



**The BExA Guide  
to Export Compliance**

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## FOREWORD

This is BExA's 7<sup>th</sup> guide. Previous guides<sup>1</sup> have addressed winning and managing exports, financing them, insuring the risk of non-payment, and the practicalities of letters of credit, contract bonds, and getting your goods back when you've not been paid.

As with previous guides, this Guide to Export Compliance is written by exporters for exporters together with their service providers and financiers, and concentrates mainly on management of the risks and processes that together contribute to making sure the export is delivered successfully.

Compliance is a legal obligation and affects us all. By all means appoint someone to make sure your team is kept abreast of changes, but don't leave all compliance to that person: it is too important for that.

Compliance is not just an administrative chore. It is a vital link in the exporting chain and needs to be given due time and attention. Get it wrong and your goods won't arrive, your customer will be let down and your competitors will step in.

Most compliance is a combination of common sense, good teamwork and record-keeping. Set your standards high, play by the rules and be sufficiently nimble so you can accommodate, or even take advantage of rule changes. Take pride in managing compliance as a team – include all members of the company right through to the Chairman – and you will get a reputation for spot-on delivery and be valued by your export customers.

Don't be daunted by the length and complexity of export compliance as described in this Guide. It's a fiercely competitive world trade arena and we are a great exporting nation. If this Compliance Guide proved a deterrent to exporting then it would have seriously failed in its purpose. Compliance is a must for exporters so make it a way of life, not a millstone. Do your homework and take professional advice – and remember there is help at hand from BExA and the contributors to this guide.

Sir Richard Needham  
President, The British Exporters Association  
March 2011

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<sup>1</sup> BExA Guides to Successful Exporting, Financing Exports, Letters of Credit, Export Credit Insurance, On Demand Contract Bonds and Retention of Title are available to download from [www.bexa.co.uk](http://www.bexa.co.uk). Printed copies are provided to members.

## EDITOR'S NOTE

The BExA Guide to Export Compliance is relevant to:

- exporters – manufacturers and merchants - of goods, technology and services,
- advisers, agents, brokers, insurers, reinsurers, bankers, financiers, advertisers and promoters of those entities
- shippers, freight forwarders, logistics companies, customs advisors.

If you get compliance right, there is every reason for the export to be delivered on time and without extra costs, fines or penalties. Non-compliance, on the other hand, can lead to missed deadlines, unexpected costs that eat into profits, the need for management time to be spent on sorting problems, late delivery, and in some cases, prison. It's the customer who loses out in the short term. Longer term, the exporter loses his reputation for being a reliable business partner.

This guide is not only about Export Controls: 95% of goods leaving the UK are not subject to export licensing, but 100% have to comply with rules and regulations. We've described a wide range of export-specific compliance needs and their management. Be compliant but don't let compliance spoil the enjoyment of successful exporting. Rest assured that thousands of exporters go about their lawful tasks with very little interference from compliance authorities.

We include a section on Export Controls. Just because a customer wants to buy your product doesn't mean that you can sell it to him. For example, your sales agent might report that there are US-branded computers on desks all through Iran and Cuba, but this doesn't mean that it is legal for an exporter to sell US goods to the country. There's no point spending a small fortune on winning a sale, only to discover at the last minute that it's illegal to make the sale. The penalties for non-compliance with Export Controls are severe.

The regulatory environment changes all the time, and keeping up-to-date is a challenge. This guide is not the be-all and end-all that you can tick off when your export is ready to go, rather it is intended as a reference source. Most usually, regulation is added to, but there are encouraging signs that there will be some streamlining: President Obama is leading the charge against red tape by instigating a review of US Export Controls.

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We thank them for sharing their advice and experiences. All views expressed are personal.

Your attention is also drawn to the notices placed at the end of the Guide.

Export compliance is a huge subject. In this guide we do not mention normal business compliance issues such as for finance, health and safety etc – though these most certainly do apply. Rather, we've written up some practical aspects to compliance that is specifically relevant to exporting. You are advised to undertake your own research and take professional advice.

Susan Ross

Aon Ltd

Chairman, The British Exporters Association

March 2011

## CHAPTER 1 EXPORT COMPLIANCE BASICS

Winning an order from abroad is a great achievement. But it is also when the real work starts. This guide aims to give you some ideas about how to get the detail right so that you don't fall into the gulf between aspiration and delivery.

### Essential components of compliance

1. Understand what it is that you are selling - "know your product/service"
2. Understand the needs of your customer and the destination country - "know your customer"
3. Understand, and keep up-to-date with laws and regulations - "know your regulator".

The other aspect of compliance is record keeping: it is worth establishing a disciplined filing system to capture the various export compliance issues so that you can lay your hands easily on proof that you have put in place the measures necessary for compliance and have records of the results.

### Inter-Company teamwork

Exporting involves a complex web of suppliers, shippers, packers, finance houses, carriers, freight forwarders etc, but at the end of the day, it is the exporter's business, and its reputation and relationships with customers that are at stake. Exporters therefore will need to ensure that contracts with, and management of, service providers address the need for high standards and good team-working. Stakeholders – colleagues, suppliers, service providers – must buy in to the fact that compliance is not the role of someone else: it affects us all. We've devoted Chapter 6 to compliance culture in the company.

Penalties for non-compliance range from annoyed or unhappy customers through to delays, missed deadlines, re-working and storage that cost money or commercial penalties in the form of liquidated damages, to official fines and financial penalties, loss of reputation and, for certain transgressions relating to non-compliance with Export Controls, imprisonment of individual members of staff.

### Ignorance is no defence

One of the difficulties with regulations is that it is not easy to find out about them. New regulations are imposed, or regulations change, without any prescribed timetable. Whereas you can pin a commercial organisation down to make changes in its commercial terms only at pre-agreed dates, public bodies are not so accountable. Also, as the political situation of the world changes, trade in products and services that was acceptable in the past might become illegal, or restrictions might be imposed on the destination.

### Preparation

Understand the UK/EU regulations that apply to your activities and ensure you are able to comply with legal requirements. Detailed research before you start selling in a market will help avoid mistakes. Don't accept one opinion from the Internet; always double-check...and then check again!

- Train all staff, including sales staff that have the potential to commit the firm when finalising contracts. Refer regularly to relevant government websites, and sign up to emailed updates.
- Check the compliance aspects of the export early on, not when you are ready to ship.
- Don't delegate legal statements to other parties in the supply chain without fully understanding what you are committing to, e.g. freight forwarders making export declarations on your behalf.
- Ensure you have a "suspicious enquiry" procedure within a contract review function which means you will check "red flags" (i.e. general concerns) in relation to money laundering, embargoes and sanctions, corruption and export controls before committing valuable time and effort to an order enquiry you will be unable to supply.
- Know if Export Control Regulations may apply. This can come into play either because the products/services are controlled, your business or the goods come under USA extra-territoriality controls or the destination country and/or customer's and end-user's nationality are key issues.
- Be aware that if the goods or services are controlled, your initial marketing, discussion and demonstrations of the goods and software to non-UK nationals, including if they are colleagues, will also be controlled.
- If you are a USA owned organisation or have USA-origin components in your product, you will need to be aware of how the USA Export Control Regulations affect your business. The USA operates extra-territoriality controls on certain types of goods and technology, contravention of which means your business could end up being blacklisted.

Seasoned exporters recommend taking professional advice, writing a statement of compliance and a procedure and having a "compliance officer" to be the "watchtower" for relevant changes and a "gate keeper" to ensure people within the organisation are up-to date and operate the compliance rules.

#### **Keep up-to-date**

An exporter shipped two 40ft containers of goods to Saudi Arabia. A week after the vessel sailed, the Saudi Customs authority decreed that all goods must forthwith be in strict compliance with new marking of origin regulations. There had been no advance warning to the wider international trading community. The two containers arrived in Saudi, were inspected, found to be in contravention of the new decree, and refused entry. No period of grace was given, even though the goods were in transit when the regulations were changed.

The exporter had to pay all the costs for the return of the containers.

High standards are an increasingly important part of business: customers want more for their money, and want to be associated with companies that have good reputations. The same goes for other stakeholders such as suppliers, public bodies that award licences or contract work etc. Correct and adequate compliance with rules and regulations is rarely visible; non-compliance can become very visible.

### **Global branding problem**

A well-known fast food chain wanted to promote its brand image in Saudi Arabia. A display stand, featuring a cartoon representation of a clown caricature, was printed on a board and shipped to Saudi as part of a consignment of retail display equipment. Saudi Customs banned the import of the graphic as it contravened strict regulations which forbid the import of "toys or statuettes representing animals or people". The graphic was considered to be in breach of this prohibition even though it was only a cartoon character. The graphic was later destroyed by Saudi Customs.

Don't expect there to be a perfect solution to export compliance and export controls if they are – or become – relevant. You will also have to apply common sense. Be aware that your senior management may not want to hear the true situation if it threatens business. But you will have to persist; there is no way around export compliance.

### **Multinational manufacturing**

The Asia-based parent of a UK exporter decided to move its manufacturing base from the UK to the USA. The company's export compliance officer writes: "In practical and financial terms, the move went well except for one small matter; three profitable export markets immediately became unavailable because of US export sanctions, not just for arms and dual-use items (for which we had checked with the UK authorities and been given a clean bill of health), but for any USA originating products. Clearly our HQ in Asia hadn't considered (or understood) all the consequences of relocating the manufacturing facility. Still, the decision had been taken and as a result, markets previously worth in excess of £1.8 million were effectively closed to us. The export sales team who had been working hard to develop these regions was understandably miffed as they were on the verge of closing new multi-year deals worth over £1.5 million per year... And apparently it was "all my fault" for bringing the issue to everyone's attention! I had become, to paraphrase Billy Connolly, about as popular as a fart in a spacesuit!"

## CHAPTER 2 FINANCIAL COMPLIANCE

In this chapter, we include a number of compliance issues that relate to the financial management of the sale. The most stringent of these are to do with illegal movements of money, including money that may be financing terrorism, but there are a number of other pitfalls in relation to the financial aspects of exporting. In this chapter we consider:

- Money laundering
- Bribery
- Client entertainment
- Information
- Data Protection
- Intellectual Property
- Trade finance and letters of credit
- ECGD and export credit insurance compliance
- VAT and indirect taxes
- Customs Duties & Excise
- Exchange Controls

### Penalties

Recent legislation in the UK and abroad, coupled with agreements between governments in the 27 members of the European Union (EU) and the Organisation for Economic Co-operation and Development (OECD), have brought money itself into the gamut of compliance. The legislation has extraterritorial applications. There are not many acts a person can commit overseas that get them put away for 10 years in the UK, but transgression of either the Proceeds of Crime Act or the new Bribery Act will.

A company selling abroad also needs to consider the issues of theft, fraud, tax evasion including VAT, and exchange controls. The Data Protection Act also has implications with regard to transactions and movement of financial data across borders.

### Money Laundering and Related Legislation

UK legislation takes an 'all embracing' approach to issues of anti-terrorism, proceeds of crime, fraud prevention and money laundering. This is achieved under a range of legislation, for example:

- The Terrorism Act 2000.
- The Anti-Terrorist Crime & Security Act 2001.
- The Proceeds of Crime Act 2002.
- Serious Organised Crime and Police Act 2005.
- Money Laundering Regulations 2007.

Under this legislation it is an offence when a person enters into, or becomes involved in, an arrangement that facilitates by whatever means the acquisition, retention, use, or control of criminal property by another person. There is a legal obligation on us all to report suspicious activity.

The clear message is that at an organisational and individual level we need not only to avoid anything that is 'dodgy', but actively consider investigating and even reporting it. Each business must have policies, procedures and training that facilitate this.

The various legislation differentiates between regulated persons, (including banks, financial institutions, money transfer businesses, bureau de change, credit card issuers, insurers and brokers, lawyers, accountants and insolvency practitioners, investment companies and estate agents), and unregulated persons who are everyone else. The acts also apply to both individuals and bodies corporate. Thus these regulations apply to every business in the UK whether exporting or not, whether regulated or not, and the penalties for non-compliance are draconian.

The obligations of the regulated entities are much greater than of the general public, as they operate in sectors where funds can be laundered to disguise their original source, and hence then treated as 'clean' funds. The authorities thus target these bodies to make it more difficult for terrorists to fund their operations or organised crime to benefit from the profits of their nefarious activities.

#### **Milking it**

A successful prosecution involving the Serious Fraud Office related to a metal trader called RBG Resources. Amongst other interesting discoveries was that the company's US metals warehouse was in fact a launderette. The company also 'traded from' a cowshed in India. Clearly, there is value in visiting someone's business premises!

#### **What checks do you do to make sure a transaction you are engaged in is authentic?**

This issue impacts banks heavily and drives a number of the (sometimes onerous) procedures they impose on you. For example, in relation to opening accounts, verifying ownership and control within your business, authenticating who people are, verifying aspects of your business operation and scrutinising individual transactions. Short hand terms used to describe this regime of practice are 'know your customer' ('KYC') and 'know your business'.

The simplest, practical, advice one can offer in this context is merely to 'grit your teeth' and cooperate as fully as you can with these requirements. Banks themselves have very limited room for manoeuvre and have been fined for failures in these control regimes. Moreover, since the penalties for non-compliance include 10 years in jail for individuals involved, they are more than a little interested in doing it right.

Banks' KYC include that they properly identify their customers, the real beneficial owners of their customers and the source of any money their customer receives. We all know these rules from the need to provide photo ID (passport or driving licence) and proof of residence (utility bill) to open a bank account, sell a house or buy and sell shares. In the case of a corporate entity, the bank will need to see the certificate of incorporation, the memorandum and articles of association, names of main shareholders, names of directors and the proof of identity and home addresses of all key persons in the

business including individuals owning more than 15% of the shares. Where the company has nominees or corporate shareholders, the bank must identify the beneficial owner(s) of those shares.

#### **It was in the name...**

A recent fraud case in trade finance related to a company called Solo Industries. The bank financed invoices raised by Solo in respect of its export sales, and Solo's turnover increased. However, the owner of Solo Industries also controlled a range of companies that formed the 'client base' (i.e. customers) of Solo. The banks that lost millions of dollars would no doubt have been less willing to lend if they had fully understood this ownership structure.

#### **Suspicious Transactions**

One provision we are all bound by is the suspicious transaction provision. This requires anyone who discovers a suspicious activity to report it to the authorities, which can be a nightmare in itself. A suspicious activity is anything which causes the beholder to have a reasonable suspicion (not proof) that something untoward is happening. Reporting suspicions is more difficult as there are different regulating bodies and some of these are being re-organised.

It is the duty of any individual, not just regulated entities, to report a suspicious transaction. The law puts a less onerous interpretation of suspicious transactions for an individual. Transactions which could be considered suspicious include:

1. Offers to settle obligations with cash
2. Payment of invoices in full, followed by a request for a refund
3. Payment of monies to a third party not connected with the transaction
4. Payments received from third parties in settlement of the account
5. Diverting shipments in transit to different port and changing the name of the consignee on the bill of lading.

#### **Making a Mistake**

If an accountant discovers tax evasion, the normal place to report it to is HMRC. But the accountant may also be required to file a report with Serious Organised Crime Agency (SOCA.) This can be even more Kafkaesque, as the accountant may find an honest mistake in the business expenses claim and this obliges him to report the honest mistake to HMRC, amend the tax return, pay/settle any resulting tax, and any HMRC penalty, following which HMRC takes no action. However, under Suspicious Transaction regulations, the honest mistake is tax evasion and a reportable potential 'crime' to SOCA. The accountant must still file a suspicious activity report even though HMRC, the enforcing authority, is happy the matter has been dealt with and is taking no further action.

#### **Tipping Off**

One serious particular provision of the legislation is the offence of 'tipping off.' It is an offence under the regulations to inform someone that you have reported them or a transaction they are involved in to the authorities. This is to prevent individuals or organisations becoming aware of a potential investigation, and taking action to evade prosecution, move funds abroad, destroy evidence, or escape capture.

## Frozen Monies

Should a bank or financial institution receive monies that it cannot identify or cannot verify are clean funds, it will withhold paying the funds to the beneficiary for up to 7 days, and make a suspicious transaction report to the Serious Organised Crime Agency, SOCA. This gives SOCA time to respond, and if it does not, then the funds can be released.

Similar regulations are in place in other EU countries and the USA. In the US, this devolves from the Patriot Act and this has caused some difficulties for businesses because it draws in all US dollar transactions. If your funds are delayed, you may find you can unlock them by making a call to the US correspondent bank explaining the background to the transaction.

### What's an invoice number?

One exporter arranged to sell some US Dollars through a foreign exchange trading company and had his own UK High Street bank remit the funds to the foreign exchange (forex) dealer's account at another UK High Street bank. All of the contracting parties were in London. Unfortunately, the US correspondent bank (through which the dollars were routed) blocked the payment under money laundering rules. It transpired that the US bank stopped the funds because it didn't recognise the forex dealer's ten-digit reference. The US bank thought it suspicious because it was only a set of numbers! A phone call to the US bank's compliance team with an explanation had the funds released immediately.

## Bribery

Bribery is unacceptable business practice. It pushes up the cost of trade and can deprive companies and people of goods and services that are most suitable for their needs. It is no surprise, therefore, that bribery is an offence at law in most countries.

Bribery & Corruption is not just about money changing hands in 'brown paper bags'. It is frequently represented in the form of 'agents' commission', and care must be taken in the choice of agent, the contractual obligations of the agent, the calculation of and method of payment of commission. In certain circumstances or jurisdictions, bribery is extended to include:

- **Facilitation payments:** A payment made with the purpose of expediting or facilitating the obtaining of or retention of business. (Facilitation payments are still allowed in some jurisdictions such as the USA).
- **Offsets:** Contractual economic return required by a governmental institution on behalf of the customer's country, for example local investments, local purchase or local manufacture.
- **Gifts & Hospitality:** The offering and receiving of gifts and hospitality for business contacts is customary across industry. However, at times such activity has strayed into being improper.

## Client entertainment

Make your entertainment modest, reasonable and transparent. The entertainment should ideally relate to the business and be proportionate to the business relationship. The UK Bribery Act comes into force in 2011 and makes it clear that undue inducements should not be made to entities that are government officials or in the private sector. While corporate entertainment

itself is not illegal, it is at one end of the scale, the other end of which is deemed inducement which is bribery. There is no definition of where you step over the line, so a good rule of thumb is only to take part in activities that you would be happy to see reported in the news.

#### **Client Events checklist: avoid paying a bribe**

- A payment, gift, offer, or promise that is made to induce the recipient to misuse his or her official position in return for an official act or omission is never reasonable, has the potential to damage your company's brand, and may also be prohibited by anti-corruption laws in this country or at the destination.
- Only invite customers and prospects who have the necessary competence and expertise to training or an educational event.
- Expenditure should be modest, reasonable and transparent.
- Do not offer to reimburse direct to a customer or prospect any costs such as restaurant bills, hotel bills and travel costs.
- Keep accurate records of, and associated documents evidencing, the expense and its purpose e.g., a travel agenda detailing the type and length of training or meetings, including details about delegates, locations and amounts spent for each component of an activity
- Spouse or companion travel, leisure excursions or vacations should be discussed in advance with your company's compliance and legal department.

#### **Client entertainment**

- Make it personal and proportionate
- Plan carefully. Be inventive. Create an opportunity to network and talk business. Consider what documentation you will hand out, and how. For example, exchange some new reference material for a completed feedback form.
- Smaller, targeted events may be more memorable than an impersonal big splash
- Make sure your senior colleagues are available, that they attend, and provide feedback about business opportunities.
- Monitor and evaluate the event. Has there been a return on the investment? What kind of feedback was received? What did you learn about your guests?

#### **Knightsbridge retail therapy for 3 wives**

A financial services company ran a one-day course for clients and volunteered to organise a shopping trip for the three wives of an overseas government official, including a dedicated taxi to ferry them around, and an expense account lunch... until the company's compliance department explained that such generosity was not appropriate.

Companies should aim to win business and keep clients happy by providing appropriate products, services and solutions, and take pride in providing good quality after-sales service.

### **Work experience... or holiday?**

A team from a financial services company signed off the payment to bring the daughter of an important US client to the UK, put her up in accommodation and provide her with a generous expense allowance while she was on work experience in London. This breached the company's financial limit on work experience payments.

### **Preventing someone asking for, or offering, inappropriate gifts or hospitality**

- Discuss your Ethics Policy with customers and suppliers at the outset.
- Tell customers and suppliers that all contracts with them will include "ethical provisions".
- Include these "ethical provisions" in draft contracts and specifically draw customers' / suppliers' attention to them.
- In contracts, describe in detail what is included in any per diem payments.
- Clearly describe the contractual conditions for acceptance / rejection of products and services in order to avoid any pressure, even implicit for "additional" consideration.
- Explain the new UK Bribery Law.
- When exporting, use local, well-established freight forwarding companies with a good reputation, who know the local customs and are less susceptible to any undue pressure.

### **Resisting an offer or a request for inappropriate gifts or hospitality**

- Politely explain the company's policy.
- Describe the new UK Bribery Law.
- Explain you do not have the authority or the power to honour any request.
- Ask your manager for advice (escalate as required).
- Offer logistical support but refuse to pay for services.
- If the person insists, ask that the request be made in writing and state that it will be sent for written approval to
  - your superiors and
  - the superiors of the person making the request.
- Work with other industries in the customers'/supplier's country to say "no".
- Report any incidents appropriately.
- Refuse politely, but firmly, a gift outside of your company's rules, and remind the supplier of your company's Ethics Policy.
- When in doubt, speak out, share, and ask for advice.

### **Bribery Law**

UK Bribery Law has become more stringent with the Bribery Act 2010 which comes into force in 2011. To a large extent, the UK has been playing catch-up: the new law replaces the fragmented and complex offences at common law and in the Prevention of Corruption Acts 1889-1916. Other countries have had

strong law on bribery for many years. Sharia law forbids corruption. The US's wide-ranging 1977 Foreign Corrupt Practices Act (FCPA) was amended in 1998 by its International Anti-Bribery and Fair Competition Act.

The new UK Bribery Law creates the following offences

- "Individual" offences:
  - Bribing another person - offering, promising or giving a financial or other advantage
  - Relating to being bribed - requesting, agreeing to receive or accepting a financial or other advantage
- Bribery of a foreign public official
- Failure by commercial organisations to prevent bribery
- Director, partner or senior officer "consented to or connived in" the general offence of bribery of the foreign public official

The new UK bribery law will, amongst other things, introduce a new corporate offence: failure of a commercial organisation to prevent bribery, i.e. not having adequate procedures to prevent corrupt practices within the company or by third parties on its behalf. In other words an event of bribery does not have to have happened for you to commit an offence. Transparency International has published on its website some useful guidelines as to what constitutes 'adequate procedures'. (<http://www.transparency.org.uk/>)

The law is very broad in relation to what may be considered to be bribery: there is a fine line between what is deemed business entertainment and what is a bribe. UK bribery law also covers UK persons' activities abroad. If you are found to have committed an offence abroad, you may fall foul of the law both in the UK and in the overseas country.

Here are some examples of penalties from overseas jurisdictions:

For the individual

- Imprisonment
- Hard labour
- Fines

For a company

- Disqualification of bid
- Termination of contract
- Confiscation of property and illegal proceeds
- Prohibition from entering into government contracts
- Publication of sentences

The main impact, long term, is loss of reputation.

No two situations are alike. If you are in any doubt as to whether an action or activity may be deemed to be bribery, and you have checked the legal aspects, ask yourself if it would stand the transparency test: if full detail of the transaction was visible to all, could it be viewed as an undue or unfair advantage? If so, even if the transaction was legal, you could be putting your reputation, and the reputation of your company, at risk.

### Information and recording

A vital part of compliance is the keeping of records so that regulators and auditors can track decision-trails and relevant activity.

- Ensure your files present a complete and accurate record, so you can demonstrate what action you have taken – you may have to explain yourself in court.
- Act professionally to all parties.
- Take care to communicate clearly.
- Know your customer.
- Operate within your expertise.
- Don't cover up a mistake. The earlier a mistake is spotted, the easier it is to put right.

### Information security Do's and Don'ts

Do's	Don'ts
<ul style="list-style-type: none"> <li>• Use confidential waste bins for sensitive material</li> <li>• Commit passwords to memory</li> <li>• Lock drawers / filing cabinets when they are left unattended</li> <li>• Escort visitors when they are in the building</li> <li>• Put your computer into "password" mode every time you leave your desk.</li> <li>• Operate a clear desk policy at night.</li> </ul>	<ul style="list-style-type: none"> <li>• Leave confidential information on a desk, white board or train</li> <li>• E-mail sensitive documents to personal e-mail addresses</li> <li>• Open e-mail attachments from strange sources</li> <li>• Download unapproved software to a company PC or laptop</li> <li>• Politely hold access doors open to people you do not know.</li> </ul>

### Helpful colleague was helping himself

In a department of 20 staff, it was company policy that payments would require to be processed by two different staff, one to input data and the second to check and authorise. One long standing individual in the team was extremely helpful - nothing was too much trouble - and he had a knack for solving IT problems. He was a hard worker, rarely took holidays, and lunch was generally at his desk. He would often sit at others' desks to solve IT issues for them, so no one took any notice when at lunchtimes he would sometimes be working at a colleague's desk. There were also no records of how many files each person had out at any one time. So when queries came up on a file that was logged out in his name, the query was passed to him. One day, a colleague decided not to accept his help, processed the file herself, and the story unravelled. It transpired that the helpful colleague had got into debt and worked out a way to "borrow" from the company - and the opportunity was made all the easier by the fact that colleagues did not log out of their computers when they went to lunch, there were no rules about needing to take 5 consecutive days' holiday, and no audit of where the files were.

### **Cutting the data differently**

A financial services company with a huge database of customer information listed by name and numeric reference, cut the data a different way and reviewed the telephone numbers. The same number cropped up about 20 times, for different customers, and this led the company to investigating further. A site visit was organised. The office was a garage, and on the other side of the street was a housing estate with a huge immigrant population. One English-speaking person was running numerous identities for 'clients' over the road.

### **Personal information and Data Protection**

This section is relevant if you have information not just about the companies to whom you sell, but also about the people involved. You may be tempted to keep records about which football team your key contact supports, his/her partner's name or key anniversaries. The minute that you file such information on paper or electronically in an indexed or accessible form, you will need to consider the law on Data Protection.

The UK's Data Protection Act 1998 aims to stop people or organisations holding and using unnecessary or inaccurate information on individuals, whether this relates to their personal or business lives. It requires that those people who process personal information or personal data relating to a living, identifiable individual:

- formally explain why they are doing so
- give the individual details about what information is held
- put right anything which is wrong or misleading

In particular, the Act does not permit the free transmission of personal data across borders, including anything which would enable a third party to identify the individual concerned. Many overseas businesses are established as sole traders and thus the invoice value, the address and customer name are all personal data.

### **Data Protection Act eight principles:**

Information must be

- Fairly and lawfully processed
- Processed for limited purposes
- Adequate, relevant and not excessive
- Accurate and up to date
- Not kept for longer than is necessary
- Processed in line with your rights
- Secure
- Not transferred to other countries without adequate protection

## Intellectual Property (IP)

It's important to protect your developments from being copied. Consider registering your own patents, registered designs and trade marks in each country where you intend to trade, even though this may mean you will have to reveal some technical information that you may prefer to keep secret. You should also ensure that your own products do not infringe other companies' patents and other IP rights. Bear in mind that IP rights can subsist not only in products themselves, but also in packaging, instructions, promotional materials and other such documents.

You may wish to license overseas entities to produce and/or sell your products, saving your own company the full cost of development. This is a highly technical area, full of pitfalls for the unwary. Not only do you need to select a licensee that will fulfil your requirements for investment and growth, but also you will need to comply with competition, licensing and other rules in the destination country. Make sure your licensee can deal with all these issues. It is wise to engage a specialist IP lawyer to help structure and draft licence agreements.

Intellectual Property Do's and Don'ts	
<p><b>Do</b></p> <ul style="list-style-type: none"> <li>• Instruct designers (whether of products or packaging etc) in writing, and save the instructions and designers' drafts</li> <li>• Ensure that contracts with external designers include an assignment of the IP rights – this is NOT automatic</li> <li>• Ensure that contracts with suppliers contain appropriate IP warranties and indemnities</li> <li>• Carry out patent/trade mark/ design searches before launching new products</li> <li>• Ensure that licences contain sufficient obligations on the licensee e.g. minimum royalties, best endeavours obligations</li> </ul>	<p><b>Don't</b></p> <ul style="list-style-type: none"> <li>• Instruct designers to copy someone else's products, packaging, documentation etc</li> <li>• Assume that because something is on the internet, it is free to use</li> <li>• Assume that products that have been around for a long time do not have any rights</li> <li>• Assume that your suppliers have ensured that their products are non-infringing</li> <li>• Enter into exclusive IP licences unless you are sure the licensee has adequate resources and expertise to exploit the IP</li> </ul>

### **Non-compliance led to re-structuring of IP**

A company, X, had developed technology for increasing the recovery of oil from wells. It had received poor advice and had granted an exclusive worldwide licence to an oil services company that was slow to develop the technology and was not paying any royalties. As the licence was exclusive, the licensor was unable to use the technology itself, nor license it to anyone else.

With good legal advice, the company managed to establish that the licence was not compliant with EU competition law, and was therefore invalid. It terminated the licence at little cost to itself. It then split the technology according to a range of applications in the oil industry, and granted separate licences to separate licensees in respect of each application. Many of the licensees agreed to pay X for R&D projects in relation to the applications, as well as royalties on sales of the technology. With this additional income, X's resources were freed up to pursue developments in pharmaceuticals and other fields.

This story therefore had a positive outcome for X, but it had lost several years' worth of potential revenues, and could (in different circumstances) have been unable to terminate the original licence. It would have been much better had X adopted the final structure at the outset.

### **Financial compliance: trade finance and letters of credit**

Many text books and training courses emphasise the need for exporters to comply with the exact terms of letters of credit (LCs) in order to avoid documents being rejected. However, this is not always as easy as it may sound. It is best to agree the exact terms and documentary requirements of a LC with your customer before the LC is issued. It is definitely important to check through the LC as soon as it is received, not only to ensure you are happy with the Bank(s)'s standing but also that you can comply with the documentary requirements to the letter and, if not, seek an amendment. Unfortunately, notwithstanding having taken such precautions, as experienced exporters will know, many LCs contain nuances which may not be immediately apparent to the unwary. Obviously, experience is the greatest asset here but the ICC produces a rule-set called Uniform Customs and Practice for Documentary Credits (currently UCP 600) to which almost all commercial LCs are subject. The ICC also produces some lesser known papers covering areas where difficulties have arisen, some of which can be downloaded from the ICC web-site. The most recent of these is 'Recommendations of the Banking Commission in respect of the requirements for an On-Board Notation.' An easy way to find them is as follows.

- Google ICC-The world business organisation
- Click on Banking Technique and Practice
- Go to the box headed 'Policy Statements, Rules and Codes'
- Obviously, there are many other sources of information but the key recommendation is to examine LCs closely when received as opposed to putting them to one side until despatch when you will need to present documents. BExA's Guide to Letters of Credit (revised for UCP 600 in 2007) provides a practical view of managing letters of credit.

## Export Credits Guarantee Department Compliance Requirements

An exporter accessing support from the Export Credits Guarantee Department (ECGD) will be required to confirm compliance with a range of statutory requirements. These are embedded in the application process and require continued compliance throughout the performance of your export contract.

### Application Process

As you fill in the ECGD application form you should be transparent and open in providing the information required. You will be asked to provide a range of data concerning your export contract such as a detailed breakdown of the contract content by sourcing and value, contract price, performance period, delivery events and anticipated terms of payment under the contract. Accuracy is important, although this will be governed by the stage you are at in your negotiation process with your customer. Data can always be updated as the deal progresses, so don't be shy in contacting ECGD.

ECGD compliance requirements include the need to make statements and supply copies of documents and sign that you will continue to apply these standards during the obtaining of and performance of the contract:

- A copy of your company's Code of Conduct demonstrating how you prevent the company and its employees from engaging in any corrupt activity.
- Extensive undertakings regarding corrupt activity relating to the contract or any related agreement, together with an undertaking that you have made reasonable enquiries of consortium partners, agents and any Group company involved in the export and, that as a result of these enquiries, the exporter is not aware of any evidence of any corrupt activity in relation to the winning or future performance of the contract. In the event that any corrupt activity does occur then ECGD reserves the right to void the cover and seek repayment of any and all claims that may have been paid to the exporter or the financing bank.
- Confidentiality conditions – you will need to ensure that you abide by these conditions.
- The Application must be signed by a director or a person authorised by the company's board of directors or an officer of the company in accordance with the company's articles of association or equivalent constitutional document to sign on behalf of the exporter.
- If you have accessed ECGD Buyer or Supplier Credit support then your contract documentation will incorporate a Qualifying Certificate containing a plethora of representations and warranties required at each drawing under the financing – make sure that your presentations and warranties are correct in all respects for each drawing. ECGD has the right to undertake an audit of your contract, so ensure that you keep accurate, up to date records.

### Environmental, Social and Human Rights (ESHR) Impacts

- ECGD has a requirement to assess the ESHR impacts of an Applicant's project and ensure that the prospective project is suitable and acceptable for support. ECGD will employ appropriate international standards, as set out in OECD document entitled Revised Council Recommendation on Common Approaches on the Environment and Officially Supported Export Credits, (see [www.oecd.org](http://www.oecd.org) for details), and will apply these to projects that:
  - require an export credit repayment term of more than 2 years
  - are either a new development or represent a material change to the operation of an existing facility

- Where the total of ECGD support is greater than the equivalent Special Drawing Rights 10million (approx £10m) or the project is in or near a sensitive area
- Categorisation of the project as either A or B, as set out by the OECD

The impact of these assessments on the exporter is the requirement to complete Project Assessment forms as follows:

**Category A projects -**

- To obtain from the project sponsor/buyer an Environmental Impact Assessment and/or a Social Impact Assessment and/or a Resettlement Action Plan

**Category B projects -**

- completion of an Impact Questionnaire.

In all events you should be completely open and submit comprehensive data—all of which involves an investment of time and resource. You should also be aware that the analysis of your responses can and will take time; make sure that you allow for this when planning project timescales.

ESHR impacts are not assessed for Defence or Civil Aerospace applications, which are covered by their own specific Government and ECGD Approval processes based on international standards

### **Debt Sustainability**

ECGD has a requirement to assess the Sustainable Lending Principles, as set out in the OECD's Principles and Guidelines to Promote Sustainable Lending Practices and the Provision of Official Export Credits, ([www.oecd.org](http://www.oecd.org) has details), as they may apply to your project. The types of assessment that ECGD may carry out include, but are not limited to:

- The priority given by the buyer to social and economic development
- That the amount and tenor of the lending is consistent with World Bank/IMF analysis of the country's debt sustainability and is within any limits set by World Bank/IMF
- Whether the export contract represents value for money in instances where a competitive tender process has not been conducted

As the exporter, you should be aware of these requirements from the outset and be prepared for the assessments – better to be prepared than disappointed.

### **Performing the Contract**

Once you've negotiated the application process and won the valuable export deal, you will be required to comply with the requirements of ECGD. The starting point in all of this is to ensure that you've read and understand your Policy documents and that you know what you need to do in order to comply!

As with any commercial insurer, you will, under the ECGD policy, have the obligation to report to ECGD any material events that occur during the performance of the contract. These will include, but are not limited to, any changes to the scope of supply under the contract or the price of the contract or any extension to the performance period of your contract. In addition if

you become aware of circumstances or potential events that you believe may lead to a potential loss under the contract – be it a potential non-payment of an invoice or failure of your buyer to carry out its obligations under the contract – then you should advise ECGD. If in doubt – shout! Better to tell ECGD as and when things happen than say nothing and find out later that you’ve voided your valuable cover.

Full details of ECGD’s requirements and the range and scope of the associated undertakings are set out in the relevant ECGD Application Forms. Guidance Notes are also provided for applicants. Documentation is available on ECGD’s website: [www.ecgd.gov.uk](http://www.ecgd.gov.uk).

### Political Risk Insurance

Political risk insurance may cover you against a contract becoming frustrated because of changes in the law, including export licensing, import licensing or sanctions or non-payment, political contract frustration, war, and foreign exchange shortage. This can be bought as a whole turnover option, covering a portfolio of export risks, or, for larger contracts, the cover is tied to the individual contract. It is important to advise the insurer if the commercial terms of the contract are amended, or if performance is not running according to plan. For example, if the customer does not supply technical drawings in the expected timeframe, and this leads to despatches being later than envisaged, this might mean that there is a doubling up of exposure or a longer overall performance period. Insurers should be advised of these variations, if only to ensure that they are ‘on side’ and to avoid tiresome, and potentially expensive, discussions if there is a loss.

### VAT Zero-rating at Export

One of the important areas of financial control procedures for exporters is the area related to zero-rating the export shipments for VAT purposes. VAT is a national tax charged by sellers to buyers within the same country. Therefore, when goods are sold and shipped to someone based outside the UK you do not charge VAT. We are so used to this concept that often exporters fail to follow the very strict guidelines for obtaining “evidence of export” that must support the raising of any invoice without VAT. Trying to provide evidence that the goods did leave the UK when VAT has not been charged may be problematic if the seller of the goods is not responsible for the transport, which happens when goods are sold internationally on an Ex Works basis. If adequate evidence is not provided to the authorities then the seller of the goods must pay the appropriate VAT amount to Revenue & Customs, and at the current rate of 20%, that will be a sizeable amount of money.

Let’s briefly look at the basics of the international VAT regulations. There are two different situations when VAT is not charged on international transactions:

- Goods are being sold and **exported** to a company based outside the European Union (EU) – this is VAT zero-rating. A basket of documentary evidence is required to prove the goods left the EU including a transport document detailing the goods, cross referenced to the commercial invoice and reference to the customs export declaration – either the unique consignment reference or the movement reference number or the CHIEF reference number. This export declaration is known by a number of names in the UK including the SAD Form, C88 or “NES” (National Export System used by HM Revenue & Customs).

- Goods are being sold and **despatched** to a company based in another EU state. VAT is not charged because it is to be accounted for in the other member state. This is known as “destination accounting” under the acquisition VAT rules. As well as documentary evidence that the goods physically moved to another member state of the EU – a transport document – the seller must state the national VAT number of the customer. If a customer cannot or will not provide its VAT Registration number the supplier must charge VAT at the UK rate. We will come back to these acquisition VAT rules later.

#### Top tip

If you record all your imports and exports on a spreadsheet, attach a hyperlink from the HMRC Customs Entry Number on the spreadsheet to where you have scanned and filed the copies of the relevant documents on your system.

In the UK, VAT regulations state that if VAT is not charged on a transaction then the goods must physically move out of the UK within 3 months of the tax point being set. The tax point is set either when the goods have been invoiced or shipped, whichever is the earliest. In addition, documentary evidence that the goods moved to a country outside the EU or evidence that they were supplied to an EU country must be obtained within 3 months of the shipment date.

#### Obtaining Evidence of Export

A UK exporter received an order from a customer in Japan. The order was accepted under Ex Works delivery terms so the exporter packed the goods, prepared an invoice and waited for the customer's freight company to collect the shipment. Everything went smoothly, the goods were collected, the exporter was paid and that was thought to be the end of the transaction.

18 months later the exporter was audited by HM Revenue & Customs (HMRC). The Japan shipment was selected. The exporter had not charged VAT, believing that the goods were destined for a country outside the EU. The exporter produced the contract and evidence that payment had been made from Japan but the freight company had failed to provide a transport document or customs declaration to prove the goods had actually been despatched to Japan. HMRC, despite the 3 month rule, agreed to be lenient if evidence of shipment could be obtained. The exporter tried to contact the freight company but it had gone out of business almost a year earlier. HMRC charged 17.5% VAT on the £90,000 shipment because of lack of compliance with rules for VAT zero-rating.

**When VAT zero-rating isn't that simple**

A UK exporter received an order from the USA for milling machinery. The machinery was to be on-sold to the American company's customer in Germany along with some other equipment. To reduce transport costs, the US customer asked the UK exporter to ship direct to Germany.

Knowing about the VAT zero-rating rules, the UK exporter was confused. Payment was to be made from the USA but there would not be evidence of export to the USA for zero-rating. Shipment was to be to Germany but the German company's VAT registration number was not known so the exporter couldn't meet the second criteria for "destination accounting".

After discussion, the VAT registration number of the US company's German subsidiary was provided, and this enabled the exporter to comply with "destination accounting" rules. A signed copy of the road transport document, the CMR Note, was obtained as evidence of shipment to Germany.

**EU VAT accounting regulations**

Though the 27 member states of the European Union operate under a Customs Union, VAT is not included in the trans EU single tariff. Each member state sets its own rates of VAT (EU guidelines being 15% - 25%) and, unlike the collection of import customs duties, VAT collected by each member state remains in that country. (Customs duties are collected at the entry point when goods arrive from outside the EU but the money goes to the European Commission.) This allows free circulation of goods within the EU but the downside is that there is extra reporting.

Under "destination accounting", VAT is not charged by the supplier/shipper of the goods if the receiver/ buyer in the EU is VAT registered in its own country. This simple system led to a large scandal called Carousel Fraud or, more accurately the Missing Trader Intra-Community (MTIC) which led to millions of euros of potential VAT vanishing as goods of low weight but high value whizzed from EU company to EU company, moving faster than the paper trail, until finally they vanished and along with them any chance of knowing which company should be accounting for the VAT in the end.

**How to spot missing trader fraud**

A booklet by HM Revenue & Customs warns companies to be suspicious if a transaction shows the following characteristics:

- A new company to the market undercuts established traders
- Contacts have a poor knowledge of the market and the goods
- Unsolicited approaches from organisations with little or no history in the market offering a guaranteed profit on high-value deals
- Repeat deals at the same or a lower price and small or unrealistic profit, e.g. £1 per item
- Instructions to charge less than the full price (and often even less than the VAT invoiced) to the supplier
- Instructions to make significant payments to third parties or offshore.

For more information and advice, contact HMRC on 0845 010 9000

So, by simply declaring the buyer's EU VAT Registration number the exporter can supply goods without charging VAT, but in addition to this the following reports must be made:

1. Quarterly/ monthly VAT returns must show the value of supplies to and acquisition from other member states of the EU;
2. A monthly EC Sales List (ESL) must be submitted showing the value of both goods and services supplied to a company in another member state. The figures must be shown against the EU buyer's VAT registration number.
3. A monthly supplementary declaration (SD) showing what has physically moved to other member states is required but only if the annual EU sales value exceeds £250,000. If the annual value of your purchases exceeds £600,000 you also have to submit a monthly SD for arrivals. This is known as the Intra-Community Trade Statistics, or Intrastat, reporting.

Failure to submit your returns on time or accurately can lead to financial penalties (up to £250,000). Repeated failure to comply is considered a criminal offence and could lead to a court case and possible imprisonment.

### Customs duties and national taxes

There are tax implications when your company is involved in international trade. Customs duties are charged, mainly on import, and as an exporter, you should be aware about how this affects the price of your goods overseas. There is an excellent database that lets you check the current customs duty rate on goods going to about 120 overseas countries – called the Market Access Database, and which can be found at either <http://mkaccdb.eu.int> or <http://madb.europa.eu>. N.B. this database is only available to companies with an EU-based URL.

Customs duties are based on the harmonised customs Commodity Code, also known as the tariff number. You will need to know the first 4 digits of the commodity code number to use the Market Access Database effectively. HMRC tariff classification helpline 01702 366077 provides assistance. Once you know your commodity code, open the Applied Tariffs Database page on the Market Access Database, select your country and enter the first 4 digits of the commodity code and you can see the amount of duty and taxes that your customer has to pay to import your goods.

#### **Incorrect commodity code**

An exporter of electronic goods received an order from Brazil. The exporter had obtained a ruling from HMRC that the product code for the items was 8524 7000 which incurred an import customs duty rate in Brazil of 12%. The Brazilian importer wanted the goods declared as 8471 7000, suggesting it would be easier to import under this commodity code. Checking the Market Access Database the exporter realised that the 8471 number was incorrect for the goods but it would lead to a reduction in Brazilian import duty rate from 12% to 2%. Aware that knowingly declaring the commodity code of a product incorrectly could lead to a customs civil penalty in the UK for £2,500, as well as problems overseas, the export department refused to use the number the Brazilian customer had requested. Under pressure from its sales department, the paperwork was completed showing no commodity code, although the correct number was used on the export customs declaration.

## Excise Duty

Like VAT, Excise duty is a tax set by each individual country in the EU but, unlike VAT, no common way has been found for accounting for it. Excise goods incur what is commonly called a “consumption tax” which means a tax has to be paid by the consumer of the goods even when sold to parties based in the same country. The three main areas of excise goods are:

1. Alcohol
2. Tobacco, and
3. Hydro-carbon oils, i.e. fuel

Excise goods are a great source of revenue for the Treasury and there is a very strict regime to ensure that all possible tax is collected. When trading with excise goods – as opposed to buying them for personal consumption – the excise duties must either be accounted for (i.e. paid) or suspended under a guarantee or bond in an Excise Warehouse. When goods leave an excise warehouse to go to a country outside the EU then the duty liability is discharged – as long as the exporter supplies adequate evidence of export. When goods leave an excise warehouse to go to another EU member state it isn't as simple. The procedures and documentary requirements are different for the three different types of excise products.

### Excise: the difference - alcohol

Export alcohol is invoiced in bond and VAT free and the unwary may believe that UK taxes will not apply. That would be a big mistake. The transport company which takes the alcohol from your bonded warehouse to the point of export must carry Transit Insurance. If the truck is stolen, or indeed crashes, and alcohol is lost, then UK taxes will be claimed. Once the alcohol arrives at the point of leaving the UK, orders destined for non-EU countries become free of UK taxes once on board ship. An order for Norway ceases to be a tax liability on a North Sea ferry. However, if it is bound for an EU country, then UK taxes apply until the receiving warehouse, in say Sweden, returns the 'goods received' document message. Should that not be returned, then the exporter is liable. On a full 20ft container of gin, Duty and VAT will exceed £150,000. Who said exporting was fun!

Excise goods being moved between member states of the EU have to be accompanied by a control document known as an Administrative Accompanying Document (AAD), which, until recently, had to be physically stamped on receipt in the other country to discharge the excise duty liability. In 2010 the EU launched an electronic Excise Movement and Control System (EMCS) which had an electronic AAD (e-AAD) with a bar code that allows electronic reporting of the arrival of excise goods into warehouses which hopefully means excise traders will no longer have to keep their fingers crossed that the stamped forms come back to them.

HMRC considers the duty on alcohol and tobacco is of sufficient value for extra care to be taken. HMRC often follows the goods in a separate vehicle to ensure they are not diverted, and may require more robust documentation than normal.

### Exchange controls

It is not necessarily illegal in the UK to receive payments which have been made in a way to avoid local exchange control regulations. However the obligation to know the source of the funds and that they were not the proceeds of tax evasion or money laundering still applies. Hence a big cash payment could be questionable, but payment through a legitimate account in a third country may be OK.

Be careful if you are paid in foreign currency locally. You will be liable to comply with local exchange controls and the penalties for exporting hard currency without due authorisation can be high. If you are passing through a country, don't forget to declare any large cash sum you are carrying on entry, otherwise it could be confiscated on exit. Using the local parallel exchange market can allow you to take advantage of attractive exchange rates, but be careful. There may be serious penalties if you break rules. In some countries, using the parallel or grey market is not illegal, but it is simply unenforceable in court. For example, if the forex trader was paid local currency but did not deliver the hard currency, it may not be possible to enforce delivery of the hard currency by suing in court.

## CHAPTER 3 CUSTOMS COMPLIANCE

Customs compliance is, almost by definition, a highly technical area. A summary is contained in BExA's Guide to Successful Exporting. With good advice, thorough systems and accurate paperwork, there is no reason why you should not have a smooth passage through customs.

It's worth taking advice and undergoing training so that you do not have hold-ups. Delayed shipments can lead to increased costs (demurrage / storage at the port), possible liquidated damages, unhappy customers, project delays, cash-flow problems, missed dates for ship sailings and late submission of documents under letters of credit or other trade finance facilities.

### Good Customs Compliance

The UK operates two different types of exports. A true export is when goods physically go to a country outside the EU – 'third country exports'. Goods shipped to another member state of the EU should really be called 'despatches'. We have covered the reporting and VAT requirements for EU despatched in Chapter 2.

UK Customs definitions	
<b>DESPATCH</b>	goods shipped to another member state of the EU.
<b>EXPORT</b>	goods shipped to a country <b>outside</b> the EU
<b>DIRECT EXPORT</b>	goods exported to a country <b>outside</b> the EU
<b>INDIRECT EXPORT</b>	goods exported to a country <b>outside</b> the EU via other EU member state, e.g. by road

### Export Customs declaration

The exporter is legally responsible for the information declared on the Export Entry, even if a freight forwarder has been contracted to perform this function.

From 1<sup>st</sup> July 2009 customs export entries are also checked under supply chain security criteria introduced under the Export Control System (ECS).

Indirect exports e.g. UK goods transiting Germany for ultimate destination Russia, will also need an EAD (Export Accompanying Document). This EAD accompanies the goods to the EU customs exit point where it is scanned into an EU-wide customs system and a message sent back to the originating country's customs that the goods have been exported from the EU.

#### What's needed for a UK export declaration?

- Accurate and full description of goods
- Commodity Code (HS) (box 33)
- Customs Procedure Code (CPC) (box 37)  
Export codes are in the format of a 7-character string, e.g. 10-00-001. The list of all 90 or so export CPCs is held in the customs tariff. Accuracy is important.
- Shipper's address and EORI (Economic Operator Registration & Identification Number). The EORI is a company VAT No. with three extra numbers on the end.

- If the commodity code is flagged as potentially subject to export restrictions then you will need the licence number or to declare it is “innocent”, i.e. No Licence Required (NLR). Code LIC99 may be used for “innocent” goods – but make sure they are not subject to export controls before doing so. Be aware that HMRC is increasing its checks on “NLR” (LIC99) shipments if the goods have a customs classification that regularly requires licences.
- Declaration as to whether the goods fall under any special customs procedure, or duty relief such as Inward Processing (IP) relief or specific foodstuffs controls under Common Agricultural Policy (CAP) regulations.
- Value – in pounds sterling; no other currency is allowed.
- Number of pieces, weights and type of packaging (and any international packing code)
- Unique Consignment References – UCRs
- Shipper’s job reference.
- Origin of goods: where manufactured, produced or grown.

#### TOP TIPS FOR CUSTOMS COMPLIANCE

1. Always obtain evidence of export for the movement of goods within the correct time period, i.e. transport documents and the export declaration when goods moved outside the EU. Check UK VAT Notice 703 for further information and to ensure the transport document you receive from the forwarder meets HMRC requirements.
2. Know how to ship your goods correctly for customs purposes – this includes knowing the commodity code number or ‘tariff’, declaring correct values and origin. The International Trade Section of [www.businesslink.gov.uk](http://www.businesslink.gov.uk) covers these issues in greater detail and has a link to the “Tariff” for you to check commodity codes.
3. Check what the overseas customs authorities require and ensure you are being compliant, e.g. certificates of origin, pre-shipment inspection. The Market Access Database operated by the European Commission provides this information for most countries – if you have the right commodity code – see <http://mkaccdb.eu.int>, ‘Exporters’ Guide to Import Formalities’.
4. Maintain a complete record of each shipment with all relevant paperwork. List or record all EU and export shipments cross-referenced to the paper files. If you wish to maintain electronic files only you must have HMRC permission. Ensure you report accurately and on-time.
5. Don’t be rushed or confused by things your customer or the freight agent may say; stick to the rules and check out anything that appears too convenient or too good to be true.

## Customs Statistics

Whether you are despatching to customers within the EU or exporting outside the EU you have an obligation to make a statistical declaration to HMRC to declare what has moved.

- Statistics on **despatches**, being goods moving to other EU member states, are provided by the trader under the Intrastat (Intra-Community Trade Statistics) rules.
- Statistics on goods **exported** to countries outside the EU are collected from the export declaration, generally made by your freight forwarder. HMRC's National Export System (NES) uses an enormous mainframe computer called CHIEF (Customs Handling of Import and Export Freight) to collect statistics, do risk assessments on goods and traders and collect duty and VAT on imports.

The following data is required:

- a. Commodity code / Tariff Number /Harmonised System - (HS) Code
- b. Value of goods declared in pounds sterling
- c. Weight of the shipment
- d. The VAT registration number of the trader and freight company (now known as the Economic Operator Identification Registration number – or EORI – for shipments to countries outside the EU)
- e. Country of origin (not currently required in the UK for Intrastat)
- f. Country of shipment
- g. Method of transport (not currently required in the UK for Intrastat)
- h. Nature of Transaction – shown for shipments made outside the EU as Customs Procedure Codes (CPCs)

## Commodity Code/Tariff Number/HS

The Commodity Code numbering system has been harmonised around the world (hence one of its names being the Harmonised System Code). The first 6-digits of the number used when statistics are collected at export should be the same as the first 6 on the import declaration submitted on arrival overseas.

The Commodity Code has a number of functions, one being to indicate how much customs duty should be paid on arrival and another whether the goods are subject to import restrictions. Because changing a Commodity Code changes export and import regulations and the rate of duty, there are financial penalties for incorrect coding of goods. In the UK the Customs Civil Penalty for incorrectly declaring a commodity code is £2,500 – which can potentially be charged for each error.

### **Wrong number**

A UK supplier of Telecoms equipment destined for Egypt was asked to declare the goods as general "computer equipment" and show the computer equipment commodity code on the paperwork by a customer in Egypt. Unaware that this would not only mean the goods would incur a lower customs duty rate but would also avoid the importer having to obtain the required import licence for telecoms equipment, the shipper complied. The goods were caught by a periodic audit undertaken by Egyptian Customs who saw immediately they were not computers. The goods were seized and both the importer and UK exporter received notification that a fine of \$140,000 would be levied for trying to avoid an import restriction. The Egyptian company refused to accept responsibility for the mis-declaration. Egyptian customs gave the exporter three options: arrange for the fine to be paid, pay to bring the goods back to the UK, or have them confiscated and sold at auction. It was decided to have the goods returned to the UK.

### **Benefit of fine tuning the customs tariff code**

This example highlights the benefits of accuracy in compliance.

A company selling electronic items had been importing products for several years using the generally accepted tariff code (HS code) which covered products under a generic heading. However, it was realised that several of the products in the range could actually be classified more specifically than using this generic classification. If the exporter could prove its case, the importer's duty rate would be reduced from the existing 2.2% to 0%... a big deal for a multi-million pound importer.

HMRC was approached for a Binding Tariff Information ruling (BTI) on the new classification. Detailed technical specifications were provided, showing the exact function of the product, samples and, with the help of a Customs specialist, legal precedents.

After 4 months of correspondence, technical discussions, evidence and debate including face to face discussions between the importer, his Customs specialist and an HMRC technical team, HMRC was satisfied with the exact functionality of the items and re-classified the goods.

This was very good news going forward, but the immediate benefit came due to the rules allowing retrospective reclaim over the previous 3 years of the overpaid import duty. This required the importer to provide copies of all its import Customs documentation. Even with a well-managed audit trail, this activity in itself proved to be a huge amount of work, but the end result was worth the effort. The importer received a gross retrospective refund from HMRC of almost £260,000 for overpaid duty and now enjoys the benefit of on-going import duty savings on these products of an average of around £14,000 per month.

In addition, this change means that the company's export customers in Europe, Middle East and Africa (EMEA) benefitted from reduced duty rates of anything up to 25%, making the exporter a more competitive supplier into those markets.

## Valuation

The valuation of goods in international trade is covered by rules originally outlined under the General Agreements on Tariff & Trade (GATT) but now controlled under the auspices of the World Trade Organisation (WTO). It almost seems too obvious to say, but we must take proper care over accuracy on the prices we declare on paperwork submitted to customs. Customs compliance is important and mis-declaration can lead to civil penalties because there is a fine line between being misleading and fraud.

1. Customs duties and taxes worldwide are based on values declared
2. Statistics on imports and exports are based on these values
3. Incorrectly increasing values on invoices may allow companies in countries with strict financial regulations to obtain foreign currency they are not entitled to
4. Under-declaring values could lead to an overseas customs authority being defrauded of the correct customs duties and taxes
5. Intra-company movement of goods by multinationals would be an unfair advantage unless correct taxes were paid.
6. Incorrect prices could be used to disguise money laundering, bribery or other inducements.
7. Over-declaring values could lead to fraudulent insurance claims.

### Buy one get one free

A Scottish company contracted to supply a shipment of clothes CPT\* Colombo Sri Lanka, for payment by sight letter of credit. The goods were shipped, compliant shipping documents presented to the bank and the payment was drawn. Two weeks after shipment the Sri Lankan customer made contact and advised that the goods had been badly damaged at the port of arrival by heavy rain and were now not fit for purpose. The transit risk had been the buyer's (under CPT Colombo) and the customer agreed to claim on the insurance and use those funds to pay the supplier again for replacement goods, which were now required urgently. The customer advised that the replacement shipment would go through customs in Sri Lanka much quicker if the Scottish company declared the value at a quarter of the true price. Because funds would be coming from the cargo insurance claim, a letter of credit was not appropriate for these replacements, and the shipment was sent. Shortly after sending the goods the Scottish company was advised by the Sri Lanka Customs Authority that the customer had not collected the first shipment and unless the Scottish company would pay the storage (around £1500), the goods would be put up for auction. The Sri Lankan customer was now ignoring messages but the supplier was able to find out from the freight company that the second shipment had been cleared through customs and duties and taxes paid at the lower value. The Scottish exporter never received payment for the replacement shipment. The company considered shipping the goods back from Sri Lanka but in the end decided to cut its losses and let Sri Lankan Customs auction them off – they were bought at a much reduced price by ... you guessed it ... the original Sri Lankan purchaser.

\*CPT = Incoterms 2010® delivery term "Carriage Paid To"

The WTO Valuation Rules require you to use one of the following methods to value your goods for customs purposes – but you must try to use them in order, e.g. only if you can't use Method 1 do you look at Method 2; only if you can't use Method 1 or 2 do you consider Method 3, etc.

Method 1: The Transaction Price

Method 2: The Price of Identical Goods

Method 3: The Price of Similar Goods

Method 4: Within the EU what is called the "EC selling price" based on the WTO/GATT Deductive value

Method 5: Cost of production

Method 6: "Fall-Back" method

#### **Value vs amount to pay**

An Indian customer purchased goods from the UK, paying 30% up front with the balance due on delivery. On the shipping paperwork the UK exporter was advised by the customer to just show the outstanding amount due, as this was all that Indian Customs would be interested in. Unsure of the Indian Customs regulations the UK exporter did as it was told.

A couple of months later the UK company received a visit from UK Revenue & Customs. They had been asked to investigate the valuation of the goods by Indian Customs who had audited the Indian customer and seen the two different payments on the books and that only the 70% had been declared for customs duties and taxes. Indian Customs had asked UK Customs to investigate if the UK supplier had been complicit in defrauding Indian Customs. HMRC did a thorough investigation and finally was satisfied that the UK exporter had acted in ignorance and not fraudulently. The exporter was fined £2,500.00 for mis-declaring the value.

#### **Origin rules**

Statements of origin are used for a number of reasons including boycott regulations, country specific duties, controlling import quotas, to assist in supporting international aid or just to give the customer the satisfaction of correct provenance. Origin is also used where there are preferential trade agreements. Often companies confuse the rules of preference origin with the rules for establishing where the goods are made – which we will call non-preference rules.

Both types of "origin" declarations are important and, if mis-declared, can lead to Customs Civil Penalties but, perhaps more importantly, if a customs authority becomes aware that incorrect statements of origin have been made they will insist that all parties to the transaction are notified of this "error". This can lead to embarrassment in relationships with a customer.

Rules for 'origin' mean different things in different circumstances. Generally, origin means the place where the goods were made or assembled, or in the case of commodities where they were grown or mined. However, for EU customs preference purposes, it is where a certain added value has been achieved.

### Fixing labels

During an HMRC customs audit, a UK distributor of fixings and fastenings was seen to be importing the goods from low cost source markets such as India, China, Malaysia, etc. No manufacturing was undertaken at the distributor, just the repacking of the goods to meet customers' requirements, so the Customs auditor was surprised to see that all the exports leaving the distributor were being declared as UK origin. "How do you do this?" he asked. "Well," replied a very honest despatch manager, "if we were to tell our overseas customers the parts came from China, they wouldn't pay the high prices we charge. We can only charge premium rates because they think they are UK origin."

A calm man, the auditor said nothing but later wrote to the distributor advising of another audit in 3 months at which time he wanted to see that the company had notified all its overseas customers of the "errors" made in declaring the origin of goods and that the export paperwork now showed the correct origins. If the distributor didn't do this then HMRC would undertake the task of notifying customers. No penalty was mentioned – but it didn't really need one, the negative commercial impact if the company didn't put it right was too worrying.

The result was that the distributor notified its customers that goods were now being sourced from low cost markets and made a slight adjustment to the prices to reflect this.

### Pipe dreams

An EU trader was approached by a USA company and asked to be an intermediate delivery point for steel tubing en route from China. The EU trader agreed and the goods arrived from China. They were entered to a customs duty suspension regime using a customs warehouse which meant the EU company didn't pay customs duties and VAT unnecessarily. When the first shipment was ready to be sent from the EU to the USA the American company advised the trader to show the origin of goods as EU.

A little concerned by this, as the trader had only stored the goods, it was decided to check the USA import tariff regulations on steel tubing. It transpired that steel tubes incurred US import duty at a rate of 6% if they were of EU origin but an additional customs duty (called an Anti-Dumping Duty) of 85% if they were of Chinese origin. When confronted, the American company collected the tubes from the warehouse and returned them to China. The EU company ensured it received correct evidence of export from the warehouse and made a note not to deal with that American customer again.

In an attempt to discourage fraudulent practices, several countries now insist on having all goods indelibly marked with their country of origin. So, if you are exporting to Saudi Arabia, South Korea, Kuwait or Oman you will need to comply with those countries' regulations on declaring the origin of goods. These rules change regularly and should be checked before shipping.

### **Old mould did not ring alarm bells**

An importer in Saudi Arabia ordered some fire alarm bells from a UK company. The Declaration of Origin correctly identified the origin as Chinese. Permanent labels were applied - "Made in China" in accordance with the Saudi requirements, and a pre-shipment inspection was carried out and signed off by the inspection company preferred by Saudi Arabia.

On arrival Saudi Customs "pulled" the shipment for thorough inspection, including completely dismantling one of the bells. By doing this they exposed a mark clearly moulded into the plastic casing of the bell: "Made in England".

The exporter's supplier had originally manufactured the bells in the UK but had subsequently moved production to China. Unfortunately when this move occurred, the Made in England mark had not been removed from the mould.

Saudi Customs impounded the whole consignment, worth around £65,000. Despite much correspondence to Saudi Customs from the shipper explaining and showing evidence of how this "innocent" error occurred, at the time of writing, 18 months after shipment, the consignment has still not been released. All costs will be for the customer's account as it was an EXW\* shipment.

Both the customer and the UK shipper have been blacklisted by Saudi Customs and importing any goods into Saudi Arabia is now extremely difficult for them.

\*EXW = Incoterms 2010® Ex-Works delivery

### **Arab league boycotts**

There are various boycotts, and they have questionable legal status, but non-adherence will, in particular, jeopardise your on-time delivery to states within the Middle East and to Israel. Knowing the origin of all your components is key: insist that all your suppliers state exactly if they themselves are the manufacturer, in which country manufacture took place, and the origin of any bought-in goods or components.

### **Preference rules**

Perhaps one of the most complicated aspects of origin is establishing the "qualifying origin" of goods for preference purposes. Preferential trade agreements allow specified goods to be imported into the countries that have signed the agreement at a reduced, often zero, duty rate. This encourages trade between those countries, giving a commercial advantage over suppliers from countries that are **not** part of the agreement. The EU has dozens of such agreements, mostly reciprocal, and which benefit EU industries. Preference agreement countries are called beneficiary countries and at time of writing, they include: Algeria, Chile, Croatia, Iceland, Israel, Jordan, Lebanon, Liechtenstein, Mexico, Morocco, Norway, Serbia, South Africa and Switzerland. The main document required to prove eligibility for the preference duty rate is the EUR1 Form, though invoice statements can be made under certain conditions.

If you are taking advantage of a preference trade agreement between the EU and another country, enabling your customer to use a lower rate of import duty, you will need to make sure that your statement of origin is correct. Unless you have made the items yourself, you will need declarations of origin from all your suppliers. HMRC notice 827 sets out the wording that is required.

There are two main rules for EU preference origin:

1. The goods must be manufactured in the EU and
2. Meet the qualifying rule determined by the commodity code. This second rule can be any, or all, of the following:
  - 1) a specifically named processing of e.g. textiles, food
  - 2) a change of commodity code for any imported items made into the finished product
  - 3) where non-EU material/goods have been used they must be less than a set percentage of the selling price; the percentage varies but a common one is that the EU material and costs (labour, overheads and profit) must exceed 60% of the selling price (the Ex-Works price).

Preference is a complicated area and it is wise to exercise caution, being careful only to issue an EUR1 Form or preference declaration when you are 100% sure of the rules. Customers in beneficiary countries are keen to have the preference declaration because it saves them money, and thereby provides a competitive advantage, but incorrect statements of preference are subject to civil penalties.

If you have established that preference applies, don't lose that advantage by careless changes to your supply chain.

#### **Research before pruning**

An EU manufacturer of gardening tools calculated that it would be cheaper to buy in the products from China, and for the EU factory to be turned into a warehouse for checking and distribution. The company was able to reduce the number of staff as well as bring down the cost of manufacturing. Transport costs from China were insignificant compared to the savings. A lone voice objected. The person responsible for issuing export documentation warned that by changing the source market, the company may no longer meet the qualifying rules of preference. She was ignored.

When the first orders of the new stock were shipped to regular customers in Switzerland, South Africa, Norway and Croatia, the export co-ordinator sent them without the EUR1 Forms because, having checked the rules, the goods no longer qualified because they were no longer manufactured in the EU. Even if they had undergone a process in the EU they still wouldn't have met the preference rule because the non-EU material exceeded the stated percentage. One by one the regular customers contacted the company to complain – Switzerland's duty bill was now approximately 7% instead of zero, South Africa's had gone from 2% to 11% for some of the items. The export co-ordinator was asked why she had upset these regular customers by failing to issue each with an EUR1 Form – "It's only a piece of paper!" She showed them the list of civil penalties and potential criminal penalties associated with the issuing of preference forms when the goods don't qualify.

This was not easily resolved, except in Switzerland where the customer advised that that Switzerland and China have a preferential trade agreement so the company would buy direct from China in future.

### **Third country exports**

A Customs Export Entry is a declaration legally required for all shipments to outside the EU. Full information must be provided about the sender and the shipment to HMRC prior to the physical movement of goods. Incorrect statements may be subject to financial civil penalties imposed in accordance with HMRC's Customs Civil Penalty (CCP) system. The accuracy of customs export entries is the exporter's legal responsibility even if it is the forwarder that makes the error. If genuine errors have been made on the export declaration, an amendment should be submitted to HMRC using a C81 document within 30 days after the date of export. It is wise to keep a copy of this document. HMRC does not have to approve amendments submitted outside this timescale.

### **Role of the forwarder**

All exports leaving the territory of the EU must be declared to Customs but many exporters don't appreciate the importance of ensuring that their Export Customs Declaration is completed accurately.

Most UK exporters rely on their freight forwarder or perhaps an export house to complete all their export customs formalities. However the accuracy of the information is totally the responsibility of the exporter. Any false or inaccurate information could result in a visit, a warning, or even a significant fine from HMRC; not for the forwarder who made the entry on the exporter's behalf, but for the exporter itself. It is a good idea to check what your freight forwarder is declaring, for example requiring a copy of the C88 from your forwarder.

It is worthwhile issuing clear instructions and providing all the correct information in writing to your forwarder on the Export Cargo Shipping Instructions (ECSI). You should also instruct your forwarder to ensure that the arrival and departure messages are logged on CHIEF at the port or airport where the goods leave the EU.

You can also, for a small fee, under the 'Management Support System (MSS) Data to the Trade' arrangement, receive monthly reports from HMRC showing what was declared on all your previous month's exports. This is known as an MSS report and will identify, albeit retrospectively, which forwarder is declaring what on your behalf and establish which of your freight agents have the best compliance record.

**Instructing your freight forwarder or logistics supplier**

Give clear instructions to your freight agent: this entity is acting as your agent and completing the customs formalities, yet the responsibility to get it right remains with you.

1. Your correct name, address and VAT number
2. The detail of the goods
3. Commodity Code/Tariff Code/Harmonised System (HS) Code
4. Value & currency
5. Customs Procedure Code (CPC)
6. Export Licence reference number or, if not applicable, LIC99 (NLR)
7. Your EORI
8. Consignee name and address
9. Origin of the goods
10. Your file reference
11. Weight (mass) of consignment
12. Country of final destination

Ask to receive a copy of the customs documents for your file.

In particular if you are selling high technology goods, check that the Export Licence declaration is correct – some freight forwarders have “NLR” (LIC99) as a default entry.

If goods are destined for outside the EU, give instruction that the agent must organise that the loader at the port of export must do the 2<sup>nd</sup> and 3<sup>rd</sup> parts of the customs declaration, the “arrival” message that the goods are ready to be presented to customs, and the “departure” message that they are departing the EU. If the goods are not properly presented, and the on-line CHIEF reminder ignored by the loader, then CHIEF will delete the entry from its system and you will have no evidence of export.

**Wood packing regulations**

If you use wood as a packing material when exporting goods from the UK you must check if the destination country has subscribed to the wood packing phytosanitary control measures known as ISPM-15 “International Standards for Phytosanitary Measures”- “Guidelines for Regulating Wood Packaging Materials in International Trade” published by the Secretariat of the International Plant Protection Convention (IPPC) which is part of the United Nations Food and Agricultural Organisation (FAO).

ISPM-15 is the set of quarantine regulations designed to protect countries’ native forests from the introduction of wood pests, insects and diseases in wood materials used as packaging material to ship products.

ISPM 15 applies to all species of coniferous (softwood) and non-coniferous (hardwood) packaging materials. The regulations cover wooden packaging pallets, dunnage, crating, packing blocks, drums, cases, load boards, pallet collars, and skids. Wood packing must be treated with heat or fumigated with methyl bromide and marked, often branded, with the ISPM-15 seal of

compliance. Take care about shrink-wrapping the goods on to a pallet – if you inadvertently obscure the ISPM-15 mark, you might end up with the whole package being fumigated, at your cost; this has happened.

#### **Wood packaging compliance**

A UK importer ordered goods from its US parent company. The US warehouse was unfamiliar with the wood packaging controls in place in the UK and shipped the goods on untreated, poor quality “domestic” pallets. The pallets broke in transit, and so, on arrival at the forwarder’s UK warehouse the cargo was de-vanned to be re-packed and it was noticed that the pallets were unstamped and therefore non-compliant. Unfortunately for the importer, the forwarder had been subject to a recent compliance inspection and was extra vigilant. The cargo was delayed while fumigation was arranged, all the other wood packaging checked, the broken, untreated pallets destroyed and all the goods re-packed onto new compliant pallets which had to be made up specially. Only then was the cargo released to the importer. The importer had to pay all the charges for handling & disposal of the non-compliant pallets, the special one off “quick” manufacture of pallets and the repacking of the new ones.

Footnote: all the costs were passed to the American parent company - which refused to pay!

If your goods or packing or dunnage is found to be incorrectly certified, your consignment will be rejected. The UK Wood Packing and Material Marking Programme (UKWPMMP) and the issuing of Phytosanitary Certificates are the responsibility of the Forestry Commission (Plant Health Section).

#### **ISPM-15 treatment of wood packaging**

1. Heat Treatment (HT): typically kiln-dried (KD) - to achieve a minimum core temperature of 56°C for at least 30 minutes.
2. Chemical pressure impregnation (CPI) is more complicated and less usual.
3. Methyl Bromide (MB) fumigation is done under specified concentrations, durations and temperatures.

#### **Marking**

- Wood packing or dunnage must have permanent and legible markings on two opposite sides of the package.
- Lumber should be marked every two feet so at least one such mark will be on all dunnage components.
- If dunnage is treated and marked it need not be bark free.
- If dunnage is not marked it must be bark free and devoid of pests and signs of live pests.
- Official phytosanitary certificates are no longer required.

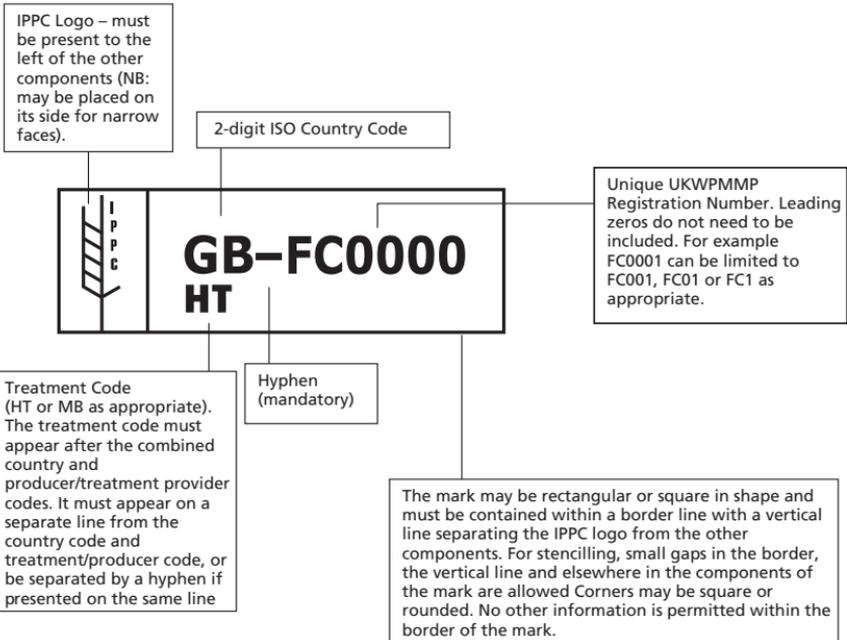
Even if your current export markets have not yet subscribed to ISPM-15, it is wise to ensure that all export wood packing is in line with the regulations or use packing material, such as plastic or compressed paper, which is not subject to ISPM-15 regulations.

**Products exempt from ISPM-15**

- solid wood thinner than 6 mm
- paper including compressed paper
- plastic
- manufactured/ derived/ processed wood products (eg plywood, particle board, oriented strand board or veneer) i.e. that is a composite of wood constructed using glue, heat and pressure, or any combination thereof.

**ISPM15 Revised Mark (2009)**

**Sample Mark**



**Carriage of dangerous goods**

Dangerous goods are those that, from their nature, are liable to cause damage to persons, means of transport or to other goods. In all legal systems the carriage of dangerous goods has given rise to the development of special rules. Some dangerous and obnoxious cargoes may require highly specialised transport, and all such cargoes will need special packing, marking and labelling. Failure to comply with stringent regulations affecting documentation and stowage can lead not only to very severe penalties, but also seriously endanger the safety of ships or aircraft, passengers or crew.

There are several sets of international rules for movement of hazardous goods. Each contains lists of the goods classed as hazardous (or dangerous: the terms are interchangeable) and the types of packing, marking and labelling required. It is not a subject to be tackled lightly by the layman. Legislation relating to the movement of hazardous cargo is regularly reviewed and updated by transport authorities, and so it is important to take good advice and keep up-to-date.

The major global influence in the transport of packaged hazardous goods is a publication called the "UN Recommendations on the Transport of Dangerous Goods" commonly known as the "Orange Book". These UN recommendations are addressed to the international regulatory bodies and to national governments as the recommended basis for the development of their own regulations.

Dangerous Goods are identified by the following pieces of information:

1. Hazard Class;
2. Unique identification number (UN No.);
3. Proper Shipping Name (PSN);
4. Special packing and marking requirements

#### **Hazard Classes**

9 Hazard Classes are universally accepted. For some of the Classes the UN splits the dangerous goods into one of three Packing Groups (PG) (I for greatest danger, II for medium danger and III for minor danger).

**Class 1** -Explosives

**Class 2** -Gases

**Class 3** -Flammable Liquids

**Class 4** -Other Flammables, e.g. flammable solids

**Class 5** -Oxidising & Organic Peroxide Substances

**Class 6** -Poisonous (toxic) & Infectious Substances

**Class 7** -Radioactive Materials

**Class 8** -Corrosive Substances

**Class 9** -Miscellaneous Dangerous Substances, e.g. magnets for airfreight, marine pollutants.

To be able to establish which class your goods fall into, you will need to undertake a methodical examination of the physiochemical, toxicological and other properties of the goods. Some substances will contain more than one hazard i.e. possessing properties characteristic of more than one Class.

Sea Freight Regulations are controlled by the International Maritime Organisation (IMO). Air Freight Regulations are controlled by the International Civil Aviation Organisation (ICAO). There are extra restrictions specifically for air freight which include:

- Limits to the amount of hazardous cargo permitted in packages to be flown on passenger aircraft;
- Special requirements for receptacles carrying liquid dangerous goods to meet a pressure differential;
- Mandatory training requirements for packers, shippers and forwarders handling hazardous cargo for air freight.

Each mode of transport - air, sea, road, rail – has its own form of Dangerous Goods (DG) declaration. The completion of this form is a mandatory requirement for transporting hazardous cargo and it can only be signed by the shipper or the approved packing company. Freight forwarders cannot complete DG declarations unless they also act as the packer. DG notes have three specific functions:

1. Standard Shipping Note for hazardous goods;
2. Written booking for shipping space;
3. Declaration:
  - correct technical name
  - UN Hazard Class
  - appropriate classification code (UN No.)

It is extremely important for the exporter to declare all movements of hazardous goods correctly on the DG Note applicable to the mode of transport. From both commercial and a moral point of view it is vital that all parties involved with handling dangerous goods are fully informed as to their exact nature and the regulations which affect their packing, marking and handling.

#### **The hidden hazards**

A UK exporter was advised that its shipment of a computer cabinet with disc drives had arrived in Australia with some damage and the engineers on site needed a maintenance kit to put it right. The maintenance kit was standard issue but wasn't normally sent outside the UK. The kit was packed and, together with an advice note detailing the contents, was handed over to a freight company for sending by air.

On checking the list of items the freight company was surprised to see aerosols, screen cleaner, touch up paint, magnetic connectors and batteries. Alarm bells immediately went off and the exporter was contacted and asked to provide the hazardous details of the goods. Never having exported these items before, the exporter didn't know what to do. The forwarder suggested removing the potentially flammable and explosive items from the kit and getting the engineers to buy them in Australia. This was done and the shipment was received without any problems. The exporter and forwarder were lucky that this was spotted because there are serious penalties for presenting hazardous goods without correct paperwork which could have meant not only a fine for both of them but also the exporter and forwarder could have been banned from booking any future goods for transport by that particular airline.

## CHAPTER 4 SUPPLY CHAIN COMPLIANCE

What happens in transit, both before and after the point when goods leave the country, can have a wide range of implications including in relation to illegal trade, people trafficking and national security. In an ideal world, goods will leave the exporter's warehouse and travel by road, rail, sea or air, through other depots and storage areas, and arrive at customers' sites without having been tampered with, pilfered from, or used to transport 'extras'.

In order to achieve this, it is necessary to ensure that goods are secure throughout transit – from the exporter's site through to the destination, and all stages in between.

In July 2009 the European Community introduced a new registration scheme - Economic Operator Registered Identification (EORI) system – which in the UK used the existing VAT and Trader Unique Reference Numbers (TURNs) to clearly identify companies involved in international trade. Compliances and non-compliances by EU companies are logged against the EORI so when the full system of supply chain security procedures comes into place by January 2013, non-compliant businesses can be clearly identified and goods being shipped from or arriving for them can be detained by Customs when appropriate.

In addition, the EU is following instructions from the World Customs Organisation (WCO) to adopt an accreditation process for "legitimate traders". In the EU this is known as the Authorised Economic Operator (AEO) scheme and it applies to goods leaving the EU. We are not the only country introducing such a scheme; some 177 countries signed up and by 2013 it is expected that the countries will have mutual recognition in place enabling greater security measures to be introduced. Supply chain security schemes have various names: Accredited Customs Partnership (ACP), Customs & Trade Partnership Against Terrorism (CT-PAT), Secure Trade Partnership (STP), Partnership in Protection (PIP) and AEO. As supply chain security measures increase, shippers will either be "legitimate" (i.e. accredited) or "unknown". Customs' physical examinations and checks on goods and paperwork will occur mainly for unknown shippers while various fast-track and pre-clearance simplifications will be offered to legitimate shippers.

All companies involved in international trade (it doesn't apply to intra-EU movements) should review their activities against the best practice requirements of these accreditation schemes to see how difficult or simple it would be to become a legitimate trader.

### **Authorised Economic Operator (AEO) - for exporters outside the EU**

AEO is part of a package of measures, introduced by the European Commission, designed to combat terrorism, organised crime, disease and counterfeiting of goods, or at minimum reduce the risk of them happening. It is a bit like "Sarbanes Oxley" (an accounting standard) for movement of goods. It is an end-to-end transparency: know your business, know your product, know your business partners and understand how everything fits in to the chain.

AEO certification acknowledges that prescribed standards in respect of customs-related operations are in place for the trading entity. It aims to provide legitimate businesses with an internationally recognised quality mark which will demonstrate that they operate within a secure supply chain and their internal controls and procedures are efficient and compliant. AEO is recognised throughout the EU and benefits (depending on which AEO status

is achieved) include streamlined and simplified customs procedures, reduced data requirements, reduced physical and documentary control, priority treatment when goods are selected for examination, and quicker release of goods. This contributes to enhanced company reputation. From HMRC's perspective, it allows increased use of electronic data and inter-operability between customs authorities and other agencies.

The scheme is currently voluntary and is designed to cover activities relating to the movement of goods, by an EU economic operator, from non-EU countries to the EU and vice-versa. The scheme does not apply to activity relating to goods being traded within the confines of the EU Single Market.

AEO standards include that the applicant possesses appropriate standards in relation to management of export processes including transport, record-keeping, financial solvency, safety, security, and a history of good customs compliance.

#### **Where will AEO have an impact in processes and recording?**

- Company information: timely returns to Companies House
- Keeping compliance records
- Accounting and logistical systems
- Financial solvency
- Health and safety
- Business administration quality, management, and related legal and financial issues
- Quality management, Human Resources, Information Technology systems, compliance with Export Controls and Customs
- Commercial department management, material control, shipping, procurement
- Business administration, finance
- Site security, facilities.

The certification scheme offers three types of AEO status:

1. Customs simplifications certificate;
2. Safety and security certificate;
3. Full certificate (a combination of 1 and 2).

Only companies that export outside the EU are eligible to apply for AEO status. AEO can however be used in internal trade within the EU. Supply chain security only works if all parties that take part in the export consistently apply high standards. To be AEO compliant, therefore, you will need to ensure that all service providers in your export chain are compliant, e.g. your freight forwarder and any agents, carriers, warehouse-keepers, consultants and software houses whose services relate directly to the export process.

### **Supply Chain Security**

- December 2003, an ABC television crew, tested and demonstrated the inconsistencies between documentation and contents in cargo movement by smuggling 15lb of depleted uranium from Jakarta to the Port of Los Angeles. The journalists achieved it by simply not declaring the contents correctly.
- November 2007, three persons were arrested Slovakia for attempting to smuggle 1kg of enriched uranium.
- 2007, the Russian authorities blocked more than 120 attempts to illegally move “highly radioactive” material out of the country.
- April 2008, fifty-four illegal immigrants from Myanmar (Burma) died inside one container truck in Thailand.
- October 2010: Two packages containing printer cartridge bombs, shipped from Yemen addressed to a synagogue in Chicago USA, were intercepted due to supply chain security messages. One was intercepted in the UK, the second shipment was intercepted by Dubai police en route before loading on to the onward flight.

### **What does the AEO application and authorization process involve?**

In itself, AEO does not cost anything, but its implementation may. An entity that applies for AEO authorisation (an exporter or export services provider) should first conduct a self-audit of its customer-related activity and business systems to ensure it meets the AEO criteria. There are 37 documented procedures to address, such as:

- knowing and documenting who is working in your export area, including temporary workers
- which visitors to your site have access to this area
- defining and documenting the packing process

The applicant will need to ensure that a security threat assessment is undertaken by suitably qualified and experienced personnel.

### **AEO self-audit process**

1. Information about the company - including the company structure; the internal organization; trading characteristics and volumes; and how information is prepared and transmitted for customs purposes.
2. The record of customs compliance.
3. The company accounting and logistical system.
4. Financial solvency.
5. Safety and security provisions.

A customs officer will carry out an audit on the business to test and establish whether the required standards have been met. If the application is successful, the applicant will be authorised as an AEO and the relevant certificate issued. The period of validity for the certificate is indefinite; however, the authorization will be subject to monitoring and a periodic review with the frequency being set at the time the certificate is issued.

Experienced exporters report that the preparation work for AEO accreditation takes about 250 man-hours. To get a project like this off the ground, you will need a sponsor from senior management, and a project team. The processes will need to be embedded into the business. The project team will need to engage with compliance, internal audit, IT and personnel as well as all other departments that are involved in the export process. It will be necessary to establish which processes are not documented, and to conduct a gap analysis to identify which processes are not effective.

### Implementing AEO

End-to-end business processes are key.

- Involve and gain “buy-in” of senior management. This will be a “top-down” initiative.
- Establish a cross-business project management team and a realistic time-table for completion.
- Multi-national exporters will need to draw up corporate guidelines incorporating the appropriate basic AEO standards for each country of operation. Although the same standards should apply throughout there may be differences in interpretation.
- A company that is involved in different business sectors/types of business will find that different standards will apply.
- Only the sites that are relevant to import/export outside the EU are relevant – all others can be excluded.
- Each legal entity needs to apply for AEO even if it is part of a multi-national.
- If any entity changes its name, the AEO certificate will be withdrawn and need to be re-applied for.

Once in place, the AEO has to be maintained: there are reporting requirements for HMRC, and audits will be carried out by HMRC if deemed required.

### What are the benefits of acquiring AEO status?

Whilst you do not need to be an AEO certificate holder to apply for customs simplification, an AEO customs simplification certificate will accelerate the authorization process (across the EU) for procedures such as:

- simplified declaration procedure
- local clearance procedure
- inward processing relief
- outward processing relief, and
- customs warehousing.

This is because customs will not need to re-examine any criteria that have already been met when you applied for AEO.

### Modernised Customs Code

When the Modernised Customs Code (EC customs legislation) is introduced (expected in 2013), a number of additional measures will have the same impact as a customs simplification AEO certificate. These are likely to include:

- guarantee waivers;
- centralised clearance (a simplified system for declaring goods across the EU);
- accreditation of agents who wish to operate in more than one Member State;
- the ability to apply for a single community authorisation to use simplified declaration procedures across the EU;
- the ability to apply for a special procedures authorisation involving more than one Member State;
- self assessment of customs charges.

Advantages of achieving an AEO security and safety certificate:

- Lower risk score which is incorporated into customs' risk management systems so your goods may be selected for fewer physical and documentary checks.
- Consignments may be fast tracked through customs controls.
- Reduction in the number of data elements that need to be supplied in respect of pre-arrival/pre-departure summary declarations for exports and imports.
- Recognised status across the EU.
- Potential to obtain benefit from future reciprocal arrangements and mutual recognition agreements with countries outside the EU, giving the AEO certificate holder a competitive advantage.

Value of AEO certificates

- Recognised standard (or kite mark) that is a useful business promotion asset;
- Reduced incidences of theft or losses in transit;
- Improved security and communication with partners in the supply chain;
- Improved customer confidence
- Recognised across the EU.

With fewer hold-ups in customs, you should improve your record of "on time delivery". The financial advantage is rather more immediate in that you will have lower demurrage (port storage) costs. There is also a trend of improved loss ratio for cargo claims because the supply chain is more secure and is monitored. This will lead in future years to lower cargo premium costs.

Current AEO certificate holders report that as result of becoming authorized, they have experienced reduced supply chain costs; enhanced reputation and image; increased identification and elimination of errors and inefficiencies. Furthermore, some companies are introducing policies which insist upon their suppliers being AEOs: AEO certification could have a significant impact on a company's ability to secure future contracts.

## CHAPTER 5 COMPLIANCE AND CONTROLS RELATING TO GOODS AND TECHNOLOGY

Whereas in many areas of compliance, it is simply on-time delivery and reputational issues that are motivators, export controls takes this up a notch: non-compliance can become a criminal offence. In the words of one experienced high technology exporter “make compliance a way of life; the penalties are too severe to do otherwise”.

### **Not just military goods**

Although this chapter concentrates mainly on defence-related technology, other goods are controlled for various reasons depending on the nature of the export, destinations and end-user. Governments worldwide seek:

- To control strategic items, whether with high technological capabilities or specially designed or modified for military purposes, to avoid export to destinations outside the UK without prior permission
- To control trade with embargoed or sanctioned countries or persons
- To prevent release of certain goods or technology to specific, named end-users
- To avoid import and export of disease,
- To take care over the movement of live animals, farmed and wild, and trade in goods relating to endangered species,
- To ensure careful handling of hazardous goods, including nuclear material and chemicals,
- To control movements of cultural items and works of art,
- To ensure appropriate tax and duty is paid, and that
- Export and import movements are documented.

HMRC is the UK's main enforcement agency. It ensures that the movement of sensitive goods is controlled (goods/services either not exported, or exported with a licence).

According to the UK's Export Control Organisation (ECO), it is ignorance not deliberate evasion that is the main UK export controls issue. Export controls legislation is voluminous, complex and wide-ranging, and the penalties for breach would do huge damage. If you have any doubts, it is best to err on the side of caution and seek advice. Control of goods and technology is a fluid area as advances in technology enable criminals to operate in different ways, and countries' politics change.

Product or service	Regulator / Decision taker (s)	Origin of Rules
<b>Defence Equipment</b>	Ministry of Defence (for F680 pre-contract and during manufacture) Department for Business Innovations & Skills (BIS) ECO (for export licence) Foreign & Commonwealth Office (FCO)	UK Export Control Order 2008 (ECO 2008) SI 2008/3231 2009* Missile Technology Control Regime (MTCR)** Wassenaar Arrangement (WA)
<b>Dual use items (such as electronics, sensors and lasers, navigation, marine, aerospace, materials processing, chemicals, computers, telecoms and information security)</b>	BIS ECO FCO	European Community Regulations EC Reg. 428/2009 (the re-cast Regulation) (OJ, L134, 29:5.2009,p1)*
<b>Antiques and Works of Art</b> Cultural objects > 50 years old and > a specified financial value	Department of Culture, Media and Sport (DCMS) Museums, Libraries and Archives Council (MLA),	Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest (RCEWA). Import, Export and Customs Powers (Defense) Act 1939
<b>Certain Chemicals (mainly pesticides)</b> hazardous chemicals	Health and Safety Executive (HSE) Reference Identification No. (RIN)	EC Regulation 689/2008* Rotterdam Convention on Prior Informed Consent (PIC)
<b>Food, Animals and Animal Products</b> (incl. endangered wildlife), Plants, Seeds and Plant Products, Horticulture, Organic Products	Department of the Environment, Food and Rural Affairs (Defra) Rural Payments Agency (RPA) Foods Standards Agency	Common Agricultural Policy Export Health Certificates Endangered Species (Import and Export) Act 1976 Convention on International Trade in Endangered Species (CITES)

Product or service	Regulator / Decision taker (s)	Origin of Rules
<b>Prescription Drugs and Medicinal Products</b>	Medicines and Healthcare Products Regulatory Agency (MHRA) - Department of Health World Health Organisation European Medicines Agency	The Medicines (Standard Provisions for Licences and Certificates) Amendment Regulations 1999
<b>Controlled Drugs, Precursor Chemicals and Reagents</b>	Home Office HSE	EC 689/2008* Rotterdam Convention
<b>Veterinary medicinal products</b>	Veterinary Medicines Directorate (VMD) Defra	
<b>Clothing and footwear</b> Military use (camouflage garments). Clothing > 50 years old + worth >£12k	BIS ECO Museums, Libraries and Archives Council (MLA)	UK Export Control Order 2008 (ECO 2008) SI 2008/3231 2009*
<b>Nuclear</b>	BIS, ECO Nuclear Suppliers Group (NSG) Nuclear Unit – Non-Proliferation (NU-NP) team of the Department of Energy and Climate Change (DECC)	Nuclear Suppliers Group (NSG) Trigger List** UK Export Control Order 2008 (ECO 2008) SI 2008/3231 2009 European Community Regulations EC Reg. 428/2009 (the re-cast regulation) (OJ, L134, 29:5.2009,p1)*

\* Legislation      \*\* Export Control Regime

**Could your product be used for another purpose?**

- Washers made of Kevlar-type material may be deemed dual use because they could be used in WMD (Weapons of Mass Destruction).
- Training of engineers visiting from abroad in developing technology for defence and surveillance may need an export licence.
- A US national working in UK contract management is not permitted under US export controls legislation to be involved in any way with bids to or contracts with US-embargoed countries.
- A manufacturer of glass flasks for fruit juice processing needed an export licence because the flask could be used for mixing chemical and biological weapons.
- Aluminium powders can be used as missile propellant.
- Transfers of technology can be licensable.
- Carbon fibre filament is not allowed to be exported to a Chinese manufacturer of golf clubs because the material could be used for rocket nose cones.
- Exports of radioactive goods used in food processing and hospitals need to be licensed.
- Seals and gaskets made of PTFE and Viton are deemed dual-use and a licence will be needed to export them to certain oil-producing countries.

Use either the Control List Classification Search Tool or the Goods Checker Database on the BIS (UK Department for Business Innovation & Skills) website. Don't forget to check also your services, software, encryption, materials etc. Check and keep checking the BIS UK Strategic Export Control Lists.

It is important to know the origin of your goods, including components: if you sell items containing US components, you will also be subject to US extra-territorial controls. If you are selling to the Arab world or to Israel, you will be aware that sourcing of goods is an issue for your customer. Chapter 3 has more detail about origin of goods.

#### Top Tips for Goods Compliance

1. Carefully check the BusinessLink and BIS websites and exporting reference books and on-line guides such as Croner's or Tate's. These will often highlight compliance issues, but the information required is not always immediately obvious or up-to-date. Subscribe to Export Control Organisation (ECO) 'Notices to Exporters' updates by emailing: [web.comments@bis.gsi.gov.uk](mailto:web.comments@bis.gsi.gov.uk)
2. Keep up to date with the international news. Areas of the world where there is conflict or political unrest are the places where compliance issues are most likely to apply.
3. Know the products you are shipping. Do they have any military application? Are they technically advanced, or do they contain parts which could be used to make something else, perhaps with a military use? Do they include any parts of US origin? If the answer to any of these is yes, you may find you need to comply with numerous UK or US or EU or UN compliance rules.
4. Know what you've bought in: put into your procurement contract that the supplier must provide the foreign trade data:
  - a. country of origin,
  - b. customs tariff codes and
  - c. export control codes.
5. Don't be intimidated by your boss! If you suspect that your products may be subject to compliance rules, or you are suspicious about a customer's ordering methods, check carefully for more information, collect your facts and present them. Penalties for non-compliance can be severe (the boss himself might be penalised!)
6. Check the documents that your Freight Forwarder is lodging on your behalf into SPIRE (the Export Control Organisation's export licensing database) and CHIEF (the HMRC customs database).
7. Attend an export controls training course run by ECO or a commercial organisation.
8. Consult a specialist.

Don't be shy of knowing where the boundaries are: what you can and can't do. Just because some goods are not allowed in some markets, you don't need to write off all trade with those countries so long as what you are selling is legal. The Chambers of Commerce can help you understand the rules, and you could engage an Export House that is specialist in the particular market. Understand why your customer needs the product you are selling. Visit his site and establish if your customer is the end-user, or if not, then who will be. You don't want to fall foul of the law because your export actually ended up in another country or with a different end-user.

One exporter also recommends taking a tape measure when you visit: some fork lift trucks were sold to an overseas factory, and on delivery it was discovered that the fork lifts would not fit through the door...

#### **In hot water**

A UK Export House had a contract to supply air conditioners to a Libyan customer. The goods were bought in from a US multinational with an operation in the UK, and declared as of UK origin. On arrival in Libya, Customs opened the evaporator element of the equipment and a "made in Israel" badge was discovered. The goods were impounded, not paid for, and the Export House was charged for storage. Moral of the story: it is your export... so check everything!

#### **Managing licensing risk**

Assuming that you have made the necessary checks before entering into a contract, and established that your export does not need a licence, is this a guarantee that when the time comes to despatch, your product/service will still be "No Licence Required (NLR)"? Unfortunately not. Nor is any licence set in stone: it can be cancelled or withdrawn, or a request for renewal may be denied. This may be because the regulations or politics – in the UK or internationally – change in the intervening period, or simply because your regulator understands better what you are selling.

There are two solutions to this risk, and it is recommended that both are taken up:

1. Include a Force Majeure (FM) clause in your contract of sale.
2. Buy pre-credit risk insurance for the risk of loss on "political contract frustration". Your FM clause may not cover all your losses, or you may be contracting on your customer's terms of purchase with a different interpretation of FM, or your customer may be unable, through a regulation in its own country, to settle your FM clause. The BExA Guide to Export Credit Insurance has a chapter about pre-credit cover.

**Force majeure**

As a risk mitigation measure, ensure the inclusion of a robust force majeure clause in your contract which will protect you should, post-contract signature, an export licence be revoked or become mandatory and not be granted, or a trade embargo be introduced, which prevents contractual fulfilment.

Under English law a contract may be brought to an end – ‘frustrated’ – when something occurs outside the control of the parties that renders the contract physically or commercially impossible (not just more difficult or more expensive) to complete or radically transforms the nature of the contractual obligations. Examples include war, strikes, riots and acts of nature (floods, earthquake and volcanic eruptions) and Acts of Government such as non-renewal of an export licence. Sometimes for greater clarity, specific contractual terms are employed to cater for such situations: force majeure clauses. ‘Force majeure’ is French for ‘greater force’. Such a clause removes or suspends liability from parties to a contract when an extraordinary event occurs which is beyond either’s control. The point about force majeure clauses is that there is no standard clause. You and your customer need to decide on a list of force majeure events, being events which, on their occurrence, the contract will be suspended or actually stop, yet not allow the customer to avoid the contract when it is performable. The ICC has a number of wordings for force majeure that can assist the drafting. Exporters recommend that you include words to describe how you will establish and agree any settlement in a ‘termination account’.

**International Controls of Strategic Goods**

Export Controls are not unique to the UK. All countries will have an export control policy, legislation and enforcement mechanisms in one form or another. Various International groupings contribute to world security and stability through implementation of export controls on arms and materials to avoid proliferation of military regimes and/or weapons of mass destruction.

- The Wassenaar Arrangement promotes transparency and responsibility in transfers of conventional arms and dual-use goods and technologies.
- The Nuclear Suppliers Group (NSG) seeks to contribute to the non-proliferation of nuclear weapons.
- The goal of the Missile Technology Control Regime is non-proliferation of unmanned delivery systems capable of delivering weapons of mass destruction.
- The Australia Group (AG) seeks to ensure that exports do not contribute to the development of chemical or biological weapons.

**Export Control in the UK**

The UK has a well-developed and coherent export control system which stems from EU and national UK legislation. The Export Control Organisation (ECO) of the Department for Business Innovation & Skills (BIS) controls the movement of strategic goods and technology for various reasons\*, including:

- concerns about internal repression, regional instability and other human rights violations
- concerns about the development of Weapons of Mass Destruction

- foreign policy and international treaty commitments, including as a result of the imposition of European Union or United Nations trade sanctions or arms embargoes
  - national and collective security of the UK and its allies.
- \* see <http://www.bis.gov.uk/assets/biscore/eco/docs/consolidated-criteria.doc> for the Consolidated EU and National Arms and Export Licensing Criteria

### UK Strategic Export Control Lists

These comprise several parts, including the following two main elements:

- **UK Military List**

Goods and related technology that have been specially designed or modified for military use, including military, security and paramilitary goods, software and technology, arms, ammunition and related material.

- **Dual-use List**

Items not specifically designed for military purposes but are high technology or have significant capabilities that could make them useful in military applications.

It is the responsibility of the exporter to be aware of the controls and the need to comply with them. Penalties are increasingly severe. Contravention of the UK export licensing system is a breach of the law and is subject to penalties of varying severity up to a maximum of 10 years' imprisonment. US penalties can include blacklisting of a company in the US which results in no orders being placed by US government or public entities and a world-wide ban on purchasing US goods.



It is estimated that only about 5% of UK exports are subject to export controls but if you are an exporter of high technology goods, goods specially designed or that can be modified for military purposes, certain chemical precursors, products that can be used in connection with weapons of mass destruction (WMD) e.g. chemical, biological or nuclear weapons, (or the means of delivering the same), you would be well advised to maintain a compliance procedure that will keep you within the law and comply with any new restrictions.

Export Controls
<p><b>Regimes</b></p> <ul style="list-style-type: none"> <li>Wassenaar Arrangement</li> <li>Australia Group</li> <li>Nuclear Suppliers Group</li> <li>Missile Technology Control Regime</li> </ul> <p><b>Regulations</b></p> <ul style="list-style-type: none"> <li>Export Control Act 2002</li> <li>EC Regulation 428/2009 (Dual Use regulation)</li> </ul> <p><b>Sanctions</b></p> <ul style="list-style-type: none"> <li>See below</li> </ul>








### Why comply with export controls?

1. It's the law.
2. Penalties: Civil fines for the company can run into millions of pounds and there can also be criminal penalties.
3. The US has a system of deferred fines – say \$5-10m to be paid if compliance is not improved by a specific date
4. The risk of damage to your company's reputation. You don't want to give prospective customers a reason to throw out your bid.
5. It is difficult to recover from an incident of falling foul of export controls: many companies go into terminal decline as a result.

If you are exporting controlled goods or technology around the world, it is a good idea to design them and your management of them to adhere to the most restrictive territory.

### What sales are controlled?

- Exports of certain goods, services and technology
- Exports to specified countries
- Contracts with named entities/companies.
- Contracts with Specially Designated Nationals – ie named Persons

### Who has to comply?

All UK businesses, including exporters of goods and services plus their advisors, consultants, bankers, insurers etc. must comply. For UK exports, it is the exporter that has the responsibility to comply with controls. Service providers are drawn into the trafficking and broking aspect of export controls if they assist in the movement of controlled goods between two countries outside the UK.

### **The law on 3<sup>rd</sup> country trade**

A UK entity selling or organising the sale of controlled goods between countries outside the UK is subject to UK laws on export controls. Article 20 of the Export Control Order 2008 “prohibits any persons within the UK, or a UK person anywhere in the world, from supplying or delivering, agreeing to supply or deliver or doing any act calculated to promote the supply or delivery of, any goods subject to trade controls from one third country to another third country that is an embargoed destination.” The Serious Organised Crime Agency (SOCA) reports “there are no exceptions from this control for those whose sole involvement is the provision of transportation, financing or financial services, insurance, reinsurance or general advertising and promotion services.”

### **Know Your Product**

Controls extend to high tech materials, electronic, electrical, telecommunication and certain engineering goods and services if they are deemed Dual Use items – see the UK Strategic Export Control Lists. To understand whether your products fall into the 5% that are subject to controls, research [www.businesslink.gov.uk](http://www.businesslink.gov.uk). Restrictions will commence at the point of describing the goods to third parties, including overseas persons visiting your office or communicating with you via telephone or email, whether they are potential customers or not. A Ministry of Defence F680 will be needed for this activity. You will need a licence to take blueprints/models/samples to a trade show if the sale would be licensable.

Finished goods and materials/components will need to be researched, and there is more than one list:

- Temporary exports, returns for or after repair, small hand-carry, low value or even free of charge items are all potentially subject to export controls.
- Where were the goods sourced/manufactured? Your Chamber of Commerce will be able to issue a Certificate of Origin, and amongst other things will look at the last major place of manufacture. A small percentage of foreign components incorporated into a product may allow the whole item to be labelled UK origin.
- By one jurisdiction, several or none? Although UK export controls stop at the border, if a component is US-controlled, it will continue to be US-controlled wherever it is in the world.
- Understand the life cycle of what you are selling and how the product may be used: can it also have a military application?
- Could your ideas be used for development of WMD (Weapons of Mass Destruction)?
- If you are involved in arranging/financing/advising/insuring the movement of controlled goods between third countries (e.g. in financing exports made by an overseas subsidiary of a UK defence company) and if the destination country or the goods are subject to UK controls then you, the third party, may need a licence under UK law relating to Trafficking and Brokering (“Trade” in controlled military goods).

Many companies manage the impact of US extra-territorial controls on components by designing out US technology in their products. This can be difficult if the US component is an industry standard or the customer specifies named US components.

## Controlled exports

### A. Exports of goods and technology

- military equipment - arms, ammunition, bombs, tanks, imaging devices, military aircraft and warships
- nuclear-related items - nuclear materials, reactors, processing plant
- dual-use items, i.e. items designed for civil use but which can be used for military purposes — including materials, machine tools, valves, electronic equipment, computers, telecommunication equipment, cryptographic goods, sensors, radar, navigation and avionics equipment, marine equipment and space and propulsion equipment
- chemical weapon precursors and related equipment and technology
- certain micro-organisms, biological equipment and technology
- goods used in programmes involved in weapons of mass destruction and missiles used for their delivery.

### B. Transfer of "controlled" technology and software by any means

- information for development, production or use of goods, software or intangible transfer relating to military and certain paramilitary products and dual use goods.

### C. Trade (trafficking and brokering) of controlled goods

- military goods traded between countries outside the UK but where some, or all, of the activity in arranging or facilitating the activity takes place within the UK or by UK persons.

### D. Weapons of mass destruction (WMD)

- Technical assistance given anywhere in the world in connection with WMD is subject to licence approval

### E. End-Use Controls

If your goods are not listed on one of the Control Lists, you may still need a licence under 'End-Use Controls'. This covers licensing of military equipment or items that might have the potential to be used in WMD programmes. End-Use Controls apply in respect of dual use items where the exporter has been informed that they are intended to be incorporated into military equipment where the ultimate destination is subject to an arms embargo.

## Know Your Regulator

If your goods/technology are listed on a control list, it is wise to get to know your regulator which, in the UK will be the Export Control Organisation (ECO) of the UK's Department for Business Innovation & Skills (BIS).

If you are not using an Open General Licence and will need an individual licence for your goods, you will need to work out when is best to apply for the licence – you will not be able to despatch without it.

- ECO won't process your licence application until the contract is signed. ECO has a target for processing 70% of applications within 20 working days. Exports to 'sensitive' destinations will take longer to process. The ECO reports its turnaround statistics on its website.

- If deliveries under your contract will take several years, you will need to renew the licence because Standard Individual Licences last 2 years. Conditions can change, and it is not a given that the licence will stay in place for the duration of your shipments. Some customers will accept that cancellation or non-renewal of an export licence is a force majeure event, and in this case, your contract should provide for you to submit a termination account.
- If you are buying components from another country – say France or Germany – licences will also need to be obtained from the relevant authority, and renewed etc.
- BIS audits companies that use export licences on a regular basis in relation to their compliance with Export Controls, especially if they are using Open General Licences (OGELs).
- Awareness and record-keeping tasks have increased considerably in recent years.
- An export licence is the document that accompanies your goods or technology as it leaves the UK (or other country). It is not a licence to discuss/market/demonstrate/enter into contracts of export sale or commence manufacture. The approval you need for these activities in the UK is a certificate from the MoD called an “F680”.
- Licensing/certification systems for controlled goods are different in each country. Different EU states will enforce and implement controls differently to the UK, but you can’t move your product to a different state just to take advantage of the different interpretation.

## Types of Export Licence

### Open General Export Licence (OGEL)

Export of specified controlled goods by any UK exporter without the need to apply for a specific/individual licence (SIEL or OIEL), OGELs are used for export to lower risk destinations. Users of OGELs must register for their use with the ECO and must make sure they can comply with all the terms and conditions of the OGEL before attempting to use it.

### Standard Individual Export Licence (SIEL)

If you cannot meet the terms of an OGEL and your goods are controlled, you will need to apply for a SIEL. This licence is for a specified amount, value, destination and time. Licences will generally be valid for 2 years or, for temporary exports (i.e. for exhibition, trial or evaluation), one year.

### Open Individual Export Licence (OIEL)

A concessionary licence. Specific to the exporter, covering multiple shipments not limited by value or quantity to a specified consignee or consignees in one or more countries. To be eligible for an OIEL you would need to make a business case or have a track record in export licencing.

### Community General Export Authorisation (CGEA)

The European Community equivalent of an OGEL. It is valid in all 27 EU Member States and can be used to export qualifying goods to Australia, Canada, Japan, New Zealand, Norway, Switzerland, USA. Refer to Council Regulation (EC) No.428/2009

### Trade Control Licence

Licences the overseas trade of military or dual use items. Depending on the type of items being exported, either an Open General, Standard Individual or Open Individual Licence might be applicable,

### Transshipment Licence

Allows items to be imported for transshipment and subsequently re-exported under certain conditions. Licence might be Open General or Standard Individual type.

### Obtaining an export licence

In the UK, the Export Control Organisation (ECO) operates through a computer system known as SPIRE. This allows all parties – exporters, the ECO, FCO, MoD, HMRC - to know which licences have been applied for or for which the exporter has registered. The main advantage for the trader is that it keeps all your records together in a workbasket. SPIRE speaks to the HMRC computer system CHIEF so there is no need to check licences manually at export – but your shipper will need to declare them at point of export.

#### Using SPIRE and the ECO website:

1. Use the Control List Classification Search Tool SPIRE or the “Goods Checker” database to do a quick review of whether your goods may be on a Control List. This must not be your only search because the search engine only looks for the word you input.
  - Enter keywords to describe the export.
  - Search the UK Strategic Control Lists
  - Defence related goods may also need permission from the Ministry of Defence under the Form 680 procedure. The F680 will be needed before you start discussions with potential customers abroad or with a visitor from abroad. This is not a licence, but it gives a warm feeling about whether a licence will be forthcoming.
2. “OGEL Checker” will determine whether an existing General Licence covers the export to the destination required. But first you need to establish the control entry of the goods on the Control List.
3. Register for use of any relevant Open General Export Licence (OGEL) including the Community General Export Authorisation (CGEA).
4. If necessary, apply for a Standard Individual Export Licence or Open Individual Export Licence (SIEL or OIEL)
5. SPIRE annotates the licence number on the shipping invoice and/or on electronic declarations under the National Export System (NES). CHIEF keeps a check of the values and quantities shipped under a SIEL.

## New services from ECO from Spring 2011

### Control List Classification Service

Via this service provided on the SPIRE electronic Licensing system, ECO's technical experts will confirm if goods are on a Control List and the relevant classification or "rating". Unlike the current Rating Service, exporters will not be asked to provide details of end-users or the intended country of destination.

### End User Advice Service

The current Iran End-User Email Advice Service will be extended to other destinations and will be issued via SPIRE. It will provide advice on whether there are any WMD or Military End-User concerns with the quoted organisations you intend to do business with. Before using the service, exporters must have first checked that their goods do not appear on the UK Strategic Export Control Lists.

Export licence applications on the UK SPIRE system should take about 20 days but this depends on whether you have submitted the correct supporting documents, the country(ies) involved and the type of goods/technology. [www.businesslink.gov.uk](http://www.businesslink.gov.uk) provides access to documents to assist export control compliance, and guidance about export licence applications and Export Control Organisation audits.

#### Licences are not automatic

An exporter won a contract to supply goods to China. He had read on the ECO website that licences took 3 weeks and set about manufacture. As at time of writing, 7 months have passed, some £150,000 has been spent on manufacture, the goods are ready to be exported, but the licence is still under discussion: these are border-line goods and it is not clear if the licence will eventually be granted.

Good ideas:

1. Make receipt of the export licence a condition precedent to contract effectiveness, and don't start work until that time.
2. Buy political risk protection for the risk that the UK's foreign policy changes during the manufacturing period. If items that did not need a licence at date of contract are subsequently restricted, you can claim for costs incurred up to the date of the regulation change.

### Know Your Licensing

There is increasing scrutiny of export controls by UK agencies. HMRC, together with the intelligence services, is trained to spot goods and technology that is being exported, and breaches of licensing rules are thereby picked up. An exporter that is unaware that a particular shipment needs a licence is likely to find that goods are held up at the border.

Once you have started using the UK licensing system, you will receive periodic auditing visits from HMRC and, in many cases, from ECO compliance inspectors, to check compliance with the relevant export licence controls (OGELs, OIELs, SIELs). It is important to keep records of how licences are used, how many times they are used, and under which circumstances. You must keep evidence that goods were correctly declared as licensable at the point of export.

- For controlled (e.g. military list goods and radioactive) goods despatched to another EU member state where the goods are shipped under a specific licence, e.g. SIEL, the licence must be 'stamped' electronically on the SPIRE system by HMRC prior to the goods leaving the UK.
- For exports to countries outside the EU, the freight forwarder must declare the licence on the export declaration which is submitted online to Customs via CHIEF. CHIEF verifies the details on the SPIRE system and approves the export. Failure to ensure a correct declaration is submitted to customs will incur a civil penalty and the potential of escalation to a criminal charge depending on the circumstance.

## **US Controls: EAR and ITAR**

### **Export Administration Regulations and International Traffic in Arms Regulations**

EAR is based on the Wassenaar Arrangement so is very similar to the EU's dual-use regulations while ITAR covers goods and technology that have been specifically designed, modified or configured for a military purpose. Despite its scary title "Traffic in Arms" regulation also covers nuts, bolts, washer, and other basic items if they have been designed originally for a military end-use.

End-user certificates are a feature of US ITAR: you will need an undertaking from the customer that the items will not be re-sold, and send this confirmation to the US authorities.

### **USA Extra-territoriality controls**

If your goods include components of USA origin, whether you have purchased them from the USA or not, you need to abide by USA extra-territoriality. The supplier of USA material – whether in the USA or outside – must advise you the goods are controlled under either EAR or ITAR. If USA goods are found in a country covered by a USA embargo (such as Cuba) then the company responsible may be placed on the "Table of Denied Parties" with the result that it would be an offence for any USA company to trade with the denied entity. This is a very significant commercial threat. It's a good idea to include a requirement to declare origin in your standard terms of purchase with all suppliers.

## **Embargoes**

The United Nations, EU and national governments are empowered to bring sanctions and embargoes to bear on a particular country for a variety of reasons usually involving regional conflicts and transgressions of international conventions. The Foreign and Commonwealth Office (FCO), HM Treasury and the BusinessLink websites are the most easily accessible sources of information on sanctions and licensing.

### Know your customer (KYC) new customer process checklist

- Always ask for latest accounts
- Complete background credit checks.
- Check key staff against the US, UN, EU and UK Denied Persons List.

### Suspicious enquiries: checklist

- Customer is reluctant to provide information about the end users and end-use of goods/services.
- Customer asks for goods to be transferred to a forwarding address
- Customer is reluctant to provide clear answers to routine commercial or technical questions.
- Unusual order in terms of quantity or performance capabilities, such as the goods ordered exceed, without satisfactory explanation, the amount or performance normally required for the stated end use.
- An unconvincing explanation is given as to why the items are required, in view of the customer's normal business or the technical sophistication of the items.
- Routine installation, training or maintenance services are declined.
- Unusually favourable payment terms/price are offered.
- Unusual shipping, packaging or labelling arrangements are requested.
- There are unusual requirements for excessive confidentiality about final destinations, or customers, or specifications of items.
- Excessive interest in spare parts or complete lack of interest in spare parts.
- The installation site is an area under strict security control or is an area to which access is severely restricted, or is unusual in view of the type of equipment being installed.
- The customer or end-user is a military or government research body.

### Sanctions to check

- **UK/EU** – the FCO and Businesslink websites provide alphabetical guides to embargoes and sanctions from the UK/EU and UN  
At time of writing, there are UN and EU sanctions and embargoes on Armenia, Azerbaijan, Burma (Myanmar), China, North Korea, Congo, Iran, Iraq, Lebanon, Libya, Somalia, Sudan, Uzbekistan and Zimbabwe.
- **UN Security Council** e.g. 1736 Iran, 1737 North Korea, 1973 Libya
- **OSCE** – Organisation for Security and Co-operation in Europe and Central Europe – at time of writing it has embargoes on Sudan.
- **USA denied parties** and countries under the ITAR which applies to military designed, modified or configured goods or technologies.
- **USA Office of Foreign Assets Control (OFAC)** – ITAR controls of defense goods and technology

- **USA Export Administration Regulations (EAR)** which apply to non-defence high technology products and technology
- **Any other embargoes** to which you may be bound e.g. **ECOWAS (West African States)**

At time of writing, there are ECOWAS restrictions on arms trade with Benin, Burkina Faso, Cape Verde, Gambia, Guinea Bissau, Ivory Coast, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

**Wisconsin Project:** for a fee, you can obtain up to date lists from a commercial organisation that searches worldwide controlled lists on your behalf.

#### **Sensitive countries - extra scrutiny of goods**

A small EX Works\* consignment of goods going to Iran by truck was stopped for a random inspection at Dover. The consignment contained items which included electronics and Dover Customs asked the shipper to provide more technical information. Due to the nature of the electronics, the consignment was then referred to the ECO export compliance team to check for "Dual-Use" compliance. The haulier requested the consignment be offloaded rather than delaying the remaining cargo on the vehicle.

After 24 hours, the licensing compliance team agreed that no licence was required and the goods were released.

The haulier was inconvenienced and had to pay offloading and storage charges. The importer in Iran was unhappy about the goods being delayed. They both insisted that next time the shipper should apply for an export licence.

The shipper now gets ECO confirmation, via the electronic export licensing system called SPIRE system, that the goods do not require a licence, and marks the relevant documents "NLR" (No Licence Required).

NB exporters to Iran should always check, immediately before despatch, the "Iran List" of customer/end user which details entities in Iran for whom exports are a concern due to the potential development of weapons of mass destruction.

\*Incoterms 2010 ® term of delivery

#### **Trafficking and Brokering**

Export Control laws in the UK and elsewhere have been strengthened to make it more difficult for 'arms traders' to buy military goods and sell them in an uncontrolled fashion, including to individuals or repressive regimes or terrorists. This valuable legislation, which criminalises certain parts of the arms trade, has also wide-ranging implications in relation to genuine supplies of defence goods to overseas governments, including where UK financial services companies are assisting an export from a non-UK manufacturer: the person arranging that business may now need a licence.

### **Financial services for overseas trade**

UK insurance broker received an enquiry from an Israeli exporter for political risk cover for an export of certain military equipment to Azerbaijan. Fortunately the enquiry came to the attention of the compliance officer who advised that this transaction was deemed to be "Trade" in licensable goods, and, if the transaction was to go ahead, the insurance broker and insurer would need export licences.

### **Managing Licensing**

British exporters should design their export sales strategies with a view to complying with the UK regulatory system.

- Keeping up-to-date about what is controlled
- Knowing when to apply for licences
- Deciding what to put into the contract about effectiveness
- Including provision for Force Majeure
- Investigating pre-credit (political risk) cover
- Maintaining a good dialogue with your regulator.

If you sign a contract to commit to deliver particular goods and services, you need to be sure that you can achieve this. It is a good idea to make contract effectiveness subject to "export licence approval".

Check the Strategic Export Controls searchable database of quarterly and annual reports on export licensing decisions. You can create your own reports based on destinations and specific types of exports at <https://www.exportcontroldb.berr.gov.uk/eng/fox/sdb/SDBHOME>

**Examples of Export Controls non-compliance**

<b>Origin of company/ technology</b>	<b>Penalty</b>	<b>Date</b>	<b>Equipment/ services</b>	<b>Destination country</b>
US exporter	Fined \$32m by US authorities	2003	Satellite technology	China
US exporter	Fined \$25m by US authorities	2003	Communications equipment	Pakistan
UK chemical company	Fined £10,000 for exporting controlled technology to the US electronically without a licence.	2007	Chemical that can be used as pre-cursor to nerve gas.	USA
UK bank	Fined \$350m by US authorities	2009	Money transfers since 1995	Libya, Sudan, Iran
UK trading company	2 years 8 months imprisonment	2008/9	Export of military personnel carriers contrary to regulations	Sudan
Swiss bank	Fined \$536m by US authorities	2009	Money transfers	Libya, Cuba Sudan, Iran Burma
US courier company	\$9.4 million fine	2009	Aiding and abetting illegal exports and failing to comply with BIS and OFAC record-keeping requirements	Iran, Sudan Syria
US trading company	Imprisonment of 3 staff for 20 months, 40 months and 5 years respectively	2009	Illegal export of sensitive dual use technology (integrated circuits and thermal imaging)	China (to a state-owned company)
UK engineering company	During manufacturing, end-user was added to "Iran list" of prohibited individuals. Export stopped by HMRC. Company could not continue. Administrators appointed.	2010	Specially designed industrial gas turbine parts	Iran

In 2007, a US defense manufacturer was fined \$100m for illegally exporting night vision goggles to China. A US Department of Justice spokesman was quoted as saying "There was a culture at this company where they viewed export laws as an obstacle to making money."

Details of recent penalties imposed on UK companies are published at <http://www.bis.gov.uk/politics/export-control-organisation/eco-press-prosecutions>

## CHAPTER 6 COMPLIANCE CULTURE IN THE COMPANY

None of us like red tape. Compliance with company procedures takes us away from the “real business” – or does it? The compliance manager is a pretty unpopular person, demanding that intranets are populated with data, on-line forms are filled in, and files (electronic or paper) contain particular papers or are arranged in particular formats. However, within reason, that compliance manager should be listened to: he/she is trying to save employees from themselves. Old knowledge, here-say, an attitude that “it’s only one” – are all potential pitfalls. Non-compliance can result in huge fines, loss of reputation, criminal action, even prison. As one experienced exporter said “think of all the companies that have got into trouble over the years with export controls: how many of them are still in existence.”

Where do you start? First, establish your key themes, such as competition, corruption and internal control. Second, develop a set of ‘core values’ such as trust, respect, transparency and integrity. Publish your themes and values so they are visible to colleagues, suppliers, customers, advisors and investors, and have this document signed by the person who is responsible for compliance as well as the CEO. Put a copy in your reception and on your website, and encourage staff to be proud of their company’s bold statement of its values.

### Sample company code of ethics

- Being honest and fair with customers, suppliers and agents, including processes for ‘know your customer’ and ‘know your supplier’
- Compliance with Export Controls + Money Laundering
- Adherence to rules for government contracts
- Conflicts of Interest
- Social responsibility
- Environmental responsibility
- Health and safety
- Data protection
- Value of staff, and measures to take care of staff
- Consequences of violation
- Who to contact, and confidentiality of contact.

Next comes implementation. It is a good plan to work out what you are doing, and where it can be done better. Each staff member or supplier that undertakes a part of the whole should understand where their contribution fits in. This contributes positively to team identity and morale and will encourage team members to take ownership of compliance.

Use software, but only if it replicates what you would do on paper, and integrates with your existing systems: just as compliance needs to be practical and is best when integrated into everything we do, so should any system be.

### Export Compliance Process Model Worksheet

1. Identify and record the export process, from marketing through to engineering and design, sales and finance, including order acceptance, whose terms and conditions of sale apply, packing specifications, export documents, method of payment, export licensing, choice of transport, freight forwarder or carrier, Incoterms® rules, purchasing, and management including quality control.
2. With the managers and supervisors of the processes, identify the compliance issues, determine where they interlock, assess the understanding as to where compliances begin and end, determine whether there are any gaps in the management of the tasks.
3. Survey the standards held by the staff in each of the functions, and the co-ordination between each. Establish if more training is required, and if a higher level of excellence will save money, such as in reducing “down-time” while problems are sorted out.
4. Does a single manager have overall responsibility for logistics or the supply chain? If not, create such a role and write a clear job description

Your company’s management should ideally have a practical knowledge of the technicalities and work processes of exports in relation to:

(a) the legal responsibilities undertaken by the company in its compliance with export and import regulations, such as statements of value, origin, commodity code numbers and Customs Procedure Codes (CPCs).

(b) where the trails in the import/export process begin and end, e.g. the shipping terms that Sales and Purchasing include in Sales acknowledgements and Purchase Orders could have detrimental effects on costs and time scales.

(c) The company’s Terms & Conditions of Sales and of Purchase should refer to the internationally recognised set of rules concerning delivery: Incoterms® 2010

(d) Relevant staff should be trained to understand the Incoterms® Rules selected for use by the company.

(e) The loss of expertise that occurs when staff are transferred or leave must be taken seriously

(f) There should be rigorous rules on customer naming and numbering, plus numbering of quotations/tenders and contracts.

(g) Good filing will allow the document trail to be followed.

An example of the need to have inter-locking departments is the choice of which Incoterms® rule to use for delivery of goods. The term will affect a number of things, from the responsibility for payment for and arrangement of transport, the actual delivery point, which party insures the risk of loss or damage in transit, the responsibility for the customs entry at point of export and on import into the customer’s country. If the sales department does not understand the potential add-ons created by freight, handling costs, insurance, start date of credit etc, it could end up selling product at a loss.

### **Tone from the Top**

For compliance to work, it needs a "top-down" approach. If senior management is seen to treat compliance as important, not only in their missives but also in their conduct, staff will understand how to go about their own role.

The compliance culture in the company is led, as with other company cultures, by the tone from the top. If members of staff see that directors "walk the walk" and work hard on achieving compliance, then staff will want to do also. If the directors focus only on revenue, then compliance will get put off and forgotten.

#### **Follow my leader**

A large UK company involved in defence exports instigated training in groups for its entire UK workforce. At each training session, each delegate had, on their seat, a letter from the CEO setting out the importance of export compliance and how it must become second nature. The letter was along the lines of: "We are in the export business. We have to comply with customs, safety and security. We will not cut corners. The penalties for non-compliance are severe and would dent the reputation of our company."

There is a saying "Attitudes and behaviours drive results". Training is important, as is accessibility of information about the rules and how the messages are reinforced. There should be clear reporting lines and responsibilities. Compliance should have good sponsorship from the Managing Director and be adequately resourced. It is important to evaluate periodically if the compliance system is effective. The company should be willing to take action if senior members of staff fail to attend to breaches of compliance when these have been pointed out to them.

#### **Data security: no Hollywood ending...**

Keeping sensitive information secure is an important aspect of the film industry where the tabloids are always eager for an inadvertent release of information about a celebrity. A film services company's manager was tasked with improving some compliance aspects of his business, yet always found the day job kept him busy and shelved the compliance upgrade action. When, after 6 months, the new compliance procedure had not been put in place, the manager was hauled up in front of the company's directors. He had no explanation of why the new procedure had not been implemented. His penalty: a reduction in his annual bonus.

### **Compliance must resonate with staff**

Messages need to be articulated in language that resonates with recipients. One size doesn't fit all in compliance communications. The message should be tailored to suit the business unit. Too often, organisations have a single means of articulating compliance, such as regular circulars. For staff to include compliance in their regular work activities, the message needs to be communicated and reminded through a number of means. For example, on-line training can be supported by mouse mats and/or screen-savers, and followed up with an internal poster campaign.

It is easier to spend time getting something right if you have an interest in the outcome. In the same way that factory floor management has changed over the last couple of decades, all of us that play a part in the eventual outcome of a successful export sale should feel that our role matters, and therefore adherence to the rules and accuracy are important.

### **Blueprints**

A personal assistant was asked by her busy boss to send some standard designs and documentation to Azerbaijan, a task that was achieved very efficiently, yet neither the staff member nor the boss remembered to check the export controls aspect – designs of sensitive or dual use products or components may be licensable.

### **Training**

The company intranet can be used to disseminate information, but this should not be the only method of transmitting information, and also, with too much information we go into overload. Inter-active training with questions and answers are a good way to activate interest in trainees.

<b>Requirement</b>	<b>Management tool</b>
Knowledge	Training
Proficiency	Coaching
Attitude	A feedback loop

It may be necessary to solve knowledge and proficiency before tackling attitude.

The goal should be that all staff are aware that certain aspects of what they do will have the potential to breach the company's rules on export compliance, and possibly also export controls. What you are trying to avoid is an "I didn't realise" situation.

### **Group therapy**

Staff of a company with on-line training groaned each time a new module was added to the training list – until they decided to work in team groups on the module, and this enabled staff to discuss the training which brought it alive, and helped reinforce the message. And the whole team completed the assignment in record time.

The most powerful way of communicating messages is face-to-face, and using examples. And, because we are human, reminders are needed at regular intervals.

Case studies should explain the issue and also demonstrate what happens to senior people who have been found non-compliant, for example in terms of fines etc. One company's penalty, on discovering non-compliance in relation to the company's client entertainment policy, was to require the whole team to attend a compulsory 4 hour anti-corruption training.

### **Not what you do but the way that you do it**

An insurance broker was fined £5.25m by the Financial Services Authority for failings in its anti-bribery and corruption systems and controls – there was no evidence of bribery, only that the broker did not have bribery and corruption controls in place.

*Comment: This happened before the introduction of the 2010 UK Bribery Law. The law requires companies to put in place controls to prevent bribery and corruption. There does not need to be evidence of bribery for it to be deemed an offence.*

### **Accountability, not buck-passing**

The company should have an accountability matrix so that someone is accountable for compliance in each area, plus someone with ultimate accountability. It must be clear that non-compliance is not an option. Since the penalty for export non-compliance will be a fine, it may be suitable for the Finance Director to be responsible for customs compliance.

### **Customer Relationship Management (CRM)**

The telesales team gave a sales executive of a services provider the meeting details and contact name for a visit to a new business prospect that was an export trading house. The sales exec spent a morning conducting homework about the trading house, and a day out of the office for the visit. On arrival at the designated address, the exec had a different challenge than he had been anticipating. Luckily he listened before launching into his sales patter: it transpired that the export house was already a client of his colleague. The seasoned sales exec managed to pretend that he was the boss and had just popped by “to check that the relationship was going smoothly”.

### **Espionage**

We need to be careful that we don't leave ourselves open to industrial espionage. Taking a competitor to court to prove your developments are your own intellectual property will not be easy. We can't plan for every eventuality, but it makes sense to take precautions, and communicate them throughout the company.

Here are some ideas about how espionage happens:

- Staff leavers taking files with them
- Unauthorised entry into the building
- “Tail-gating” through secure doors
- Support staff
- Not changing passwords
- Hacking into IT systems
- Loose chatter in public places
- Lax security at a service provider that has files on your company.

- Freedom of Information: beware that information shared with UK public officials can be viewed by parties that can demonstrate that they have a valid interest in seeing the information
- Misplacement of documents, files, memory sticks, lap-tops

Protagonists spend time aggregating disparate pieces of information from the many openly-available sources.

#### **The village pond: fishing for chips**

An insurance broker resigned from his job to take up a role in a competing broker. The firm that he left accused him of taking commercially sensitive information such as client lists with him, most probably on the company laptop which he inexplicably had not returned before leaving.

Lawyers from both broking houses told him not to destroy any data. However, the broker's solution was to throw the laptop in the village pond and claim it had been lost. He then bragged about this in the village pub. This got back to the insurance broker, which paid to have the village pond dredged to retrieve the laptop.

#### **Accuracy**

Use electronic documentation wherever possible because this avoids the need for re-keying, and thereby reduces the risk of inaccuracies and spelling mistakes.

#### **Component labelling**

A UK manufacturer of air coolers labelled exports "made in UK" which was correct, but Dubai customs looked through the packaging and saw a fan blade labelled "Made in Germany" and held the goods back. This problem took 4 weeks to resolve, and all the time the goods were in the port, and incurring demurrage/storage costs.

#### **Not "transmit only"**

The compliance department must be seen to listen as well as instruct. Frontline staff - who are its 'customers' - may have questions concerning interpretation of documents, or they may make recommendations in relation to the practicalities of doing business. A compliance department that hides behind a "computer says no" mentality and ignores such invitations loses all its credibility. Compliance department staff must themselves have processes for escalation of issues and decision-taking. They must engage with frontline staff: after all, these are the guys that are bringing in the income that pays their wages.

### Three steps to better compliance culture in an exporter

1. **Appoint someone with responsibility for compliance.** Give the compliance officer backup from senior management and resource to build procedures including systems. The compliance officer will not be able to be knowledgeable about all aspects of compliance (financial, goods, export controls, supply chain, health + safety, training) – it is too big a subject – so will need authority to achieve implementation company-wide.

The compliance officer will also need to form relationships in his/her business and learn how best to deliver a message about improving compliance to colleagues who are resistant to what is seen as bureaucracy. For example, it could be important that the production department understands the export controls implications of a software design.

2. **Train staff.** Include staff whose roles are not directly export-related, and overseas sales offices. Staff should know what the compliance procedures are, and where to find details of them. There is a danger that a new product or service will be developed without consideration of the export compliance requirements. On-line company-wide training is important, but there is no substitute for training in small groups.
3. **Build compliance into everything that you do.** Make compliance second-nature and it will be less likely to be a problem, and you will be able to be proactive, flexible and nimble. Review every process and make sure that compliance is built in, for example requiring a box to be ticked on a form, and for that form to be signed, before the next stage in a process can be completed. Make sure that the process covers the whole export from buying in goods through to knowing who the end user is. Do dry runs to test if the procedure is watertight. But do not let compliance be a reason not to export.

### Downsizing tale

One day the whole export department of a global plc were called into the HQ dining room and the HR Manager explained politely that the central function was being closed down. “ To be perfectly honest” he said “ I don’t know what you people do”. The members of the department subsequently either left the company or were deployed elsewhere and life went on until maybe 6 months later a letter arrived at HQ containing a demand from HMRC for almost £1m in duties which had been suspended under the IPR (Inward Processing Relief) system administered by the central function. The same HR Manager had to gather key players back to HQ and organise payment, and quickly: HMRC does not like to be kept waiting!

## CHAPTER 7 REFERENCES

### Abbreviations & References

AEO	<p>AEO EU regulations:</p> <ul style="list-style-type: none"><li>• Council Regulation (EEC) 2913/92</li><li>• Regulation (EEC) 2454/93 as amended by and Regulation (EC) 648/2005</li><li>• Commission Regulation (EC) 1875/2006.</li></ul> <p>Application Pack for AEO status - forms C117 and C118 and self-audit guidelines (TAXUD/2006/1450) - <a href="http://www.hmrc.gov.uk">www.hmrc.gov.uk</a></p> <p>Secure on-line, application pack available from <a href="http://www.businesslink.gov.uk">www.businesslink.gov.uk</a> .</p>
BExA	<p>The British Exporters Association <a href="http://www.bexa.co.uk">www.bexa.co.uk</a></p>
BIS	<p>UK – Department for Business, Innovation and Skills (previously BERR) <a href="http://www.bis.gov.uk/">www.bis.gov.uk/</a></p> <p>US – Bureau of Industry and Security <a href="http://www.bis.doc.gov/">www.bis.doc.gov/</a></p>
BusinessLink	<p><a href="http://www.businesslink.gov.uk">www.businesslink.gov.uk</a> The UK government's source of practical advice for business including on export licencing and international trading.</p>
CHIEF	<p>Customs Handling of Import and Export Freight – main customs computer system in the UK <a href="http://www.hmrc.gov.uk/index.htm">http://www.hmrc.gov.uk/index.htm</a></p>
CITES	<p>Convention in International Trade in Endangered Species <a href="http://www.defra.gov.uk/animalhealth/CITES/">www.defra.gov.uk/animalhealth/CITES/</a> <a href="http://www.cites.org/">http://www.cites.org/</a></p>
CPI	<p>Chemical pressure impregnation</p>
Data Protection	<p>Information Commissioner's Office <a href="http://www.ico.gov.uk/">http://www.ico.gov.uk/</a></p>
Data Protection Information Commissioner	<p>Information Commissioner responsible for enforcing and overseeing the Data Protection Act 1998. Any company wishing to obtain and subsequently hold personal information must be registered. Registration must include the purpose for which that information is being processed.</p>
DB	<p>De-barked</p>
DEFRA	<p>Dept for Environment Food + Rural Affairs <a href="http://www.defra.gov.uk/animalh/int-trade/gen-inf/contacts.htm">www.defra.gov.uk/animalh/int-trade/gen-inf/contacts.htm</a></p> <p>Export Certificates for food and drink products <a href="http://www.defra.gov.uk/exports">www.defra.gov.uk/exports</a></p>
DVLA	<p>Driver + Vehicle Licencing Authority <a href="http://www.direct.gov.uk/en/Motoring/BuyingAndSellingAVehicle/ImportingAndExportingAVehicle/DG_4022582">www.direct.gov.uk/en/Motoring/BuyingAndSellingAVehicle/ImportingAndExportingAVehicle/DG_4022582</a></p>

EAR	USA Export Administration Regulations (EAR) <a href="http://www.gpo.gov/bis/">www.gpo.gov/bis/</a>
ECA	Export Credit Agency - Government supported export credit insurer
ECGD	Export Credits Guarantee Department, the UK ECA <a href="http://www.ecgd.gov.uk/">http://www.ecgd.gov.uk/</a>
ECO	Export Control Organisation of the UK's Dept for Business (BIS) <a href="http://www.bis.gov.uk/exportcontrol">www.bis.gov.uk/exportcontrol</a> or <a href="http://www.businesslink.gov.uk/exportcontrol">www.businesslink.gov.uk/exportcontrol</a> ECO Helpline 020 7215 4594 <a href="mailto:eco.help@bis.gsi.gov.uk">eco.help@bis.gsi.gov.uk</a> ECO 'Notices to Exporters' email updates <a href="mailto:web.comments@bis.gsi.gov.uk">web.comments@bis.gsi.gov.uk</a>
ECOWAS	Economic Community of West African States <a href="http://www.ecowas.int/">www.ecowas.int/</a>
ECOWAS Moratorium	Destinations currently covered by the ECOWAS Moratorium: Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea Bissau, Ivory Coast (Cote d'Ivoire), Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo. <a href="http://www.businesslink.gov.uk/bdotg/action/layer?r.l1=1079717544&amp;r.l2=1084228483&amp;r.l3=1084100244&amp;r.s=tl&amp;topicId=1084656147">http://www.businesslink.gov.uk/bdotg/action/layer?r.l1=1079717544&amp;r.l2=1084228483&amp;r.l3=1084100244&amp;r.s=tl&amp;topicId=1084656147</a>
Embargoes and Sanctions	<a href="http://www.businesslink.gov.uk/exportcontrol/embargoes">www.businesslink.gov.uk/exportcontrol/embargoes</a> <a href="http://www.fco.gov.uk/en/about-us/what-we-do/services-we-deliver/export-controls-sanctions/country-listing/">http://www.fco.gov.uk/en/about-us/what-we-do/services-we-deliver/export-controls-sanctions/country-listing/</a> <a href="http://www.hm-treasury.gov.uk/fin_sanctions_index.htm">http://www.hm-treasury.gov.uk/fin_sanctions_index.htm</a> <a href="http://ec.europa.eu/external_relations/cfsp/sanctions/index_en.htm">http://ec.europa.eu/external_relations/cfsp/sanctions/index_en.htm</a>
EMEA	Businesses often group their global sales management into Americas, Asia, and 'EMEA' = Europe, Middle East and Africa
European Customs	EU Customs Information Portal <a href="http://ec.europa.eu/ecip/index_en.htm">http://ec.europa.eu/ecip/index_en.htm</a>
EX-Works	A contractual term of delivery. See Incoterms® Rules - <a href="http://www.iccwbo.org/incoterms/">www.iccwbo.org/incoterms/</a>
F680	UK MoD clearance to release classified information through export promotion. Apply through SPIRE. F680 is not necessary for dual use goods.
FAO	United Nations Food and Agricultural Organisation <a href="http://www.fao.org/">http://www.fao.org/</a>
FCO	UK Foreign and Commonwealth Office <a href="http://www.fco.gov.uk/en/">http://www.fco.gov.uk/en/</a>
FDA	US Food and Drug Administration <a href="http://www.fda.gov/">www.fda.gov/</a>

FSA	Foods Standards Agency <a href="http://www.food.gov.uk/foodindustry/imports/exports">www.food.gov.uk/foodindustry/imports/exports</a> Financial Services Authority <a href="http://www.fsa.gov.uk/">www.fsa.gov.uk/</a> (financial regulator)
Force Majeure	Contract clause relating to termination- see Chapter 5
Goods Checker	A database tool provided by the UK's ECO which enables exporters to search by keyword for items listed on the UK Strategic Export Control Lists, <a href="http://www.ecochecker.co.uk/goodschecker">www.ecochecker.co.uk/goodschecker</a>
GATT	General Agreement on Tariffs and Trade <a href="http://www.gatt.org/">http://www.gatt.org/</a>
HMRC	UK customs authority – Her Majesty's Revenue and Customs Investigation + enforcement of UK Export Controls <a href="http://www.hmrc.gov.uk/index.htm">www.hmrc.gov.uk/index.htm</a>
Home Office	020 7273 3484 <a href="http://drugs.homeoffice.gov.uk/drugs-laws/licensing/">http://drugs.homeoffice.gov.uk/drugs-laws/licensing/</a>
HSA	Health and Safety Executive 020 7717 6286 <a href="http://www.hse.gov.uk/chip/pic.htm">www.hse.gov.uk/chip/pic.htm</a>
HS	Harmonised System customs tariff
HT	Heat Treated
IATC	International Agriculture and Technology Centre <a href="http://www.theiatc.org">www.theiatc.org</a>
Incoterms	Internationally recognised terms of delivery – latest Incoterms® 2010 Rules – available from the International Chamber of Commerce <a href="http://www.iccwbo.org">www.iccwbo.org</a> * <i>Incoterms® is a registered trade mark of the International Chamber of Commerce</i>
IPPC	SECRETARIAT OF THE INTERNATIONAL PLANT PROTECTION CONVENTION Principles of plant quarantine as related to international trade, 1995. ISPM Pub. No. 1 FAO  IPPC Secretariat, Plant Protection Service, Food and Agriculture Organization of the United Nations (FAO), Viale delle Terme di Caracalla, 00100 Rome, Italy <a href="http://www.ippc.int">www.ippc.int</a> <a href="mailto:ippc@fao.org">ippc@fao.org</a>
ISPM-15	International Standards for Phytosanitary Measures
KD	kiln drying
MB	Methyl Bromide Fumigation
MHRA	Medicines and Medical Devices <a href="http://www.mhra.gov.uk/Howweregulate/Medicines/Importingandexportingmedicines/Exportingmedicines/index.htm">www.mhra.gov.uk/Howweregulate/Medicines/Importingandexportingmedicines/Exportingmedicines/index.htm</a>

MLA	Museums Libraries and Archives <a href="mailto:elu@mia.gov.uk">elu@mia.gov.uk</a> <a href="http://www.mia.gov.uk/what/cultural/export/export_licensing">www.mia.gov.uk/what/cultural/export/export_licensing</a>
MoD	Ministry of Defence
NPPO	National Plant Protection Organization <a href="https://www.ippc.int/index.php?id=13310">https://www.ippc.int/index.php?id=13310</a>
NSG	Nuclear Suppliers Group <a href="http://www.nuclearsuppliersgroup.org">www.nuclearsuppliersgroup.org</a>
OFAC	US Office of Foreign Assets Control <a href="http://www.ustreas.gov/ofac">www.ustreas.gov/ofac</a>
OGEL Checker	A database tool provide by the UK ECO to enable exporters to check the terms and conditions of Open General Export Licences. <a href="http://www.ecochecker.co.uk/OGELchecker/">http://www.ecochecker.co.uk/OGELchecker/</a>
Phytosanitary Measures, 1994	World Trade Organization, Geneva. <ul style="list-style-type: none"> <li>• Export certification system, 1997. ISPM Pub. No. 7, FAO, Rome.</li> <li>• Glossary of phytosanitary terms, 2001. ISPM Pub. No. 5, FAO, Rome.</li> <li>• Guidelines for phytosanitary certificates, 2001. ISPM Pub. No. 12, FAO, Rome.</li> <li>• Guidelines on notification of non-compliance and emergency action, 2001. ISPM Pub. No. 13, FAO, Rome.</li> </ul> ISO 3166-1-ALPHA-2 CODE ELEMENTS ( <a href="http://www.din.de/gremien/nas/nabd/iso3166ma/codlstp1/en_listp1.html">http://www.din.de/gremien/nas/nabd/iso3166ma/codlstp1/en_listp1.html</a> )
SAR Online	Suspicious Activity Reports for SOCA <a href="https://www.ukciu.gov.uk/(yngw4dib4suq4245ei20tw3q)/saronline.aspx">https://www.ukciu.gov.uk/(yngw4dib4suq4245ei20tw3q)/saronline.aspx</a>
SNAP-R	U. S. Bureau of Industry and Security <a href="http://www.bis.doc.gov/snap/">www.bis.doc.gov/snap/</a>
SOCA	Serious Organised Crime Agency <a href="http://www.soca.gov.uk">www.soca.gov.uk</a> Exporters are obliged to report any suspicious financial activity to the SOCA
SPIRE	The ECO's electronic export licensing application system <a href="http://www.spire.bis.gov.uk">www.spire.bis.gov.uk</a> (SPIRE = Shared Primary Information Resource Environment). <a href="http://www.spire.bis.gov.uk">www.spire.bis.gov.uk</a> <a href="mailto:eco.help@bis.gsi.gov.uk">eco.help@bis.gsi.gov.uk</a>
Transparency International	<a href="http://www.transparency.org.uk/working-with-companies/adequate-procedures">http://www.transparency.org.uk/working-with-companies/adequate-procedures</a>
UKTI	UK Trade and Investment <a href="http://www.uktradeinvest.gov.uk">www.uktradeinvest.gov.uk</a>
UKWPPMMP	UK Wood Packaging and Material Marking Programme <a href="http://www.forestry.gov.uk/pdf/fcph004.pdf/\$FILE/fcph004.pdf">http://www.forestry.gov.uk/pdf/fcph004.pdf/\$FILE/fcph004.pdf</a>
US BIS	US Bureau of Industry & Security <a href="http://www.bis.doc.gov/">www.bis.doc.gov/</a>

- VMD Veterinary Medicines Directorate 01932 336 911 Export Certificates Scheme document (No 25) [www.vmd.gov.uk/General/VMR/vmgn/VMGNote25.pdf](http://www.vmd.gov.uk/General/VMR/vmgn/VMGNote25.pdf)
- Wassenaar <http://www.wassenaar.org/>  
 Participating states: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States
- Wisconsin Project <http://www.wisconsinproject.org/>
- WMD Weapons of Mass Destruction
- WTO World Trade Organisation <http://www.wto.org/>

**Wood Packing regulations - Countries currently requiring adherence to ISPM15**

Argentina	Guatemala	Paraguay
Australia	Honduras	Peru
Bolivia	India	Philippines
Brazil	Indonesia	Seychelles
Canada	Israel	South Africa
Chile	Japan	Syria
China	Jordan	Taiwan
Colombia	Republic of Korea	Turkey
Costa Rica	Lebanon	UK
Cuba	Mexico	Ukraine
Dominican Republic	New Zealand	USA
European Community	Nicaragua	
Ecuador	Nigeria	
Egypt	Norway	
Guyana	Oman	<a href="http://www.forestry.gov.uk/forestry/infnd-6ablsn">http://www.forestry.gov.uk/forestry/infnd-6ablsn</a>

**Advisers**

Strong & Herd LLP	Customs and compliance adviser <a href="http://www.strongandherd.co.uk">http://www.strongandherd.co.uk</a>
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Aon's specialist trade credit team works with you to design specific trade receivable solutions to meet your strategic business needs.

Our dedicated team offer advice to support businesses, including exporters, to protect and finance their sales. We specialise in a range of products including:

- credit insurance;
- trade finance;
- business information; and
- credit risk diagnostic tools.

Our business segment teams have been created to support your company whether you are an SME, a large UK corporate, or a multinational business. We recognise that every company is different and focus on creating distinctive value for you based on a deep understanding of your business and risk issues, insightful analysis and powerful execution.

To complement this, our dedicated sector teams have the expertise and knowledge to understand and resolve industry specific issues pertinent to your business. Aon Trade Credit is an international organisation with local access to the best markets in the world and we are always looking for ways to bring innovative and cost effective solutions to our clients.

Aon's technical expertise is exemplary in its industry and we continue to invest in the people that will offer you industry-leading service wherever you need it. Your business is allocated a named Account Manager who acts as your technical resource on contract, policy wording and claims issues.

FP ref: 5865

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Bibby Financial Services provides specialist Export Factoring facilities to UK exporters looking to raise finance in order to fund growth in international markets.

Export Factoring is a comprehensive funding and collections package specifically for businesses involved in exporting and releases cash tied up in outstanding customer invoices.

The facility can offer:

- An immediate and ongoing supply of working capital advanced against outstanding customer invoices both domestic and overseas.
- Flexible funding against confirmed customer orders
- Access to specialist credit management facilities – supported by dedicated multi-lingual teams.
- Multi-currency facilities – providing protection against fluctuating exchange rates.
- Specialist bad debt protection – providing peace of mind that you'll get paid, even if one of your customers becomes insolvent.

Our aim as the UK's number one independent invoice finance provider is to support the cash flow position and growth of our clients both in the UK and overseas, utilising expert knowledge gained from more than 25 years' experience helping companies regardless of size or industry sector.

Expert professionals at Bibby Financial Services make fast, confident and informed decisions to give businesses access to the funding they need quickly and efficiently.

As part of a global network of companies, Bibby Financial Services truly understand the challenges businesses trading overseas face and with companies across the world are able to utilise the experience and knowledge of the local markets they operate in to assist their clients.



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Euler Hermes, part of Allianz, is the world's leading credit insurer, protecting thousands of businesses across the UK from the threat of unexpected customer insolvency. With more than 6,000 staff and a presence in more than 50 countries, the Euler Hermes group, to which the UK subsidiary Euler Hermes UK belongs, insures more than €600 billion transactions worldwide, enjoying a 36% market share.

Euler Hermes UK is the UK's largest credit insurer with a dedicated export underwriting team for all sectors, insuring clients' deliveries to customers in the UK and overseas. Euler Hermes UK remain committed to the export market and we will continue to work closely with our customers and BExA to support the industry going forward.

Established in 1918, Euler Hermes UK itself has more than 500 staff and insures £50 billion of trade transactions each year for companies of all sizes from SMEs to multinationals. It covers not just domestic trade, but also export, helping businesses to identify the right trading partners and monitor the financial health of their clients around the world.

A particular strength of Euler Hermes, beyond the confidence given by its AA- Standard & Poor's rating, is how it manages risk. The information it holds on more than 40 million companies worldwide is regularly updated through a network of more than 6,000 Risk Analysts embedded within the local business community worldwide.

This commitment to obtaining the most up-to-date financial information is at the heart of helping businesses make better informed credit risk decisions – whatever the sector and wherever in the world they wish to trade. And its service extends beyond credit insurance to embrace a range of credit management solutions, including bonding, surety and debt collections, making maximum use of its local contacts, knowledge and expertise.

With 2011 defined as a year of growth, credit insurance through Euler Hermes is essential to enabling businesses to grow with confidence.

# Export Control Organisation

## - Understand your export control compliance responsibilities

If your items have an entry or 'rating' on the UK Strategic Export Control Lists you will need to apply or register for an appropriate export licence.

**As the UK Regulatory Authority for licensing of 'dual-use' and military goods, the Export Control Organisation can help you with**

- Advice on how to determine (self-rate) if your goods need a licence
- Making better licence applications on-line using the SPIRE database
- Understanding your export control requirements
- Ease the business risks posed by non-compliance
- Keep up to date with the latest regulations



**Stay on top of latest announcements via our email update service and our UK-wide training and seminar programmes**

<http://www.bis.gov.uk/policies/export-control-organisation/eco-training-skills-academy>

# **BIS** | Department for Business Innovation & Skills

**BIS Department for Business  
Innovation & Skills**

For more information see:  
[www.businesslink.gov.uk/exportcontrol](http://www.businesslink.gov.uk/exportcontrol)  
email: [eco.help@bis.gsi.gov.uk](mailto:eco.help@bis.gsi.gov.uk)

Contact:  
**ECO Helpline**  
Tel: +44 (0)20 7215 4594

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Ince & Co is an international commercial law firm with offices in Dubai, Hamburg, Hong Kong, Le Havre, London, Paris, Piraeus, Shanghai and Singapore.

Our clients range from major international corporations to smaller companies, sole traders and private individuals. We practise English, French, German, Greek, Hong Kong, PRC and Turkish law. Ince & Co Singapore has entered into a Formal Law Alliance, the Ince Law Alliance, with local law practice Incisive Law LLC. Members of Incisive Law provide Singapore law advice and represent clients in both the Singapore Courts and in domestic and international arbitrations.

A leading legal directory *Chambers & Partners* recently commented that our international trade group *"Delivers clear, insightful advice and has a great combination of commercial acumen and technical expertise."* Clients seek that advice on a wide range of export and trade matters, including financing, trading, hedging and derivatives, storage, transportation, insurance and end use. Of particular significance these days, we are asked to advise on regulatory matters, international sanctions, and environmental issues.

We also represent our clients in all forms of dispute resolution – from negotiated settlements to, when the need arises, mediation, arbitration and litigation.

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The Royal Bank of Scotland Group (RBS) is one of the world's foremost financial services providers. We are a leading banking partner to corporates, financial institutions and governments around the world, specialising in providing customers with an extensive range of banking services.

Through dedicated client coverage teams, we bring solutions to customers that draw on our product strengths in international cash and liquidity management, trade finance, debt and equity financing, risk management and corporate finance advisory.

Our approach combines these products with deep sector expertise and a network which spans developed and emerging markets. It is this approach which enables us to effectively meet customers' needs in local, regional and global trade, trade finance and supply chain finance.

We support the needs of small, medium-sized and multinational companies in arranging pre- and post-shipment finance to keep imports and exports flowing. We can help you gain control over your working capital, strengthen trading partner relationships, mitigate trade cost and risk, and execute your commercial strategies around the world.



**Strong & Herd LLP**  
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Strong & Herd LLP are an outsource function to numerous companies who are unable to import or export goods themselves. This can be for technical, complex or staff related reasons.

We help produce numerous import and export guides/bibles. To achieve this we have access to numerous websites and HMRC support.

S&H are widely respected consultants in all areas of International trade. Our associate network allows coverage from finding Agents/Distributors/ Customers/Suppliers to payment, including financing.

All the above combined helps S&H present factual legislative training courses, but in a fun and relaxed manner. Providing attendees with support and assistance guides for future use

S&H alliances with The Institute of Export & International Trade (IOE), The International Chamber Of Commerce (ICC), The British Exporters Association (BEXA), Croner (Wolters Kluwer), HM Revenue & Customs (HMRC) and others ensures total satisfaction and approved content.

Strong & Herd LLP aims to enhance the export and import performance and compliance levels of businesses with practical and relevant training. Look at our wide range of international trade topics on offer as public courses – all delivered by experienced, accredited & specialist tutors. Many key topics will be available as an on-line training option very soon. We can also provide a cost-effective way to improve the skills of your international trade teams by delivering tailored programmes on any customs/ import and export related topic of your choosing. Whether you want one-to-one training development programmes or have a number of people to train the advantages of the in-company option can include:

- Convenience as timings are suited to your required dates.
- Less disruption to work schedules, confidentiality and direct relevance to company needs
- Value for money as the charges are per event rather than per person.
- Time savings - all the work involved in designing the training activity.
- Freedom of expression - attendees can talk openly in the knowledge that competitors are not present.
- S&H LLP is accredited to issue Continuous Professional Development (CPD) points on public and incompany events

