The BExA Guide to Successful Exporting

in association with RBS The Royal Bank of Scotland

CONTENTS

Foreword

Editor's Note

Chapter 1 What is an Export?
Managing the differences.

Chapter 2 Export Strategy
Starting, developing, research, make it a business, finance, route to market.

Chapter 3 Export Process
Bringing product to market, finance, delivery terms, packing, management team.

Chapter 4 Choosing a Local Representative
Types, what do you know about him, references, commission, agreements, distributors, franchises, joint ventures.

Chapter 5 Making an Offer or Bid
Pre-tender qualification, vendor lists, unsolicited invitation, samples, RFQ/RFP, language, bonds, clarity, product or service, shipping instructions, delivery dates, payment terms and payment risk, know your customer, customer risk, sovereign or political risk, bonds, bid bonds, contract bonds, liquidated damages, contract law and courts jurisdiction, choose your bid, you decide to bid, after the agreement internally to bid, delivering the bid, how to win a bid, managing your supply chain, foreign currency bids, insurable risks, taxation, be prepared.

Chapter 6 The Contract
Contracting process, what makes a legally binding contract, what to put in the contract, battle of the forms, specifically drafted documents, model contracts, intellectual property, what an agreement needs to cover, reviewing terms and conditions.

Chapter 7 Managing the Export
Knowing your responsibilities, country considerations, controlled goods, export documents, the invoice, essential information on an invoice, information for customs, certificate of origin, pre-shipment inspection, transportation issues, transport documents, special transport requirements, pre-arrival/departure messages, dangerous goods, cargo insurance.

Chapter 8 Direct Shipping
Moving goods across countries, tasks of shipper and supplier, risks, preparation.

Chapter 9 Looking after Customers
Direct sales, research, keeping your customer informed, customer surveys, good business practice, patience, making it happen, customer's payment is late, after sales service.

Terminology

Copyright & disclaimer

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by other means, electronic, mechanical, photocopying or otherwise without the prior permission of the British Exporters Association.

Whilst every reasonable effort has been made to ensure accuracy, information contained in this publication may not be comprehensive and readers should not act upon it without seeking professional advice from their usual professional advisers.

FOREWORD

The BExA Guide to Successful Exporting has been written by exporters for exporters with the aim of providing a practical source of help without surrounding the subject with an overwhelming amount of detail. It is one of seven BExA Guides[1] to exporting.

First of all let us not be complacent regarding our status as a trading nation: in 2012 the United Kingdom held 11th place in the world league table of exports. Our share of world exports[2] is 2.62%. Our main export partners are the EU (49%) and USA (17%)[3].

One of the most important issues with cross-border trade is accuracy of documentation. Seasoned exporters check import tariffs regularly to ensure that packing and presentation keep up to date with tariffs, enabling them to stay competitive. However, even with the best preparation, things can still go awry. A consignment destined for Russia was recently impounded by Russian Customs because a warehouseman's glove had been inadvertently left on the pallet and had not, of course, been declared on the export documentation!

My first venture into exporting was a disaster. Twenty five years ago I worked for a company selling giftware: table mats, melamine trays, pictures and corn dollies that had been made in the West Country. These attractive items sold well in the UK. We were invited to sell through a store in Stuttgart. But we didn't do our research. We didn't know what the customers were looking for, who our competitors were, or their pricing. We did not know about packaging. We assumed the store would arrange promotion – we did not do any of our own marketing or advertising.

When we arrived to set up our stall – a "gondola" of products – we realised that the German buyer for the store had also invited along a Czech producer of corn dollies to have the "gondola" next door. Whereas our corn dollies had been well shaken-about by the journey, next door the Czech stall had pristine corn dollies that were four times the size of ours and half the price. We didn't sell any corn dollies, or any of our other goods either.

Successful exports don't just happen. Many exporters learn the ropes by trial and error, or being an apprentice on a team. In this guide, we have tapped into the experiences of seasoned exporters to give you some ideas about how to avoid the main pitfalls and build a successful book of export business.

Rt Hon. Earl of Kilmorey PC
President, the British Exporters Association
Minister of State for Trade 1992-1995

May 2013

[1] BExA Guides to Letters of Credit, On-Demand Contract Bonds, Financing Exports, Export Compliance, Export Credit Insurance, and Retention of Title are available from www.bexa.co.uk and printed versions are free for members.
[2] https://www.cia.gov/library/publications/the-world-factbook/geos/uk.html
[3] http://www.ons.gov.uk/ons/rel/bop/united-kingdom-balance-of-payments/2011/tsd-pink-book-2011-time-series.html

EDITOR'S NOTE

BExA is an independent trade association for exporters funded by membership subscriptions. As a lobby group, BExA's mission is to keep our government, insurers, banks, and selected international bodies in tune with the needs of UK exporters. Why then does BExA produce guides for exporters? The answer is simple. Export is a huge and complex subject. Experienced exporters are always learning, and no single person knows the whole subject. BExA draws members from a number of fields and we realised that together, if our experience can be pooled, and with a bit of application, we could produce guides from a practical perspective to complement the valuable in-depth technical references and training that are available.

With this Guide to Successful Exporting, we have tried to transmit some of our experiences so readers can at least plan to avoid problems where possible. We need our exports to keep the UK in good financial health, and there is no point in setting out to export unless you are also able to make it a success, and, thereby, profitable.

The original writing team originated from a varied set of commercial organisations, each with a different approach, supported by an editorial team.

Hugh Bailey of BExA

Roger Bamber of Aon

Rt Hon. Earl of Kilmorey PC

David Barton of JCB

Chris Parker of London & Scottish

Bob Bruce of Raytheon

Jason Crowhurst of Aon

John Porter of Alderley

Nigel Ford of Siemens

Glyn Powell

Phil Richards of BPL Global

Tony George of Ince & Co

Gerard Grady of Motorola

David Millett of The Royal Bank of Scotland

Alan Rides

Brian Herd of Strong & Herd LLP

Denise Rowley

Guillaume Simonnet of Thales UK

Richard Hill of BAE Systems

Jonathan Stafford of Aon

Kazimierz Layton of Aon

Jessie Lenihan of Aon

Sandra Strong of Strong & Herd LLP

John Lodge of SELEX Communications

Melanie Wartenberg of Aon

The 2013 revision contributors were:

Lindsay Andrews of Tata Steel

Hugh Bailey of BExA

Jon Coleman of BAE Systems

Nigel Kushner of W Legal

David Millett of The Royal Bank of Scotland

Sandra Strong of Strong & Herd LLP

Paul Titley of Aesica

Graham Tyers of Newson Gale

These good people deserve the thanks of British exporters.
All views expressed are personal.

Susan Ross
Aon Trade Credit
Vice President, the British Exporters Association
May 2013

CHAPTER 1
WHAT IS AN EXPORT?

For the purposes of this Guide, an export is:

> The consignment of goods, technical assistance or services from the shores of the United Kingdom to another country, irrespective of ownership and regardless of whether the destination country is an EU member or not. The purpose of the export may vary from goods sold or services performed to temporary exports for reasons of exhibition, for repair, test, processing etc.

How does export differ from simply selling goods commercially in the domestic market? Surely the principles are the same: Sell!! Get Paid!! Move On!!

It would be wrong to generalise the differences since the export field is wide and enormously varied. Of course there is a huge difference between sending a bag of nuts and bolts to France and selling oil production equipment to Russia. However there are some very real differences between export and domestic trade, as well as the obvious currency, culture and language issues which remain constant and include:

a) Distance

b) Customs formalities and duty[4]

c) Regulations relating to goods[5]

a) Distance

The geographical distance between the supplier and the customer increases the physical risks of loss or damage, adds freight costs regardless of which party is paying, adds to the delivery timescale and may also influence the packing specification.

The separation of supplier and customer by distance can also interfere with normal trading relationships e.g. visibility, credit rating, debt collection, business reputation, personal interface etc.

b) Customs formalities and duty

Consignments to destinations within the European Union (which is a customs union), generally speaking, do not require to be presented to Customs (HMRC) at export from the UK or on arrival at another member state. There are exceptions to this rule but it is generally the case for the majority of industrial goods. There are declaration issues and VAT formalities but these are considerably easier than exporting outside of the EU. Similarly, for sales to the countries of the European Economic Area duty levels and formalities are much simpler and handled according to the free trade agreement.

For destinations outside the EU it is a legal requirement for a customs declaration to be made before the goods leave the UK and a customs entry/declaration has to be made when the goods arrive at the destination country. These declarations include legally binding statements relating to value, commodity or tariff code, customs procedure code, etc. and may involve payment of customs duties and import taxes at the arrival point of entry in the overseas destination. The

[4,5] Customs and regulations are addressed in detail in the BExA Guide to Export Compliance

responsibility for customs clearance and payment of duty is determined in your contractual agreement by Incoterms® 2010 (assuming these are incorporated into the contract). Customs declarations are usually made by the freight forwarder acting on behalf of exporter or importer, but the information submitted to customs is the legal responsibility of you, the exporter, as principal.

The modern exporter looks at the supply chain in totality not just the part that is his or her responsibility: every export becomes someone's import. A competent exporter won't ship goods to any overseas destinations without understanding whether there are any documentary requirements demanded by that country over and above the standard ones (e.g. Invoice, Packing List, transport document such as Airwaybill, Bill of Lading etc.) For example, some EU countries require a health certificate for food and drinks imports and many Arab League countries require documents legalised by their embassies in the exporting country.

c) Regulations for particular types of goods

"Controlled Goods" form only a small proportion of UK export output but we need to define what we mean by the term. "Controlled" means that the goods or services (including certain technologies and intangible movements, e.g. emails) come under the statutory control of other UK bodies as well as HMRC. For example:

1. Export Control legislation, administered by BIS – the Department for Business, Innovation & Skills – controls the export of military and dual-use goods and technologies and additionally, any product that may be used in the construction of a weapon of mass destruction (chemical, biological and nuclear weapons) and the means of delivering same. Some seemingly innocuous goods may be caught by the dual-use category.[6]
2. Agricultural products and pharmaceuticals – information is available from DEFRA and www.gov.uk website.
3. Various authorities in connection with the transportation of hazardous goods by air, sea, road and rail – information is available on the www.gov.uk website.

Managing the differences

If Export Controls seem a challenge, think again: all these regulations and requirements can be dealt with without inducing a nervous breakdown. In return, exporters can reap the rewards of a wider market with greater opportunities. They can receive help when necessary from the various Government organisations such as UKTI (UK Trade & Investment) and via the new government website www.gov.uk (within the Business and Self-Employed section there is an Imports and Exports area).

Prudent exporters who want to make a success of exporting need the sense of adventure which has made Britain a great trading nation. But they should look also at good housekeeping, allocating resource, making sure that all sources of help and information are used when appropriate, and above all, that management takes the trouble to look at the detail as well as the 'big picture'.

[6] See BExA's Guide to Export Compliance for more detailed information on controls and licences.

CHAPTER 2
EXPORT STRATEGY

UKTI research suggests 28% of exporters begin exporting in response to customer demand, many working through social ties such as with the Indian sub-continent. This statistic in isolation potentially understates the role of people – the internal, proactive drivers/managers of the businesses. In any case, even if a business begins exporting by chance, it must be with the intention that exporting will become a profit contributor, and to achieve this, it is helpful to develop an export strategy. This strategy should identify where it is easiest to do business, culturally and linguistically, and which markets offer the best sales opportunities.

The key question is how to get started? What kind of selling mode should you use? Which are the best countries to start in? How do you get your goods there? What information do you need to make the sale? Who is going to do each task?

Text book marketing theory talks about entry modes. In simple terms, that means the method of selling goods or services, and what organisation to use to do it. The choice revolves around three issues:

1. Business risk taken by exporter
2. Exporter's management control and visibility of the destination market
3. Flexibility

The three types of entry mode are:

Mode	Types	Payment risk	Market visibility	Flexibility
Direct export	Sales via your export department or sales agents	insurable	limited	good
Intermediate Collaborative or contractual	Distributor, reseller, franchise, joint venture	largely insurable	overseas operation controls	depends on contractual agreements
Hierarchical	Subsidiary, direct investment (FDI), branch operations	insurable	strong	limited

Each route has its place but the resources available to exploit the market and the level of risk the seller is prepared to take will determine which is most appropriate in the circumstances. For example, the sheer size and strategic potential of China may suggest a direct investment, whereas Zambia would suggest a distributor method. A very small market like Ascension may best be served by exporting directly from head office.

A good place to start for help and information is with UKTI. This government-funded agency supports UK exporters and helps companies realise their international business potential through knowledge transfer and ongoing support. The UKTI website contains country information and details of the services on offer.

The business of packaging

An Indian-born consultant for a UK design company that had considerable domestic success wanted to export. The company commissioned UKTI to provide an Overseas Market Introduction Service (OMIS) and the designer joined a UKTI market visit to India, the combination of which helped him to understand the business culture of the Indian market, while the association with UKTI gave the consultant credibility when speaking to potential customers. A commission was won from a pharmaceutical company to update the packaging for an antiseptic cream. The customer was happy: the cream's new contemporary styling reflected the product's benefits and led to a 32% increase in sales.

1. Start with a profitable product line

It is very difficult to start your first business with exporting. However, if you have a successful product in your home market, exporting can help you to grow and diversify your business. So, if you have a product that sells well here and is successful and profitable, you can understand its ins and outs and what works and doesn't work in the UK before going overseas. If your UK domestic business doesn't enjoy good margins, do not assume that, by adding export markets, you can improve your company's finances. It is only worth venturing overseas if the product is already profitable: exporting is going to take a lot of your time and is likely to cut into your margins. The cost of every aspect of business is higher, and your overseas representative will also want a percentage of sales.

2. Begin close to home

With exporting, you need to take one step at a time: don't try to launch in every market. The nearest market to the UK is Ireland: they speak the same language, use the euro, and have strong ties with the UK.

If your product works in Ireland, look to countries with a similar customer profile, needs and wants. This may be to larger English speaking countries such as the USA or Canada, or closer to home into Europe. Benelux countries are physically close, speak English, and their population of 25m (under half that of the UK) belies their trading skills. The Netherlands acts as a distribution centre for continental Europe and is the world's seventh largest exporter[7], exporting four times as much per head of population as the UK.

Notwithstanding this, one exporter writes "Export strategies for new exporters often suggest concentrate on easy, near markets. Sensible strategy, but in practice a good order from Japan is worth two promises from Ireland."

[7] https://www.cia.gov/library/publications/the-world-factbook/geos/nl.html

3. Developing your product for export

Look at what adaptations your product will need for your chosen export market. Is your product right? Get to know the competition. Look at the customer requirements. Try to imagine the position of the customer, the wholesaler and the retailer. What do they want? You are going to make a big investment in exporting, you need to protect your brand and provide good quality and service to encourage your customers to choose your product instead of their familiar locally produced product. You cannot afford to get it wrong.

> To enter the Japanese market, a consumer engineering company needed to design a tiny machine that could be put away in a cupboard in a typical Japanese home. Subsequently, the company discovered that customers in Europe also wanted a tiny machine.

Consider your Intellectual Property Rights, and be careful about which entities you licence to distribute your products, for which sectors or geography, and if exclusive or not. You do not want to have a licensee that has acted as a 'brand collector' and is not working hard enough for you. The BExA Guide to Export Compliance has a useful checklist on this subject.

4. Research

Do your research: make sure you have time to spend to research the market properly. Understand the culture and demographics of the country. Find out what sells locally, what price it is and what its shortcomings are. Understand what will be the best way to promote/market/advertise your product. Who are the key players? What can you learn from them? Taking a key UK customer out to your golf club might be a pleasant way to spend an afternoon and initiate some useful discussion, but it won't necessarily suit a French customer since golf is less popular in France.

> **Perfecting the image**
>
> A young electronics company had developed a calibration system to enable installers of digital TV to achieve the best reception. Exports were mainly to the USA and comprised 10% of turnover. An approach was made to UKTI for advice about growing exports. The recommended strategy included being more proactive in seeking out new opportunities, using on-the-ground market information from overseas embassies, who also supplied useful leads, and understanding the technology and consumer needs of each market before visits were made. New European markets were established and exports grew to 70-80% of turnover.

There is a lot of information on the internet, but the key is its interpretation. Ensure the data obtained is pertinent to the question. For example, some countries' economic and demographic information may be controlled by their governments. It may have been produced to toe the party line, may be misleading, inaccurate or even blatantly untrue.

If you are selling consumer products, information such as GNP and GDP are useful for identifying the bigger markets, but consider also the disposable income of the people: China, for example, has the world's second largest economy, but 1.4 billion people spreads that wealth out

dramatically. Per Capita Income is an important measure if the product is a mass market product, but if you are selling luxury goods, the real measure is the disposable income of the rich segment of the population, the A, B, C1 demographic strata.

Checklist: Awareness of local customs and practices

- Check local, national and religious holidays, and summer factory/office shutdowns. The working week may not be 9am-5pm Monday to Friday
- What is the normal dress code?
- Be sensitive to your customer's religion:
  - Foods or food combinations to avoid
  - Fasting times
  - Prayer times
- Understand the politics and other newsworthy events in territory, including when elections and major sporting events are being held
- Understand the business etiquette on greetings and meetings. If in doubt, always shake hands with your right hand, address as Mr/Mrs, and receive a business card with both hands, taking care to read it. Practise these things at home so that you do not feel shy doing them when you arrive
- Smiles can go a long way, but don't try British or self-deprecating humour too early in your relationship, and certainly not by email where it can be read very differently. Taking the blame and playing the eccentric Brit can have benefit, so long as you don't repeat this too often.

5. Make it a business

Don't try to take on overseas markets until you have the resource (in terms of people and money) to do things properly. Too often people go into exporting via an export agent, assuming this will be a useful add-on for the domestic business, but it isn't wise to treat export as an add-on. Take it very seriously. And think: you need to have a success early on or the team will become disillusioned.

This is where working with third parties can help. Much expertise is available from sales agents and export houses, from freight forwarders for the logistics, and the bank and factoring houses who can help with payment and credit collections. You don't have to do it all yourself to be successful!

6. Finance

When you start exporting, you will have an extra cash requirement. Suppliers may demand payment at 30 days, but because the goods take longer to get to their destination, you have to give longer credit on your sales. You may need to compete with local suppliers in your destination market where the usual credit terms may be longer. For example Germany and Netherlands tend to pay strictly 30 days after invoice date; whereas in France and Belgium, 60-90 days is the norm and Portugal, Spain, Greece and Italy ask for long credit terms and take longer to pay! How will you fund this? You may be able to negotiate longer terms from suppliers because you are winning more business for them. Export factoring can be used to close the gap. However factoring only works once the sale has been made. Prior to that, you may need

to look at procurement finance or sources of additional working capital. The Government launched a scheme in 2011 to help address the working capital needs of exporters[8]. See also BExA's Guide to Financing Exports.

> Terms of payment must relate to something under your control, the despatch date or invoice date, are usual. Avoid "30 days from date of arrival at customer's site": What if the goods are delayed? How do you prove they have arrived? What if your goods arrive at the beginning of a public holiday and have to be stored.

7. Route to market

Work out how you are going to get the goods there, including delivery (Incoterms®) and management/organisation. Use the four Ps:

Product – what are you selling; how is it packaged, what are the warranty obligations? What substitute product is available?

Place – destination; how you will transport the goods there, how you will get them in front of your customer. What is your method of distribution/logistics? Who will provide after sales services?

Price – check what else sells in the market and at what price. What are the usual payment terms, and what will you have to offer to be competitive?

Promotion – how do you get the customer to buy? How do you get the message out – advertising, trade shows, brochures, sales force, distributors? Will you sell directly or engage a local representative? How does the local market normally sell goods?

> Sometimes it is better not to follow the crowd. One British exporter had a choice of two trade shows: Moscow supported by BIS or Prague with no support. The exporter writes: "We went to Prague and were the only foreign company. We established business with four different Czech importers."

8. Where to start

Identify your new market from research with the help of UKTI. British embassies and consulates, through their commercial staff, provide invaluable help to new exporters in a number of different ways, including helping identify potential agents and local organisations and give you an understanding of local commercial practices. Consider taking part in a trade mission organised by a UK Chamber of Commerce or Trade Association.

[8] Details of Government Export Finance schemes can be found on the UK Export Finance website.

Innovation wins export orders for young companies

1. **Prioritise target countries.**
2. **Homework:** desk research, internet, local business agencies.
3. **Equip your organisation:** people, systems, languages.Recognise your limitations and constraints.
4. **"Wow factor":** Develop your niche product/service offering
   1. Aim to dominate your niche (be a big fish in a small pond).
   2. "Productisation" – something recognisable, repeatable and profitable to offer to customers.
   3. "Own a thought" in customers' minds.
5. **Continuous product development**, certification, ensuring there is a pipeline of developments and strategy for marketing them.
6. **Marketing/PR:** Internet, traditional marketing (consider cultural differences) and public relations (PR) can be more cost effective than advertising. Offer your product or company as an example for features in the national press.
   - Enter competitions – as many as you can
   - Consider working with a partner with complementary goods/services – each promoting each other, sharing income from orders.
   - Piggy back: can another company's Intellectual Property (IP) be developed further with your products or services?
7. **Channels of distribution:** Agent/Distributor/Representative/Hybrid. Select and appoint your representatives, but remember the saying 'Marry in haste, repent at leisure'
8. **Relationships:** Establish relationships with key decision-makers. This may be easier with smaller or family owned companies.
9. **Service**

   Go faster: accelerate past your competitors.
   - Proposals: two weeks might be standard in your industry. Turn your proposals around in two days.
   - Generate prototypes so that you can share them same day.

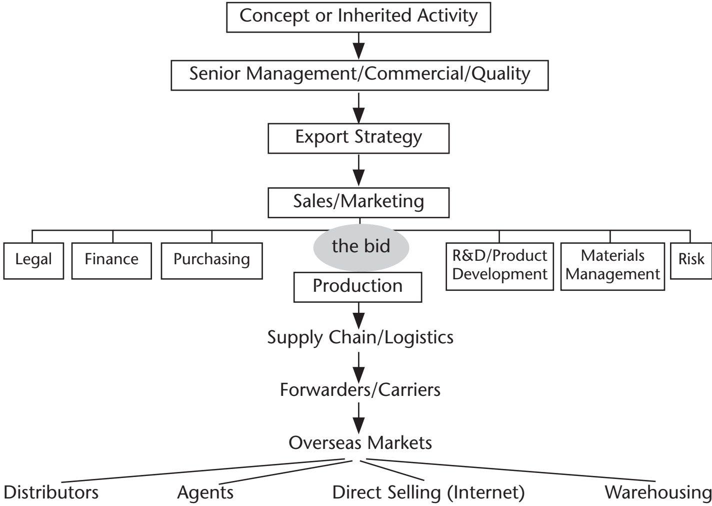
   Be accessible all the time.
   - Allow customers and prospects 24/7 access to your team.
   - For larger projects, consider having a customer employee in an office on your site.

   Be ready to act if it's not working

   Don't be too choosy: if a customer wants something that you can deliver, but is not your core business, you may develop a new line of income.
10. **Never stop innovating!**

CHAPTER 3
EXPORT PROCESS

Stages in exporting



We define the **Export Process** as the interlocking steps, within an organisation, that result in the export of goods, technology or services (including technical assistance).

Simple? No! Not really. There are perhaps 200 potential destination countries, and we are exporting a vast array of products – ranging from a machined component to a working power station with trained workforce – which, when added to a mind numbing variety of customers from the single trader to vast monolithic enterprises, governments and state assisted or funded structures, produce a countless variety of situations, which greatly affect the steps we call the Export Process.

The first and most important action is to recognise the steps, chart them, examine the links between the departments or individuals who have the various responsibilities and conduct a form of internal audit with the aim of identifying weaknesses or faults in the process. These weaknesses can be rectified with the 'time served' remedies of education and training although great care should be taken in ensuring the training is up to date and meaningful in the workplace.[9]

Problems can arise if exporters do not grasp the interacting nature of the export process. Most of these boil down to communication.

Supply chain and logistics staff attending export training courses, when asked what causes them most problems in their daily working lives, invariably answer without hesitation "sales departments". The reason is that management hasn't taken the trouble to educate sales staff in the important areas of delivery terms, duty relief, cost add-ons, etc. This leads to export contracts being accepted with faulty contract terms relating to responsibilities, including freight, loss or damage in transit,

[9] A good initial point of reference if you are seeking to develop skills and qualifications in exporting is the Institute of Export & International Trade (IoE)

import duty and tax payments at the destination country, losses due to delayed delivery, warranty obligations or product liabilities.

Similarly, when the same question is asked of delegates at importing courses, it brings the wholehearted reply "purchasing". Managements seem to fail to understand that a purchasing officer (customer) needs to have an understanding of such things as delivery terms (Incoterms®) and preferential trade status in order to buy from an overseas supplier in an effective way to ensure control of cost and timescales.

These are two examples of how the export process in many companies fails to reach "best practice" levels because of lack of harmony. Should there be overall control of the whole process vested in one person within the company with the knowledge and authority to influence the whole, not just its parts? Ideally yes, but not all exporters will be able to afford this luxury.

The export process begins with the marketing of the product, following which you will need to identify the folk who will be involved in agreeing commercial terms and writing the contracts, arranging the shipping, organising insurances, getting paid, keeping records etc. We don't attempt to make this totally comprehensive because individual organisations vary enormously, but it may help to identify the communication and awareness needs which are important elements in achieving export excellence.

The product and bringing it to market

The marketing of the product should include an awareness of the logistical and compliance aspects of the 'supply chain'. It may call up issues relating to duty and import tax payments and factors such as customs warehousing, consignment stocks and valuation issues. They all need to be part of the planning process because rectification further down the line may be difficult and costly or even impossible.

Finance

In a busy trading company there are so many import and export related matters that spin before the finance department that it is a wonder that they can cope without real training on a whole raft of export/import topics. Take this little list for example:

- Method of payment (simple invoice, letter of credit, bills of exchange, etc.)
- Export credit insurance
- Intrastat (Intra-Community Trade Statistics)
- Duty and VAT
- Operating a Customs Duty Deferment account
- SIVA (Simplified Import VAT accounting)
- Approving freight and other logistical charges
- Bonds and guarantees
- Costing issues for overseas quotations
- Foreign currency (currency accounts – foreign exchange)
- Overseas taxation issues

Without a good grasp of import and export procedures there is plenty of room for things to go wrong. The answer? Reach out and talk to your colleagues to identify areas for improvement and remember the benefits of good, well-directed training.

> **Sleep easy – have export credit insurance**
>
> A highly reputable French company, with excellent credit ratings and that was trading profitably, ordered £30,000 of high quality beverages from a UK exporter. During an audit, a major legal/accounting problem was uncovered at the French company and it was decided that the only route was to use French law for protection from creditors. The exporter had covered the payment risk through its credit insurance and so, instead of having to write off the uncollectable £30,000, a claim could be made on the insurance for 90% (£27,000).

Delivery terms – Incoterms® Rules

Every part of the supply chain is affected by the shipping term (Incoterms® Rules, or the US Uniform Commercial Code). Incoterms® Rules define the responsibilities of the supplier and seller in relation to delivery, risk of loss or damage for goods in transit and such vital issues as customs presentations, documents and the payment of customs duties and import taxes. Of course, the Incoterms® Rule used will have an effect on your selling price. For example, FCA (Free Carrier) will not include sea freight/air freight, while DDP (Delivered Duty Paid) involves a complete service and therefore a higher cost.

Packing & despatch

Give this team the credit they deserve and don't expect them to operate without knowing why they have to provide certain documents or use certain terms. Take the ISPM 15 Wood Packing Regulations for example: the reason that wood pallets and dunnage must be heat-treated and fumigated is to prevent tree pests being imported. If all staff know the importance of the regulations, they are less likely to be forgotten.

Management team

Last but not least, whether your organisation is small or large, whether you are ISO-badged or not, certain principles must always apply. Some kind of quality system that will highlight the cost of non-conformance is vital. Improvement should be the aim, and measurement is vital. A process worksheet is useful. This is where you record the inputs and outputs, determine whether the process is clear and whether it meets your requirements or not.

CHAPTER 4
CHOOSING A LOCAL REPRESENTATIVE

A company's first overseas sales are often done without any local representative, but for long-term success, there needs to be some local presence, whether that be your own sales and service team, an agent or a distributor. This allows you the on-the-ground relationships with customers that are necessary for a successful business.

A good intermediary/representative/agent will become part of your team. He/she will know who in the customer's office is making the decisions: the decision-making unit and its motivations won't always be obvious from afar or by studying the formal paperwork. Your customer, for example, may be employing an engineer to run the tendering process (e.g. an EPC or Engineer-Procure-Construct contractor), and the end-user of the project may also have its own engineers and influencers. Your representative feeds back valuable information, and tells you who are the people you need to get to know. Often, it isn't so much who you need to know to get the job done, but who will stop you winning.

It may be preferable to engage a 'consultant' to avoid the legal issues which can result from appointing an 'agent', which is defined in agency law and entails certain rights and responsibilities. You may be able to stop at one representative for the job, but not necessarily. One representative may be needed in territory for the sales work, and a second to provide spares and service support.

Choose someone who is on the spot and who knows your product and the market for it. Your customer may require some confirmatory evidence that your representative has the authority/capacity to act on your behalf. However, be careful not to grant too much authority to the representative; he is after all potentially committing your company, yet he isn't governed by your company's rules and standards.

Securing the right representative isn't an easy business. And, if for whatever reason, you decide to terminate your relationship with your foreign representative, you may have to defend yourself in a local court of law – even though it may be stated that your agreement shall be subject to English Law.

This may all sound rather depressing, but it is just to emphasise two things: make sure you have the right representative, and avoid falling out with him/her.

Types of local representative

- **Commission Agent:** probably the most commonly used intermediary in international trade. The commission agent represents a number of principals for specific and compatible products in a particular territory. He is responsible for promotion, selling, chasing overdue accounts, problem solving and so on but does not normally buy, sell, handle goods or hold stock himself. He receives a commission payment on sales in that territory (say between 5% and 10%) which should be based on the ex-works price (rather than the "delivered" price, which will include transport costs). Termination of an agency may be expensive.

- **Consultant:** a representative that is still governed by the law of agency, but in a less onerous way, and this may give you more freedom. A consultant can be commissioned to perform particular work, such as preparing a report on opportunities in the market, or advising on your approach to the customer.
- **Distributor:** sometimes referred to as wholesaler, stockist or dealer. Typically purchases goods from the manufacturer at a discounted price and resells into the specified territory at a profit. Can be:
  - **Sole distributor** – exporter does not appoint other distributors in the territory. The manufacturer can, however, retain the right to deal direct with customers.
  - **Exclusive distributor** – no other distributors are appointed and the manufacturer does not deal direct.

  In addition to all the duties of an agent, the distributor may also hold stock of finished goods, parts, components and repair materials and may provide pre- and after sales service, maintenance, repair etc.
- **Franchise:** you export your brand and knowledge, and provide management support, to an overseas company, which pays royalties based on turnover. The franchisee buys product from you, on which you receive a margin.
- **Joint venture (JV):** you establish a new company and own its shares jointly with a local company. Each party receives dividends from the JV's trading profits. Product is still bought from you, but at a substantial discount.

So, how do you go about finding the right representative? A visit to the British Embassy or Consulate in territory is an absolute must. But make sure you plan your visit in advance: do not just drop in. Notice of your visit will enable the commercial section to do some research and ensure your enquiry is given full attention.

From a list of potential candidates, approach the selection process in the same sort of way that you would interview someone to become an employee of your company. After all, this person is going to represent your company and you need to know he has the right skills to do the job.

So what do you need to know about him?

1. **Background:** How long has he been an agent representing foreign companies? Has this been a life-long job or something he has moved into recently? If this is a recent change of direction, understand why he made this move. Why does he feel qualified to become your agent?
2. **Language:** Can he communicate fluently in English? This is very important indeed. If you have difficulty understanding each other, you could have serious problems in future. Find out where he learnt English and during your meeting, test him to the full.
3. **Whether he is working on his own or as part of a company.** Both have strengths. Your choice will depend on your requirements.
4. **Track record:** What is his track record in winning sales? Does he have good contacts with the likely customers of your products? Are the other companies he represents in a similar sector as yours? You will have already researched the market for your product. What does your prospective agent think?

You would expect a commission agent to be honest because, if there's no market, he gets nothing. There are some agents, though, who collect agency agreements for the sake of it.

5. **Does he have experience of your industry sector?** Does he already represent any of your competitors in his territory (and, if so, would it still be in your interest to appoint him)?

   You need to be aware of the occasional unscrupulous agent who will be keen to represent you – but to keep you out of the market. Perhaps a relative may be representing a competitor of yours. This happens only rarely and by considering applicants who have been introduced to you from a trustworthy source, the risk of this happening is most unlikely.

6. **What products do you want the agent to promote?** Your company may produce a range of products. Do you want your agent to represent you for all products or for specific ones? Does he have the ability to do this? Are you planning to appoint, or might you in future need, more than one agent, or will you sell some products direct yourself? You need to be clear about how you wish to structure your company's sales in this market, and you need to be clear with whichever agent you do appoint, which products he is responsible for, and for what time period.

7. **What else do you want your agent to do?** Check his experience in each of these fields.
   - Are you looking for an agent who can help you with the contract negotiations? This could be very useful to you, particularly if the customer doesn't speak or write English well.
   - Are you expecting him to provide technical assistance to your customers?
   - Is this a market where customs clearance experience will be of help?
   - You may need local services such as a local construction company to enable you to perform the contract. Could your agent provide guidance on the selection of a suitable company? However, beware of the response that "My brother runs a construction company – no problem..." Whilst at first sight this may seem a blessing, it is wise to always make such appointments on a competitive bid basis.
   - Your agent should expect to be engaged in expediting payment, especially if it becomes overdue. Check your agent's track record in this respect, and, on no account, agree to pay commission before payment is actually received in full from the customer.

Beware the brand collector

A British exporter writes, "Some representatives believe in obtaining all possible agencies in the hope that some will succeed. We were caught by one in Canada who wasted several years before we understood that the 'trade problems' were that no one came and asked for the products."

References

It is absolutely essential for your company and its business that your agent isn't only professionally astute and capable of developing new business for you, but also that he/she is also financially sound, of good character, and that there are no skeletons in the cupboard that could come out and haunt you.

Although you may have received the introduction to your agent from a recognised source such as the local British Embassy, introductions do not come with guarantees and you should make your own enquiries. A local lawyer, such as is recommended by the Embassy or local Chamber of Commerce, can take up references and make appropriate searches and enquiries. Some firms of UK lawyers have networking links with overseas groups.

Whilst different countries have different approaches to winning new business, it would be a grave mistake to put the future of your company's business in the hands of an agent who considered 'facilitation payments' the way forward. All forms of corruption are now against the law[10].

Establishing a distributor network

A furniture designer approached UKTI for advice about exporting. The company participated in UKTI's Passport to Export scheme to gain an understanding of the issues and develop contacts overseas. The company also took part in several UKTI-sponsored market visits and trade fairs. During one such visit to Norway, the company visited the British Embassy in Oslo and acquired knowledge about the economy and Norway's relationship with the UK. Through UKTI, the company discovered government grants to help exhibit overseas, received funding for translation of brochures and display material, and help from International Trade Advisers. The company has now established a network of distributors and has manufacturing partners overseas. Annual turnover has grown to £12m, some 40% of which is export-related.

Agent's commission

There are a number of ways that agents are remunerated.

1. Pay a small retainer on a monthly basis with commission paid on actual sales. This is good for the agent, because it supports his investment in the sales process, but, with enough representations on this basis, he won't have to develop any new business!

2. Pay a higher level of commission only on sales. This is probably the best choice, at least for you the exporter. Specify that commission is payable on receipt of the ex-works price so that your agent has an incentive to ensure that payment is made for your export.

3. Pay a daily rate, without any commission. This might be appropriate if for example your agent is assisting you to develop business that falls outside his contractual responsibility. It might also work if you want your agent to assist with a one-off contract . From an agent's standpoint, the daily rate means payment for work done rather than waiting until, or if, a contract is signed and sales made. If the contract takes a year or more to negotiate and a further year before any actual sales are invoiced, the agent may opt for a daily rate for which you would be wise to agree a cap.

[10] UK Bribery Act 2010 implemented 2011

4. Whichever way you decide to pay your agent, include the costs in your contract price. Also, make your agent responsible for any tax deductions.

Put it in writing

It's very important that once you have chosen your agent an agency agreement is prepared by a professional experienced in the local market. This is a contract between your company and the agent. It must spell out:

- Exactly what his responsibilities are
- What products he is responsible for selling
- The period of his contract, including an expiry date
- Timing of periodic performance reviews
- Reasons for early termination of contract and period of notice of termination
- The basis of remuneration – how, when and where
- Whether or not commission will be paid on sales already in hand but in which he has had no previous involvement (if you have a contract in the pipeline)
- Whether he will receive commission on any sales, which he did not generate but which are for products which are otherwise his responsibility
- Whether he will receive commission on sales for products which are not formally his responsibility but where he has provided assistance at your request
- What commission he will receive on contracts already signed but not yet fulfilled at the time the agency contract is terminated for any reason
- Law & jurisdiction.

It is worth setting out minimum expected sales volumes. Don't enter into an exclusive arrangement unless you are sure that your overseas representative has adequate resources and expertise to achieve the expected volumes. Consider employing a specialist Intellectual Property lawyer to help structure any licence agreements.

Beware the shut out importer

Some years ago, a British exporter signed an agreement with a Russian company with whom it had traded for about three years. The exporter failed to notice that the break clause was not in the final document which had a five-year duration. The exporter never received another order and the importer concentrated on a competitive product.

Selling to or through distributors

Your distributor buys product from you and acts as your overseas marketing and sales team in the appointed country or region. There is an art in finding the distributor who is a good fit for your business and wants to grow its own business (and thereby yours).

Research potential distributors prior to entering into any agreement. Look for:

- **Stocks** of product of other companies that are represented: if stock levels are low, is this because of high stock turnover or because only low levels of sales are budgeted?
- **Specialisation:** many will concentrate their energies on one product type or industry in order to understand better the needs of their customers.
- **Marketing support required:** display material only, or a large budget for the full works including media advertising and mail shots?
- **Balance sheet:** ensure the proposed distributor has sufficient working capital to finance the stock and the overheads, and pay you in accordance with the contract terms.
- Provision of **customer training** at the customers' and at the distributor's own premises.
- **Management:** to optimise his contribution your distributor must be given training to the same standard that you provide to your own sales personnel. Give your distributor a sense of involvement in your business, such as providing a regular newsletter on your company's activities.
- It is advisable to hold regular **briefings** or conference calls to discuss strategy and developments and to resolve problems. This is when you will pick up information on local legislation and trading conditions. You should regularly review his record of payment, the insurances he maintains and the security and storage facilities he provides for your goods.
- Do not overly restrict the distributor's ability to make a **profit**; there need to be incentives for both parties if you want a successful business.
- Always use an experienced lawyer to draw up **distributor agreements**, and be careful about the termination provision: you want to have the ability to cease the relationship if the distributor isn't performing to your satisfaction. In this case, you will want the surrender of customer lists and after-sales service contracts.

Distributor as the customer

Your distributor will advise you on the payment terms that are usual for the end-customers and these will need to be reflected in the commercial terms you establish for your distributor. You do not have to finance your distributor, but manufacturers who do provide longer credit for their distribution network may enjoy improved market share. The result may be a floor-planning arrangement whereby an item is held in stock for up to 12 months and only paid for once the distributor has sold it, or at the end of 12 months if the item is otherwise unsold. N.B. stock not sold on within a reasonable time could become obsolete. Floor planning arrangements must be checked carefully for their legal acceptability in the distributor's country: for example, respecting Sharia law in the Middle East.

Whatever payment terms you agree for sales, spares and services, have in mind to set terms such that you will be encouraging your distributor not to over-order and to pay on time. You will need protection against the risk of insolvency of your distributor, for example by using credit insurance and having an effective retention of title clause. BExA has produced guides on both of these subjects.

Need for detailed research before making commitments

A British machinery manufacturer needed a company in the northern territories of Brazil to service equipment that had found its way up there. It was proposed that this service should go hand-in-hand with being a distributor. An engineering firm was appointed as sole distributor for an agreed period, but it was subsequently discovered that while the firm was excellent at servicing machines, it did not have the financial capabilities to hold a stock of equipment for sale. The exporter had to wait until the agreement expired before being able to appoint a new distributor.

Franchises

Companies with a known brand frequently choose franchising to export their products. The UK franchisor receives an income in exchange for licensing its brand together with its management expertise and knowledge of creating a sales and marketing environment for the products. Franchising avoids the need for direct investment in an overseas environment while allowing the UK business to generate foreign exchange earnings.

Franchising is suitable for businesses that have a brand with a proven value, and a management model that works. The franchisee will recognise the growth potential and good profit margins available, and be prepared to pay for them.

However, be aware that franchising potentially creates ‘royalty’ income, which tends to have extremely onerous withholding tax treatment in many markets, and may in some cases be non-transferrable. In the worst-case scenario, the tax authorities could claim a cut of the worldwide profits of the brand owner! For this reason, many manufacturers with a recognised brand chose a distribution model in difficult overseas markets, rather than franchise arrangements.

From a management perspective, a franchise operation also carries the risk that the franchisee may get the know-how and then do it itself, with a substitute product. Ensure each franchisee has the financial strength to support its own operations and purchase sufficient stock from you to make its business a success.

The main benefit of becoming a franchisor is that your customer, the franchisee, is far more committed to developing the knowledge needed to run your business in its country than either an agent or distributor. You are likely to find that, instead of barriers to trading with the country in question, there will be encouragement to import your concept because you are not just selling product but also knowledge, branded product and systems. It isn’t unusual for the supplier of products to have representation on the franchisee’s board of directors and to have its managers participate in the running of the franchise business.

Selling to a joint venture company

A joint venture company (JV) can be set up by two or more separate companies in order to sell to a defined locality or bid for a substantial contract/project.

Each JV partner will have particular capabilities which the other/s do not possess, leaving none individually in a position to meet the customer's or country's needs, but together they can win large and profitable business. One or more parties will need to fund the JV. Take care in agreeing the voting arrangements: who has the power and who has the technical expertise?

JVs, like direct investment in subsidiaries, are more advanced modes of international business marketing, typically entered into by organisations who already have experience of export. They require considerable input from professional advisors, such as tax, accounting and legal, and are not cheap to establish. Furthermore, once established JVs can be inflexible and difficult to restructure.

Many local tax authorities have an inherent dislike of JVs and subsidiaries, believing rightly or wrongly that the owners use the structure to reduce the transfer price and thus limit customs duties, VAT, and tax on profit. Careful planning is required to avoid the JV becoming uneconomic. You will also need to work out how profit will be distributed to the shareholders, and if there is a realistic risk that the country's government will forbid it or the country run out of foreign exchange.

Whichever route of establishing a local representative you use, remember that the service you provide to him will have a direct impact on his ability to sell your products, so – support him!

CHAPTER 5
MAKING AN OFFER OR BID

Bidding, also known as tendering, is the process through which exporters present their contract's scope and terms to their prospective customer. The process can range from the simple submission of a pro forma invoice or estimate, to the fulfilment of a formal, documented, bid process with strict rules, which may be audited.

We make no apology that this is the longest chapter in this guide. Bidding is probably the most important part of exporting. Your bid creates the opportunity of a new contract, an increase in sales, increased profitability and growing the business. It's an exciting and very critical stage in business development: get it right and it's another brick in the solid foundation of a growing company, get it wrong and it could not only lose the company money, it could bring the company to its knees.

In this chapter, we run through how to make sure you are alerted to potential business, your eligibility to bid, what to put into your bid and ideas on pricing. We also recommend that you take stock and keep your company's management informed so they are alerted to the need for increased resource to achieve a professional result, or alternatively the opportunity to decide to pull out because the costs of doing business will be too high.

Pre-tender qualification

Obtaining the business lead or formal call for tender document presupposes a fair amount of effort from the sales and marketing department in the background: a lot of work may need to be done before you even reach the tendering stage. It is useful to have knowledge of bidding in the UK – this is a good starting point for understanding the extra features of export tendering.

You may be required to pre-qualify to assure the customer that you have the necessary competencies to make bid. This documentation could prove expensive and time-consuming to produce. Likely areas that will require attention include:

- **Insurance:** demonstrating that you have proper insurances for Public/Product/Employers' Liability and Professional Indemnity (such as from a Contractors' All Risk policy). It may be necessary to produce some form of documentary evidence from a broker confirming the outline of the terms of cover, i.e. limits of liability, validity dates, excess, payment of premium. This standard document should be available from your broker on request.

- **Environmental:** you might need to demonstrate compliance with Packaging (Producer Responsibility Obligations (Packaging Waste) Regulations 1997), EU Directive on Waste Electrical and Electronic Equipment (WEEE), and/or Restrictions of the Use of Certain Hazardous Substances on Electrical and Electronic Equipment Regulations (the RoSH Regulations).

Where wooden pallets or dunnage are used, be aware of ISPM 15 (International Standard Phytosanitary Measures) an international standard for wood packing under the authority of the Food and Agriculture Organisation of the United Nations. The UK authority is the Plant Health section of the Forestry Commission. Pallets being exported to the many countries that now impose this standard must be heat-treated and fumigated by an approved pallet manufacturer and the pallets must be stamped in accordance with ISPM 15 rules.

Some customers may require such documentation to be bound into a public notary certificate with a Foreign & Commonwealth Office Apostille authenticated by the overseas office's Consulate.

Of course once the bid is completed, and if you maintain compliance, there's a good chance you will be eligible next time, although that's not always necessarily the case. With competitive international bids, to ensure fairness between all bidders, it's often necessary to provide a complete set of documentation each time you bid, even if you have supplied it before for an earlier bid. Either way, your company should aim to be on the vendor list for the projects that you wish to bid for.

Vendor lists

In the UK, you will have an established presence in your field, and are likely to be on a vendor list. For export, being on a vendor list is critical. If you are not careful you can waste a lot of effort just because you are not on the vendor list (or on an end-user's or project-specific vendor list, where applicable).

Don't assume that if you are on a vendor list for one project with a multinational, you will automatically be on the equivalent list for other projects that group may have.

How do you get on the vendor list?

You or your overseas representative should talk to the customer or end-user or to the contractor who may be able to add names to the vendor list or suggest names for the list. You may need to dedicate one person to servicing the key customers and ensuring your company is on the key vendor lists, and stays on them. Don't hand your competitors an easy win because you no longer appear on the relevant vendor list!

Unsolicited invitation

What do you do if you receive a call for tender but you are not on the vendor list? Some seasoned exporters say, "don't bid". Although you want to be on all the vendor lists that matter, be aware that your company's name may have been added to a list merely to use you for pricing comparison.

Samples

Ensure that demonstration goods or those intended for trade fairs and exhibitions or as samples are actually sent out! Make sure that any necessary carnets (an ATA Carnet is a temporary admission document for goods, available from a Chamber of Commerce) plus transit and any other insurance covers are arranged.

Even for samples, brochures and manuals, you must supply an invoice for a true value for customs purposes, even if you are giving them away free of charge. Do not inadvertently commit a customs fraud.

Requests for quotation or proposal (RFQ or RFP)

Foreign language

You've received an RFQ: is it in English? Does it require the bid to be submitted in a foreign language? What will be the official language of the contract and for all related communications, including invoicing and any bonds and guarantees? Translation will add both costs and delays. You need to have an understanding of these and factor them in to the bid price and timescales. If you are not familiar with the stipulated language, is this all going to be just too difficult? It's important to make this decision before you start to work on the bid.

If the RFQ isn't in English then you are wise to engage the services of a professional translator who can be relied upon. However familiar you may be with the language, unless you are absolutely fluent, it is essential to have the RFQ professionally translated. It's not uncommon for your overseas representative to agree to translate for you, at some cost saving, but while your agent's linguistic skills may seem excellent, when it comes to legal and contractual documents, the breadth and depth of his skills may well be challenged.

If you are required to submit your bid in the foreign language, it's absolutely essential that the foreign language version reflects your English version 100% since you will be committing your company. Avoid abbreviations, acronyms, slang and colloquialisms that are particularly difficult to translate, even for people who speak the same language.

Bonds

If the bond is to be issued by a bank local to your prospective customer, then the bank will naturally use local language. The good news is that banks generally are happy to issue guarantees in any language, although the process may take a little longer because they will want to understand the liability they are entering into and for which they require recourse to you as the exporter. There is scope here for protracted discussion between the local issuing bank and your bank (which will be providing an indemnity to the local bank) concerning the extent of each bank's liability.

If the RFQ is in English

Bear in mind English is invariably not the customer's mother tongue, so, no matter how well written, some words, phrases may not be entirely clear and in such cases it's of paramount importance to obtain clarifications within the required timescale.

Clarity

Check any timescale allowing you to submit requests for clarifications on any elements of the bid that are not clear. These could include technical and commercial issues and even the bid submission process. Be aware that the customer may be obliged to circulate your queries and the responses to all other bidders to ensure fairness in the bidding process.

Be absolutely clear about what you are being invited to offer.

Product or service

Do you manufacture it yourself or will you have to source it from another supplier? Is that supplier reliable as to delivery, quality and price? Can he comply with any exporting restrictions? Can you match your supplier's payment terms to those of the bid? Could you find yourself with a cash flow problem? If you need to provide a bid bond, will your supplier provide a bond to you in support of his portion of the bid?

Shipping instructions

Every quotation for sales overseas requires a delivery point and delivery terms defining who pays what and who is liable for what up to when. The internationally agreed delivery terms are called Incoterms® Rules and the current version is Incoterms® 2010. It is vital in the construction of an international supply contract that you give them your full attention. They include the obligations and responsibilities regarding:

a) Freight costs
b) Transit risk
c) Customs declarations at export and import
d) Transport mode
e) Payment of import duties and import tax.

To determine which of the eleven Incoterms® (divided into four groups E – F – C – D – see chapter 6) best suits you, be aware of some pitfalls. Four of the terms can only be used for conventional sea freight only, not overland distribution. The seller's responsibilities become greater as the terms move from the baseline of making the goods available for collection in Ex Works (for which experienced exporters prefer FCA, loaded on to customer's transport at exporter's warehouse) to the other extreme of Delivered Duty Paid (DDP) involving arrival at the customer's site, ready for unloading. Many exporters avoid DDP since it involves full responsibility for all costs to destination including local transport overseas, import customs clearance and payment of any import duty, which, for countries outside the EU, will require documentation from the importer.

Different shipping conditions – FCA, CIP etc – will result in different costs.

- **Transport:** make sure you have a reliable cost estimate from your freight forwarder.

- **Insurance:** you may prefer a 'destination' delivery term such as CIP because it gives you control over the insurance of the cargo in transit. You can ensure that the goods are adequately insured, and process any claims that arise.

- **Import duty:** outside the EU, each country will have different requirements. Make clear in your bid submission who will be responsible for import clearance and payment of duty – you or your customer?

  It is worthwhile studying the import duty regulations, whichever party is paying, so that both you and your customer do not unwittingly increase the price of your goods.

  It's better to include the cost of import customs clearance in your price than to have an agreement whereby you will invoice your customer separately for re-imbursement.

Address clearly all costs related to shipping and customs clearance in your bid to avoid doubt or misunderstanding in the future. If you are successful in your bid, make sure these issues are covered in your contract terms.

Greenhouse savings

A British company employed a consultant to check the overseas import regulations and customs duties on its exports of kits for making tubular greenhouses because the exporter was considering selling DDP buyer's premises. It was found that a particular destination country had a higher tariff for greenhouse parts, i.e. steel tubes, than was applicable if the greenhouses were shipped complete but disassembled. The result, a 14% difference in customs duty due, became a competitive advantage on this supply: the exporter agreed to ship the goods partially assembled under DAP to the buyer's premises at a higher unit price and the importer, now controlling the import procedures, saved 14% customs duty so both parties were happy.

Delivery dates

Be certain you are able to meet the delivery expectations of your customer, particularly if you have to sub-contract any part of your contract to an outside supplier. If you are forced to deliver late because your supplier has let you down, you may be required to pay financial penalties.

Many RFQs require bidders to submit details of previous similar contracts or projects as evidence of their ability to deliver the contract underlying the bid. In providing this, be careful not to infringe any confidentiality clauses.

Payment terms and payment risk

Establish payment terms that are appropriate for your customer. Reflect the requirements of the RFQ and take into account the local practice in the country, the customer's financial standing, and the terms of the credit limit provided by your credit insurer.

Payment terms and payment risk are two of the most important aspects of a contract. Great as it is to win a new contract, non-payment due to not properly understanding the payment risk and therefore not setting the payment terms, will result in a bad debt write-off that could severely damage your company.

A range of payment terms is in use internationally, reflecting the greater risk of buying and selling at distance.

Common terms are:

Common Terms	Description
Open Account	Sale of Goods to customer on trust requiring payment at an agreed future date, e.g. 30 days from date of invoice[11].
Irrevocable Letter of Credit (ILC)	A commitment by a bank to pay a certain sum at a certain date against presentation of specified documents[12].
Cash Against Documents (CAD)	Bank conducts the transaction, releasing shipping documents to the customer only when the goods are paid for[13].
Documentary Term Draft (DSD) *or* Documents Against Acceptance (DAA)	Similar to CAD, but the customer signs a bill of exchange, agreeing to pay at a future date.

Know your customer

It sounds simple enough, but it can be very difficult to establish the actual legal style and registered address of your customer but it is vital that you get this right. We don't always see a letter heading in a simple contract. If you are dealing through a contractor or agent, it is difficult to work out the exact legal style of your actual customer. Outside the UK, smaller entities are often sole traders or partnerships rather than limited liability companies, and this makes identifying the principal challenging. Take a bank reference or credit report to verify the name. It is not worth carrying on negotiations with a potential customer if you do not know exactly who it is.

If your customer is a subsidiary of a large company, it does not follow that support will be given by the parent: when times get tough, the opposite can occur. Project-specific companies and joint ventures are a particular challenge: the actual name may not be settled until late in the day. Ask for guarantees from the main shareholder(s).

It is important to conduct your own research about your customer and make use of whatever service your export credit insurer can offer in evaluating the risk of trade. The BExA Guide to Export Credit Insurance provides some ideas about customer risk and how to manage it.

Once you have established the actual name of your customer and any end-user, ask your sales team and finance colleagues about their experience of them. Your customer may wish to pay you when he receives cash from his customer. Avoid agreeing this contractually (as a "pay-when-paid" contract) at all costs and ensure the payment mechanism delivers cash when you expect it. Be aware that you may have export licensing/end-user certificate issues where the customer is selling on to a third party.

[11] Experienced exporters recommend credit insurance protection of Open Account trade.
[12] See the BExA Guide to Letters of Credit for advice on management of letters of credit.
[13] CAD can be open to misinterpretation. Strictly it is SD/DP (Sight Draft, Documents against Payment, a form of Documentary Collection). CAD is sometimes used to refer to the practice of paying cash on receipt of invoice "Cash Against Invoice when documents are sent direct on Open Account basis".

Customer risk

> A steel stockholder from Kent reported on his experience of exporting. The company had exported once to the customer, on Ex-Works terms, and been paid on time. Two lorries came over from France to collect the steel for the new order. The only drawback was that the exporter was never paid! Fortunately the exporter had a credit-insured factoring arrangement, so was not totally out of pocket (the claim was for 90% and was paid at the end of a six-month waiting period). But that was sufficient experience of exporting never to want to try again.

Many credit insurers will be able to provide a credit limit service, thereby providing a third party view of customer risk. If you are in doubt about your customer's creditworthiness, you may wish to request a letter of credit. Some exporters are reluctant to do this in the belief it will "offend" the customer because of the implied doubt about the customer's financial standing. Do not be apologetic on this issue. Rest assured that US exporters, and anyone who hasn't heard of export credit insurance, routinely asks for letter of credit payment terms.

If letter of credit terms are an issue, you can remind your customer that he will have the security of knowing that funds will only be released when the documents he has stipulated are presented to the bank. On the other hand, a letter of credit will be costly for your customer (in terms of bank charges and cash flow) and take some time to set up, so letters of credit are not appropriate for low margin or fast-moving trades. BExA's Guide to Letters of Credit has advice from experienced exporters on how to manage letters of credit, in particular the documentary aspects.

Always use a letter of credit specialist to check the wording. A number of organisations such as freight forwarders, banks and Chambers of Commerce provide this service at a very reasonable cost. Check that you can supply the documents for drawing down the payment, and that you do not have to rely on your customer for documents.

Build into your contract price the credit insurance premium or, if you are selling on letter of credit terms, the advising costs and other costs of the letter of credit (and the confirmation, if you choose to have it confirmed). Your bank should be able to provide you with estimates. Take into account that the contract may take longer to deliver than expected, in which case the letter of credit expiry date may need to be extended thereby adding further costs. Build in a contingency for these factors. Ordinarily, the customer will pay the opening bank's costs and have the LC value debited from its account or allocated against its borrowing and will prefer to delay the opening of the letter of credit to a date near to despatch. This will leave you with a risk that the letter of credit does not get opened within the agreed timescale. It would be unwise to undertake specialist work before the letter of credit is open, unless you have pre-shipment credit insurance to cover this risk[14].

[14] BExA's Guide to Export Credit Insurance has a chapter on pre-shipment/pre-credit risk insurance

Sovereign/political/country risk

As well as establishing whether your customer is creditworthy, consider also the country risk. Sovereign risk includes the risk of government action preventing transactions being completed including imposing restrictions on trade or the country simply not having enough foreign currency. Many countries agree a fixed exchange rate with the US$, but then, when foreign currency income from export revenues or from inward foreign investment dries up, there is an imbalance and a sudden and large correction in the exchange rate, leading to a foreign exchange shortage.

Country risk also includes the war risk and 'acts of god' such as natural disasters.

Take advice from your trade finance bank or credit insurer to ascertain the extent of the country risk. If the risk is high, consider carefully how you will protect contract receivables and exposures – letters of credit, large advance payments and credit insurance each have their benefits and drawbacks so the ideal may be to use different techniques for different customers.

Bonds

If you are supplying capital goods, it is common for overseas customers to require bank guarantees (bonds) to secure your performance under the contract. Guarantees are issued by a bank or surety (insurance company), on your behalf, supported by your indemnity or a line of credit agreed with you. You may be required to provide security for a bond issued by a bank, or allocate part of your lending limit. There will be a charge/premium from the bank/surety to issue the bond and you will also bear the overseas charges.

If this is to be a bank bond, there are usually two banks involved: your bank and a bank local to the customer. If you can, arrange that the bond is issued directly from your UK bank to your customer, the beneficiary, thus saving some bank charges. Obtain an estimate of the banks' likely costs so they can be taken into account in your bid price, and bear in mind that the bonds may not be returned for cancellation until later than the stated expiry date. Bank(s) will continue to charge until cancellation is effective, regardless of the expiry date.

Do spend time reviewing the wording of any draft guarantees included in the RFQ. In some countries, the text or format of bonds is directed by the central bank. Beware of requests for guarantees with unlimited value or which can be topped up, no expiry date, interest penalty charges at an undefined rate etc. A valid call ideally should require documentation demonstrating the failure of the supplier to fulfil the contract, but the purpose of an 'on-demand bond' is that it can be called without notice and without supporting documentation so you may not be able to include a requirement for the beneficiary to stipulate a reason for calling the bond. While this also provides the opportunity for your customer to claim legally, on a whim, it is unusual that this happens.

Nonetheless, it is important to ensure that bond/guarantee wordings are robust, stating clearly contract details, value, terms and conditions and importantly, the procedure for making a claim plus expiry date and applicable law and jurisdiction. A well-worded guarantee not only provides the beneficiary protection but also avoids unnecessary risk for the exporter.

Take advice from your bank about guarantee wordings. Ask the bank if it has any experience of bonds being called in your customer's country. BExA's Guide to On-Demand Contract Bonds is an essential read. If the requirement for you to issue bonds is restricting access to other Bank facilities, or working capital, explore the Government schemes designed to address this problem[15].

Bid bonds

A bid bond (also known as a tender bond) may well be required to ensure that you (the bidder) abide by the terms of your offer. This type of bond is usually issued by a local bank and subject to local law. There is little flexibility in the wording of the bid bond: you are normally obliged to issue as drafted. If you do not use the specified wording, you run a real risk of your bid being immediately disqualified for being non-compliant.

Ensure that the local bank doesn't send the bid bond to the customer in advance of the bid submission date. To have control over the bid bond until the actual time of presentation of the bid, arrange for the bond to be collected from the local bank by someone you name. Make sure you have the address of the local bank, with a telephone number and contact name if possible. Plan this in advance and build in sufficient time to allow for it taking longer than you think it should. Trying to find the right branch of the bank in, say, Kuala Lumpur, and someone in the bank who knows about your bid bond can be a stressful business. Provide the bank with your representative's details, such as: name, passport number or work permit/ID number.

Another advantage of collecting the bid bond and retaining it under your control right up to the point of bid delivery is that you are able to leave the final decision, about whether actually to bid or not, until the last minute. Circumstances may change in relation to the customer, the customer's country, or your own company, such that you no longer wish to bid.

Your bid bond is not likely to be returned until the preferred bidder (hopefully you) has put its performance bond in place. Consider the arrangements and costs of collection of the bid bond at the end of the bid adjudication period.

A final point on the bid bond: its value is traditionally required to represent a percentage of your bid price, e.g. 2% – 5%. However, you should not leave the issue of the bid bond until you have determined your bid price for two reasons. Firstly, it may by then be too late, or at least make things very tight, for it to be issued on time. Secondly, if you issue the bid bond for a rounded-up value that doesn't have a direct correlation to your bid price, it will be more difficult for the opposition to calculate your actual tender value.

[15] Bond Support is available from UK Export Finance (ECGD)

Bond wording minutiae

A bid was made to a Middle Eastern company for an agreed number of industrial machines. Both the bid and draft contract wording specified that the bond should expire on a date that corresponded with the end of the bid period. It was not until the company sat down in talks with the customer that it became clear that, notwithstanding the instructions given to the bank in relation to the issue of the bond, it had been issued without an expiry date. Furthermore, during the bid period, the UK bank had also cut its commercial ties with the corresponding Middle Eastern bank. The exporter had to negotiate alone for the return of the bond. And because it did not win the tender, it had no contractual relations with the beneficiary.

Types of contract bonds

Advance Payment Guarantee (APG)

An APG is often required by an overseas customer as security for an advance or down payment. The value of the guarantee will be for 100% of the value of the advance payment which can be up to 30% of contract value.

While having a down payment shows your customer's commitment to the contract, if your bank will be keeping it as security for the issue of the bond you will not be able to draw on the cash[16].

You should aim for the advance payment guarantee to expire upon delivery of the goods, or for it to have an agreed reduction provision relating to evidence that you have performed your part of the contract to that point.

Some importers may require an interest payment clause in this type of guarantee, which, in the event of making demand for return of the advance payment, allows them to charge compensatory interest. While there is some logic in this, be sure that such a clause, if it is included, shows clearly the method of calculating interest: the rate of interest and the exact period to which it applies. For example, you could state margin over a defined cost of funds that can be established from the date the advance payment was made to the date of the demand for repayment. Aim to put a cap on the interest element.

Performance Bond

A performance bond compensates your customer in the event that your performance isn't in accordance with contract terms and conditions. Performance bonds are typically for 10% of the contract value and valid for a period (e.g. six – 12 months) after you have completed delivery and installation.

Warranty Bond

This bond encourages you to maintain/repair the equipment sold under the contract for 12 or 24 months after completion. The guarantee is typically 5% of contract value.

If you are the prime contractor, do not expect the contract to be delivered on time: allow for others to cause delays. Consider taking security from your suppliers and have them share the bond liability with you. If you are supplying to a middle man, and required to provide a bond, word your

[16] UK Export Finance (ECGD)'s Bond Support can provide a solution to improve the security/cash requirements

bond so that it can only be called as a direct result of a call on the main bond due to your failure. Include firm end dates to avoid evergreen clauses.

Your liability on bonds will only terminate when the UK bank, to whom you have given a counter indemnity, is released from liability. Recovering your bond can be difficult, even if you have included a workable reduction mechanism and an end-date. Consider the use of standby letters of credit, which are issued subject to UCP600 or ISP98, as an alternative.

Cash flow

Having addressed payment risk, look at your cash flow to establish

- **When** you would like to be paid, in days from date of invoice or despatch
- **How** – in pounds sterling?
- **Where** – in the UK.

Unless your company is cash-rich, it's very important to calculate the likely outlay of cash to fulfil the contract, and compare it with the bid's payment terms. If you have considerable up-front expenditure and costs, yet the customer is expecting only to pay you upon delivery a few months down the line, this will create negative cash flow.

If you are going to sub-contract any of the work, check that the sub-contractor can deliver at the price and in the currency he has quoted. Consider asking for a bid bond. What are your supplier's payment expectations compared with when you will be paid? Do you really have sufficient working capital to finance the contract as proposed?

It's fair to say that, at the bid stage, it will be too early to resolve all these problems, but it is the time to begin thinking about them.

Penalty costs or liquidated damages

It isn't at all uncommon for customers to expect their suppliers to deliver on time and in accordance with the contract and to penalise them if they don't. "Liquidated Damages", as they are commonly referred to are often charged as a percentage of the value of the goods that haven't been delivered, and calculated over the period of delay. Thus a typical clause could state that a charge of 0.2% per day will be calculated on the value of the goods not delivered by the contractual delivery date. Your customer might not want this charge to be capped in any way but it is essential that you do, as well as limiting damages to the value of undelivered goods and not on the full contract price. If payment is to be from a letter of credit, you can specify that any liquidated damages be deducted from payments owed to you.

Contract law and courts jurisdiction

Your customer is likely to prefer his local law and for the jurisdiction (the court governing the contract) to be his local court. You may have to accept this position, so, before you agree anything, research the implications of submitting a contract subject to local rather than English law and jurisdiction.

Contract law is addressed again in Chapter 6. It is not unusual for international contracts to be subject to a well-understood national law, such as English or New York Law, so both parties have certainty over their obligations. Even if the contract must be under local law, ensure the forum for disputes is safe and fair, such as the ICC Court of Arbitration in Paris.

Your local representative should help to identify a local lawyer who can provide you with sound practical advice so that you can better understand the risks and plan how to manage them. The local British Embassy may keep a list of English speaking lawyers that can assist, and Chambers of Commerce may have recommendations.

Choose your bid

Your sales department will always find more enquiries than you can possibly bid for, so you have to make choices.

- Has the customer a budget for this purchase, and/or is project finance in place? A lot of projects will disappear into the ether if the contractor is unable to organise suitable finance. You could spend management time and expense preparing your bid, all for nothing.
- Is this an initial feed study for the contractor to be awarded the management contract, e.g. in an Engineer-Procure-Contract (EPC contract)? If so, a budgetary proposal will probably be adequate.
- If you did not get involved at the budgetary stage but are asked only to bid at formal post-EPC award stage, a more searching review of the viability of tendering is necessary as this implies poor positioning. Your local representative should have engaged earlier with the EPC contractor so that it is your budgetary proposal he is working to, not your competitor's.
- Try to work out who are the expected bidders, how many other bidders there are, and what are their likely preferences. Knowing what angles your competition is likely to take is helpful in your decision-taking about how to bid, and if you bid at all. If the vendor list is long, you are likely to have to quote a low price since there will be lots of competition.
- Are there special conditions? What are the consequences of failing to perform? Do you have to deliver to a pre-defined programme? If so, can you tie the programme to the required stage payments and/or draw-downs from a letter of credit? Are there political considerations such as local content or offset requirements? Will you be able to meet technical expectations? Do you have a track record of doing so? If you can't or don't, then you should not be bidding – except if you want to expand your operations, but choose carefully when you do this.
- Arrange for your commercial department and lawyer to advise on the proposed terms and conditions, including payment terms, liquidated damages and other potential liabilities. Are they weighted so much in favour of the customer that it isn't worth bidding? Is the bid valid for a short time (to allow for adjudication) or is it open-ended until required and to be valid until it is provisionally accepted? If a bid/tender bond is required, be prepared to agree an extension if there is a delay.

- Do you have enough time? Most companies will need a minimum of three weeks to prepare a bid. If you only have been given 10 days' notice, it may be sensible to walk away because there is insufficient time to line up the internal meetings and prepare the bid. Legalisation alone could take up to 10 working days, or longer where the Embassy or Chamber of Commerce is closed for holidays or Ramadan.
- It is likely that the customer will want to conduct the process in his own language. Translation of the tender specifications and your bid will need to be done properly. Allow time in the publishing phase for printer breakdowns etc. Take heed of the format for presenting your bid. Some overseas customers still require each page to be signed by an authorised signatory and for bids to be individually wrapped and wax sealed.

Unfortunately your bid document may not always remain confidential. It is possible that, through the bidding process, you will alert your competitors to technological advances that you are making, and you will want to keep these confidential.

After the agreement internally to bid

This is when the hard work starts: the proposal manager and commercial manager will work through their detailed technical and commercial reviews and prepare proposals plus an estimate of costs. At the same time, if you have credit insurance, prepare your credit limit application so that it is ready for submission when you have established the price and terms of your bid. Rather than delay making the application for cover, apply on the terms requested by the customer.

Close to bid date, call a final pricing and bid review meeting. The team will need to understand the cash needs, liabilities and risks and take decisions on payment terms, delivery, margins and commissions for your local representative. Technical and commercial proposals should be signed off at senior level; therefore the final pricing and bid review meeting should ideally be chaired by your managing director or a senior member of the board. The company is committing itself through this offer document, and he/she needs to be aware of the benefits and risks of bidding and to be given the opportunity to ask questions.

Delivering the bid

Ensure that you follow the instructions to the letter regarding the submission of your bid. These can be more complicated than you would think. Make sure they are one of the first things about the bid that you consider: there's little point in preparing a fantastic bid, for example, only to find you've prepared it in the wrong format or left too little time to submit it because it has to be presented in person half way round the world. Your representative should be able to give advice about local customs and rules, and about the tender-opening process.

A recent development in bid submission is an electronic Dutch auction. Electronic bidding can involve submitting the bid by email and then going online to submit a price. You may have visibility of your position (e.g. if you are cheapest) or of the target price. Bidding can be open for a few minutes only. The problem with this system is that you start high and then nibble down – but by how much should you reduce your price? Just as with an auction for anything else, it is essential to establish in advance your "go home" price, and when you reach it, stop.

Checklist: Delivering your bid

- Where does the bid have to be presented?
- How does it have to be signed? Some RFQs require a bid to be signed by a company official under power of attorney.
- Does the bid have to be presented in different envelopes? Almost invariably, yes.
- How should the envelopes be marked?
- What must the envelopes contain? Bidders are frequently required to submit documentation to prove they are bona fide. Documents can include a bank reference that includes details and dates of opening of all bank accounts.
- A letter from HM Revenue & Customs may be needed to prove registration for tax purposes and payment of taxes.

How to win a bid

You and your competitors will have been looking for an angle – how to be in the right price bracket to get to the negotiating table. Once the bid is submitted, your local representative should be following up and providing you with a regular commentary.

The customer or his consultant may prepare a shortlist of pre-qualified bidders. The bids will be checked for compliance. If many bids are received, only a limited number may be reviewed. Perhaps it will be the compliant bids or those that are technically superior. Most likely it will be the cheapest two or three.

If you get through the first round, you might receive a commercial email and will be asked to withdraw certain terms. This is where you start to haggle. You should ensure that you have built something into the bid that you can give away. Of course, there is a balance to be struck between building in a negotiating margin and pricing yourself out.

This discussion process can take time, but the net result for which you are aiming will be that you and one or possibly two other bidders are invited to a vendor co-ordination meeting. The main part of this is technical. If there are to be, say, three days allocated for these meetings – e.g. Tuesday, Wednesday and Thursday – always try to make sure that you are the last in! The consultant or contracting engineer will in any case probably invite the least likely winner to present first and treat that as a dummy run. The favourite is typically invited last, and should aim to leave a lasting impression.

The contracting engineer won't just be receiving your presentation and dozing off (although this has been known!), rather he will populate a "bid tab" to do a comparison between the bidders. If you are dealing with a professional company, you will win or lose based on that bid tab.

If at this stage you are told that your bid is 15% too high, ask yourself if it is because the other bidder has cut something out to save money.

Managing your supply chain

Where a key element is to be sourced from an external supplier, you will need confirmation that the supplier can deliver in accordance with the bid terms. If you are required to stand by a fixed and firm price offer valid for six months, your supplier must offer the same to you.

Keep your supplier updated with bid developments, particularly if you are selected as the preferred supplier. As you negotiate your contract, negotiate your supply contract. The last thing you want is that your contract and the supply contract are not aligned as to price, deliveries and payment. The payment terms, governing law, and liquidated damages should also match. If the supplier is overseas, you will need to build in extra delivery time, and be aware of customs and licensing issues.

When you are obliged to supply bonds to the customer, consider demanding a matching bank guarantee from your supplier. Should the supplier require an advance payment from you, demand an advance payment guarantee. Detail these guarantee requirements in a draft supply contract.

During negotiations the terms and conditions that you originally agreed to may be renegotiated. Consider whether these changes could impact on your supplier's price because, unless you take this into account in negotiations with your customer, your supplier's extra cost will start to eat away at your overall margin on the contract.

Foreign currency bids

Does your customer intend to pay you in a currency other than sterling? Even today many currencies are not convertible, so they can't be transferred out of their country and therefore will have very little value for you.

If you have to bid in any currency other than sterling (assuming your costs are in sterling) you will have a foreign currency exchange risk. An adverse move in exchange rates could wipe out your profit. This is an everyday risk for all exporters.

Consider your foreign exchange risk in two stages:

i) Between bid date and contract award
ii) Between contract award and payment.

The easy part is when you have a firm contract. Then you can use a bank mechanism for setting the exchange rates because you have certainty of values and payment dates. The more difficult stage is your exposure during the bid phase. You have no income, no knowledge of values and timing, and no certainty of winning the contract.

In 2012, we saw the dollar weakening during the first quarter so a fixed bid of $1 in January would have brought in only 94 cents when converted back to sterling three months later. The euro ranged between €1.18 and €1.285 to the pound during 2012.

Books have been written on the management of foreign exchange exposure. Suffice to say for the purposes of this guide, it is a sufficiently important subject for you to take advice from your bank and find out how other exporters deal with it.

If you are still not convinced it is something to worry about, consider this: in 2003–2004 the dollar weakened from around $1.55 to the pound to $1.89 to the pound, about 22%. That's enough to wipe out the profit of most contracts before you've even started to manufacture anything.

During the tender validity, you can use bank options, but these are expensive. It may be possible to bid in the required foreign currency with a clause in the bid that the exchange rates will be re-worked at time of contract signature. This is the simplest and safest route to take but it does put the exchange risk on to the customer's shoulders.

Insurable risks

- **Credit risk**
  Establish with your export credit insurer appropriate terms of payment, and obtain a credit limit recognising the outline worst-case horizons of delivery and payment.

- **Pre-delivery/work-in-progress**
  If the customer cancels the contract or becomes insolvent before delivery, or an event of force majeure prevents the contract continuing, how would you recover the costs you have incurred in the pre-delivery period? The problem only arises if the goods are not easily re-saleable. In this case, you can add pre-credit risk to your export credit insurance policy.

- **Bond unfair calling risk**
  It is possible to buy cover, as an extension of your export credit insurance, against the unfair call of a contract bond or bid bond, or a call arising as a result of a political event.

- **Transit/cargo risk**
  Are you required to arrange transit insurance for the movement of goods (e.g. for Incoterms® 2010 "CIP")?

- **Liability risk**
  Where you are involved in installation work, you would be wise, if possible, to buy a small amount of Public Liability and Product Liability cover on the back of your Contractors' All Risks policy and thereby cover any difference (i.e. inadequacies) in policy limits and conditions. It provides protection against your staff causing damage to the goods being supplied.

Obtain advice from your broker on insurance issues to ensure that the insurance and indemnity provisions in the tender are covered.

Taxation

An increasing number of foreign tax jurisdictions will take the view that foreign contractors' contracts should be subject to local taxation rules on corporation tax, payroll taxes and VAT, as if the foreign supplier were a local supplier. The type of contract typically caught in this way is one where there is meaningful activity in country either by the UK supplier himself, or via a subcontractor to the UK supplier for perhaps 6–12 months or where you hold a stock of goods overseas. The Double Taxation Treaty (DTT) between the UK and the overseas country will govern the rules by which a contract is liable for local taxation.

If your contract does attract local taxation obligations you will be deemed to have a Permanent (taxable) Establishment and as a result may need to set up an in-country local branch or subsidiary of your company, have a local accommodation address and local bookkeepers to manage the fiscal aspects of the contract.

All of this comes at a price. At bid stage you should therefore review the tax implications of your contract and make soundings with a local tax adviser. Your prospective customer or local agent is not likely to have detailed information on DTT or its implications for you.

Be prepared

Never underestimate the amount of effort required by the bid process. If you are not well prepared then you may lose out technically or commercially.

CHAPTER 6
THE CONTRACT

This is a key stage in your process of winning export business. It is when you are 'on the hook' and legally bound to deliver. You will probably have reached this stage as a result of having submitted a quote or bid to the overseas customer and being selected as the preferred supplier. The bid you submitted may have been very technical and detailed, or it could have been a simple offer to the customer. Either way, negotiating the contract is critical to you, and to your customer.

The contract is the legal document or documents that define the rights, responsibilities and obligations of you and your customer. It may take the form of a specially negotiated multi-page document where every clause has been discussed and agreed. It may simply be the exchange of correspondence, including by e-mail – your pro forma invoice and your customer's order – that together created the contractual agreement. It can even be concluded orally in person or on the telephone. It is vital to keep a record of any verbal agreements.

At a practical level, it is a good discipline to recognise that you are formally entering into a contract; also to ensure you are clear and comfortable with the nature of contract you are committed to.

The contracting process

At its simplest level the process of reaching a formal agreement can be broken down into four stages:

- Enquiry
- Quotation
- Order
- Order acknowledgement

This simple summary belies what can be a maze. You might ask at what point this exchange becomes a binding contract – but this will depend on the individual deal, plus of course the system of law governing the contract. As you move through an exchange of correspondence with a potential customer, the nature and content of the enquiry, quotation and order may shape the final contract. The point at which you are both without doubt 'on the hook' is when you formally acknowledge the order. Make sure that you do not unwittingly enter into a contract before you intend to do so. One method of helping to achieve this is to write "Subject to Contract" at the beginning of any document or e-mail message you send to your counterpart.

What makes a legally binding contract?

Under most systems of law several elements will need to be present for a contract to exist. For example, under English Law:

- **An intention to contract:** It must be clear that both the seller and the buyer of the goods or services want to enter into a binding agreement.
- **Capacity to contract:** More particularly, in a commercial contract are you dealing with someone who has authority to contract on behalf of the customer?
- **Consideration:** Each party has to be contractually bound to provide something, e.g. goods or services for payment.

- **Offer and acceptance:** At some stage in the negotiations one party needs to have offered to the other party and had accepted the important terms of the contract.

Clearly, this puts an onus on you, the exporter, to understand what elements apply in relation to the law governing the agreement you make. This is part of the necessary due diligence. Similarly, establishing that the people you are engaging with (whether they are employees of or acting as agents for principals) have the capacity to bind your customer could prove crucial.

> Consider the varying capacity to contract different types of organisation may have. For example, a limited company, a University or a Government agency: not only will you need to ensure they are empowered to enter into contracts, but also that their representatives have authority to bind. Some will be easier than others to validate. In many countries, authorised signatories are registered at the chamber of commerce, together with their level of financial limit. Sometimes corporations may only be bound in writing. In others, particularly those whose system devolves from the French Civil Code, the individual has a stamp that he or she must use on any document. This obviously makes it difficult to contract by e-mail or fax. Similarly, if you are contracting with a Chinese company, make sure the Chinese company has included their "chop" or stamp on the contract otherwise it may be difficult to ultimately enforce it. It may also be helpful to add at the place of signature for your counterpart the words "Authorised Signatory".

What to put into the contract?

For a simple straightforward supply of goods, a document that is already printed with standard terms and conditions of sale is a good starting point. It may be sensible for you to have your own standard terms and conditions which are tailored to your type of business and for you to send these to your counterpart as a matter of routine, usually with a short contract, at the time you are ready to enter into the contract. Bear in mind that an export may well require additional terms and conditions that would not be necessary for a sale of goods within the UK. These would include terms such as shipping, payment method, any requirement for bank guarantees, who pays import duty, the governing law and jurisdiction and so on.

Basic checklist

1. Contract price and currency
2. Who exactly are the parties to the contract
3. Products or services to be delivered
4. Delivery terms and dates. Time may be of the essence. Ensure you are indeed able to meet the delivery dates you advise. If in doubt refrain from affirming fixed dates. Beware of possible damages caused to your customer who might just rely on the delivery dates and have arranged for selling-on
5. Payment terms

Continued…

6. 'Frustration' and events of force majeure (see below) and termination provisions
7. Limitations on liability and liquidated damages (again, see below)
8. Guarantee obligations
9. Conditions relating to returns, shortages and quality
10. Time limits for pursuing claims
11. Entire Agreement clause which states that the written contract and terms contain the final agreement and supersede any prior discussions or representations
12. Applicable law governing the contract
13. Agreement on jurisdiction for the resolution of any disputes
14. Points of contact for both customer and seller

Practical tips

- Make sure the contract terms match the terms you have bid.
- Beware of any last minute changes from the customer that might open up new risks.
- Negotiate to specify the terms and conditions, and that you draw up the contract, if you can.
- Double check that the contract contains the correct full name and registered office address for your contractual counterpart. Incredibly, it is not unusual for this to be incorrect and this creates difficulty if you subsequently try to bring a claim against a non paying customer.
- It is absolutely crucial that the law and jurisdiction clause contained in your contract is valid and binding. Otherwise, you may find yourself having to take legal action in an undesirable country. If you have agreed an arbitration clause then check the website of the relevant arbitral organisation, most will contain a model clause for you to use.
- If you are attaching terms and conditions to a contract then check that the contract refers to the terms and conditions attached, and states that they are incorporated into it. Also check whether there is an inconsistency between the contract and the terms and conditions (for example, they may contain different law and jurisdiction clauses). It is usual for a contract to state that if there is any conflict or inconsistency between a term or provision of the contract and a term or provision of the attached terms and conditions then the terms and provisions of the contract take precedence with respect to such conflict or inconsistency.
- If you attach terms and conditions to your contract make sure they are legible. You will be surprised how often terms and conditions appear on the back side of a contract but when the contract is scanned in to be emailed to a counterpart someone forgets to scan the back side with the terms and conditions! It may not help you if you have referred to terms and conditions in the contract but fail to send them to the customer. Nor may it help to send the terms and conditions together with your invoice – if the deal has already been done then you cannot later add new terms.

Continued…

- Payment terms are critical. If you are receiving a letter of credit then this must be received at the latest before shipment and must be workable. If you are being paid after shipment then make sure you include a clause which prevents the customer avoiding payment in full due to any alleged defect in the goods or any other claim in relation to the contract or previous contracts. Will interest be payable on late payments and if so at what rate?

Clearly, your own default terms and conditions are going to be acceptable to you but that may not be the case for your customer and you should give him the opportunity to review the document before signature.

Your customer may use his own standard Purchase Order, which establishes the conditions under which he will buy from you. Will these conditions be acceptable to you? It's important that you review the terms and look for any omissions, or conditions that need to be changed because they are at variance with the conditions that you bid for the contract.

You should also check the language of the Purchase Order, or any contract provided by the customer. Ideally it should be English. This remains very much the accepted language in international trade. Check, too, the quality of the English. It can't be emphasised too much the importance of every word, phrase and sentence having absolute clarity in its meaning. All too often, this is not the case, even when the contract is drafted by someone for whom English is his/her first language. A poorly worded contract can lead to misunderstanding, confusion, unanticipated cost or even legal arguments and could result in a breakdown in the relationship with your customer which brings a halt to any possibility of follow-on business.

Checklist: Contract drafting

- The contract terms must match the bid terms
- Does customer require any changes that impact on price/risk?
- Who is going to draft the contract?
- What is the language of the contract – English or other?
- Are you negotiating the contract within the validity of the bid? If not, is there an opportunity to review your price in the light of cost increases?
- Ensure that the contract defines clearly:
  - Parties
  - Contract price and currency
  - Whether or not local sales tax is to be charged on the contract price
  - Product/services to be delivered
  - Delivery dates and final delivery date of contract (see above)
  - Payment terms – if letter of credit, include the agreed name of the issuing bank, confirming bank (if any) and documentation required for each presentation and that it is irrevocable

Continued…

- Requirements for bonds or guarantees: advance payment, performance, warranty including wording, by whom issued and expiry dates
- Events of force majeure (see below)
- Liquidated damages or any limitation or cap on damages (see below)
- Confidentiality clause
- Prevailing law governing the contract
- The place for resolution of disputes, perhaps before a nominated court or in arbitration or by some other means of adjudication
- Points of contact for both customer and seller.

Beware the battle of forms

If your offer/pro forma invoice is made on your terms and the customer's purchase order is on his terms, which set of terms applies? Some exporters include a clause in an order acknowledgement specifically stating that the terms in their document override anything contained in earlier exchanges. It may be that the final set of terms – e.g. your order acknowledgement – will apply – but only if your customer has understood them and shown some form of agreement. The answer will be different according to which country's law is deemed to apply.

Even more fundamental, if you are not drawing up the contract, is the language in which it is written. Equally, if there is a real 'battle of the forms' going on, expert input can help you assess 'what you are letting yourself in for' if you agree an apparently innocuous clause. Under English law, the party who submitted its terms and conditions last will usually prevail. For example if an exporter sends his terms and conditions to a customer and the customer later sends his own terms and conditions to the exporter (before the parties have finally agreed the contract terms or before any significant steps have been taken in the performance of the contract) and the exporter then delivers the goods, it is likely that the customer's terms and conditions only will apply.

There are many traps from pre-printed conditions that you need to be wary of, or may even have set yourself! Here are just a few:

- **Applicable Law.** The governing system of law that will be used for the contract should be specified within the contract. Beware of the CISG (UN-Convention on Contracts for the International Sale of Goods), which might automatically be part of the Law you have chosen. To exclude the CISG from applying to your contract you might have to explicitly state that within the agreement.

- **Jurisdiction.** This is where any dispute will be settled. Typically your country or your customer's country, but there will be some countries where you would not want to have to try to go to court to enforce your rights. To ensure that your choice of jurisdiction will stand when challenged at court, you and your customer both should have ideally signed the agreement containing chosen jurisdiction. Sometimes it is worth giving thought to agreeing that disputes should be resolved by arbitration instead. If there is a stand-off between you and your customer as to agreeing a jurisdiction, this can often be resolved

by agreeing a neutral arbitration 'forum', perhaps Switzerland. Arbitration awards are often more easy to enforce, too and have the additional benefit that arbitration proceedings are private. However, the costs of an arbitration can often be higher than English court proceedings and the arbitration process can sometimes be slower. If you opt for arbitration then unless the contract is high value or complex, it is usual to agree that one arbitrator rather than three arbitrators will determine the dispute.

- When does **ownership** ('title' or 'property') in the subject matter of the contract pass from you to your customer, and, although not necessarily related, when does 'risk' pass? Please note: ownership/title is not covered by Incoterms® Rules but must be covered by its own contract clause commonly called a Retention of Title (RoT) clause (see below).
- **Terms of delivery**, i.e. Incoterms® Rules. When does the risk of loss, damage and delay to the exported goods become the buyer's problem? Who is therefore responsible for the transit insurance and at what stage?
- **Retention of Title (RoT)**, allowing you to retrieve your goods if they are not paid for. Be aware that there are different RoT wordings: some may give you more effective measures to safeguard your interests than others. Some may not work at all in your customer's country. BExA has produced a useful guide on this subject that includes a range of sample clause texts.
- **Standards and technical specifications**. These aim to ensure the customer gets what he has ordered, but you will need to be satisfied the standards and specifications are framed in a way that you will be able to comply with. Many countries have their own standards bodies and may have requirements inconsistent with the UK. The British Standards Institute has services in this regard.
- Consider a **time limit** stopping claims being pursued against you after a certain period – otherwise under English law the normal period is six years. Check the time limit in the customer's country for collecting debt – this can be as short as one year, and will influence the way that you negotiate if there are disputes.

Customer's purchasing terms

A British exporter received an order from Iran for the supply of engineering goods. The customer advised that he would only buy on his firm's own terms which included:

- Price to be the contract price of goods as FOB price on CPT Tehran basis.
- The income taxes on the profit to be derived from the activities in Iran as per the assessment of the Ministry of Finance and Economy Affairs shall be borne by the seller

  and
- Sanctions imposed by a third country over each of the parties excluded by force majeure. No party can refuse to fulfil its obligations due to such sanction.

Continued…

So, not only is there confusion about delivery terms (FOB, CPT) but also on tax and this last stipulation would have meant that if sanctions were imposed, the exporter would have been obliged to continue to supply. The penalties for breaking sanctions are criminal but the exporter might have been liable under the contract for non performance.

Intellectual property

You do not want to lose the rights to your ideas and designs, and must not infringe someone else's. The BExA Guide to Export Compliance includes a useful checklist on IP. It is wise to engage a specialist IP lawyer to advise on and draw up agreements with designers and suppliers as well as vendors.

Specifically drafted contracts

Larger contracts involving the export of capital goods usually require unique terms and conditions to govern their sale. Sometimes the customer will provide this draft contract. That might be the easy option for you, but you should treat this as his "Purchase Order". Check it to make sure the terms and conditions match those in your bid or offer, or in any event are acceptable to you. If there are any variances, consider them carefully.

Do they represent any additional risk to you? The risk may not be unacceptable, just more than expected, and could result in you incurring additional cost. Certainly if the customer is seeking to impose more onerous conditions on you than you had bid, and your bid price does not take that into account, you should discuss this openly with your customer to either revert to the condition in your bid, or negotiate a price adjustment.

Bear in mind that if you have provided a bid bond, now is not the time to change conditions just for the sake of it. Your customer might justifiably feel aggrieved that your bid was less than sincere and, at best, cease negotiations with you, and at worst, call your bond.

This does not mean to say, however, that due to the passage of time and circumstances, you or your customer may wish to make not unreasonable changes to the original conditions offered. In this case, have an open discussion about these changes of circumstance with a view to reaching a satisfactory agreement.

Model contracts

Instead of using your own standard terms, you could use a contract that is "off the shelf". This means that you don't have to start with a blank sheet of paper. The International Chamber of Commerce (ICC) has developed standard contracts:

- No. 556 Model International Sales Contract
- No. 440/5 International Contracts for Sale of Information Services
- No. 624 International Commercial Transactions

Do these terms suit your company? Classically, this is an area where professional support is valuable. Legal professionals will have varying track records and expertise in particular markets and sectors. Hence, there is value in seeking out recommendations via your network of contacts, trade association, or trusted sources.

Practical tips

- Find and use a lawyer with relevant experience not only of the law but also of your industry.
- Make sure you are in a position to deliver on any commitment you enter into.
- Groundwork and due diligence is critical.
- Keep verbal communications to a minimum, but insofar as necessary make record of them and confirm them in writing.

What an agreement needs to cover

An exporter supplying identical goods has quite different obligations in terms of physical delivery. These range from delivery at the exporter's warehouse Ex Works (EXW) or Free Carrier (FCA) through to delivery to the customer's premises DAP or DDP. Whichever term is used, make sure that the appropriate costs of packing, carriage, insurance, customs clearance, loading and unloading are factored in to your unit price. Further, you should specify which version of Incoterms will apply, for example, "Incoterms® 2010".

Incoterms® 2010 RULES

The International Chamber of Commerce (ICC) publishes International Commercial Terms, also known as the INCOTERMS® rules[17].

WHAT INCOTERMS® RULES ARE – the Incoterms® rules are a set of three-letter standard trade terms most commonly used in international contracts for the sale of goods. First published in 1936, the INCOTERMS® rules provide internationally accepted definitions and rules of interpretation for most common commercial terms.

WHAT INCOTERMS® RULES DO – Incoterms® rules inform the sales contract by defining the respective obligations, costs and risks involved in the delivery of goods from the Seller to the Buyer.

WHAT INCOTERMS® RULES DO NOT DO – by themselves, Incoterms® rules *DO NOT:*

- Constitute a contract
- Supersede the law governing the contract
- Define where title transfers
- Address the price, currency or credit terms

These items need to be defined by express terms in the sales contract.

Continued…

[17] "Incoterms" is a trademark of the International Chamber of Commerce (ICC).
More information on the Incoterms rules, developed by ICC, can be found at **www.international-chamber.co.uk**. It is recommended to consult the rules in full prior to using the Incoterms® rules; the full official text obtained at **www.iccbookshop.com**.

Incoterms® 2010 rules are grouped into two classes:

1. **TERMS FOR ANY TRANSPORT MODE**

- **EXW - EX WORKS (... named place of delivery)**

  The Seller's only responsibility is to make the goods available at the Seller's premises. The Buyer bears full costs and risks of moving the goods from there to destination.

- **FCA - FREE CARRIER (... named place of delivery)**

  The Seller delivers the goods, cleared for export, to the carrier selected by the Buyer. The Seller loads the goods if the carrier pickup is at the Seller's premises. From that point, the Buyer bears the costs and risks of moving the goods to destination.

- **CPT - CARRIAGE PAID TO (... named place of destination)**

  The Seller pays for moving the goods to destination. From the time the goods are transferred to the first carrier, the Buyer bears the risks of loss or damage.

- **CIP - CARRIAGE AND INSURANCE PAID TO (... named place of destination)**

  The Seller pays for moving the goods to destination. From the time the goods are transferred to the first carrier, the Buyer bears the risks of loss or damage. The Seller, however, purchases the cargo insurance.

- **DAT - DELIVERED AT TERMINAL (... named terminal at port or place of destination)**

  The Seller delivers when the goods, once unloaded from the arriving means of transport, are placed at the Buyer's disposal at a named terminal at the named port or place of destination. "Terminal" includes any place, whether covered or not, such as a quay, warehouse, container yard or road, rail or air cargo terminal. The Seller bears all risks involved in bringing the goods to and unloading them at the terminal at the named port or place of destination.

- **DAP - DELIVERED AT PLACE (... named place of destination)**

  The Seller delivers when the goods are placed at the Buyer's disposal on the arriving means of transport ready for unloading at the named place of destination. The Seller bears all risks involved in bringing the goods to the named place.

- **DDP - DELIVERED DUTY PAID (... named place)**

  The Seller delivers the goods – cleared for import – to the Buyer at destination. The Seller bears all costs and risks of moving the goods to destination, including the payment of Customs duties and taxes.

Continued…

2. MARITIME-ONLY TERMS

- **FAS - FREE ALONGSIDE SHIP (... named port of shipment)**

  The Seller delivers the goods to the origin port. From that point, the Buyer bears all costs and risks of loss or damage.

- **FOB - FREE ON BOARD (... named port of shipment)**

  The Seller delivers the goods on board the ship and clears the goods for export. From that point, the Buyer bears all costs and risks of loss or damage.

- **CFR - COST AND FREIGHT (... named port of destination)**

  The Seller clears the goods for export and pays the costs of moving the goods to destination. The Buyer bears all risks of loss or damage.

- **CIF - COST INSURANCE AND FREIGHT (... named port of destination)**

  The Seller clears the goods for export and pays the costs of moving the goods to the port of destination. The Buyer bears all risks of loss or damage. The Seller, however, purchases the cargo insurance.

PRACTICAL POINTS

- **BE SPECIFIC:**

  Identify the appropriate Incoterms® Rule [e.g. FCA, CPT, etc.], state “Incoterms® 2010”, and specify the place or port as precisely as possible.

- **RECOGNISE WHERE THE RISK OF LOSS TRANSFERS:**

  A common misconception when the Seller pays the freight is that the Seller has the risk of loss until the goods are delivered to the place or port specified on the bill of lading or airway bill. Actually, when using the Incoterms® rules CPT, CIP, CFR or CIF, risk transfers to the Buyer when the Seller hands the goods over to the carrier at origin, not when the goods reach the place or port of destination. Understand that under CIP and CIF, the Seller is only obliged to obtain insurance.

- **UNDERSTAND WHO HAS RESPONSIBILITY FOR LOADING AND UNLOADING CHARGES. FOR EXAMPLE**:

  DAT obliges the Seller to place the goods at the Buyer’s disposal after unloading at the named terminal at port or place of destination.

  DAP obliges the Seller to place the goods at the Buyer’s disposal on the delivering carrier ready for unloading at the named place of destination.

  CPT, CIP, CFR or CIF on the other hand, require the parties to identify as precisely as possible the point at the agreed port of destination because the costs up to that point are for the account of the Seller.

- **DETERMINE THE IMPORTANCE OF SUPPLY CHAIN VISIBILITY**

  When CPT, CIP, CFR or CIF are used the Seller fulfils its obligation to deliver when it hands the goods over to the carrier, not when the goods reach the place of destination.

1. The contract price

Include the value of goods plus cost of getting them to your customer. Physical delivery will need to be consistent with the contractual obligation, so choose the Incoterm that is most appropriate. Incoterms are not a substitute for the contractual terms, but they do define a number of important elements including parties' responsibilities for costs, delivery and associated risks.

International trade is subject to a range of export and import controls. For example, the duty, tax, excise or licensing regime that regulates any specific negotiation can impact on price. For trading within the European Union (EU) it is quite possible to use an invoice that is zero-rated for VAT as long as the customer's EU VAT registration number is on the invoice and the exporter obtains evidence that the goods have left the UK. However, as a general principle, it is helpful to all parties if a contract states whether invoices should specify if local sales tax is to be charged or not.

2. The products or services to be delivered

At one level it is self-evident that any formal agreement must define clearly the products or service to be delivered. Use this opportunity to pre-empt disputes by defining as clearly as possible what is, and what is not, being supplied. Define any conditions designed to minimise delivery risk, for example, technical specifications or requirements for packaging. Care should be taken not to exaggerate the properties of the goods or services to be provided. Such 'misrepresentations' under English law can lead to a contract being cancelled, and in certain circumstances result in a claim for damages.

3. The delivery dates

It is good practice for a contract to specify delivery dates, and the final delivery date. Consider the implications of a fixed delivery date. Further, if there are significant dependencies upon which you as the exporter are reliant on the importer to fulfil, it is also sensible to include these also. For example, if you are dependent on your customer obtaining necessary import licences, there may need to be a clause that modifies your delivery obligation if the licences arrive late. If possible, an exporter should avoid agreeing that "time is of the essence" for a delivery date. In these circumstances, if you are one day late then this may entitle the customer to terminate the contract. You may seek to add a clause that allows you a grace period to deliver if you are late. You may also seek to add a clause which states that the delivery date will be extended by the time the customer has delayed in the performance of his obligations. For example, if the contract states that the letter of credit is to be opened by a particular date and the customer is seven days late in opening the letter of credit then this would allow you to extend the delivery date by seven days.

4. Payment terms

The thought process behind defining the appropriate payment terms needs to begin early on in your planning to export. By the time you get to the formal agreement key issues are:

- Ensuring the payment terms are properly captured in the contract.
- That processes are in place to allow payments to happen smoothly, and you are best protected against the risk of your customer becoming insolvent.

If the payment terms are by letter of credit, then it is best to specify the preferred issuing bank, terms and documentary requirements in your bid and contract.

It is quite common in some sectors, like fresh food, where produce has to move fast, for sellers to protect themselves by selling on standby letter of credit terms. The physical flow is not disrupted, but the assurance of 'the standby' sits in the background should the importer default. However, in the event of non-payment, to be able to claim from the letter of credit, you would need a simple acceptance certificate from the customer – not so easy if he has gone bust. An easier (and cheaper) solution may be to trade open account with credit insurance protection. There are BExA Guides on both of these subjects.

Similarly, if there are requirements for performance bonds or, advance payment guarantees, the detail on who can issue the bonds and the expiry date can be specified in the contract. There is another BExA Guide on this subject.

The contract should allow you to raise the invoice according to something within your control – e.g. on despatch rather than on evidence of delivery to your customer's site. The invoice needs to carry clear instructions about payment, i.e. the due date and that payment should be routed in a way that provides certainty that value is delivered without any hitch. One way of achieving this is to include the International Bank Account Number (IBAN), which helps identify account numbers across national boundaries.

Example IBAN

Austria (20 digit) format: ATkk BBBB BCCC CCCC CCCC

B = bank code, C = account number

The use of IBANs is still gaining acceptance, particularly outside Europe, so it remains necessary to use the current ISO 9362 Bank Identifier Code system (BIC or SWIFT code) in conjunction with the IBAN to ensure effective routing. This information can often be found your bank statements.

5. Frustration and events of force majeure

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, earthquakes and volcanic eruptions). 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. The ICC has a number of wordings for force majeure that can assist the drafting. Although you may sometimes be able to rely on the English law doctrine of "frustration" if you find yourself unable to perform the contract due

to circumstances outside of your control it is in practice very difficult to invoke “frustration”. Therefore, it is critical to include a force majeure clause in your contract.

Whilst such clauses are designed to limit exposure to uncontrolled events, they are not intended to provide an excuse for failure to take action, or put in place contingency for predictable hazards (for example, that rain might interrupt an outdoor event). So an important aspect is to have a second clause that defines what each party has to do if a force majeure event occurs. From your perspective, this should include the ability to draw up a termination account detailing the costs incurred up to the date of the event. Review and draft a force majeure clause with care. Will the clause allow termination (rather than suspension) and if so after what period of time?

Some force majeure clauses allow termination or suspension if a party is “hindered” or “delayed” from performing its obligations rather than being “prevented”. The clause will usually state what steps, information and notification must be given to the other party if you wish to invoke force majeure. Make sure you comply otherwise you could lose the ability to invoke your rights under the force majeure clause. A simple reference in an English law contract to “force majeure applying” will not help a party under English law. A definition of “force majeure” will be required and this may be a long form clause or a short form clause.

Check the force majeure clause is reciprocal. It is not uncommon for a customer to include in the contract or terms and conditions a force majeure clause which is in favour of the customer only! Under English law an exporter will not be able to invoke force majeure in these circumstances.

6. Limitations of liability and liquidated damages

If you breach the contract, for example if delivery is late, the customer is likely to ask for some compensation, and you will want to limit the amount of the compensation. This is the reasoning behind a limitation of liability clause. Your ideal contract will specify the circumstances in which a claim can be made, and the amount that may be payable as a result, e.g. limited to 10% of contract value. Consider the risks of a delivery being delayed. If there is a realistic risk, then cap or limit your liability to as low a level as possible. For example, you may be selling a new product, relying on a supplier to provide a key element of your goods.

However, although a liquidated damages clause might be common use in a standard English contract, it might not be permitted by law in other jurisdictions and you could therefore face a full damage claims.

A parallel contractual mechanism used to help the party who has suffered the breach of contract is a ‘liquidated damages’ clause. This is a clause designed to fix the provable losses in advance of any breach: for instance so much per day of delay in performance or payment. Such a clause, however, has to provide a genuine pre-estimate of the likely financial consequences of a breach of contract, rather than a ‘simple penalty’ in which case it will be unenforceable.

An interesting technique that has some similarities with this is where customers and sellers agree a ‘currency clause’ in a contract to share the risk associated with currency fluctuation movements. These might include a ‘cap and floor’ agreement that invokes an element of compensation in the event of more extreme fluctuations outside a defined range.

If possible, you should try to limit your liability (i.e. the types of loss which you can be liable for) and also place a monetary cap on your liability. A lawyer should review the clause to ensure it is binding.

7. Possession and ownership

You can have goods under your control or custody (possession) without actually having legal title to them (ownership). English law provides for the title to goods to pass from seller to buyer when the contract states that it will pass, but if the contract does not specify when this should occur, the title will transfer on delivery of the goods. An RoT clause in the contract will defer the transfer of title until some condition, such as payment, is fulfilled, notwithstanding that the goods will already have been delivered into the custody of the buyer. The BExA Guide to Retention of Title Clauses is an essential read. There are a number of different types of RoT clauses and some are more easily enforceable than others.

8. Applicable law governing the contract

There is no international standard law of contract, and there are good reasons why it would be a poor idea. The primary reason is that the law of England and Wales, and other sophisticated jurisdictions' laws have been tried and tested over many years. To introduce a new law ostensibly 'to harmonise' those jurisdictions' laws would, in our view, only create confusion and in the short term be of benefit only to the lawyers. It would certainly add to your costs as an exporter.

So we are left with English, Scottish and Northern Irish Law (which may differ), an acceptable international law such as of the State of New York or of Switzerland and your customer's country's law. Your legal advisor will need to ensure that whatever contract is agreed, it is workable. While agreeing the law of your customer's country will keep your customer happy, it will add to your costs since you will need to engage the services of a lawyer who practises that law and can therefore interpret it for you. However, bear in mind that by agreeing to a foreign law with which you are unfamiliar, you may leave yourself open to additional delay and expense while matters are being resolved. It is critical to agree a clause which a lawyer has confirmed is valid. For example, a clause which states "UK law applies" is invalid. There is no such thing as "UK law"!

The jurisdiction clause will govern which country's courts will deal with disputes that have to be resolved and by what procedure. If that is not to be the English courts, consider the costs of employing a lawyer in that jurisdiction who knows the local courts.

As mentioned earlier, if you can't agree a court jurisdiction then a neutral arbitration forum is often an acceptable compromise. You might want to enquire about UNCITRAL, LCIA, or ICC Arbitration rules. For contracts with Far Eastern counterparts it is common to agree to SIAC Arbitration, which is based in Singapore. Also consider a possible mediation clause which allows the parties to try to negotiate a solution outside of court or arbitration proceedings. Mediation can occur at any time if the parties agree.

9. Points of contact and correct details for both customer and seller

This may be a self-evident point, but if there is a potential source of dispute emerging you want to be aware as soon as possible so you can take steps to minimise potential damage. You will be amazed how often

a contract fails to include the correct registered name and address of the counterparties. Always include the registered office address for a counterpart if this is different from the business address. If you need to commence proceedings then you will likely need to know the registered office address.

Reviewing terms and conditions

Whichever type of documentation you settle for, take time to go through each clause. If you submitted a bid, you could use that document as a reference.

Van trouble

One building contractor told of a situation where his company's 'on demand' bond was threatened to be called by a client because the site workers were repeatedly creating chaos with the parking of their vehicles. Fortunately, he was able to retrieve the position by delicate negotiation and speedy intervention with the site manager. However, such problems can be headed off if contact points, and escalation routes, are transparent up front.

Make sure that:

- Goods and/or services to be delivered are properly described
- The contract price and currency are unambiguous
- Shipment procedure is clear and who has responsibility for arranging it, and paying the costs
- Payment terms are defined. If open account, the number of days following date of invoice/despatch of goods as the case may be. Do not leave it open for interpretation
- The contract is subject to a law and jurisdiction – i.e. forum for the resolution of disputes with which you are comfortable
- You are comfortable with on the one hand, any limitations of liability, and on the other, any penalties or liquidated damages
- Any and all tax issues are addressed. If your tax adviser has identified that your customer will be obliged to deduct any tax from the payments due to you, the contract must require your customer to gross up the payment so that after deduction of the tax, the net amount is the amount owing to you under the contract
- Force majeure is defined. If an event outside your control and that of your customer occurs which prevents you from delivering on time for example, it would be unreasonable for your customer to penalise you
- If your contract price is in foreign currency, you will need to talk to your bank at an early stage about exchange rates to establish the value of the foreign currency in sterling. It makes good sense to sell forward the foreign currency receivables to your bank so that you can fix the sterling amount you will receive for each payment. Alternatively you could fix the foreign exchange rate contractually.

Whilst you are negotiating the contract with your customer, you should at the same time be keeping your other departments up-to-date with developments, especially manufacturing, purchasing and finance. (If difficulties arise during the performance of the contract then make

sure that one nominated person takes the lead in corresponding with the counterparty. For example, you do not want someone from your finance department who is not up to date with any difficulties agreeing to accept a delayed payment whilst someone else in your organisation has threatened termination.)

Upon completion of contract negotiations, amend the draft contract to take account of changes agreed. If the customer is responsible for drafting the contract, do make sure that all changes you require and were agreed to at contract negotiation, have been included. Do not assume the contract presented to you is correct. Take time to check it, clause by clause.

Your customer may well require you to sign the contract under power of attorney that in turn could require a board resolution issued by your company's board. This is not unusual and is often required to assure your customer the person signing the contract has full authority to commit the company. Alternatively, the contract may need to be authenticated by a Notary and/or a Consular office. The Notary may wish to have sight of a copy of the appropriate board resolution.

By the same token you should satisfy yourself your customer's signatories have authority. This is something you should raise with your local lawyer who will advise you on the appropriate procedure.

Confirmed irrevocable letter of credit (CILC)

- Include the name of the local issuing bank and confirming bank
- Detail each document you will present
- Make clear that issuing bank costs are for the account of your customer.
- Stipulate when the letter of credit, with acceptable terms and conditions, has to be in your hands – e.g. 30 days following contract signature
- Include a clause that requires the customer to extend the validity of the letter of credit in the event that, for any reason, the delivery period extends beyond the original date specified
- Make sure that the CILC provides payment in full. Check the terms of UCP 600 and ask for deletion of clauses that you will not be able to comply with – e.g. Article 32 multiple dispatches.

N.B. until you have that letter of credit, you have no means of receiving payment and you will need to consider carefully to what extent you feel comfortable committing to cost. Ask yourself "what will I do if the letter of credit does not materialise?"

It is often the case that a customer either fails to open the letter of credit by the time stated in the contract, or alternatively, that it is opened but is not workable. In such a case you may wish to terminate the contract. However, always proceed with care and seek legal advice in these circumstances. If you do not follow the correct procedure you may find yourself in breach of contract for wrongful termination and face a damages claim – even though you do not consider yourself to be the party who has been wronged.

CHAPTER 7
MANAGING THE EXPORT

Knowing your responsibilities

The aim of this chapter is to bring all the planning together so that you can fulfil the orders received, and deliver the goods to your customers. The topic is covered in greater detail in BExA's Guide to Export Compliance.

Two things must be clarified before you can understand your obligations:

1. **Your responsibilities for delivery**

   If you have agreed to an Incoterm in either Group E or Group F then it is the customer's responsibility to nominate the method of transport and arrange the main physical movement of the goods. If you have agreed to a term from Group C or D then transport to your customer's country is your obligation. Check which party has the responsibility for insurance and for establishing if export licences are needed, and obtaining them.

2. **Destination country**

   a) Exports fall loosely into one of three destination categories:

      i) Shipped to another EU member state

      ii) Exported to countries outside the EU or

      iii) Exported to a country outside the EU which has a special (preference) trade agreement with the EU

   b) A number of non-EU countries have special documentation or customs requirements, which you must be aware of before starting to export.

All of these issues should have been considered earlier in the export process and any additional requirements, costs or potential delays taken into consideration before the order was accepted.

Country considerations

a) Despatching to another member state of the EU:

The EU is a Customs Union meaning that as long as the goods you are shipping to another member state of the EU are "in free circulation" then you only require customs documents and/or licences if the goods are "controlled". Free circulation goods are those that are wholly produced within the EU and/or materials/ components that have been imported from outside the EU with all customs duties paid.

"Controlled" goods are:

i) Goods not in free circulation

ii) Excise goods, i.e. alcohol, tobacco and hydrocarbon oils

iii) Goods controlled by the Common Agricultural Policy (CAP), i.e. animals, animal products, food

iv) Military equipment and technology

v) Explosives, firearms, fireworks

vi) Certain drugs and other prohibited or restricted goods

vii) Works of art

Key points about selling to EU customers are:

- The UK customs authority, HMRC, doesn't consider that EC shipments are "exports": they are officially known as "supplies" or "despatches".
- As long as you are shipping goods "in free circulation" then your goods won't incur customs duties.
- Each EU country sets its own rate of VAT with differing rates for certain products or services. Your EU customers will have to declare and pay VAT on the value of their EU purchases to their own customs authorities. Don't inadvertently offer to do this for them!
- Obtain your customer's EU VAT registration number and show this on the commercial invoice. Only if you have this number can you invoice without charging VAT. If your customer is not registered for VAT, this will not be an option and you must charge your customer VAT at the UK rate.
- Send a monthly or quarterly EU Sales List to the HMRC detailing the VAT numbers of your customers and the value of goods you have supplied to them.
- Keep a record of the value of sales made to EU customers; if this will exceed a stipulated threshold (currently £250,000 per annum) you will have to submit Intra-Community Trade Statistics (Intrastat reports) to HMRC.
- Regardless of the delivery terms (Incoterms® rules), obtain evidence that the goods have left the UK and been shipped to your customer's country. It is your legal responsibility to provide evidence of export when you do not charge VAT on a sale. If you do not do so, HMRC may charge you the lost VAT.

b) Exporting to countries outside the EU:

Regardless of the value or reason for shipping the goods, if the end destination is outside the EU then the following applies:

i) A declaration must be submitted to UK/EU customs prior to the goods being exported. This declaration is mainly for statistical purposes but is also used to ensure customs compliance and that the goods can legally be exported. The freight company responsible for shipping the goods usually completes this, but the exporter retains the legal responsibility for making sure the declaration is true and correct. HMRC identifies the exporter by its VAT Registration Number and by the EU Registration Number known as an EORI (Economic Operator Registered Identification number).

ii) An export invoice must be completed giving full details of the goods including a clear description, value(s) and currencies, country of origin, delivery address, and packing details.

iii) Because the goods are leaving the UK/EU tax zone you do not charge VAT but you must ensure you receive evidence of export from the forwarder/carrier clearly showing that your goods have been exported from the EU.

iv) Depending on the overseas country's regulations, you may be required to provide special documentation. Check this on the EU Market Access database www.madb.europa.eu.

v) Of course, your export will become your customer's import and involve the payment of customs duties and taxes. Though it may be necessary in certain situations, do not lightly accept the responsibility for paying duty and taxes in your customer's country.

c) Exporting to a country outside the EU which has a special (preference) trade agreement with the EU:

As the EU is the most powerful trading block in the world, many countries have signed preferential trade agreements with it. This allows eligible goods from those countries to be imported into the EU at reduced (often nil) rates of duty, and also vice versa; this can give EU exporters a market advantage over non-EU exporters.

This preference isn't granted automatically: the exporter must ensure it can provide evidence that the goods meet the rules of preference origin and either issue a "Preference Certificate" (normally an EUR1 Form although for Turkey this is an ATR Form and for larger shipments to South Korea, a Customs approval number is needed) or include a special preference clause on the export invoice. N.B. a preference certificate or statement is not a certificate of origin.

Issuing preference documents or statements isn't mandatory; your customers can still import goods without the certificate, but at a higher duty rate. Only issue a preference document or statement if you are certain the goods meet the relevant preference rules of origin.

Controlled goods

Some UK goods are controlled, and so to export them you will need a licence. The BIS UK Export Control Organisation website doesn't include US legislation. Bear in mind that any US content, however small and of whatever nature, included in an UK export, may be subject to US export controls which the USA may seek to enforce under an extra-territorial effect. US restrictions can even apply to military goods of Israeli origin supplied to overseas destinations. Whilst the US regulations may not be enforceable directly against you in the UK, the US authorities may seek to enforce them on your subsidiary, parent or US employees working for you.

It is vital to appreciate that export controls, whether US, UN, or EU/UK, are not solely concerned with military items but also "dual-use" items which are ostensibly for high technology products for commercial use but could have a military application. The list of such items is wide-ranging, complex and technical (and it is subject to change). For instance "seals and gaskets" made of certain material are currently export licensable (EU) if destined for certain Middle Eastern countries; such items are standard in the engineering and water industries.

The two pillars of export controls are (1) what is the (re)-export? (2) to whom/where is it to be delivered? "Critical" countries currently include Iran, Syria, N. Korea, Sudan and Cuba. Arms embargoes obviously extend to other countries and if you are involved in such trade, you should be fully conversant with export controls compliance! The list of critical countries is subject to change and there are plenty of destination countries that are on the list for 'dual use' items.

Penalties for breach/violation are increasingly severe, with detailed scrutiny by authorities (not just the US). The indirect consequences of penalties are potentially even more severe, for instance loss of company reputation and business. 9/11 concentrated Western Governments' minds.

US political pressure on companies known to be dealing with US-embargoed countries is being increasingly felt not just by exporters but also by banks and shipping companies. However, a bank's change of heart in processing your documentation or sanctions imposed by

another country (e.g. US) is not, in itself, an acceptable reason to cease performing your obligations under the contract if it is subject to English Law.

Export documents

Documentation is needed to evidence compliance with the contract terms and facilitate customs clearance, both export and import. This may seem a tedious subject but it becomes more manageable if split into the categories determined by the question "Who needs what?"

At the minimum you may need no paperwork at all (as is the case of civil/industrial shipments within the EU) whereas, at maximum, you may need several documents including specific certificates issued by authorised bodies such as a Chamber of Commerce. It is important to know what you need for every despatch, to communicate it clearly within your organisation, to avoid transgression of the law, comply with the order or contract and meet import regulations in the destination country. Getting it right first time will save you money and prevent the penalties of non-compliance. Finally, it is a legal requirement for the exporter to retain all export paperwork for at least six years.

If the paperwork is wrong, it can have serious consequences:

a) Payment is delayed or forbidden;
b) Delays to the export shipment;
c) Incurring unnecessary expense to put things right;
d) Inaccuracies leading to a fine or additional costs to you or your customer;
e) Delays at the import stage potentially leading to late delivery penalties;
f) Impact on your reputation, jeopardising future sales;
g) Confusion, leading to a dispute between seller and customer;
h) You failing to make a profit on the order;
i) Can result in cancellation of time sensitive orders (e.g. perishable/ seasonal goods).

What can affect the type and number of documents required?

1. Your customer's requirements;
2. Official documentary regulations in the UK;
3. Official documentary regulations in the destination country;
4. Nature of the goods, e.g. hazardous;
5. Country of origin of the goods, e.g. preference certificates
6. Method of shipment: transport documents;
7. Reason for export, e.g. Customs declarations for temporary exports;
8. Method of payment e.g. letter of credit or CAD;
9. The shipping term (Incoterm) used, e.g. if delivery is CIF (sea transport) or CIP (any transport), an insurance certificate is required.

The invoice

The format of your invoice is very important. The invoice (or details of the shipment) is required at each stage in getting your goods to your customer.

Who needs the invoice?

1. Exporter
2. Freight forwarder
3. UK Customs
4. Transport company (carrier)
5. Overseas Customs broker/forwarder
6. Overseas Customs

Essential information on an invoice

- Exporter's name and address in full with contact name and phone number, plus registered office, registered number, and EORI number
- Date
- Invoice No.
- If within the EU – VAT Registration number of the exporter and customer
- Detailed delivery address with contact name of consignee
- Customer name – its full legal style and registered address
- Description of goods in plain English (or language requested by customer)
- Value of goods and any relevant shipment costs, e.g. freight, insurance. Indicate clearly the currency by using the 3 letter currency code, e.g. GBP (sterling), USD (US dollars)
- Shipping term (Incoterms® Rule)
- Payment terms and due date
- Contract or Purchase Order "P/O" No.

Whereas the UK transit can be covered by some form of "despatch" note, when exporting outside the EU your customer will need an invoice to present goods to its customs authority. The information contained in an invoice is needed whether the shipment is a sale, a temporary shipment, a return, free of charge supply, etc. All goods need to be clearly identified with values and descriptions. Too many exporters don't give this the attention it deserves. Some countries may require the invoice to be signed by an authorised employee. Other countries may require "legalisation" of the invoice. This means the invoice has to be stamped by the Embassy or similar representation of the overseas country in the UK prior to being sent to the destination country. If this is required, contact your Chamber of Commerce who will advise you of the procedure (also see Certificate of Origin below). This adds time and cost to the process which can be critical in the case of documents required under a letter of credit.

Information that may be required by your customer or its Customs Authority

- Customs Tariff code (commodity code)
- Declaration of origin
- Preference statement
- Other country specific declaration
- Name and address of manufacturer of the goods
- Breakdown of the value, e.g. does the cost include freight or insurance?
- Import Licence No.
- If payment is by letter of credit, then any detail specified in the LC including its reference number

Certificate of Origin (C of O)

Not to be confused with EUR/ATR forms, which are preference certificates and are related to special EU trade agreements, a C of O is required by some importers or their country to confirm the origin of the goods. The country in which the goods were manufactured must be clearly identified.

Rules of origin (non-preference) are laid down in European Community Regulation No. 2913/92, Chapter 2. It states that goods whose production involves more than one country shall be deemed to originate in the country where they underwent their last, substantial, economically justified processing or when work results in the manufacture of a new product or representing an important stage of manufacture.

Certificates of Origin do not have a prescribed format. They may take a variety of forms:

- Invoice declaration of origin
- Declaration made on the exporter's/manufacturer's letterhead
- European Community C of O
- Arab-British Chamber of Commerce C of O
- Manufacturer's or supplier's own C of O.

The destination country or your customer will identify which one is applicable. An EU C of O is issued by your Chamber of Commerce for a fee (approximately £35 for non-members).

An Arab-British C of O may be required when trading with an Arab League country. Your local Chamber of Commerce issues this C of O and your Chamber then sends it to the Arab-British Chamber for certification. Occasionally the documents will also have to be sent to the Embassy of the overseas country to be legalised. Fees for these services depend on the country involved, the value of the consignment, whether legalisation is required and whether the invoices also need to be certified. The total can come to hundreds of pounds, though the Arab-British Chamber is aiming to cap the fees at £900 maximum. The procedure can take a week to complete, though you can engage Consular Services not to walk documents through at a reasonable cost.

There is a possibility that your customer in the Middle East may be able to get freight released without the Arab-British C of O (perhaps on payment of a small fine); check this out as it could save both of you time and money.

Pre-Shipment Inspection (PSI)

Pre-shipment inspection allows the importing country an independent assurance that the goods being imported are actually what they are declared to be. This comfort can be demanded by consumer protection or by the need to protect the State from corrupt and dishonest practices involving embezzlement and misappropriation of currencies and duties. The main areas of the world where you can expect PSI are:

- Africa
- Latin America
- Russia
- Some Asian countries, e.g. Bangladesh

By appointing an independent test house, e.g. SGS, Intertek, Cotecna, Bureau Veritas, the importing country can demand pre-shipment inspection of various classes and value levels of goods and it can control its imported goods. PSI can be mandatory and import will be denied if the PSI certificate isn't in place. The procedure varies from country-to-country but is usually triggered at the importer's end and at its conclusion leads to an actual inspection carried out at the exporter's premises by the officially designated inspector of the Test House who will carry out the required checks to verify the validity of the transaction. This should result in a "Clean Report of Findings" (CRF), which is the key to successful import of the goods.

PSI often requires the goods to be shown at FOB value and freight and insurance costs at actual values – this can be a problem where payment is out of an irrevocable letter of credit that doesn't permit separate invoicing.

Although PSI is another cost and piece of administration, on the plus side, it limits the opportunities for disputes because the goods have been checked/verified by an independent party.

Transportation issues

Transportation shouldn't be an afterthought. It is connected to most aspects of the commercial process. Not only can it affect the selling price but it can also affect:

- Packing
- Documentation
- Contract and delivery terms
- Insurance
- Delivery time (contract performance)
- Cash flow.

The main modes of transport are sea, air, road and rail. Smaller packages may be sent using Express Services or through a Small Parcel Operator. An understanding of the scope of modern freight services is essential to the trader attempting to compete competitively in world markets. The range includes premium, dedicated services through to consolidation through a freight forwarder.

Many exporters use freight forwarders rather than dealing with shipping lines or airlines themselves. A forwarder's core service is to act for you "the principal" or "shipper" in forwarding the goods to their destination and in liaising with the carrier (whether airline, shipping line, trucker or multi-modal service provider). A good forwarder relieves you of tedious

documentation requirements, advises you on HMRC procedures, best routes, cheapest rates, etc. and perhaps links you to a computer system to track the progress of the consignment. Forwarders may be worth their weight in gold. Trust them by all means, but remember they are suppliers of services and should be treated as such. Do not completely abdicate responsibility to them. You have a legal responsibility as an exporter to make correct declarations, and it is you, not the forwarder, that will be fined if inaccuracies lead to mistakes.

Toilets and Incoterms® rules

A UK manufacturer of sanitary ware was selling to an Italian distributor on CPT terms. Because the exporter was responsible for carriage of goods to an overseas place, the exporter incorrectly thought he must be responsible for breakages en route. However, Incoterms® Rules say that the risk in the goods under CPT passes on delivery of the goods to the first carrier in the exporter's country (not to the destination). When this was pointed out, the exporter realised that he could save £70,000 p.a. in free replacements.

Transport documents

Sea Freight: Bill of Lading (B/L)

The main sea freight transport document is the Bill of Lading. A B/L is a unique transport document because, as well as evidencing the contract of carriage and receipt for goods loaded on board, it provides entitlement to the goods. Goods evidenced by a B/L can be bought and sold while they are on the high seas. The consignee can only receive delivery of the goods once he has presented an original B/L.

Bills of lading are issued by the shipping company in a set of "originals" (which are negotiable) and "copies" (which are non-negotiable), the number within each set being stated on the B/L, e.g. three original two copies (3/2). B/Ls are prepared by the shipping line on loading the goods on board ship, and released when the ship sails. The exporter then sends them by courier to the consignee, or submits them into the banking system for cash against documents (CAD) or documents against acceptance (D/A) payment terms or where payment is from a letter of credit.

Sea Waybill

While B/Ls are ideal for payment security, they are cumbersome and require a relatively long sea journey to make them worthwhile. An alternative is to use a sea waybill, which is also available electronically and is also known as an "express bill". Waybills are not documents of entitlement so goods can be released at the destination port without production of an original. Sea waybills are not suitable for CAD or D/A payment terms.

Air Freight: Air Waybill

The air waybill is not a negotiable document, or a document of entitlement. It is a receipt for the goods and evidence of the contract of carriage. On arrival at the destination, the goods will be handed out to the company named as consignee. If the air waybill has been addressed to a bank (e.g. for CAD payment), then the bank will need to provide a release note in favour of the importer. Air waybills are issued (or "cut" as they say) by the airline. If you send goods by a consolidated service arranged through a freight forwarder, you will receive a House Airway Bill (HAWB) as a "ticket" for your freight by the freight forwarder.

Express services

You complete a Consignment Note or Courier instruction on a pre-printed note particular to the courier company. This is a receipt indicating collection of the goods and doesn't actually evidence export (i.e. it isn't stamped or certified by the carrier in any way). It isn't a powerful document and isn't usually accepted by banks as evidence of export and may be rejected by customs unless supported by other proof of delivery.

Road Freight: CMR

Road haulage companies raise an official CMR note for full loads. Exporters will generally only see the CMR if a full trailer load is involved or when a foreign haulier is collecting on behalf of the customer when signature of the CMR note is required. The CMR certifies that the goods have been received for transport and the condition they are in. It stipulates the carriers' liabilities and the (rather meagre) compensation if the goods should be lost and it is evidence of the contract for carriage. A CMR note is raised in three copies, one for the exporter; the second to accompany the goods while the carrier retains the third.

Smaller consignments: Certificate of Shipment

For some consolidated or groupage movements, the evidence of export will be a Certificate of Shipment issued by the freight forwarder or road haulier. A Certificate of Shipment may also be provided to an exporter in situations where the customer has nominated the transport method, e.g. Ex Works or Group F contracts. As long as the certificate meets the requirements laid down in the VAT Notice 703 then it is acceptable to HMRC as legal evidence of export. At the very least it must show a consignment number, vehicle details, exit point from the UK/EU and despatch date. It should also show the terms and conditions of carriage on the reverse along with mention of the CMR Convention.

Special Transport requirements:

Security Measures

"Known Shipper" Status and Authorised Economic Operator

After the Lockerbie bombing in 1988, transport authorities around the world devised a system to ensure goods in transit were monitored and controlled in a secure manner. The result is that freight forwarders must be classified as "known" agents or their freight cannot be consolidated and will be held for inspection before loading on the aircraft. Shippers of goods by airfreight can apply to be classified as "known" shippers. This involves a full inspection by the Department for Transport (DfT), the requirement to have trained staff and a regular review of safety and security procedures, including IT, employment and site security. Becoming a "known" shipper is not free, the basic cost for the regular inspections is £400 but it will mean the certified exporter avoids unnecessary delays or additional supply chain security costs when goods travel by air freight.

In 2008, under the World Customs Organisation (WCO) SAFE Framework, the EU introduced a new accreditation scheme for exporters, importers and freight forwarders known as the Authorised Economic Operator (AEO) scheme. It is not to be confused with "known shipper" status. AEO is not mandatory but the inspections and accreditation procedures, administered by HMRC, is free. AEO approval can be granted just for

supply chain security (very similar to “known shipper” status) or for customs compliance or both. For supply chain security accreditation the company will need to demonstrate that the packing and despatch areas and warehouses are secure, that the company has a good system for vetting new employees (even casual labour), and that there is a system of monitoring all visitors in sensitive areas. Mutual Recognition Agreements (MRAs) between countries are being established which means that UK exporters with AEO approval will be treated as “safe and secure” exporters in overseas countries, e.g. EU-Japan, EU-USA.

Pre-Arrival/Pre-Departure Messages (PAPD)

For sea freight, the carrier/forwarder notifies the destination port 24 hours prior to goods being loaded onto a vessel in a UK port, of vessel details, container numbers and information about the consignment. Any containers not pre-cleared will be refused entry. An Aviation Security Declaration quoting the consignment details and the Certificate Number must accompany each airfreight shipment. Responsibility will be laid with the carrier to ensure supply chain security checks are undertaken. Exporters will have to indicate on these declarations whether they have been awarded the AEO status. AEO approval isn’t mandatory but cargo being sent by non-AEO approved companies are more likely to be detained for inspection.

Dangerous/Hazardous Goods

Dangerous goods are those that, from their nature, are liable to cause damage to people, the environment, the means of transport, or to other goods. Dangerous/obnoxious cargo frequently calls for highly specialised transport operations and always for special packing, marking and labelling. Failure to comply with stringent regulations affecting documentation and stowage cannot only lead to very severe penalties but also seriously endanger the safety of ships or aircraft, passengers and crew. 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

Each mode of transport – air, sea, road and rail – has its own dangerous goods regulations and its own form of dangerous goods declaration. There are different rules in every country, and they are regularly reviewed and updated. The shipper or the approved packing company signs a dangerous goods form. Freight forwarders cannot sign unless they also act as the packer. Check the lists of goods classed as hazardous (or dangerous: the terms are interchangeable) and the types of packing, marking and labelling required. It isn’t a subject to be tackled lightly by the layman and cannot adequately be dealt with in detail here. The importance of obtaining accurate and sufficient advice cannot be over-emphasised.

Cargo insurance

Don't feel that you don't need to insure your cargo just because you are using a freight forwarder. The forwarder or shipping line/airline will be obliged to pay you for damage in certain circumstances, if it is found negligible, in accordance with its standard contract of carriage, bill of lading, air waybill etc., but only up to certain pre-agreed limits. These are historically woefully below the actual value of the goods. There are also a number of circumstances in which the carrier can even avoid liability, e.g. damage caused by storm.

Contract of carriage limitation of liability

AIR	Carriage by air act 1961–WARSAW	17 SDR per kg (of damaged or lost cargo)
SEA	Carriage of Goods by Sea Act – 1971 HAGUE – VISBY US CARRIAGE OF GOODS BY SEA ACT 1936	2 SDR per kg or 666.67 SDR per package (whichever is the greatest) US$500 per package
RAIL	International convention concerning the carriage of goods by rail CIM	17 SDR per kg (UK only) 16.67 SDR per kg (Europe)

SDRs are Special Drawing Rights of the International Monetary Fund. They are a paper currency not in general use. The value of one SDR is posted on the IMF website and its current range is between US$1 and US$2.

Rather than try to claim against these minimalist limits, it is preferable to claim on your insurance and let the insurer sort out the claim against the carrier as part of its subrogation after paying you the claim.

A good freight forwarder will be able to provide you with a "one stop shop" for the entire forwarding process, including the cargo insurance which he will organise and negotiate any claim. Alternatively you can arrange this cover yourself through your broker. Check the detail of what is being offered:

- If your goods are covered: Freight forwarders are unlikely to organise insurance for bulk, high tech goods, audio-visual, valuable cargoes (e.g. bullion), living creatures, cigarettes or alcohol. For all of these, you will need the specialist advice of a cargo insurance broker.
- Institute Cargo Clauses (ICC) set out the minimum requirements for the movement of goods and set minimum standards for age and suitability of the vessel.
- ICC A = "all risks" (do not be satisfied with ICC B or ICC C).
- Any deductible or excess?
- Conditions and scope of cover.
- If cargo is covered from leaving your premises to arrival at the destination (not just the port or airport) "warehouse to warehouse".
- Additional "seller's interest" clauses in the cover may enable you to claim under your insurance even where the customer has taken charge of the goods.

Don't forget that you will need cover for the UK part of the journey: the goods could be damaged on the motorway on the way to Felixstowe, or the truck could be hijacked.

Unlike most insurance, cargo insurance policies are expected to generate regular losses. Insurance companies realise that the extreme rigours of transit (long voyages, extensive handling, theft, moving, shifting, loading and bad weather) almost guarantee regular losses. Approximately 30% of losses in transit are deemed unavoidable.

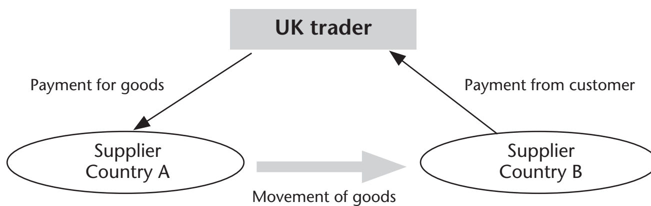
Cargo insurance specialists recommend that you choose Incoterms® Rules "C" and "D" delivery terms so that you have control of the risks of transportation. With FOB and FCA, you do not have to insure the goods after delivery to the carrier, but you have a problem if you get the goods to the destination and the customer has disappeared. Not only are the goods in the wrong place, but also if they are damaged there is no policy to claim on because the goods were never insured. You can buy "seller's interest" insurance for this risk, but few do.

There is one last, and rather unusual, element of cargo cover, and that is your liability to general average. If your cargo is on a ship which lists or runs aground or suffers engine failure, there may be a deliberate jettisoning of cargo to stabilise the ship or a need for the ship to call for assistance from a tug or salvage vessel. In this case, general average is declared, and all cargo owners on the ship are liable for a share of the cost of the salvage operation. General average is designed to provide an equitable distribution of losses so that one interested party does not make all the sacrifices to benefit the others. If general average is declared, a guarantee is required from all cargo owners and the ship owner that they will contribute to costs, many of which are not known at the outset. There are often delays to processing the calculation of each share. How much better is it to leave these negotiations, contributions, guarantees and delays to an insurance company?

MSC Napoli

In January 2007, MSC Napoli ran aground on the Devon coast while en route from Belgium to Portugal and carrying 2,400 containers. A Limitation Fund of GBP 14 million was established in England by the owners and bareboat charterers of the MSC NAPOLI to cover any liability for claims arising as a result of this incident. This was not an admission of liability, but merely a right to limit any liability that may arise over the many years before final claims are received, assessed and settled.

CHAPTER 8
DIRECT SHIPPING



Some trade involves the supply of goods where the "exporter" makes all the arrangements but doesn't actually manufacture the goods itself or ships finished goods from his warehouse overseas. This perhaps can be viewed as taking best advantage of the UK's increasingly service-based economy while using lower cost manufacturing and technology from overseas. For background information on this subject, contact the inward investment arm or export promotion arm of the country of the supplier.

We will call this "direct shipping" but it is also referred to as drop shipping, third party delivery, triangulation, or as a cross-border transaction. Direct shipping accounts for some of the UK's "invisible" foreign exchange earnings. It is a slightly more challenging area of exporting, but potentially can be considerably more profitable. The procedure changes some things and should be undertaken with caution and an understanding of the potential traps and pitfalls. Good advice from freight forwarders and logistics/warehousing partners together with finance and insurance advisors will ameliorate these factors and lead to greater opportunities.

The decision to source, process, assemble or manufacture in a third country will be based on many criteria. Among them will be the political and economic status of the country of supply, availability and quality of local goods and services, tax and regulatory regimes and quotas. These considerations are too far ranging to explore in depth here but typically the UK Company organises for the manufacturer or supplier to ship direct to the customer and the usual motivation is to reduce distribution costs and time scales so that is what we will concentrate on.

Here are some key questions that are intended to clarify the key issues relating to responsibilities, compliance and above all feasibility. In other words, can it be done, or is it better to find another way?

1. **Who is the exporter?** Who is taking on the responsibility of complying with export regulations in the country of departure?
2. **Who will be responsible for the export paperwork preparation?** This is normally the same party as in (1) above.
3. **Are there one or two supply contracts?** Usually the 'principal' who has received an order from the overseas customer is constructing a contract for the provision, manufacture or assembly with another party in a third country. There will be further contracts for forwarding, carriage and insurance.
4. **What are the delivery terms?** Do not leave this to chance. Use Incoterms® Rules and ensure you cover both sides of the transaction.

5. **Which party or parties will insure the cargo?** The delivery terms selected will indicate where risk passes from seller to buyer but this can become confused, particularly where consignment stock is involved.

6. **Who is responsible for customs clearance and valuation?** Several issues need to be addressed on these very important topics. A key factor is that the value shown at the point of shipment from the manufacturer in the country of departure of the goods may not be the value that should be shown at the country of arrival. Additionally the UK principal may be very anxious that the end customer doesn't discover the price paid to the manufacturer.

7. **Who is the importer?** In many countries it is vital that the importer of record is registered in that country so that import taxes similar to the UK VAT can be reclaimed in the accounting process, the import entry therefore should be executed by a freight forwarder either acting on behalf of the end customer or one who is able to act on behalf of the UK principal whilst still being able to retrieve import taxes.

8. **How do we link the contracts?** It is worth getting professional help to ensure that the sales contract and purchase contract fit together without gaps so that all parties are aware of their responsibilities and requirements and that no artificial obstructions stand in the way.

Checklist

Supplier

- Location, size, quality, systems, reliability, reputation, experience of export. Construct a procedural plan that makes clear to each party what its responsibilities are.

Customer

- Location, creditworthiness, reputation, experience of import, plus what import entry procedures exist and, how to build a 'firewall' between the supplier and your customer.

Forwarder

- Who will choose the forwarder? Who will take responsibility for instructing the forwarder, when this will happen? In the hurly burly of forwarding, it is vital that you eradicate the risk of the forwarder not following your procedure.

Moving goods across countries

If you are moving the goods through one country to get to the destination, be aware of the transit issues. Control is the essence and it becomes far more important in the world of 'direct shipping' than in traditional export from the UK to the customer's country.

You must retain sight of the elements involved and must construct a clear understandable procedure that will be followed by all involved parties. Factors such as export and import regulations, paperwork/documentation and customs issues, plus careful selection of the parties in the chain must be 'proofed' to avoid omissions or mistakes.

Export country

- EU or not.
- Relationship with import country. Is there a preferential trade agreement between the countries that will result in duty relief?
- Export licence regulations.
- Any additional compliance factors, e.g. wood packing regulations, excise, hazardous, etc.

Tasks of shipper

- Who is the shipper? Is it the supplier or a nominated forwarder or other appointed agent?
- Delivery/Incoterms® Rules responsibilities: Tasks such as loading, paperwork, freight costs, transit risk and import duty and tax payments all come under this umbrella.
- Export paperwork: In whose name will this be done, and who will handle the paperwork?
- Follow instructions to the letter in respect of handing goods to the selected forwarder or for presentation to Export Customs. To achieve this, you must have established a workable procedure that includes an allocation of responsibilities.

Tasks of supplier

- Duplicate paperwork: To avoid valuation problems, it is useful to have a second set for use at export point or import arrival.
- Organising the collection/transportation. This may not be required if the UK principal takes control of the total process.
- Insurance – check Incoterms® rules
- Be prepared to deal with back orders and returns. Just because some of the hassles are eliminated with drop shipping, not all of them are.

Import country

- EU or not? If it is an intra-EU movement, you won't normally be required to do a customs entry or export declaration.
- Preferential duty rate: Are both the export and import country the subject of trade agreement that can affect the duty rate?
- Import licence regulations: Do not overlook else your goods will be held up.

Checklist for your direct shipping 'plan'

- Nomination of freight forwarder
- Supervision of the Customs import entry procedure
- In-land or domestic delivery
- Transit risk insurance
- Identification of importer of record for the import entry
- Payment of appropriate import duty and tax where applicable
- Compliance with Customs regulations/regimes
- Responsibilities in respect of loading/unloading at port/airport of arrival and subsequently at destination customer premises.

Risks

In addition to the practical points detailed above, continual monitoring of the situation at the supplier's end will be required to anticipate detrimental changes:

- In the economic situation e.g. wage rises leading to price rises.
- Political or regulatory changes e.g. elections bringing new restrictions on export licences or duty rates.
- The need to monitor product quality and performance and the costs of doing this, plus the potential for financial misappropriation of various kinds in view of the arm's length nature of the transactions.
- For companies where image is important, the potential for bad press that could result if the supply chain is seen as carrying a high carbon footprint or there is any exploitation of workers.

Preparation

It is impossible to overrate the value of good preparation in dealing with these matters. In situations that are complicated and difficult to control consider one of these options:

a) Consider a 'trial' or 'dummy' shipment to assess the performance of the players or

b) Don't be shy of taking a decision not to go ahead. Consider the virtues of importing the goods physically into the EU and arranging the supply to your customer without involving other parties.

Watching your duty

Company D in the UK has regular contracts to supply goods direct to a customer in Mexico. The goods qualify for EU/Mexico preference and are imported into Mexico duty free (EUR1).

Company D moves its warehouse for North America to Chicago and starts delivering goods to Mexico from USA.

USA has a preference agreement with Mexico. The Mexican customer asks for the NAFTA form instead of the EUR1. It can't be issued because, although goods shipped from USA, they originate in the UK so don't qualify under NAFTA preference rules. The Mexican customer asks for the EUR1 – but this can't be issued because goods would have to be shipped direct from the EU to qualify. The angry Mexican customer is now paying 8% duty.

CHAPTER 9
LOOKING AFTER CUSTOMERS

It is generally cheaper to win new sales from existing customers than to invest in new relationships. With this in mind, it isn't only good for your brand and reputation but also more economic to give good service to your customers. You may be physically close to your domestic customers, so looking after them should be easier. With your export customers, you will need to address the differences in the local marketplace, together with culture and language and different time zones.

How do you define good customer service? Ask yourself a few questions:

- When you are a customer, how do you evaluate good service?
- How well do your products and services meet your customer needs?
- Are your goods and/or services perceived as value for money?
- Is your documentation (invoices, training manuals etc.) timely and accurate?
- Do you keep your customer informed?
- How professional are your employees?
- How strong is your after sales service?
- How effectively do you deal with queries and problems?

As with most areas of business, how you implement and manage these issues is very important. And it is not only local service that will have an impact: you will also need to address issues in your UK-based export team.

- Product awareness/development to meet the needs/conditions of overseas territories.
- Internal systems/procedural improvements.
- Possibly cost savings.
- Increase in job satisfaction and morale of your export team.
- Competitor positioning.
- New business introductions.

UKTI's research found that exporting companies showed a 30% increase in productivity in the year they commenced exporting. When BExA asked UKTI why they thought this happened, it was suggested that it was as much to do with meeting a new range of customers and taking on board their requirements and suggestions that influenced the changes back at home.

Direct sales

In the majority of companies, the client base falls into the 20:80 split where 20% of clients represent 80% of sales. Ideally these 20% will represent profitable business, and since making a profit is your company's objective, these customers are vital to your continuing success. A review of profit margin will confirm or otherwise whether those customers deserve the highest level of service.

Whilst dealing with certain prestigious organisations can, in marketing terms, promote the perceived standing of your company, larger customers are often in a position to negotiate substantial discounts; which in profit terms have to be balanced by increased sales volume. It isn't advisable to agree to too much low margin export business: the costs of doing business are higher than for UK sales, and the risks are diverse. Also, you still need to deliver good service else you risk damaging your reputation.

A smaller customer may be worth spending extra resources on if it is part of a much larger organisation and can make an introduction to other Group member companies. This "relationship marketing" has a direct link with customer services in that, once the relationship is established, your clients are more likely to retain your company as their supplier and will be more tolerant of the occasional lapse in your service. Whilst it is difficult to define "good service", we all know what happens when we receive "poor service": we tell others about it.

Research

If you need to persuade your management of your point of view in relation to resource to be allocated to the export book, look back at what you have achieved and the potential for growth within a sector or market, and add external research to this.

- **Historical ordering.** is it increasing, decreasing or static?
- Your **terms of payment** compared with the industry average and if payment is received at or around due date.
- **Customers' needs** – talk to them, look at their websites
- **Customers' financial standing.** are they growing and is business likely to be profitable next year and the year after?
- Refer to the various sources of reference regarding the **political and economic climate** within the customer's country: How easy is it for your customer to do business? What are the prospects for growth of the country's GDP?

Keep your customer informed

You might have the best products in the business, you might listen to your customers and look after their needs with tact and charm and provide excellent technical support. But it is important, from time to time, to take stock and inform your customers of what you think of the market in general, and your role in it. Your customers may not read your newsletters and other information sheets, but they might find them handy to have on file in case anyone challenges their judgment about buying from you. Keeping your customer informed will also manage his expectations about what your product should be expected to do and not to do, and this will strengthen your relationship rather than sow seeds of doubt.

Expectation vs. reality

A UK industrial machinery exporter appointed a new dealer in Mexico. The dealer was new, but it was run by a man who had been the best salesman of the exporter's US competitor, and had started up on his own with great enthusiasm. The dealer had good banking lines and an excellent location. He was satisfied with the % commission, and he ordered his first consignment of stock. Two things were overlooked. First, the funding requirements to meet the exporter's expectations and targets: though the sales were made according to plan, the dealer had problems arranging financing for end-customers, which in his previous employment had been resolved by a committed Finance Manager. Consequently, his customers found it difficult to buy from him, and the business suffered. Second, the dealer had made an assumption about the unit value of the equipment ordered from the UK (which fed through to the commission earned on each sale): it was not high enough. The dealer was disappointed with the reality and wanted to cancel the agreement and return the machines.

Customer surveys

Asking your customer what they expect of you will give you ammunition if you need to persuade your management to make investments in exporting. Here are some ideas on questions:

- Do you feel we understand your business needs?
- Are there any product/service areas where we can be of greater assistance to your/our success?
- Have we any particular strengths or weaknesses in our business dealings with you?

Be prepared, however, for only a few responses, as is common with surveys. It is possible to improve response rates to double figures percentages, however, if the survey is short and you warn your customers in advance to expect it.

Good business practice

What a difference it makes if a person who is knowledgeable and who has an overview of procurement, manufacture, shipping, contracting and accounts answers one's phone calls quickly, politely and efficiently. Relationship building with customers starts at every level of the company and can flow through to financial savings for the company and also increased enthusiasm and job satisfaction.

Patience

Be prepared for your customer to challenge you. He most certainly won't appreciate the work you have done in developing something for him and getting it to him if it doesn't work, as he perceives it should. Training, communication, and clear documentation will play a part in this. Above all, you will need patience, and, most probably, an ability to laugh at your frustrations.

A consumables exporter reports, "We had extensive business in Japan and one of the importer's sales managers was an enthusiastic photographer of rugby matches. He came to London for the first Rugby World Cup and we succeeded in having him registered as an official photographer. Sales never looked back!"

9 hours of wait

An exporter of machinery needed an extension to be granted to a letter of credit to allow for delays in the production of the machine. The customer was not at all happy and was resisting extending the letter of credit. The exporter made an appointment, via his local office, to visit the customer, flew down and arrived at the customer's office on the appointed morning. The customer kept the exporter waiting for nine hours. The exporter kept calm and enjoyed the benefit of the air-conditioned office on a hot day. After nine hours, the customer having made his point about the poor performance, a civilised meeting took place. It was established that an engineer should be on-call from the local office to make sure that the machine operated to maximum performance. One year later, the customer ordered another five machines.

Making it happen

You've been on the trade mission, the Commercial Staff in the British Embassy have enabled you to meet some senior people locally who have given you an insight into the opportunities, have established that your product and pricing are suitable, and you are convinced that the country will be an excellent overseas market for your goods and services. You are sitting in the hotel deciding on what to put into your report to management. If you work for a big company, you'll be writing a series of reports and approaching a range of strategic thinkers in the company to negotiate for an allocation from the budget to fulfil your aim of making an investment. If your organisation is small, your persuasive talents won't need to be so widely spread.

However, the principle is the same. If you are to develop sales in a country where you have never sold before, you will need to show your potential customers that your company is making a genuine commitment. Don't wait for an order to justify an investment; it may never happen. If there is a real opportunity for you to sell, then consider opening a support office. Let the market know that your company will be there to support the product.

The costs of a representative office are relatively low; you will need to rent premises, take on staff, bring them to the UK for training. Although language skills are an advantage, you don't need to be able to speak the local language yourself; so many international companies now use English as their language of business that it is commonplace for ambitious skilled locals to be willing to upgrade their language skills.

An established, trained local presence enables you to go out and sell. When your customers know that you can service the equipment locally, and as long as you do it well, they will come back to you if they need more product. You will be able to demonstrate to your customers that price isn't everything: the ability to call on a local expert or engineer is far more valuable to the running of their business.

Your customer will have made an investment in the product that you have exported. Work hand-in-hand with him. Try to ensure that he understands the capabilities of the product and knows how to look after it to get the best out of it. If your customer is a distributor, give him the opportunity to learn about finance and managing stocks.

In the Middle East and the further East that you go, business tends to be done on a personal level. If potential customers want to come over to the UK to see you, don't just have the meeting and show them your factory; take them to see the sights. A few short meetings interspersed with some culture or a football match can create a huge bond. Also, the relationships that you build on customer visits to the UK will be those that you draw on to see you through the difficult stages – for example delays, banks who won't provide the finance on time, inspection companies that don't turn up, visa delays, commissioning engineers that don't want to travel to the site at the agreed time etc. This is when you find out the strength of the relationship.

If things really are not going well – e.g. the machine that you supplied isn't working – engage your local office. Send the engineer to the site for several weeks. If the equipment that you supplied isn't of your manufacture, go back to the supplier and negotiate that he should contribute part of these extra servicing costs. Don't stick rigidly to what you are obliged to deliver in your contract – go the extra mile to make the customer happy. After all, he has bought an expensive piece of equipment, and you most certainly don't want it back!

Once you are seen to have added the extra service, you may create an even stronger bond with your customer than if you had not had the problem in the first place. In fact, research into customer retention and repeat sales shows that a customer is significantly more likely to buy again from a supplier who resolved a problem than one who never had a problem at all: if you solve the problem satisfactorily, your client will have tested the relationship and found that it works.

Customer's payment is late

Assuming your contract sets out that you are actually owed this money (i.e. you have fulfilled your obligations and the due date has arrived), there should then be no reason why your customer has not paid. However, just repeating to your customer the terms of the contract won't necessarily build on your long-term relationship. Try to look past the contract at the real reason why the customer doesn't pay.

- Is it because he isn't being paid under his own contract with an end-user? If this is the case, then there might be little chance of you being paid until your customer, with your support and help, can solve the issue with the end-user.
- If it is that your equipment doesn't work as planned, visit your customer and commit to make sure that it does. Approach the issue positively, not begrudgingly.
- If there are documentation problems delaying transmission through the bank, take time to understand them and take action to ensure such third party delays are avoided in the future.

Don't try to solve equipment performance issues by phone or email. You will have much greater impact if you get on a plane and see your customer in person.

If your customer simply won't pay, take the advice of your credit insurer, raise the issue with the local chamber of commerce or get the British Embassy on side (your customer will find it difficult to get a visa to travel to an EU country if there is an outstanding debt).

After sales service

Once the contract is finished and the customer has paid, don't sit back and wait for the next order. Work out what to do with the profit that you have just made. Plough it back into the operation, for example employing a second engineer or keeping a stock of spares. Tell your customer what you have done; take him to see the stock of spares. Don't just train your local staff once; bring them back to the UK every year. Show your customer that the support team is up-to-date with developments and able to help him keep the equipment going for many years.

Incorporating UK culture into export relationships:

Sharing best practice overseas plus the Queen supported by Elgar, Holst and Benjamin Britten

An exporter writes of hosting the 2012 'Sharing best practice' conference involving the export sales team working with overseas customers to improve their understanding of industrial design and the performance and benefits of the product.

'As it was the year of the Diamond Jubilee and also the Olympics I wanted to make it a bit special. It was most of the delegates' first time to the UK. I hired a special dedicated "red bus" for the visit to the venue. After the programme of site visits and regional discussions, we met for a reception where we played traditional British classical music, I ordered in some crates of a British real ale called 'London Glory' and also a Queen look-a-like to greet the guests. The customers were speechless and really enjoyed it! I believe I have converted some to British real ale, and there was talk from some delegates that they wanted to bring their families to visit too!'

References

- **Authorised Economic Operator:** AEO application forms C117, C117 (Notes), C118 and C118 (Notes) are now available on the HMRC website.
- **BExA Guides:** Available from www.bexa.co.uk
  - Financing Exports
  - Letters of Credit
  - Contract Bonds
  - Export Credit Insurance
  - Retention of Title
  - Export Compliance
- **BIFA:** British International Freight Association www.bifa.org
- **BIS:** Department for Business, Innovations & Skills
- **BSI:** British Standards Group www.bsigroup.com
- **Bond Support:** UK Government support for the issue of bonds is available from UK Export Finance
- **CAD:** Cash Against Documents payment terms
- **CIM:** Chartered Institute of Marketing www.cim.co.uk
- **Chamber of Commerce:** www.britishchambers.org.uk
- **CIA World Factbook:** Useful statistics on countries' imports, exports, GDP, growth.
- **CMR: Convention Merchandises Routiers:** Convention on the Contract for the International Carriage of Goods by Road, introduced in the UK by the Carriage of Goods by Road Act 1965
- **D/A:** Documents against Acceptance payment terms
- **DEFRA:** Department for Environment Food & Rural Affairs
- **European Union (EU):** There are currently (2012) 27 member states: Austria; Belgium; Bulgaria; Cyprus; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Ireland; Italy; Latvia; Lithuania; Luxembourg; Malta; Netherlands; Poland; Portugal; Romania; Slovakia; Slovenia; Spain; Sweden; UK
- **EEA (European Economic Area):** EU + Iceland, Liechtenstein & Norway
- **Export Controls:** UK Export Control Organisation (ECO) defines and licences controlled exports. See the BExA Guide to Export Compliance
- **FDI:** Foreign Direct Investment
- **Franchise:** See Franchise Development Service or UK Franchise Directory
- **Freight Forwarding:** BIFA, the trade association for UK forwarders, provides standard contract terms and enforces a Code of Conduct on all members
- **GNP:** Gross National Product
- **GDP:** Gross Domestic Product
- **Hague-Visby:** Cargo value limits for carriers
- **HM Revenue + Customs (HMRC)** UK customs authority www.hmrc.gov.uk

  Search for guide: HMRC Guide to Importing and Exporting – Breaking Down the Barriers

- **ICC:** (International Chamber of Commerce) www.iccwbo.org
- **Incoterms® (International Commercial Terms) rules:** Internationally recognised delivery terms for domestic and export trade published by the International Chamber of Commerce www.iccwbo.org
  Add Incoterms® rules to a contract of sale to set out responsibilities of the buyer and seller in respect of delivery goods. Always refer to the date of the Incoterms® issue (currently Incoterms® 2010).
  US customers may prefer to use delivery as defined in the UCC (Uniform Commercial Code) for their particular state.
- **ISBP 681:** International Standard Banking Practice for the Examination of Documents under Documentary Credits (ISBP)
- **ISP 98:** International Standby Practices – see the BExA Guide to On Demand Contract Bonds
- **ISPM 15:** International Standards for Phytosanitary Measures No. 15
  Measures developed by the International Plant Protection Convention (IPPC) to address wood packaging. Some 39 countries comply
- **Institute Cargo Clauses:** Definitions of marine cargo insurance
- **Institute of Export:** www.export.org.uk provides training courses for exporters, including Certified International Trade Advisor
- **Intrastat:** Intra-Community Trade Statistics for HMRC www.uktradeinfo.com
- **League of Arab States:** League of Arab and North African States
- **Letters of Credit:** Bank payment mechanism See BExA Guide to Letters of Credit
- **Market Access Database:** madb.europa.eu
  For export documentation, select "Exporters' Guide to Import Formalities", country and enter either a brief description of your goods or the first 4-digits of the commodity code. This takes you to a page listing the documents needed to get your goods into that country. This is a free service for EU traders.
- **Notary:** www.thenotariessociety.org.uk
- **OMIS:** UKTI's Overseas Market Introduction Service
- **Preferential trade agreements with the EU:** Countries currently granting preferential duty rates on many UK/EU goods include many of the EU's close neighbours plus Chile, Egypt, Iceland, Israel, Jordan, Lebanon, Morocco, South Africa, South Korea, Tunisia, Turkey, and the Territories of the West Bank and Gaza Strip. N.B. rules differ per country and may not be applicable for certain types of goods so always check.
  See www.hmrc.gov.uk Customs Notices 827 and 828. Or select "Applied Tariffs Database" on madb.europa.eu and view the standard and preferential duty rates.
- **SDR:** 'Special Drawing Rights' – an internationally understood value www.imf.org/external/np/exr/facts/sdr.htm
- **Small parcel operators:** For small consignments - e.g. DHL, FedEx, Ceva and UPS
- **UK Export Finance (ECGD):** UK Government Export Credit Agency, providing insurance for the risk of non-payment for exports and also export finance schemes including Bond Support www.ukexportfinance.gov.uk

- **UKTI:** UK Trade & Investment, the UK Government organisation for assistance for exporters www.ukti.gov.uk
- **UCP600:** Uniform Customs and Practice for Documentary Credits: Rules for Letters of Credit established by the International Chamber of Commerce. Essential reading.
- **Uncitral arbitration rules**: www.uncitral.org
- **US Export Controls:** US Export Administration Regulations (EAR) which govern non-military items www.access.gpo.gov/bis/index.html
- **UCC (US):** USA Uniform Commercial Code - US delivery definitions
- **VAT:** Value Added Tax – see HMRC www.hmrc.gov.uk/vat/index.htm
- **VAT zero-rating for exports:** See BExA's Guide to Export Compliance
  Exports to non-EU are zero-rated
  Despatches to another Member State between taxable persons (i.e. VAT registered traders) can be exempted because there is a right to deduct the input VAT (i.e. make the supply zero-rated) on despatch) by declaring the customer's VAT number. This is known as destination accounting on "intra-Community supply". Check the customer's VAT number using the VAT Information Exchange System (VIES)
- **VAT Notice 703:** See HMRC www.hmrc.gov.uk
- **VAT number validation (EU):** http://ec.europa.eu/taxation_customs/vies/vieshome.do?selectedLanguage=en
- **World Bank Ease of Doing Business:** http://doingbusiness.org/rankings

The British Exporters Association
Broadway House
Tothill Street
London SW1H 9NQ
Tel: 020 7222 5419
Fax: 020 7799 2468
Email: hughbailey@bexa.co.uk
www.bexa.co.uk

90284503 0513