

Exporting US Goods to a Russian Market

The cataclysmic changes in Russia have opened a relatively unexplored market of over 150 million consumers to Western businesses. Russia's large domestic market, and proximity to markets of the other former Soviet republics is attracting considerable trade activity. In past years, data has shown that U.S. exports coming into Russia range from \$40 Billion to \$68 Billion Dollars per year. Today, leading U.S. exports into Russia include machinery, equipment, vehicles and aircraft, which accounted for nearly 30% of goods shipped; meat and food products; food processing and packaging equipment; computers and computer components; medical instruments and pharmaceuticals; and cigarettes .

As entrepreneurial Russian and US businessmen begin establishing distribution channels, their efforts are hampered by lack of information. The purpose of this article is to help chart a course in the murky, unexplored waters of U.S. export controls relating to Russia and the relevant Russian import regulations.

A. US Export Controls.

First, you should be aware of United States Export Regulations, which you must abide by before you can even get your product out of the country. Export controls forced on exporters by the United States government agencies are imposed depending on the type of export controls, either product specific export controls or end use/ultimate destination controls.

(1) Product specific export controls are primarily in the control of the US Department of State and the US Department of Commerce.

(a) US Department of State: The US Department of State has exclusive control over the export of defense articles, defense services and related technical data. Basically, the test for whether your export of goods falls under the control of the US Department of State depends on whether the item that you are exporting has the possibility of being used for a military function. If the item does meet the military use test, the goods cannot be exported from the US without a State Department export license. If the item does not fall under the control of the US Department of State, because it does not have a military function, then the goods to be exported are under the control of the US Department of Commerce.

(b) US Department of Commerce: Items that are controlled by this agency, do not automatically require an export license. Indeed, only a very small percentage (5% or less of goods exported for non military use) are required to have a license before export from the US. You should be sure to consult with an experienced international business attorney, who will be able to inform you of whether your specific item to be exported out of the US requires a license.

(2) Export Controls based on End Use/Ultimate Destination: End use export controls are also controlled by the US Department of Commerce which restricts exports for certain end uses such as nuclear and missile end uses, chemical and biological weapon end uses and foreign aircraft and vessel uses. The second tier of this export control category is the ultimate destination export controls, which works to restrict export

of goods to certain geographic areas. As such, you as the exporter, must screen the ultimate destination of the exports against the list of restricted destinations kept by the US Department of State.

In the face of the knowledge that most of the goods that will be exported from the US will not be military in nature and most likely will not require a license, compliance with export regulations becomes centered around the right documents and properly written export contracts. Exporters are required to file an SED document and abide by proper record keeping. Also, the sales contract with the international buyer and letter of credit become very important for you because if they are not properly drafted, you risk legal liability and financial loss.

(1) SED Document: The Shippers Export Declaration (SED) is a document that must be filled out by any US exporter, on virtually all exports before he can ship the goods out of the country. The SED must list the contents of each shipment, cite the appropriate export license, if one is necessary, and identify the final destination and end use. It is important for you to remember that all exporters are responsible for providing an accurate SED form because misrepresentations on the form, expose you to both civil and criminal liability.

(2) Record Keeping: Under US export law, all exporters of goods are required to keep and maintain records of all exports of goods from the US for a period of 5 years. If you fail to keep proper records, you also expose yourself to both civil and criminal liability.

(3) Letter of Credit: A letter of credit deals only with payment and the documents required to be presented to obtain payment. However, it does not deal with what happens when the buyer does not want to accept your goods or how to resolve such disputes. Thus, you cannot rely solely on a letter of credit to protect yourself in an export transaction. You must also make sure that you have a well written export sales contract.

(4) Contract: In negotiating a contract with a foreign purchaser for your goods, it is important for you to draft your contract with terms that minimize risk and protect your interest. In such areas as exports of goods to a foreign country, insurance coverage, arbitration, title, risk of loss and payment method become very important provisions for all types of contracts, including distribution and supply agreements.

For example, it would be a good idea for you to consider purchasing adequate insurance for the goods shipped. Further, it would be prudent for you to include a risk of loss provision in the contract, stating that as soon as the goods leave the US, you are no longer responsible for the goods if something happens to them. Thus, if on the way over to Russia the goods get damaged, you protect yourself by stating in the contract that the risk of loss falls on the purchaser and not you as the seller.

In light of how important these contractual provisions can be in export situations, you should consider visiting an experienced business attorney to help you draft provisions in distribution, supply and other agreements that would be most favorable to you as the exporter of goods.

B. Russian Import Regulations.

Second, you should also be aware of Russian Import Regulations and procedures; procedures and regulations which must be followed, before your product can come onto

Russian soil. In addition to miscellaneous customs processing fees, goods going to Russia are potentially subject to 3 Russian levies: (i) an import duty, (ii) a value added tax and an excise tax. Further, you must abide by Russian import licensing regulations and various types of certification, labeling, documentation and customs requirements. Thus, U.S. companies and individuals thinking about shipping goods into Russia, are strongly encouraged to seek the assistance of legal counsel who can thoroughly research the legal requirements and procedures for shipping goods into Russia. However, let us now look at these requirements in more detail.

(1) Import Duty: Russian Custom Officials calculate levies on imports by adding together three different taxes or duties, an import duty, a value added tax and an excise tax. The import duty is calculated on the value of the good established for customs purposes. This customs value could include any applicable shipping and handling terms that may be included in the price of the shipment, as well as the stated price of the particular goods.

(2) Value Added Tax (VAT): In addition to the import duty, Russian Custom Officials will calculate the VAT which is applied to nearly all goods imported into Russia. As of April 1, 1996, the VAT has been applied at a standard rate of 20%. However, you should be aware that some food items in particular, are subject to only a 10% VAT charge, thus, you should inquire into what percentage you will be charged for the particular item you are thinking of exporting into Russia.

(3) Excise Tax: The Excise Tax is the final factor used to figure out the total amount of tax paid on a particular item to be imported into Russia. The excise tax is charged on most imported goods considered to be "luxury items" such as: cars, jewelry, alcohol and cigarettes. The current rate of excise taxes run between 10% and 250% percent.

(4) Import Licenses: An import license, as opposed to an export license that you would have to get from the US government, is required to import a number of goods into Russia, including electronics, tobacco products, alcohol and others. Thus, you are strongly advised to make sure that before you ship goods into Russia, you check that the Russian buyers of your products have all necessary licenses.

(5) Certification: Pursuant to a Russian Government Order, many goods exported to Russia are required to first meet safety, quality and/or sanitary or veterinary testing or certification requirements. In order to meet certain requirements, products must be tested and certified through the appropriate authorized organization.

For example, if you are thinking of shipping food, oil/gas, mining or health equipment, the product you are shipping needs to be certified by an authorized *Gosstandart* office. The *Gosstandart*, which is a Russian accreditation body, requires all imported products to carry the GOST-R mark in order to show conformance with national safety standards. Thus, it becomes very important for you to seek the assistance of an experienced legal counsel, who can research and advice you of all the certification requirements on particular goods that you are shipping before you enter into a contract with a Russian buyer.

(6) Labeling: Since late 1996, Russia has been establishing labeling requirements for imported products, particularly food products. A range of information is now required, to be printed in Russian, on the labels of imported food products, including such

information as: product name, country of origin, net weight, content, nutritional value, terms and conditions of storage, date of expiration and shelf life.

(7) Documentation: In March of 1999, Russia has implemented a new legislation requiring documentation that the goods that you are shipping into Russia have an equivalent foreign value compared to the price for which you are charging the Russian buyer. This legislation regulates the export and import of goods through a system of “passports for deals”. For each import contract, a passport account must be established by an importer of goods and then certified by a local Russian authorized bank, which handles payment under this contract. The passport of import transaction is one of the most important documents required for customs clearance of imported goods. Imported goods will not be released by customs officials until the importer, the Russian Buyer, has provided the “passport for the deal”. Because of this transaction, you can encounter a roadblock for the proper export of goods into Russia, and thus, you are encouraged to seek the advice of an international business lawyer in making sure that you obtain proper documentation for the goods you are exporting.

(8) Customs Requirements: Today, a large portion of customs requirements is the “passport system” which must be abided by before the goods can be imported into Russia. Further, if goods are subject to import duties and excise taxes, these fees must be paid at Russian customs entry points. Often Russian customs authorities require supplementary documentation, such as a copy of the sales contract between the exporter and the buyer before the goods can enter Russia.

Based on the high demand of the Russian market for US goods, you may be interested in exporting goods into Russia. However, both the laws of exporting goods from the US and importing goods into Russia are complex. In order for you to protect yourself against legal liabilities and financial losses you should consult with an experienced international business lawyer before you export goods from the US.

If you require assistance with international trade matters or preparing international distribution or supply agreements, please contact Serge Biberman at 312. 410. 7863.