

The Effects of U.S. (FOREIGN) Policy on Trade for U.S. Exporters

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Introduction

For instance, before a U.S. supplier can export to another country that wants to buy its product, it must comply with either the U.S. export regulations (EAR) or the U.S. International Trade in Arms Regulations (ITAR) for munitions items. If one doesn't know if their product is subject to commercial rules (dual use Department of commerce bureau of industry and security dual use items such as possible business or military applications) or considered a munitions items such as for satellites, missiles or defense technology, then one has to prepare a Commodity control jurisdiction form and submit it to U.S. Department of commerce B.I.S. for interpretation. Once you have a direction to go, then submitting the EAR or ITAR means that you have to know which country destination the product will be shipped to. The U.S. government has shifting policy regulations to the various "country blocs" depending on the current level of relations and evaluated behavior of the subject country. For instance, some countries change their level of relationship by becoming more democratic and open or more autocratic and aggressive. The various country blocs are identified by codes in the EAR and ITAR. Then the product itself must be categorized. The U.S. B.I.S. has various branches that review various proposed exports such as the capital goods branch (for biological exports, capital equipment, etc.), the microcomputer branch for micro computer parts, the computer branch, etc. Each branch has engineers that review the proposed export for its level of sophistication and where it fits in the U.S. export allowed technology export plans for that category of countries to allow them to have such level of sophistication. Don't forget that U.S. persons, computers desktops, laptops, etc. that have proprietary knowledge contained, even in their intellect must have export licenses to travel to sensitive deemed countries. And companies that deal with Defense items that negotiate with sensitive foreign countries such as China or Russia must have a U.S. government representative from D.I.S.A. government agency sitting in on negotiations with them.

Even countries on the policy list as unfavorable, such as Cuba used to be, Vietnam, etc. are allowed humanitarian exports such as clothes, bandages, etc. and they have categories for these items. Those are marked General Destination Items (GDEST) on the shipping declarations. Key words are consignor, consignee, shipping declaration, letter of credit, and bill of lading. If one has a question, they can always contact freight forwarders in the nearest airport environment. They often have people who have passed the strict customs tests required for freight forwarders categorizing items and all the requirements.

On the other hand, as a U.S. government buyer, one has to subject to the Buy American Act and more recently the Berry Amendment. The Buy American Act is referenced in FAR part 25. And the various treaties under it are also referenced. All government buyers must comply. More recently there is the Trade Agreements Act that U.S. Buyers must comply with (government buyers). And even more recently there is the Uruguay Round of the General Agreement of Trade and Tariffs (GATT) that further defines the trade, tariffs and export allowances.

Let's not forget the NAFTA Trade Agreement between our trading partners Canada and Mexico and the NAICS code that resulted from a conversion of our Standard Industrial Code classification of U.S. into a coordinated code of Canada, Mexico and U.S. to harmonize our trading,

Nor the role that the Troubled Asset Recovery Program (TARP) and its requirements for Buy American Act had on our reliance of Canada steel for construction businesses programs in U.S. The NAICS codes formerly SIC codes; categorize businesses based upon their industry specialization, category and business size. This is all done through computers now and "one size does not fit all". That is, there is not standardization for a certain revenue size or company employee size across all industries. Each category has unique codes, and size codes for their specialization and the important thing is that they are not dominant in their industry.

Buy American Act (BAA)

The Buy American Act is also subject to rules enacted by Congress and also the executive branches in making trade deals. Typically, the trade agreement between various countries and trading partner groups gives them the same status as buying from domestic suppliers. This typically applies to our free world friendly countries such as western Europe, Britain, Australia, etc. For other countries, there are other agreements, and the rules change periodically.

Most recently, the "American made" type category had to be "50 percent of component sourced in America". Mind you, these products can be made in the friendly country categories of Western Europe too and that is still considered as equal to and just as good. Then more recently the "50 percent component rule" was changed to "50 percent substantially transformed in U.S.". the reason for that is because America sources a lot of microchips from Asian country suppliers, and these parts are reliable and reasonably priced, so to accommodate companies with the convenience of these suppliers, they changed to requirement to "50 percent substantially transformed in U.S." so that the products could still be sourced in Asia or elsewhere but assembled in U.S. Product "transformation" and manufacturing percentages most likely be calculated and submitted to a government authority for review and verification. This most likely complies with the Trade Agreements Act correlation to the Buy American Act.

That's not to mention the Berry Amendment, an Act of Congress within the last twenty years. This Act resulted from objection of American citizens to U.S. army berets being sourced and manufactured in Korea from Korean materials for use by U.S. soldiers. This was deemed to be disloyal to American soldiers in their line of work representing U.S. country and citizens. So Congress enacted the Berry Amendment to require all things, clothing etc. that U.S. soldiers wear on their body to be sourced and manufactured on U.S. soil. That includes gloves, berets, boots, etc.

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As a side note, sort of peripherally related, the U.S. Defense Logistics Agency had to purge many of its supply items that it had purchased at competitive prices from foreign suppliers because they had been found to be in violation of the Buy American Act and also violation of patent and copyright laws. There seems to be a tightening of these rules.

But the Buy American Act has historically been subject to political influence. Such as one of the provisions of the BAA is that U.S. coal should not be exported to U.S. bases in other countries, but when protectionist tendencies rose in Congress in the mid-1980s, Congress acted to allow a series of shipments of U.S. coal to Europe to supply bases over there at considerable more cost to U.S. taxpayers.

Let's not forget that Congress acted to prevent U.S. companies from engaging in bribes to foreign governments, countries to buy U.S. made products. This was in the form of the Foreign Corrupt Practices Act (FCPA), enacted in the 70's in Congress mainly because of the huge bribes Lockheed Martin was making to secure contracts in Asia for their products. Other companies had engaged in similar practices, and maybe they were just the ones caught red handed. In any case, this is considered common business practice in most parts of the world for international trading. It should be noted that foreign owned companies that also register on U.S. stock exchange are subject to FCPA. Witness

the huge penalty fine that Siemens was assessed for engaging in a bribe in a foreign transaction. Headlines said that bribes were "just a line item" for their company in its business transactions in the international setting. This law was passed apparently to assuage American citizen's beliefs that they are an honest people who win contracts in the international arena and at home based upon a superior product and competitive pricing rather than unscrupulous business practices and trickery and deceit. For whatever motivation, it is a standing law and must be complied with by American businesses or companies registered on U.S. Stock Exchange. It should be noted that a second part of the law of FCPA corresponds to the accounting side of international businesses and requirements by the U.S. Securities and Exchange Commission (US SEC) there are special classes and training in that regard offered by companies specializing in that area of accounting.

Summary and Conclusion

In Summary, U.S. congress and national sentiment over international affairs in the public realm do influence business trade and policies. For instance the export regulations side of things sort of sprung up after the Cold war, and is now experience renewed vigilance and attention after the terrorist fears have sprung up since 9/11 and U.S. concerns about keeping sensitive technology out of the hands of enemies.

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