

Customs Alert: Duty rates change this year

Miller Canfield: The law firm for international business.

Miller, Canfield, Paddock and Stone, P.L.C., headquartered in Detroit and with offices in Canada and Europe, has been active in international business and trade law for many years. The firm's International Business and Trade Law Group and Business and Finance Group provide legal services to U.S. and foreign multinational companies, banks, and other firm clients whose business affairs are tied to the increasingly interdependent world economy.

For more information contact:
Richard A. Walawender
Director, International Business
and Finance Group
walawender@millercanfield.com
(313) 496-7628

January: Singapore and Chile

In January 2004, the United States ratified free trade agreements with Singapore and Chile—the first such agreements passed since NAFTA. Before taking advantage of the lower duty rates, companies should consider the new country-of-origin rules to ensure products are eligible.

March: European Community

In March 2004, the European Community began enforcing an additional customs duty of 5% on a select list of U.S. products destined for the European Union. That initial 5% hike will be followed by automatic monthly increases of 1%, up to a ceiling of 17%. This is the EU's countermeasure to an ongoing Foreign Sales Corporation/ Extraterritorial Income dispute with the United States.

May: Eastern Europe

Ten new countries joined the EU in May, including Poland, the Czech Republic, the Slovak Republic, and Hungary. As a result, those countries are no longer eligible for Generalized System of Preferences (GSP), which allows imports to be received here in the U.S. duty free. Instead, goods will be imported at the same duty rate as other goods that originate in the EU—anywhere



from 1% to 20%. Some companies in Eastern Europe are only now learning that their margin of profit may be significantly impacted once U.S. customers are required to pay customs duty.

Our International Trade and Customs Practice can offer strategies to reduce customs duty and liability. If you'd like to know how your imports or exports will be affected, please contact the author.

Andrew P. Doornaert
doornaert@millercanfield.com
(313) 496-8431

In this Issue

The ins and outs of ITAR 2

Considering a move
to China 3

Reducing risks and costs 4

International Trade and Customs

Successful international trade and customs planning enables a company to become more competitive, create new growth opportunities and reduce the risk of civil and criminal liability related to importing and exporting. Miller Canfield offers comprehensive international trade and customs services to assist companies to reach their business objectives. The fundamental goal underlying our approach is to reduce cost and minimize the risk associated with international trade and customs duties and liability. See page 4 for additional details.

Defense Contracting: The ins & outs of ITAR

Careful compliance called for when doing business with the defense industry.

Does your company provide goods or services to the defense industry? Or would you like to get more active in the defense industry? If so, you should be aware of your obligations under the Department of State to comply with International Trade in Arms Regulations (ITAR)—even if you're not transporting defense articles outside the U.S.

ITAR governs the import and export of defense-related **articles** and **technology** transfers on the United States Munitions List (including, for example, parts for military vehicles, some chemical and biological agents, and satellite communication technology). All exports on that list must be licensed by the Office of Defense Trade Controls unless an exemption applies.

As defined by ITAR, export involves sending or taking a defense article out of the U.S. in any manner, or disclosing or transferring data to a foreign person (that is, someone who's not a lawful, permanent resident under U.S. immigration laws)—whether in the United States or abroad. A foreign entity can also mean any foreign corporation, business association, or partnership not incorporated to do business in the States.

The Canadian Exemption

U.S. companies that employ Canadian nationals or work closely with Canadian corporations as part of their normal supply chain are exempted from the requirement to file for an export license. Each exemption has its own criteria for eligibility, which may include a requirement to be registered in Canada in accordance with the Canadian Production Act. License-free exports fall into four basic categories:

1. Temporary import of articles from Canada
2. Permanent or temporary export of articles and technical data
3. Defense service including furnishing assistance to foreign persons—here or abroad—about the design, development, engineering, manufacture, production, or testing of defense articles
4. Re-export or re-transfer in Canada to another end user for end use in Canada

To take advantage of the Canadian Exemption, U.S. exporters must make certain that access to technical data is limited to eligible employees of the Canadian company. Dual nationals, or permanent residents of Canada that hold citizenship in a country whose government has been designated by the U.S. Secretary of State as a sponsor of terrorism, will not qualify for an exemption.

Violations of ITAR regulations can result in severe consequences—including losing the right to perform a federal contract. To avoid civil or criminal penalties, make sure you work with a law firm that's knowledgeable and experienced in export controls.

Compliance Considerations

- Determine if there are any non-permanent residents working in U.S. facilities where technical data for military contacts is accessible
- Find out if employees of affiliates outside the country have access to technical data
- Know whether any suppliers or prospective suppliers are foreign nationals, employ foreign nationals, or share technical data with foreign nationals
- Require your suppliers and service providers to sign an ITAR compliance agreement
- Create a technology-transfer control plan to comply with ITAR
- Learn whether a voluntary disclosure should be filed because of a violation of the Arms Export Control Act
- Make sure you create a manual spelling out the details and implementation of your compliance program

Andrew P. Doornaert
doornaert@millercanfield.com
(313) 496-8431

Considering a move to China? Consider a Representative Office.

Need Some Help?

Our firm works closely with counsel in China to fashion the best solutions for clients. Whether establishing manufacturing facilities, setting up joint ventures, or paving the way for American companies to begin selling services or products in China, we have the experience it takes to get you moving. Call if you would like some assistance.



Business opportunities in China continue to grow, and many U.S. companies are feeling pressure to establish operations in that country. Yet, establishing a presence in China can be a daunting process. Here's a way to get started.

Establishing a Representative Office

Although several forms of legal entities can serve as a vehicle for entry into China, many companies set up a Representative Office as their first step. Capitalization is the primary reason. Since a Representative Office requires no registered capitalization, it can be an inexpensive way to begin.

Because a company is liable and subject to having judgments levied against it for a Representative Office's activities in China, businesses often set up as a subsidiary, or subsidiary of an offshore entity. China's regulators require that such an entity be in existence for at least one year before it can establish a Representative Office. Thus, if your company is considering entering the Chinese market in this manner in the next year, it may be beneficial to create a corporate entity now for use at a later time.

Representative Offices are not allowed to engage in profit-making or income-generating activities, and for that reason U.S. companies often choose to use a Representative Office as a liaison rather than an entity through which to conduct actual business. In such an arrangement, the home entity conducts all business with outside companies, invoices, and executes all contracts.

Hiring Local Employees

Officially, a Representative Office may employ Chinese nationals only through State-owned firms such as the Foreign Enterprise Service Corporation, or FESCO. In the past, this has meant that American firms had no autonomy in hiring. Now, however, many companies interview and identify the right job candidate, then have the local FESCO hire the employee. The FESCO office remains the technical employer, and the Representative Office is charged a service fee.

Relocating Your Home Employees

Establishing a Representative Office makes the process of transferring employees to China much easier. Once registered, employees may import one shipment of personal belongings duty free and obtain long-term residence certificates, thus eliminating the need to obtain visas or visa extensions while in China. Multiple exit and re-entry permits are also granted to such foreign representatives, and obtaining internal visa permits is made easier as well.

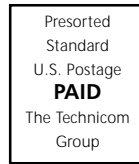


Finding the Right Negotiation Partners

Business negotiations in China take a vastly different tack than do talks in the United States. This is why winning a significant contract in China generally requires a great deal more patience than in North America or Europe. Westerners tend to think in a linear fashion, addressing issue by issue until an agreement is reached. The Chinese, by way of contrast, negotiate from a holistic perspective, bouncing from topic to topic. Even when it seems agreement has been reached on a key point, the Chinese may revisit an issue and reopen discussion days or even weeks later.

While major players meet and negotiate face to face in the West, the approach often leads to failure in China. Instead, an intermediary known to both parties usually handles negotiations. A successful strategy may involve establishing a relationship with a secondary party who will eventually act as an intermediary with your target company. A good intermediary will continue to be intimately involved with the process and step in when needed.

Paul A. Saydak
saydak@millercanfield.com
(313) 496-7619



150 West Jefferson Avenue
Suite 2500
Detroit, Michigan 48226-4415

www.millercanfield.com

This newsletter is for general information only and should not be used as a basis for specific action without obtaining further legal advice.

RETURN SERVICE REQUESTED

International Law Notes **Summer 2004** **Page 4**

Miller Canfield can assist your company in obtaining cost saving opportunities such as setting up a Foreign Trade Zone. We can also advise your company on how to reduce risks and costs and develop a compliance improvement plan.

Cost Savings Opportunities for Consideration:

- Proper HTS Classification to minimize duty
- Method of Valuation to account for all possible deductions to reduce the dutiable value of merchandise (e.g. international freight and insurance, software)
- Free Trade Agreements and US Trade Programs: NAFTA, EU-Mexico, GSP, AGOA, US goods returned; provide advice on eligibility, file refunds and protests, compliance programs

- Operational Savings: Best Practice recommendations for Customs Function (e.g. ensure smart and efficient use of Customs data within a company)
- Foreign Trade Zone Programs to reduce the cost of duty; application and activation
- Trade Programs in Foreign Countries to reduce the cost of global transactions (e.g. Maquiladoras, Inward Processing Regime to reduce duty and VAT costs, tax credits)

Miller Canfield Can Advise How to Reduce Risks and Costs:

- CBP Focus Assessments and NAFTA Verifications: Prepare companies to minimize exposure
- C-TPAT: Best Practice security procedures; Advice about application process

- Identify Risk: Meet with company personnel and review financial and entry documentation
- Quantify Risk: Determine duty underpaid or value underdeclared and possible penalties
- Reduce Risk: Assess whether to file prior disclosure with U.S. Customs, supplemental information letters, protests, and/or requests for binding rulings
- Develop Compliance Improvement Plan: To include internal controls, "best practices," written instructions for customs broker, policy and procedure manual

For more information, contact Andrew P. Doornaert at doornaert@millercanfield.com or (313) 496-8431.