

Impact of US Export Controls on the Sale of a Manufacturing Business

An owner of a US business that manufactures export-controlled items (“Export Business”) nears retirement. The owner decides to sell the Export Business. In a win for the owner, the sale of the Export Business interests both US and foreign purchasers. However, selling a Export Business to a foreign purchaser immediately subjects the Export Business to US law affecting the transfer of export controlled items, including software and technology, to foreign nationals. Is the Export Business prepared for a sale to a foreign purchaser?

Export Businesses will have differing levels of export control preparedness determining how quickly the Export Business can enter productive pre-sale discussions with a foreign purchaser:

- A “Probably Prepared” Export Business can likely engage in productive pre-sale discussions with a foreign purchaser. The Probably Prepared Export Business usually has both US citizen employees and foreign national employees, and exports controlled items from the US to a multitude of foreign destinations in full compliance with export control laws. Additionally, a Probably Prepared Export Business may have a foreign affiliate company, or operate as part of a multi-national business structure dealing with export controlled items. This business has an actively practiced export control compliance program involving stakeholders throughout the company. Often, these attributes indicate a level of experience with export controlled items making the Export Business Probably Prepared.
- A “Possibly Prepared” Export Business may or may not be able to engage in productive pre-sale discussions with a foreign purchaser. The Possibly Prepared Export Business normally possesses sufficient institutional knowledge to lawfully export controlled items from the US to longtime customers in well-known foreign destinations. But a Possibly Prepared Export Business often lacks prior experience in granting facility access to foreign nationals, such as foreign employees, contract personnel or customers. So this business may lack the necessary infrastructure to secure export controlled items from a visiting foreign purchaser. These attributes normally indicate a level of experience with export controlled items making the Export Business Possibly Prepared.
- A “Probably Unprepared” Export Business usually cannot engage in productive pre-sale discussions with a foreign purchaser. The Probably Unprepared Export Business generally delivers export controlled items to customers within the US, and predominantly employs US citizen employees. A Probably Unprepared Export Business lacks the necessary institutional knowledge to effectively classify export controlled items, and therefore, a Probably Unprepared Export Business cannot quickly identify export controlled items as necessary to properly secure a US facility for a visiting foreign purchaser. These attributes indicate an experience level that the Export Business is Probably Unprepared.

To acquire a Export Business, a purchaser should perform export transaction verification due diligence, a classification of export controlled items, including software and technology, as well as an investigation of any additional export controls compliance infrastructure that may be required by the purchaser. If the Export Business is unprepared, these steps take time, slow down the purchase, and ultimately increase costs to the US business owner. To maximize the sale price of your Export Business to both US and foreign purchasers assess your export controls preparedness now.

Jeffrey Richardson is a senior attorney in Miller Canfield’s export controls group, based in Troy, Michigan. He can be reached at richardson@millercanfield.com.