

Utah U.S. Export Assistance Center

# International Representatives & Distributors

**Find Them, Sign Them  
& Enhance Their Performance**





## TABLE OF CONTENTS

<b>FIND THEM</b> .....	<b>3</b>
U.S. Commercial Service - Services for Finding International Partners	
Gold Key Matchmaking Service	
Recruiting Representatives - Tips	
<i>17 Lead Sources for Overseas Distributors</i>	
U.S. Commercial Service - International Buyers Program 2009-2010	
International Partner Search (IPS) Sample Introductory Letter	
<i>Choosing a Foreign Representative or Distributor</i> excerpted from "The Basic Guide to Exporting", 2009 ed.	
What a Representative Prospect Wants from You	
What You Want from a Representative	
<b>SIGN THEM</b> .....	<b>17</b>
<i>Response Package</i> - Sample Prospectus/Fact Sheet & Questionnaire	
International Company Profile	
How Americans Negotiate & Why	
The Best Negotiation Strategy Overseas	
Checklist for Agent/Distributor Agreements	
A Good Commission Plan Includes These 4 Elements	
Foreign Corrupt Practices Act	
U.S. Dept. of Commerce Bureau of Industry & Security (BIS) - <i>Know Your Customer Guidance</i>	
BIS - <i>Red Flag Indicators</i> - Things to Look for in Export Transactions	
U.S. Government - <i>Lists to Check</i>	
<b>ENHANCE THEIR PERFORMANCE</b> .....	<b>39</b>
Improving Foreign Distributor Performance	
Why Don't Resellers Sell - Managing Your Distribution Channels	
Common Complaints About U.S. Exporters	
Firing Distributors	

Utah U.S. Export Assistance Center  
U.S. & Foreign Commercial Service, U.S. Department of Commerce  
9690 S. 300 W., Suite 201 Sandy, Utah, USA  
Ph: 801-255-1871, [www.buyusa.gov/utah](http://www.buyusa.gov/utah)  
October 2009

**FIND THEM**

# U.S. Commercial Service

## Services for Finding International Partners



### **International Partner Search**

Find qualified buyers, partners, or agents without traveling overseas with the International Partner Search. U.S. Commercial Service specialists will deliver detailed company information about up to five international companies that have expressed an interest in your company's products and services.

Fee: SME \$550; Large Business \$1400

### **Gold Key Matching Service**

Save time and money by letting the U.S. Commercial Service help you find a buyer, partner, agent or distributor. The Gold Key Service provides you with one-on-one appointments with pre-screened potential agents, distributors, sales representatives, association and government contacts, licensing or joint venture partners, and other strategic business partners in your targeted export market.

Fee: SME \$700 day 1/\$350 subsequent days; Large Business \$2300 day one

Lead time: 4-6 weeks

### **Commercial News USA**

Promote your products and services to more than 400,000 international buyers in 145 countries. Commercial News USA is a product catalog distributed by U.S. embassies and consulates worldwide, and has a proven track record of high response rates and solid sales results. See <http://www.thinkglobal.us/>

### **Trade Leads**

View announcements from qualified international companies looking to source U.S. products and services and advertise government tender projects through our trade leads database. All of our trade leads are pre-screened by our U.S. embassy or consulate staff overseas and are provided as a free service for U.S. exporters. Search the Trade Leads List. See: [http://www.export.gov/eac/trade\\_leads.asp](http://www.export.gov/eac/trade_leads.asp)

### **International Company Profile**

Prevent costly mistakes with quick, low-cost credit checks or due-diligence reports on international companies. Before you do business with a prospective agent, distributor, or partner, the International Company Profile will give you the background information you need to evaluate the company.

Fee: SME \$600 / Large Company \$900.

### **Featured U.S. Exporters (FUSE)**

FUSE is a directory of U.S. products featured on U.S. Commercial Services websites around the world. It gives your company an opportunity to target specific markets in the local language of business. Listings are offered to qualified U.S. exporters seeking trade leads or representation in over 50 markets worldwide. See:

<http://www.buyusa.gov/home/fuse.html>.

### **Trade Events**

These include Single Company Promotions, seminars, webinars, trade shows, missions, etc. For a searchable list of both local and international events, see [http://www.export.gov/eac/trade\\_events.asp](http://www.export.gov/eac/trade_events.asp)

\*SME - Small or Medium-sized Enterprise with fewer than 500 employees.

# Gold Key Matchmaking Service

## Available from the U.S. Commercial Service



The Gold Key Matchmaking Service (GKMS) provides U.S. firms with pre-screened appointments to explore the market and establish relationships with potential overseas agents, distributors, sales representatives and strategic business partners.

### We will:

- Provide you with a primary contact person
- Counsel you on the appropriateness of conducting a Gold Key
- Schedule a conference call with the appropriate staff to understand your objectives and requirements
- Provide a progress report half-way through the project
- Provide a tentative meeting schedule with company profiles one week in advance, and a final schedule upon your arrival
- Arrange up to six pre-screened appointments
- Complete the meeting arrangements within six weeks of payment and receipt of product brochures, or as negotiated
- Provide information regarding in-country travel logistics
- Provide pre-and-post program briefings either in-person or via teleconference
- Provide follow-up assistance
- Provide logistical and administrative support as agreed upon

### You agree to:

- Pay for the service when you place the order
- Complete the GKS client questionnaire promptly
- Mail product literature via a service with package tracking capabilities
- Clearly communicate product / service intricacies
- Attend all preparatory meetings and participate in conference calls
- Respond to e-mail and other inquiries
- Review progress report, meeting itinerary and company profiles as soon as you receive them, and provide us with timely feedback
- Ask questions and express concerns at any point
- Complete a Comment Card when you receive it via e-mail

### Cost:

Small Business (fewer than 500 employees) \$700\* day one and \$350 for subsequent days

Large Business (over 500 employees / includes parent company or other divisions) \$2300 day one.

### Time frame:

Usually 4-6 weeks prior to travel and after payment is received.

\*Additional fees for transportation, translation or escort - will be advised upfront, prior to payment.

## **RECRUITING REPRESENTATIVES - Tips**

*When you are recruiting a sales representative, treat it as though you were recruiting your own number two person.*

### **CLEARLY DEFINE YOUR OWN NEEDS:**

- Each territory is different from another.
- What impression did the former representative have on customers?
- Get a good profile of customers, their needs, and the way they do business.

### **CREATE A PROFILE THAT WILL MAKE IT EASIER FOR YOU TO SELECT THE BEST REPRESENTATIVE**

- With your product, what is the average call cycle needed to make a sale?
- Are there any unusual conditions in this territory in terms of quotes, specs, and delivery?
- Do you have any slow payers?
- How well are you acquainted with the prospects in this territory?
- How competitive is the business in the territory?
- How aggressive are your competitors?

### **CREATE A PROFILE OF THE REPRESENTATIVE THAT WILL BEST SERVE YOUR NEEDS**

- Is it important to have a well-established representative or will a new one do?
- Does the representative understand and sell without a lot of factory support?
- Are the representative's people compatible with your people?
- Are the representative's growth plans compatible with yours?

**RECRUITING REPRESENTATIVES IS AS IMPORTANT AS TAKING ON A PARTNER. RECRUIT THEM CAREFULLY**

## “17 LEAD SOURCES FOR OVERSEAS DISTRIBUTORS”

Use them in advance of a personal visit

by John Norton

Here are seventeen sources of distributor leads. They should be used selectively and in combination with one another. In key markets you should use them well in advance of the personal visit.

1. **Check with others in your industry**, particularly with any companies whose sales would be helped by your success overseas. This could include your suppliers or manufacturers of complimentary equipment. Don't be shy about telephoning overseas.
2. **Contact customers of potential distributors**. They know the strengths and weaknesses of their suppliers. Use the telephone. Hire an interpreter if necessary. If you find these companies difficult to contact from long distance, call on them when you visit.
3. **Use the overseas expatriate business community**. For American companies this often means the American Chambers of Commerce abroad. They speak your language. They can easily be identified and reached by phone. Some of them are especially helpful in referring you to local business contacts. The American Chambers in Japan, Costa Rica, and Switzerland are examples.
4. **Learn how to get the best out your own government trade promotion services**. The U.S. Department of Commerce offers an International Partner Search for \$550 SME/\$1400 large co. per country--a bargain if the search is done well. You can affect how well it is done by providing a clear presentation of your product and an exact description of the kind of representative you are seeking. Allow [15-30 working days] for completion.
5. **Your foreign commercial officers in your government embassies and consulates abroad are as close as your telephone [or computer]**.
6. **Most publicly disseminated trade leads are out-of-date before you get them...but not always**. It pays to review such leads to see who is in the business. Once in a while these leads pay off handsomely.
7. **Professional or trade periodicals sometimes mention companies active in your field overseas**. Some editorial staffs know what is happening abroad and can suggest contacts.
8. **Work through your industry or trade association**. Some association managers have personal contacts abroad in your industry. Some organizations publish newsletters, which are read by potential distributors.
9. **Trade lists of foreign companies are available from government and private sources**. They are often out-of-date. It is difficult to select the proper classification or product code. Potential importers are often lumped together with competitors. Occasionally, however, a careful mass mailing will turn up in an interesting company or two.
10. **Trade directories are available for many countries**. Do not overlook directories just because the work of consulting them seems routine.

11. **Foreign telephone directories and yellows pages.** Use internet search engines to find many of these resources.
12. **Computer database providers.** If you do not yet have a skilled database searcher in your organization I recommend that you hire or train one. The benefits go far beyond distributor searchers.
13. **Foreign government trade offices and consulates** are in the business of pushing their own exports, but they can provide useful lists of companies if you frame your questions carefully.
14. **Advertise in major foreign business newspapers or specialized trade periodicals.**
15. If you already have a strong relationship with a **bank, international freight forwarder or international airline**, you may be able to impose on them for distributor's contacts.
16. **Trade fairs**, in your own country and abroad are an efficient way of meeting foreign companies first-hand.
17. **Trade missions** to larger markets must be industry specific to be of much use. Otherwise they are junkets. In smaller countries where everyone knows everyone, trade missions can lead to valuable distributor contacts.

*John Norton is an international consultant and representative for Business International Corp. in San Diego, California. This material was taken from an article published in NUTS AND BOLTS.*

Revised, July 2009.

# International Buyers Program 2011-2012



2011 International Buyer Program	Industry	Show Venue	Start Date	End Date
Graph Expo 2011	Computers/Peripherals	Chicago, IL	11-Sep-11	14-Sep-11
RETECH (Renewable Energy Technology Conference & Exhibition) 2011	Renewable Energy Eq.	Washington, DC	21-Sep-11	22-Sep-11
Natural Products Expo East 2011	Foods – Processed	Baltimore, MD	21-Sep-11	24-Sep-11
PACK EXPO Las Vegas 2011	Packaging Eq.	Las Vegas, NV	26-Sep-11	28-Sep-11
High Point Market – Fall 2011	Furniture	High Point, NC	22-Oct-11	27-Oct-11
National Funeral Directors Association International Convention and Expo	General Services	Chicago, IL	23-Oct-11	26-Oct-11
IFAI-Industrial Fabrics Association International (IFAI Expo Americas 2011)	Textile Fabrics	Baltimore, MD	25-Oct-11	27-Oct-11
Louisiana Gulf Coast Oil Exposition (LAGCOE) 2011	Oil/Gas Field Machinery	Lafayette, LA	25-Oct-11	27-Oct-11
American Film Market 2011	Film/Video	Santa Monica, CA	2-Nov-11	9-Nov-11
Greater New York Dental Meeting (GNYDM) 2011	Dental Eq.	New York, NY	25-Nov-11	30-Nov-11
POWER-GEN International 2011	Architectural/Constr./Engineering SVC	Las Vegas, NV	13-Dec-11	15-Dec-11
<b>2012 International Buyers Program</b>				
2012 International CES	Audio/Visual Eq.	Las Vegas, NV	10-Jan-12	13-Jan-12
World of Concrete 2012	Architectural/Constr./Engineering SVC	Las Vegas, NV	24-Jan-12	27-Jan-12
International Builder's Show 2012	Architectural/Constr./Engineering SVC	Orlando, FL	8-Feb-12	11-Feb-12
Graphics of the Americas (GOA)2012	Printing/Graphic Arts Eq.	Miami, FL	1-Mar-12	3-Mar-12
Natural Products Expo West/Supply Expo	Agricultural Products	Anaheim, CA	8-Mar-12	11-Mar-12
International Home and Housewares Show	Consumer Electronics	Chicago, IL	10-Mar-12	13-Mar-12
Nightclub & Bar Convention and Trade Show 2012	Apparel	Las Vegas, NV	12-Mar-12	14-Mar-12
NPE 2012 International Plastics Showcase	Plastics Production Machinery	Orlando, FL	1-Apr-12	5-Apr-12
The 2012 National Association of Broadcasters (NAB) Show	Audio/Visual Eq.	Las Vegas, NV	16-Apr-12	19-Apr-12
Offshore Technology Conference 2012	Oil/Gas Field Machinery	Houston, TX	30-Apr-12	3-May-12
2012 AMI Int'l Meat, Poultry & Seafood Industry Convention and Expo, FMI 2012, NASDA, United Fresh	Agricultural Machinery & Eq.	Dallas, TX	1-May-12	3-May-12
Waste Expo 2012	Environmental Technologies	Las Vegas, NV	1-May-12	3-May-12
The National Restaurant Association Restaurant, Hotel-Motel Show (NRA Show) 2012	Air Conditioning/Refrigeration Eq.	Chicago, IL	5-May-12	8-May-12
International CTIA WIRELESS 2012 Convention	Information Services	New Orleans, LA	8-May-12	10-May-12

ELECTRIC POWER 2012	Coal	Baltimore, MD	15-May-12	17-May-12
WINDPOWER 2012	Renewable Energy Eq.	Atlanta, GA	3-Jun-12	6-Jun-12
InfoComm International 2012	Computer Software	Las Vegas, NV	9-Jun-12	15-Jun-12
HBA Global Expo	Cosmetics/Toiletries	New York City, NY	19-Jun-12	21-Jun-12
Annual Meeting and Clinical Laboratory Exposition of the AACC 2012	Biotechnology	Los Angeles, CA	15-Jul-12	19-Jul-12
International Woodworking Machinery & Furniture Supply Fair-USA 2012	Computer Software	Atlanta, GA	22-Aug-12	25-Aug-12
MAGIC Marketplace	Apparel	Las Vegas, NV	27-Aug-12	29-Aug-12
MINExpo International 2012	Laboratory Scientific Instruments	Las Vegas, NV	24-Sep-12	26-Sep-12
GridWeek 2012	Electrical Power Systems	Washington, DC	1-Oct-12	4-Oct-12
2012 Graph Expo	Printing/Graphic Arts Eq.	Chicago, IL	7-Oct-12	10-Oct-12
Automotive Service & Repair Week (ASRW) 2012	Automotive Parts/Services Eq.	Las Vegas, NV	15-Oct-12	17-Oct-12
PACK EXPO International 2012	Food Processing/Packaging Eq.	Chicago, IL	28-Oct-12	31-Oct-12
2012 American Film Market	Films/Videos	Santa Monica, CA	31-Oct-12	7-Nov-12
Industrial Fabrics Association International, IFAI, 2012	Textile Fabrics	Boston, MA	7-Nov-12	9-Nov-12
Greater New York Dental Meeting 2012	Dental Eq.	New York, NY	23-Nov-12	28-Nov-12
POWER-GEN International 2012	Architectural/Constr./Engineering SVC	Orlando, FL	11-Dec-12	13-Dec-12

## *IPS SAMPLE INTRODUCTORY LETTER*

Coast Communications, Inc  
1 Main Street  
Any Street, USA  
TEL : 401 123 4566; FAX: 401 123 4567  
Yourname@yourwebsite.com  
www.yourwebsite.com

Dear Distributor:

We welcome your interest in representing our products in Thailand. This letter briefly describes who we are, what we do, what we are looking for, and how we prefer to operate.

Coast Communications, Inc. is a leading U.S. manufacturer of two way radio equipment for professional use. Coast offers vehicular mounted radios and base station radios. They are used by police, taxis delivery services, etc., in the U.S. and three other countries. The firm was founded in 1942 with 3 employees. We now have 132 employees, and our annual sales this past year totaled over \$10 million. Coast Communications, Inc. is capitalized at over \$5 million, has modern plant facilities, and excellent profitability. Our financial operations can be confirmed by national credit agencies. We are also a member of the U.S. Chamber of Commerce.

Coast products are sold in the U.S. through a nationwide network of stocking distributors who purchase direct from our factory. A distributor must have adequate test equipment, stock our radios and have the capability to install the equipment and provide local service (warranty and non warranty).

We prefer to deal with mutually exclusive distributors in each defined territory. We grant a one time, first order 10% overseas discount and also offer bulk discounting from the factory prices shown in the enclosed price list. We will provide one sample model of each item you buy for stock. We fully support our distributors with technical advice, express shipments and other services. Distributors may set their own prices in line with their markets.

It is our policy to select and work with a dealer on a trial basis using either pre payment or payment by an irrevocable letter of credit confirmed by a U.S. bank. After a relationship has been established, and a distributor has demonstrated they can sell and service our products profitably, we are open to other credit and payment terms.

With kind regards,

I.J. Kreamer  
President

**BOX 5.2 CHOOSING A FOREIGN REPRESENTATIVE OR DISTRIBUTOR**

Each company should tailor the following checklist to its own needs. Key factors vary significantly according to the products and countries involved.

**SIZE OF SALES FORCE**

- How many field salespeople does the representative or distributor have?
- What are the short- and long-range expansion plans, if any?
- Would the representative company need to expand to accommodate your account properly? Would it be willing to do so?

**SALES RECORD**

- Has the sales growth of the representative company been consistent? If not, why not? Try to determine its sales volume for the past five years.
- What is the average sales volume per outside salesperson?
- What are the sales objectives of the representative or the distributor for next year? How were they determined?

**TERRITORIAL ANALYSIS**

- What sales territory does the representative company now cover?
- Is the sales territory consistent with the coverage you desire? If not, is the representative or distributor able and willing to expand the territory?
- Does the representative company have any branch offices in the territory to be covered? If so, are they located where your sales prospects are greatest?
- Does it have any plans to open additional offices?

**PRODUCT MIX**

- How many product lines does the representative company handle?
- Are these product lines compatible with yours?
- Is there any conflict of interest?
- Does it represent any other U.S. firms? If so, which ones? (names and addresses)
- Would the representative company be willing to alter its present product mix to accommodate yours?
- What is the minimum sales volume that the representative or distributor needs to justify handling your lines? Do its sales projections reflect that minimum figure? From what you know of the territory and the prospective representative or distributor, is the projection realistic?

### **FACILITIES AND EQUIPMENT**

- Does the representative company have adequate warehouse facilities?
- What is the method of stock control?
- Does it use computers? Are they compatible with yours?
- What communications facilities does it have (fax, modem, e-mail)?
- If your product requires servicing, is the representative company equipped and qualified to perform that service? If not, is it willing to acquire the needed equipment and arrange for training? To what extent will you have to share the training cost? Are there alternative ways in the market to service the product?
- If necessary and customary, is the representative or distributor willing to inventory repair parts and replacement items?

### **MARKETING POLICIES**

- How is the sales staff compensated?
- Does the representative company have special incentive or motivation programs?
- Does it use product managers to coordinate sales efforts for specific product lines?
- How does it monitor sales performance?
- How does the representative or distributor train its sales staff?
- Would it pay or share expenses for its sales personnel to attend factory-sponsored seminars?

### **CUSTOMER PROFILE**

- What kinds of customers is the representative company currently contacting?
- Are its interests compatible with your product line?
- What are the key accounts?
- What percentage of the total gross receipts do those key accounts represent?

### **PRINCIPALS REPRESENTED**

- How many principals is the representative or distributor currently representing?
- Would you be its primary supplier?

*continued on next page*

**BOX 5.2 (CONTINUED)**

- If not, what percentage of the total business would you represent? How does this percentage compare with other suppliers?

**PROMOTIONAL THRUST**

- Can the representative company help you compile market research information to be used in making forecasts?
- What media does it use, if any, to promote sales?
- How much of the budget is allocated to advertising? How are those funds distributed among various principals?
- Will you be expected to contribute funds for promotional purposes?
- How will the amount be determined?
- If the representative or distributor uses direct mail, how many prospects are on the mailing list?
- What type of brochure does it use to describe the companies and products that it represents?
- If necessary, can it translate your advertising copy?
- Does the representative have a Web site to promote the product?
- Can it provide product demonstrations and training if needed?

## WHAT A REPRESENTATIVE PROSPECT WANTS FROM YOU

When negotiating a contract with a prospective representative, you should be aware of what he or she normally wants. Here is a list of points that he or she would like to have.

1. Prestige products.
2. Exclusive territory.
3. Good product line (either one that sells easily and has a large market or a high-cost product with a small but monopolistic market).
4. Training from the manufacturer.
5. Technical aspect of the after-sales servicing provided by the manufacturer.
6. Warehousing back-up by the manufacturer.
7. Ready parts availability.
8. Good warranties from the manufacturer.
9. The manufacturer to carry the cost of labor and parts needed to replace defective components.
10. Advertising and merchandising support from the manufacturer (or at least an allowance for advertising).
11. Special discounts and deals.
12. Favorable credit terms.
13. Commissions on "house accounts".
14. Commissions on direct sales by the manufacturer in distributor's Territory.
15. Manufacturer to assume the responsibility of keeping his or her other sales outlets from selling in distributor's territory.
16. Minimum visits and control by the manufacturer.
17. Representative need supply only minimum information to manufacturer.
18. Freedom to handle other lines.
19. Freedom to price.
20. The right to terminate agreement when he or she pleases.
21. To have the manufacturer pay indemnities for cancellation of the agreement.
22. Security that the line will not be taken away from him or her once the product is established.
23. Cheaper packaging of goods to reduce bulk.
24. Dealing with one person in the home office.
25. Trips to the U.S. or to regional meetings.
26. Product liability coverage.

Obviously, no manufacturer will meet all these conditions. Companies whose probable sales in a given market are not going to be very great or whose name is not internationally known may have to grant more demands than others in more favorable positions. Firms seeking representatives in "representative short" markets will also have to yield more than they would where there are many experienced representatives. The same manufacturer may be quite happy to grant some of these requests in one market, but not in another.

## WHAT YOU WANT FROM A REPRESENTATIVE

This checklist is more suggestive than complete. Different products require different questions, especially with regard to technical know-how. And perhaps the candidate's ability, willingness, and desire to make a success of a new product outweigh all other criteria.

1. Reputation with suppliers, banks, and customers.
2. Overall experience.
3. Experience with single manufacturer.
4. Experience with product line similar to evaluator's.
5. Sales organization and quality of sales force.
6. Lines handled at present and in the past.
7. Sale volume and growth record.
8. Share of market.
9. Geographical areas covered, past and present.
10. Financial strength: D & B type reports, Bank references.
11. Analysis of his or her costs.
12. Physical facilities (size, location, warehouses, etc.).
13. After-sales servicing facilities.
14. Knowledge of U.S. business methods, accounting and measurement standards.
15. Knowledge of efficient promotion techniques (advertising, packaging, point of sales).
16. Knowledge of English and other languages.
17. Number and type of outlets.
18. Stocking or purchasing minimum acceptable to distributors.
19. Reputation among marketing and credit staff of other U.S. principals represented.

**SIGN THEM**

## ***RESPONSE PACKAGE***

This three part "package" of documentation can be used to screen and/or select prospective trading partners (dealers, distributors, commission representatives, etc.)

You may use this package whenever you receive; a random inquiry from overseas, as a handout at Trade Shows (kept on hand and handed to prospects), and in response to any legitimate lead inquiring as to representation for a firm.

It is not necessary that a custom letter be written every time an inquiry is received, this package will suffice and is totally acceptable in International business.

Many times firms will receive an inquiry as to the possibility of a dealership or representation and will respond by asking the inquirer to provide further information and references, usually not asking for specific information; typically asking that the other party supply a bank and two or three credit references. **THIS IS NOT SUFFICIENT IN INTERNATIONAL BUSINESS TO MAKE AN INFORMED DECISION.**

**The PACKAGE consists of three parts:**

1. A **one sheet "prospectus" of "fact" sheet, that in tenth grade English says three things:**

- A. Who you are
- B. What you do
- C. What you are looking for

2. **The firm's literature or catalog depicting and describing the product (or service) offered.** Price information (price lists) may or may not be appropriate. For example, if it is a large custom system, then a price list is not appropriate.

3. **A questionnaire.** In detail, (see sample) it asks for the in-depth information that you are entitled to, and which you must have to make an informed decision. (Remember that often times you may find resistance to completing forms, so you may need to persist to get this questionnaire filled out completely--including asking for and receiving an attached financial report).

The Package can be sent without the necessity for any customized letter.

If the "Prospectus" or "Fact Sheet" is carefully done, the prospective representative will receive all the information he or she needs, and be ready to further pursue a working relationship with your company, or look elsewhere.

## **SAMPLE: PROSPECTUS OF FACT SHEET**

*(One page-in simple English on letterhead)*

Coast Communication, Inc. is a leading U.S. manufacturer of two-way radio communications equipment for professional use. Coast offers vehicular-mounted and base-stationed radios. Police, taxi-cabs, and delivery services use them.

The firm was founded eight years ago and annual sales this past year totaled \$8 million dollars. The company employs 100 people, including 13 engineers and technicians.

Coast's products are sold in the U.S. through a nation-wide network of stocking dealers who purchase directly from the factory. The dealers must have the capability to install and service the equipment locally. The dealers must provide warranty and non-warranty service. The dealers must have adequate test equipment and be willing not only to carry inventory of radios, but also an inventory of service materials.

Coast Communications prefers to deal with exclusive dealers in each defined territory. Coast grants a 25% discount from their recommended or suggested list price (25% commission).

Coast's terms are normally either pre-payment or payment by a confirmed Irrevocable Letter of Credit. After a relationship has been established and the dealer has a proven track record, there are ways to establish a line of credit.

It is company policy to select a dealer in an area (or country) and work with the dealer on an ad-hoc basis (case-by-case) for a trail period of time, usually six months. If the relationship is mutually profitable, it is Coast's policy to enter into a written, mutually exclusive agreement.

- *Add website.*

Enclosed is a questionnaire. For further consideration, please complete and return it to the company.

Upon receipt and review, Coast will contact you.

**PROSPECTIVE BUSINESS PARTNER QUESTIONNAIRE**

Please return completed questionnaire to: \_\_\_\_\_

**General Information**

Company name: \_\_\_\_\_

Company address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Cell: \_\_\_\_\_

E-mail: \_\_\_\_\_ Web Site: \_\_\_\_\_

Company Organization: Proprietorship \_\_\_\_\_ Corporation \_\_\_\_\_ Partnership \_\_\_\_\_

Limited Liability \_\_\_\_\_ Other \_\_\_\_\_

Date Organized \_\_\_\_\_

**Principle officers or owners:**

1. Name: \_\_\_\_\_

Title: \_\_\_\_\_

Home Address: \_\_\_\_\_

\_\_\_\_\_

Home Phone: \_\_\_\_\_

2. Name: \_\_\_\_\_

Title: \_\_\_\_\_

Home Address: \_\_\_\_\_

\_\_\_\_\_

Home Phone: \_\_\_\_\_

3. Name: \_\_\_\_\_

Title: \_\_\_\_\_

Home Address: \_\_\_\_\_

\_\_\_\_\_

Home Phone: \_\_\_\_\_

4. Name: \_\_\_\_\_

Title: \_\_\_\_\_

Home Address: \_\_\_\_\_

\_\_\_\_\_

Home Phone: \_\_\_\_\_

If your company is a subsidiary, list the name and address of parent company: \_\_\_\_\_

\_\_\_\_\_

Describe your company's major business activities:

\_\_\_\_\_

\_\_\_\_\_

List all your company's branch offices and/or representatives:

\_\_\_\_\_

\_\_\_\_\_

Please identify the individual(s) in your company responsible for sales, service, and administration:

Sales: \_\_\_\_\_

Service: \_\_\_\_\_

Administration: \_\_\_\_\_

**FINANCIAL INFORMATION**

Sales for last year: \_\_\_\_\_

Sales for current year: \_\_\_\_\_

Sale forecast for next year: \_\_\_\_\_

Your company's paid-in capital:  
\_\_\_\_\_

Bank name and complete address/Telephone/fax/E-mail/web:  
\_\_\_\_\_  
\_\_\_\_\_

Business references (U.S. references would be appreciated), including names, address, telephone, fax, E-mail and Person to contact:

a) \_\_\_\_\_

b) \_\_\_\_\_

c) \_\_\_\_\_

Please attach current financial statement and/or annual report.

**MARKETING INFORMATION**

Are you currently a representative, dealer or distributor in (identify product line)?

Yes\_\_\_ No\_\_\_

Describe types of products represented or sold, including brand names: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

How long have you been in the (specify product are) business? \_\_\_\_\_years

Check below those government or private organizations with whom you have good current liaison: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Are you currently an agent or representative of any other company which manufactures product similar to (specify products are)? Yes\_\_\_ No\_\_\_

If yes, name of companies: \_\_\_\_\_  
\_\_\_\_\_

Do you have an objection to our contacting any principles? Yes\_\_\_ No\_\_\_

What are your geographic sales for the above listed product(s)?

---

---

Projected sales of our products for the next fiscal year

---

---

Will you maintain product for demonstration in your country? Yes\_\_\_ No\_\_\_

Please describe your product display facility and/or product demonstration procedures:

---

---

---

---

### TECHNICAL INFORMATION

Do you have your own service facility and workshop for repairs and overhaul of products?

Yes\_\_\_ No\_\_\_

If no, do you contract with an outside service contractor? Yes\_\_\_ No\_\_\_

Name and address of outside service contractor: \_\_\_\_\_

Company name: \_\_\_\_\_

Contact: \_\_\_\_\_

Company address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-Mail: \_\_\_\_\_

If you do not have a service facility, are you willing to establish one for support of our products?

Yes\_\_\_ No\_\_\_

If yes, when? \_\_\_\_\_

# International Company Profile

## Available from the U.S. Commercial Service



The International Company Profile (ICP) provides U.S. companies with due diligence information on a specific foreign company to help determine its suitability as a potential business partner.

Cost: \$600 Small-medium sized business / \$900 Large business

### We will:

- Provide you with a primary contact person
- Counsel you on the appropriateness of conducting an International Company Profile
- Counsel you on the availability of an ICP in a particular market
- Schedule a conference call with the appropriate staff to understand your requirements
- Confirm the ICP report content regarding company size, sales data, business activities, corporate structure, shareholders and directors, references, financial data, creditworthiness, market outlook and other agreed-upon information
- Conduct a site visit and interviews with principals, if feasible
- Provide you with the specific due diligence information you requested to the fullest extent possible
- Maintain your anonymity, if requested
- Identify the information sources we consulted in preparing the ICP
- Complete the ICP within three weeks of receipt of payment and company contact information, or as negotiated
- Provide logistical and administrative support as agreed upon as follows:

### You agree to:

- Pay for the service when you place the order
- Provide us with the full company name and as much contact information as possible
- Communicate your due diligence information needs
- Attend all preparatory meetings and participate in conference calls
- Respond to e-mail and other inquiries
- Complete a Comment Card when you receive it via e-mail

## HOW AMERICANS NEGOTIATE AND WHY

When we communicate with others, we (and they) make certain assumptions about:

- The process of perceiving
- How others will judge
- What others think
- How they reason

Correct assumptions aid the communications process. Incorrect assumptions impede communications. Misunderstandings and stalled or deadlocked negotiations may result. It is essential that:

- Americans know their own assumptions
- We know the assumptions of the other side
- We discern ways to bridge the gap

It is difficult to generalize about the culture of the United States for two reasons:

1. Not all foreigners see us the same. For example, while we appear unemotional and cold to Latins, we may appear hyperbolic, frenetic and impulsive to Asians.

2. Traditional American values are undergoing profound reevaluation. The United States is a society in flux and one moving toward multiculturalism.

**Nevertheless, the following are a combination of general characteristics that Americans bring to the negotiating table:**

*We are ethnocentric*

- So are most peoples, but Americans are used to high status, power and success in world trade
- Our values were forged on the frontier
- Strong isolationist strain in American culture

*Americans are individualists par excellence*

- Our culture teaches us to stand on our own two feet
- "I can go it alone"
- Responsibility for decisions lie with the individual
- Friendships and relations are not deep and lasting
- We lack cooperation skills
- We join groups to seek our own goals

*We are seen as workaholics*

- American culture defines a person by their work
- Necessary to work hard to get ahead
- The schedule becomes all important
- We want to work first and socialize later
- In other parts of the world, many other factors are equally or more important than work, hence there is no need to rush into it

*Short-term profits motivate more than long-term considerations*

- Negotiators are under pressure from management to produce tangible results quickly

*Achievement is more important than rank*

- Position is achieved and tenuous
- Identity is within self and defined by work

- Task-oriented
- Achievement motivates
- Anticipation of future time

*Americans are utilitarian*

- What works is valued
- Goals are evaluated in terms of their consequences and utility

*Activity is better than stasis*

- Concern with doing
- Getting things done
- Progress and moving toward the new
- Vigorous youth is valued

*In planning, goals are less important than:*

- Means, procedures and techniques
- Action: When in doubt, do something!
- Tendency to wing it
- Planning is to anticipate consequences

*Quick is better than slow*

- Efficiency and speed are equated
- The pace of American business is fast, busy and driving
- Brief introductions and forms of social address

*Persistence is highly valued by Americans*

- Stick-To-It attitude and hard work will win the day
- Don't take no for an answer
- Americans come on too strongly in negotiations

*Americans seem overly concerned with facts and being precise*

- We feel decisions should be made on factual basis
- Strong belief in reason and rationality
- The world operates in a rational, knowable, controllable way

*Americans also are seen as relying too heavily on reason to make business decisions*

- Decisions should be made by those affected because they will know the reasons
- Many cultures emphasize tradition or intuitions as the basis of decision making

*One thing at a time*

- We reason in a stepwise fashion
- We attack a complex negotiation sequentially

*We are not sociable enough by most foreign standards*

- Since work defines ourselves, that's what we do first, then we relax.

*Americans are said to discuss business too much*

- Because work is of primary significance, we spend a great deal of time on it
- Socializing comes after work
- Social reciprocity should be equal and limited
- Circumstance, not tradition, determine social reciprocities

*We are seen as being too quick to become intimate*

- We value informality
- Equality over hierarchy and social class
- Americans try to minimize status differences
- We use first names, dress and sit informally
- Americans move quickly into a close friendship

*Americans are concerned with power and control*

- Our culture teaches us that society is competitive and you need leverage to get what you want
- Frontier society taught tenacity in overcoming the wilderness
- Environment seen as hostile, including other people and groups
- People are "naturally" competitive and aggressive
- Social aggression is seen as acceptable, interesting or fun
- Competition is seen as healthy and constructive

*Negotiation is:*

- Positional
- Based on give and take

*Negotiating leverage comes from:*

- Persuasion of the individual
- Power
- Guilt

*In Negotiation, give-and-take concessions are a sign of good faith*

- In many parts of the world, give-and-take is seen as far too competitive. Negotiation is a showcase to ceremonially highlight what has been agreed upon in private.
- In America, negotiation is about give-and-take of offers and counteroffers.

*Americans get upset if they can't deal with the "highest" authority*

- We expect a "chain of command" similar to ours
- Americans don't understand group decision-making

*Americans are direct in communication*

- Don't beat around the bush

*We value truthful information exchange*

- Honesty is the best policy
- Laying your cards on the table is a sign of good faith
- To be devious creates distrust

*Americans are generous and altruistic*

- We assume foreigners will be fair and reasonable by our standards
- We may give a concession in order to get an equal concession in return

*Americans need to be liked*

- We often tell them a secret to show good will
- We may give concession to be liked

*Silence is a sign of deviousness*

- Speaking indicates a willingness to negotiate
- Silence equals deadlock

*Americans can also appear quite opinionated*

- As children we are taught to have opinions
- Few Americans take pride in changing their minds

*A deal is a deal*

- A handshake closes the deal
- A contract seals it, despite future events
- Commitment is short

# THE BEST NEGOTIATION STRATEGY OVERSEAS

We can learn the basic skills necessary to negotiate overseas. Among others they include:

- ★ Learn about their way of doing business
- ★ Be PATIENT!
- ★ Prepare -- don't shoot from the hip
- ★ Expect a long negotiation
- ★ Don't be too straightforward and eager to work
- ★ Socialize and observe their etiquette
- ★ Try the win-win approach first
- ★ Be prepared to be tough if necessary
- ★ Don't be hung up on the schedule
- ★ Make time work for you, not against you
- ★ Take a long term view of the business at hand
- ★ Be flexible
- ★ Look for the best deal for both parties

## CHECKLIST FOR AGENT/DISTRIBUTOR AGREEMENTS

The first and most important consideration is to ensure that the agreement clearly states what the relationship actually is -- agent or distributor. The rights and duties of the two different relationships is very significant (see following article). Given this distinction, the agreements should state very plainly and clearly what relationship is being established.

### **The following basic items normally are included in a typical foreign sales agreement:**

- Date when the agreement goes into effect
- Duration of the agreement
- Provisions for extending or terminating the agreement
- Description of product lines included
- Definition of sales territory
- Establishment of a policy governing resale prices
- Maintenance of appropriate service facilities
- Restrictions to prohibit the manufacture and sale of similar and competitive products
- Designation of responsibility for patent and trademark negotiations and/or policing
- The assignability or non-assignability of the agreement and any limiting factors
- Designation of the country of contract jurisdiction in the case of dispute
- Determine whether the relationship is exclusive versus non-exclusive
- State which geographic regions are to be covered
- Set forth issues of payment for the products (in the case of a distributor) and for payments of commissions (in the case of agents)
- Determine the currency in which payments are to be made and address currency fluctuation issues
- Provide specific provisions regarding renewal of the agreement, including specific parameters for performance, promotional activity and notice of desire to renew
- Establish a specific provision for termination of the agreement and for what reasons, i.e., failure to perform to the terms of the contract. (Be careful with this provision. Some foreign countries restrict or prohibit termination without just cause or compensation.)
- Outline the termination process for the end of the agreement period
- Provide for workable and acceptable dispute settlement clauses
- Assure that the agreement addresses whether or not intellectual property rights are being licensed or reserved
- Do not allow, without sellers consent, the contract to be assigned to another party (sub-agents or sub-distributors) to be used to fulfill obligations in the contract or the contract to be transferred with a change of ownership or control over the agent/distributor
- Assure that your contract complies with both U.S. and foreign laws on topics such as : export and import licenses; customs duties and sales taxes; relevant antitrust/competition laws relating to marketing restrictions and pricing methods; relevant laws on bribery (Foreign Corrupt Practices Act) and employment and marketing discrimination (Anti-Boycott Law)

**The agreement should also contain statements to the effect that the representative will not have:**

- Business dealings with a competitive firm
- Will not re-export contrary to the national security and foreign policy interests of the United States
- Will not reveal any confidential information in any way that would prove injurious, detrimental or competitive to the U.S. firm
- Will not enter into agreements binding on the U.S. firm
- Will refer all inquiries received from outside the designated sales territory to the U.S. firm for appropriate action

**At all times, exporters should avoid articles that could be contrary to U.S. antitrust laws. Legal advice should be sought when preparing and entering into foreign agreements.**

## **A GOOD COMMISSION PLAN INCLUDES THESE 4 ELEMENTS**

1. A rate which is high enough to ensure that the rep will make a profit and, at the same time, is practical for the manufacturer.
2. The rate should be competitive with the other lines the rep carries, large disparities are the fastest way to minor-line treatment.
3. Flexibility. Fixed rates must be set, but must remain flexible to handle special situations, larger quantity purchase for example.
4. Rates should be high enough to encourage the rep to invest in local promotion of the product.

# Distributor and Sales Representative: Foreign Corrupt Practices Act

Excerpted from a presentation given by Andrew Pidgirsky, Esq., Adams & Reese, LLP, during the seminar *International Representatives & Distributors: Find Them, Sign Them & Enhance Their Performance*, July 21, 2009

## What is the FCPA?

- The FCPA (Foreign Corrupt Practices Act) makes it illegal for any U.S. company, U.S. citizen, national or resident to bribe a foreign official anywhere in the world for the purpose of obtaining or retaining business
- The FCPA imposes certain accounting and record-keeping requirements upon companies whose securities are listed in the United States

## FCPA Application

- Companies
  - Issuers (securities are registered in the U.S. or are required to file periodic reports with the SEC)
  - “Domestic Concerns” (U.S. Private Companies)
- Individuals: Any U.S. citizen, national, or resident for any act worldwide.
- Any act within the U.S. or use of instrumentalities of interstate commerce in furtherance of an illicit payment (telephone, mail, e-mail, facsimile).

## FCPA Elements

- Offer, authorization, promise to pay, or payment
- Money or anything of value
- Directly or indirectly
- To any foreign official, politician or candidate for a political office or any person while knowing that payment or anything of value are offered or given to the above
- With corrupt intent
- For the purpose of influencing an official act or decision, inducing a violation of lawful duty, or securing any improper advantage
- In order to obtain or retain business or direct business to any person

## Definition: Foreign Official

- Foreign Official: officer, employee, or person acting on behalf of government in any official capacity
- Federal, State, or Local Government Official: Hospital Employees, Airport Employees, Customs Officials, Judges, Police, NOC, and Ministry Employees
- Public International Organization Official: Organization of American States, European Space Agency, Hong Kong Economic and Trade Office, World Bank
- Foreign Political Party
- Foreign Party Official or Candidate for Foreign Political Office

## Permissible Payments

- Small payments or gifts made to expedite or secure the performance of a “routine governmental action”:
  - Processing of permits, licenses, visas, work orders, or other official documents
  - Providing police protection, phone services, power and water supply, cargo handling, or protection of perishable products
  - Mail pick-up and delivery
  - Scheduling inspections associated with contract performance or transit of goods across the country.
- Clerical activities which do not involve exercise of discretion
- Does not involve a decision to award new business or continue business with a particular party.
- Facilitating payments are unlawful under the local laws of most foreign countries.

## **Affirmative Defenses**

Two affirmative defenses:

- Where the payment or gift was lawful under the written laws of the foreign country (explicit permission under the “written laws” of that country);
- Where the payment or gift was a reasonable and bonafide expenditure for travel, lodging and meals directly related to either:
  - The promotion, demonstration, or explanation of products or services, or
  - The execution or performance of a contract

## **Travel, Lodging, and Meals Guidelines**

- Legitimate business purpose
- Reasonable
- Permissible under local law
- Foreign government is aware of travel
- Avoid making direct payments to foreign official
- Budget approved by senior management
- No expense reimbursements for side/leisure trips, spouses, and family members
- Recordkeeping

## **Potential Criminal Liability—Anti-Bribery Violations**

Criminal penalties for violation of the anti-bribery provisions:

- Up to a \$2 million fine per violation for company
- Up to a \$250,000 fine and 5 years in prison for individual
- Alternative fines for companies and individuals where there is gain to the defendant or loss to the victim equal to twice the amount of the total gain or loss

## **Potential Civil Liability—In General**

- Civil penalties for violation of anti-bribery provisions: up to \$10,000 against any firm or any officer, director, employee, or agent
- DOJ and SEC obtain injunctions to prevent future violations
- Imposition of a monitor
- Suspension and debarment from doing business with U.S. government
- Disgorgement of proceeds
- Loss of export privileges and other benefits under governmental programs (Arms Export Control Act/International Traffic in Arms Regulations—State Department)
- Disallowance of deductions

## **Due Diligence Procedure**

- Third Party Due Diligence
- Address any “Red Flags”
- FCPA Documentation: written agreement to comply with FCPA, certificate of compliance, written FCPA policy
- Document payments and all compliance steps
- FCPA training
- Document compliance audits

## **Red Flags**

- Lack of experience with product, field or industry
- Reputation for unethical behavior
- Unwillingness to enter into written agreement to abide by anticorruption laws
- Close relationships to government officials (family equity participation)
- Representative or consultant recommended by governmental official or customer

- Location of the transaction has a reputation for corruption
- Incomplete or inaccurate information in required disclosures
- Request that payment be made to a third party or in some other country
- Requests for payment in cash, specified account outside the country
- Problematic industries: defense, aircraft, oil, engineering, and construction services
- Illegal conduct under local law
- Suspicious conduct

Provided by the Houston U.S. Export Assistance Center, [www.buyusa.gov/houston](http://www.buyusa.gov/houston).

For contact information on the presenter, see below:

Andrew A. Pidgirsky, Esq.

Partner

Adams and Reese LLP

4400 One Houston Center, 1221 McKinney

Houston, Texas 77010

Ph: (713) 652-5151

Fax: (713) 308-4056

Mobile: (713) 492-6183

[andrew.pidgirsky@arlaw.com](mailto:andrew.pidgirsky@arlaw.com)

[www.arlaw.com](http://www.arlaw.com)



## KNOW YOUR CUSTOMER GUIDANCE

[www.bis.doc.gov](http://www.bis.doc.gov)

Know Your Customer Guidance (see <http://www.bis.doc.gov/enforcement/knowcust.htm>)

Certain provisions in the Export Administration Regulations (EAR) require an exporter to submit an individual validated license application if the exporter "knows" that an export that is otherwise exempt from the validated licensing requirements is for end-uses involving nuclear, chemical, and biological weapons (CBW), or related missile delivery systems, in named destinations listed in the regulations.

BIS has issued the following guidance on how individuals and firms should act under this knowledge standard. This guidance does not change or revise the EAR.

### **Decide whether there are "red flags."**

Take into account any abnormal circumstances in a transaction that indicate that the export may be destined for an inappropriate end-use, end-user, or destination. Such circumstances are referred to as "red flags." Included among examples of red flags are orders for items which are inconsistent with the needs of the purchaser, a customer's declining installation and testing when included in the sales price or when normally requested, or requests for equipment configurations which are incompatible with the stated destination (e.g.--120 volts in a country with a standard of 220 volts). Commerce has developed lists of such "red flags" which are not all-inclusive but are intended to illustrate the types of circumstances that should cause reasonable suspicion that a transaction will violate the EAR.

### **If there are "red flags."**

If there are no "red flags" in the information that comes to your firm, you should be able to proceed with a transaction in reliance on information you have received. That is, absent "red flags" (or an express requirement in the EAR), there is no affirmative duty upon exporters to inquire, verify, or otherwise "go behind" the customer's representations. However, when "red flags" are raised in the information that comes to your firm, you have a duty to check out the suspicious circumstances and inquire about the end-use, end-user, or ultimate country of destination.

The duty to check out "red flags" is not confined to the use of general licenses affected by the "know" or "reason to know" language in the EAR. Applicants for validated licenses are required by the EAR to obtain documentary evidence concerning the transaction, and misrepresentation or concealment of material facts is prohibited, both in the licensing process and in all export control documents. You can rely upon representations from your customer and repeat them in the documents you file unless "red flags" oblige you to take verification steps.

### **Do not self-blind.**

Do not cut off the flow of information that comes to your firm in the normal course of business. For example, do not instruct the sales force to tell potential customers to refrain from discussing the actual end-use, end-user and ultimate country of destination for the product your firm is seeking to sell. Do not put on blinders that prevent the learning of relevant information. An affirmative policy of steps to avoid "bad" information would not insulate a company from liability, and it would usually be considered an aggravating factor in an enforcement proceeding.

Employees need to know how to handle "red flags." Knowledge possessed by an employee of a company can be imputed to a firm so as to make it liable for a violation. This makes it important for firms to establish clear policies and effective compliance procedures to ensure that such knowledge about transactions can be evaluated by responsible senior officials. Failure to do so could be regarded as a form of self-blinding.

**Reevaluate all the information after the inquiry**

The purpose of this inquiry and reevaluation is to determine whether the "red flags" can be explained or justified. If they can, you may proceed with the transaction. If the "red flags" cannot be explained or justified and you proceed, you run the risk of having had "knowledge" that would make your action a violation of the EAR.

**Refrain from the transaction, disclose the information to BIS and wait.**

If you continue to have reason for concern after your inquiry, then you should either refrain from the transaction or submit all the relevant information to BIS in the form of an application for a validated license or in such other form as BIS may specify.

Industry has an important role to play in preventing exports and reexports contrary to the national security and foreign policy interests of the United States. BIS will continue to work in partnership with industry to make this front line of defense effective, while minimizing the regulatory burden on exporters. If you have any question about whether you have encountered a "red flag," you may contact BIS's Office of Export Enforcement or visit the website listed above to submit a confidential tip.

## **BIS Red Flag Indicators - *Things to Look for in Export Transactions***

(<http://www.bis.doc.gov/enforcement/redflags.htm>)

Use this as a check list to discover possible violations of the Export Administration Regulations. You may also wish to visit our page that provides "Know Your Customer Guidance".

The customer or its address is similar to one of the parties found on the Commerce Department's [BIS's] list of denied persons.

- The customer or purchasing agent is reluctant to offer information about the end-use of the item.
- The product's capabilities do not fit the buyer's line of business, such as an order for sophisticated computers for a small bakery.
- The item ordered is incompatible with the technical level of the country to which it is being shipped, such as semiconductor manufacturing equipment being shipped to a country that has no electronics industry.
- The customer is willing to pay cash for a very expensive item when the terms of sale would normally call for financing.
- The customer has little or no business background.
- The customer is unfamiliar with the product's performance characteristics but still wants the product.
- Routine installation, training, or maintenance services are declined by the customer.
- Delivery dates are vague, or deliveries are planned for out of the way destinations.
- A freight forwarding firm is listed as the product's final destination.
- The shipping route is abnormal for the product and destination.
- Packaging is inconsistent with the stated method of shipment or destination.
- When questioned, the buyer is evasive and especially unclear about whether the purchased product is for domestic use, for export, or for reexport.

If you have reason to believe a violation is taking place or has occurred, you may report it to the Department of Commerce by calling its 24 hour hot line number: 1 (800) 424-2980. Or, if you prefer, please use our form to submit a confidential tip.

## Lists To Check

### **The following lists may be relevant to your export or reexport transaction.**

For further information, see the Bureau of Industry and Security's website at <http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm> . Or, visit the U.S. Treasury Department's Office of Foreign Asset Control website at <http://www.ustreas.gov/offices/enforcement/ofac/programs/>.

### **Denied Persons List**

A list of individuals and entities that have been denied export privileges. Any dealings with a party on this list that would violate the terms of its denial order are prohibited.

### **Unverified List**

A list of parties where BIS has been unable to verify the end-user in prior transactions. The presence of a party on this list in a transaction is a "Red Flag" that should be resolved before proceeding with the transaction.

### **Entity List**

A list of parties whose presence in a transaction can trigger a license requirement under the Export Administration Regulations. The list specifies the license requirements that apply to each listed party. These license requirements are in addition to any license requirements imposed on the transaction by other provisions of the Export Administration Regulations.

### **Specially Designated Nationals List**

A list compiled by the Treasury Department, Office of Foreign Assets Control (OFAC). OFAC's regulations may prohibit a transaction if a party on this list is involved. In addition, the Export Administration Regulations require a license for exports or reexports to any party in any entry on this list that contains any of the suffixes "SDGT", "SDT", "FTO", "IRAQ2" or "NPWMD".

### **Debarred List**

A list compiled by the State Department of parties who are barred by §127.7 of the International Traffic in Arms Regulations (ITAR) (22 CFR §127.7) from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or approval is required by the ITAR.

### **Nonproliferation Sanctions**

Several lists compiled by the State Department of parties that have been sanctioned under various statutes. The Federal Register notice imposing sanctions on a party states the sanctions that apply to that party. Some of these sanctioned parties are subject to BIS's license application denial policy described in §744.19 of the EAR (15 CFR §744.19).

### **Country Sanctions - Office of Foreign Asset Controls, U.S. Treasury Department**

U.S. exports are prohibited or tightly controlled to the following countries: Balkans, Belarus, Burma, Cote d'Ivoire, Cuba, Democratic Republic of the Congo, Iran, Iraq, Former Liberian Regime of Charles Taylor, North Korea, Sudan, Syria and Zimbabwe.

### **List-Based Sanctions - Office of Foreign Asset Controls, U.S. Treasury Department**

U.S. sanctions programs are also in place for Anti-Terrorism, Diamond Trading, Counter Narcotics Trafficking, Non-proliferations (as noted above) and for Persons Undermining the Sovereignty of Lebanon or Its Democratic Processes and Institutions.

# Enhance Their Performance

# IMPROVING FOREIGN DISTRIBUTOR PERFORMANCE

The following guidelines point out ways and means of increasing sales and profits in highly competitive foreign markets. A firm must be flexible in using these techniques, since situations vary depending upon the nature of the product line, the personality of the distributor, and other special market factors. Close coordination between manufacturer and distributor is, of course, essential, and the company representative is the person in this relationship, helping the distributor to overcome obstacles and acting as an indispensable communications link.

## **CONTROLS and COMMUNICATIONS**

- ✓ See to it that head office executives, regional representatives, and marketing experts visit the distributor often.
- ✓ Secure monthly and quarterly reports on: sales, inventory, after-sales services, storage facilities, competition activity, new product and technological developments, and distribution patterns.
- ✓ Maintain regular, sympathetic, and clear correspondence.
- ✓ Bring distributors occasionally to the U.S., to foreign plants, to major regional offices.

## **CREATING DISTRIBUTOR LOYALTY**

- ✓ Develop the distributor's identification with your company and make him proud to be your representative by communicating the importance of the distributor to corporate goals, taking him into your confidence on future plans, asking for his ideas for improving your business, improving your company's image locally and regionally.
- ✓ Hold regional distributor conferences.
- ✓ Send giveaways and free samples to distributors, bearing your company's name.
- ✓ Reward good performance with cash prizes, trips abroad, achievement certificates or plaques.
- ✓ Publicize successful distributors in advertising and house newsletters.
- ✓ Cover costs of his club and society memberships.
- ✓ Provide training and training materials.
- ✓ Reward a successful distributor with an exclusive contract.

## **FINANCE and CREDIT**

- ✓ Offer credit terms that are competitive or better, both in length and method of payment.
- ✓ Give better credit terms to new distributors or to those in highly competitive markets.
- ✓ Offer incentive prices for expanded sales.
- ✓ Assist in overcoming exchange difficulties.
- ✓ Assist in securing local financing.
- ✓ Share advertising and promotion costs.
- ✓ Ship semi-manufactured goods for local finishing which will result in lower tariffs and greater margins for the distributor.

## **INCREASING the MARKET**

- ✓ Provide training programs to develop distributor skills in product management, market research, and general business.
- ✓ Develop advertising campaigns in local media (newspapers, magazines, cinemas, radio, outdoor, websites); in international media (mainly magazines), and by providing local advertising materials.
- ✓ Develop promotion through clear and impressive export catalogs (preferably in the local language), plenty of samples for customers, contributions to local charities, participation in local trade fairs, close identification of your firm with local country aspirations (where possible), direct mail campaigns, sponsorship of local sports and cultural events, documentary films and slides for schools, clubs, and customers.

- ✓ Upgrade after-sales servicing to ensure customer satisfaction, generate reorder sales, and build the distributor's service income.
- ✓ Provide necessary service and technical manuals in the local language.
- ✓ Cooperate in market surveys to spot sales trends.
- ✓ Warehouse at strategic spots around the globe to assure prompt filling of orders.
- ✓ Maintain regional technical centers to support effective after-sales servicing by the distributors.

#### **EVALUATING DISTRIBUTOR PERFORMANCE**

- ✓ Compare ratios of your sales with competitor sales.
- ✓ Match sales against past performance.
- ✓ Check against market-survey targets.
- ✓ Watch inventory turnover ratios.
- ✓ Compare notes with retailers on your distributor's sales efforts.
- ✓ Check local media for effectiveness of advertising (and to see that ads are really being placed).
- ✓ Compare short-term and long-range effectiveness of distributor's activities.

#### **DIRECT PRESSURE METHODS**

- ✓ If dissatisfied with distributor's performance, tell him or her so in person, not by letter.
- ✓ Tie credit and terms to distributor performance.
- ✓ Set deadlines for selling a fixed amount.
- ✓ Threaten (nicely) to give new products or all products to a competing distributor.
- ✓ Switch from an exclusive to a nonexclusive contract -- if possible.
- ✓ Suspend shipments to the distributor.

# WHY DON'T RESELLERS SELL

## MANAGING YOUR DISTRIBUTION CHANNELS

### General Tips

1. Remember that it is not uncommon that 90% of a reseller's revenue comes from maybe only 2 or 3 of the products they carry.
2. Remember that you may need to overcome the existing inertia from the reseller's strategic products.
3. To be really effective, you need to influence the sales person at the reseller, not the managing director. Sales people usually receive at least part of their income from commissions...and they have personal bills. You need to convince them that if they spend more time selling your products that they will be able to make more money and still make the payments for their Porsche.
4. Try to understand their internal business processes so that you can blend in and not disrupt the way they do things.
5. Remember that although you think your product is a great opportunity for the reseller to make more money, they look at you as a risk – a market risk, a risk that you may be with them 3-5 years and then set up your own sales offices and cut them out, and a risk that you don't know what you are doing. Help them overcome these risks.
6. Remember that every product the reseller carries is your competitor in the sense that it can take away from the time they spend selling your products. So, give them a reason to buy (and resell) your products.

### Be Prepared to Recruit Resellers

1. Make sure that you have established your pricing policies and how orders will be fulfilled.
2. If your product requires technical support, answer the questions; Who will do it? What will be done? When will it be done? Where will it be done? How will it be done?
3. Does the product need to be localized for market needs.
4. Provide them with a path of least resistance for your marketing support. Make it easy for them to receive your support in selling your products.
5. Have legal documents prepared.

### Recruiting Resellers / Managing Prospects

1. Remember it is easy to find distributors that want your products added to their product line. Be careful of distributors that approach you with a potential customer wanting to buy soon. You might make the one sale, but if you sign an agreement and they make no further sales, you may actually lose many better opportunities by being tied to that reseller. Also, they may take on your product solely to keep you out of the market. The challenge is finding a reseller that will actually sell your products on a regular basis.
2. After the initial contact and follow-up, send the prospect a partner/reseller application. It does not need to be lengthy. The key here is that if they take the time to fill out an application, you are at least seeing a sign that they may also take the time to sell your products.

3. Send them a sample of your product(s) to conduct a product evaluation. Find out who will be conducting the evaluation and communicate with them. Again, if they take the time to do an evaluation, this is another signal that they may become a serious reseller for you.
4. Next, create a Memorandum of Understanding/Heads of Agreement with them. Give them 90 days to determine if there is a market for your products. This can be referred to as "Market Validation."
5. In the MOU, you can request the development of a marketing plan for, say, the next 3-6 months with a bullet list of action items. Assist them with this.
6. If all has gone well – they've validated that there is a market, they have executed the marketing plan – it is time to sign a final contract.

### **Managing Your Partner**

1. Remember, getting a reseller to sell your products is a full time job. No matter how great you think your products are, they are yours and not your reseller's. As a result, your reseller will never be as enthusiastic as you are about selling your products.
2. Work with your partner to set up sales and marketing programs.
3. Hold their feet to the fire by requesting sales & marketing reports of what they've done to sell your products.
4. Conduct an annual review. REMEMBER to take into consideration local market conditions and trends, what has been happening in their business, etc. If they've missed sales goals, you need to know why and be understanding.

Notes taken at a seminar presented by  
Harald Horgen, President of The York Group. February, 2005. <http://www.theyorkgroup.com/>, [hhorgen@theyorkgroup.com](mailto:hhorgen@theyorkgroup.com)

## COMMON COMPLAINTS ABOUT U.S. EXPORTERS

- U.S. firms don't familiarize themselves with the market
- Give less attention to foreign business
- Ignore foreign inquiries
- Delivery dates not reliable
- Promises are not honored
- Price quotes are f.o.b.
- No foreign language literature
- Domestic customers are offered better terms

## FIRING DISTRIBUTORS

A frequent temptation for corporate marketing executives, particularly those just back from a trip abroad, is to rearrange their foreign distributorships. One firm should be let go, another hired, and so on. The itch to change is easily inflamed by disagreement on strategy, disappointment in results, or by meeting someone who might do better as a distributor.

But changing distributors can be costly, both in immediate expenses (training, setting up cost, legal difficulties, etc.) And in loss of momentum in the market as the new distributor takes over. To avoid hasty decisions, one manufacturer has launched a procedure for executives recommending a distributor change. The executive must fill out forms that detail not only what was wrong with the old and right with the new distributor, but give enough information about the territory involved for a headquarters vice president to make a decision. Since introducing this procedure the company has found that many ideas for changing distributors are now abandoned halfway through filling out the forms; it considers this a sign that executives are carefully thinking out the implications of their proposals.

Significantly, the questionnaires require the advocate to deal in specific facts. The form for cancellation buries its "reasons for recommendation" question toward the end of a series of questions that bring out any positive points against a change and hint at the difficulties involved in a cancellation.

The forms are normally filled out by the field sales manager for the region. The principal points covered:

1. Products handled, for how long, and degree of involvement (sales, service, assembly, licensee, etc.).
2. Products recommended canceled.
3. Sales, by product, over past three years.
4. Orders in progress.
5. Credit experience, including amount now owed, amount past due, speed of payment, any credit difficulties.
6. Reasons for recommendation to cancel.
7. Documented record of efforts to advise distributor that his performance is unsatisfactory.
8. Who will personally inform distributor of cancellation?
9. Contractual terms for cancellation.
10. Recommendation, if any, for a new distributor.