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Before firms dive into exporting, legal checklist needs a long look

Business First of Columbus - by [Tami Kamin-Meyer](#) For Business First

Despite nearly daily stories about Ohio's budget deficit, failing industries and unemployment rates, Buckeye-based businesses continue to be experts on exporting their goods to more than 200 nations.

And it's likely more will continue to take on the challenge, prompted by a shaky economy and weak American dollar. The [U.S. Chamber of Commerce](#) recently suggested a reliance on alternate sources of economic prosperity, most notably exporting and trade expansion.

But exporting isn't as simple as making a widget, packing it up and having it shipped. Legal considerations abound.

"It's important to know the import/export rules of the country you're dealing with," said Vinita Mehra, a senior associate with [Kegler Brown Hill & Ritter](#) law firm.

An exporter needs to know foreign laws, including intellectual property rights and vulnerabilities, prior to shipping an item outside the U.S., she said.

Meanwhile, a businessperson must consider insurance needs, especially because rules vary greatly from nation to nation, Mehra said. For example, in her native India, it can take upwards of three years to secure coverage. Another complication is presented for people who export pharmaceuticals to India – they must carry local insurance.

Taxes and wages are additional contemplations. If the exporter hires workers overseas, they should "pay the prevailing wage" of that nation, said Martijn Steger, a partner at Kegler. Moreover, unlike in the U.S., many countries don't recognize employment-at-will contracts.

According to [Globoledge.msu.edu](#), a portal published by the [International Business Center](#) at [Michigan State University](#), Ohio businesses exported \$42 million in goods and services in 2007.

Richard Rogovin, a partner at [Frost Brown Todd LLC](#) who leads the firm's international law practice and is on the board of the International Trade Division of the [Ohio Department of Development](#), expects the activity to pick up.

"We had a blip in '08 due to the recession, but the infrastructure is there and systems are in place (for expanded exports)," he said. "We're coming out of the recession, and I predict we'll have stronger exports due to the weaker dollar."

Considerations for exporting include getting a solid contract with the receiver of the goods that includes an arbitration clause authorizing the use of an American-based arbitrator.

Roberta Ford, director of the Columbus office of the U.S. [Department of Commerce, U.S. Commercial Service](#), equates learning about exporting to "homework." Once a business owner has completed a research project she suggests, they will be able to determine whether the product is ripe for exporting.

- A thorough investigation of the international marketplace.
- Finding various shipping methods.
- It's important for a business owner to know how the product will be delivered. If a product is not accessible to those who might want it, it simply will not succeed.

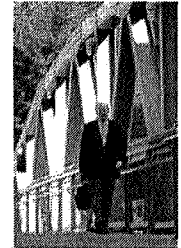
In another country, those avenues of distribution "may be different than in the U.S.," Ford said.

Another consideration includes researching whether a product or service can be modified to be useful in the recipient nation. "We're the only country in the world that doesn't use metrics" for measurement, Ford said, For example.

In addition, an exporter needs to consider whether the product requires any tweaking prior to entering a foreign market, Steger said.

Managing intellectual property rights is yet another concern. "Just because you might have IP protection in the U.S. does not mean you have protection elsewhere. You must take affirmative steps to get protection outside the U.S.," Steger said.

Just because a product might be patented, copyrighted or trademarked in America does not mean it can or can't be produced and sold in other countries, said Joe Dreitler, a partner at Bricker & Eckler.



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Richard Rogovin expects export activity to pick up, allowing companies that ship overseas to take advantage of a weak dollar.

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While certainly a main goal of exporting is to improve a company's bottom line, it takes money to make money. Exporter hopefuls should be prepared to travel. Business to be conducted on those sojourns includes meeting with distributors, representatives, customers and generally "attending to problems with products," Rogovin said.

"It's not like driving to Scioto County to straighten out a mess," he said. "Major expenses are involved, so it isn't for small companies. They should look at markets like Canada or outside Ohio."

Tami Kamin-Meyer is a freelance writer.

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