

Checklist:
**How to Locate, Evaluate and Motivate
Foreign Distributors and Representatives**

Prepared by the Connecticut District Export Council

FORWARD

Certainly the most frequently asked question in export marketing by both novice as well as experienced exporting firms is “How do I identify, evaluate and motivate a potential foreign representative or distributor?” There is, of course, no one answer to this question but many answers depending on a variety of factors - the industry, the product or service, the country involved to name a few. To help answer this question the Connecticut District Export Council decided that exporters would find a checklist the most useful, thus this publication. Companies interested in expanding internationally should seek legal advice on protecting their intellectual property-- their patents and trademarks in particular before establishing overseas representation. The rights granted by a U.S. patent, trademark or copyright extends only to the United States.

This “Checklist: How to Locate, Evaluate and Motivate Foreign Distributors and Representatives” is the product of many experienced exporters. Thanks go to members of the Connecticut District Export Council for contributing to and reviewing various parts of the checklist. Also, thanks to Ms. Cynthia Griffin for assisting in compiling and editing the checklist and to Ms. Rosemary Gallant for updating the publication.

This Checklist is meant to be used as a guide and we welcome any suggestions, additions, and comments.

Louis J. Auletta, Sr.
Chairman
Connecticut District Export Council
c/o U.S. Department of Commerce
Export Assistance Center
213 Court St. Suite 903
Middletown, CT 06457

Tel: 860-638-6950
Fax: 860-638-6970

TABLE OF CONTENTS

DEFINITIONS

<input type="checkbox"/> Sales Representative	4
<input type="checkbox"/> Agent	4
<input type="checkbox"/> Distributor	4
<input type="checkbox"/> Other Terms	5

PROFILE OF A REPRESENTATIVE, OR DISTRIBUTOR

<input type="checkbox"/> Characteristics of a Representative or Distributor	6
---	---

FINDING A REPRESENTATIVE OR DISTRIBUTOR

<input type="checkbox"/> Unsolicited	7
<input type="checkbox"/> Take the Initiative Using Publications, Associations, Trade Shows	7
<input type="checkbox"/> Through U.S. Department of Commerce, Commercial Services	9
<input type="checkbox"/> Through U.S. Department of Agriculture, Foreign Agricultural Services	10

REPRESENTATIVE OR DISTRIBUTOR QUESTIONNAIRE

<input type="checkbox"/> Introduction Package for Potential Representatives or Distributors	11
<input type="checkbox"/> Qualification Questionnaire	13

BACKGROUND CHECKS

<input type="checkbox"/> Know your Customer!!! Information from the Bureau of Export Administration	16
<input type="checkbox"/> What to Look for in an Export Transaction	16
<input type="checkbox"/> List of U.S. Companies Providing Financial and Other Information on Foreign Firms	19

AGREEMENTS

<input type="checkbox"/> Checklist for Representative or Distributor Agreements	21
---	----

EVALUATING REPRESENTATIVES OR DISTRIBUTORS

<input type="checkbox"/> Checklist for Evaluating a Representative or Distributor	24
---	----

MOTIVATING YOUR REPRESENTATIVES OR DISTRIBUTORS

<input type="checkbox"/> Checklist for Motivating Representatives or Distributors	25
---	----

ADDITIONAL RESOURCES

<input type="checkbox"/> Useful websites for locating potential Representatives or Distributors	26
---	----

TERMS AND DEFINITIONS

Sales Representative:

- ❑ Equivalent to a manufacturer's representative in the United States, but works overseas.
- ❑ Uses the company's product literature and samples to present the product to potential buyers.
- ❑ A representative usually handles many complementary lines that do not conflict.
- ❑ Usually works on a commission basis, assumes no risk or responsibility, and is under contract for a definite period of time (renewable by mutual agreement).
- ❑ Helps find initial opportunities
- ❑ The contract defines territory, terms of sale, method of compensation, reasons and procedures for terminating the agreement, and other details.
- ❑ The sales representative may operate on either an exclusive or nonexclusive basis.
- ❑ In some countries, a legal relationship as a representative can be implied if business is conducted whether or not there is a written agreement or contract. Termination of the relationship can subject manufacturer to liability. Seek legal counsel.

Agent:

- ❑ Firms in the United States and other countries have stopped using the term and instead rely on the term "representative." An agent in many countries can legally obligate the company it represents. The term agent creates implied legal authority. Also, termination can subject manufacturer to liability in some countries. Seek legal counsel. Given the problems with this term, this publication does not use it and recommends that US exporters not use it for their international sales representation needs.

Distributor:

- ❑ The foreign distributor is a merchant who purchases goods from a U.S. exporter (often at a substantial discount) and resells it for a profit.
- ❑ The foreign distributor generally provides support and service for the product, thus relieving the U.S. company of these responsibilities.
- ❑ The distributor usually carries an inventory of products and a sufficient supply of spare parts and also maintains adequate facilities and personnel for normal servicing operations.
- ❑ Distributors typically handle a range of nonconflicting but complementary products.
- ❑ End users do not usually buy from a distributor; they buy from retailers or dealers.
- ❑ The terms and length of association between the U.S. company and the foreign distributor are established by a written contract. Some U.S. companies prefer to begin with a relatively short trial period and then extend the contract if the relationship proves satisfactory to both parties.
- ❑ The distributor may operate on either an exclusive or nonexclusive basis.
- ❑ In some countries, a legal relationship can be implied if business is conducted whether or not there is a written contract. Termination of the relationship can subject manufacturer to liability. Seek legal counsel.

Other Terms:

- **Dealer** – usually another name for distributor
- **Franchisee** – relationship requires strict conformity to U.S. corporate marketing guidelines, usually associated with trademark, usually involves franchise fee.
- **Licensing** – A business arrangement in which the manufacturer of a product (or a firm with proprietary rights over certain technology, trademarks, etc.) grants permission to some other group or individual to manufacture that product (or make use of that proprietary material) in return for specified royalties or other payment.

PROFILE OF REPRESENTATIVE OR DISTRIBUTOR

Create a profile that will make it easier to select the best-qualified representative or distributor. Ask the right questions. A good profile will save time in qualifying a representative or distributor, and it could ultimately save money in termination costs or compensation*.

The following are examples of desirable characteristics:

- Knows the market and understands economic conditions in country.
- Has adequate sales force in terms of size and experience.
- Is financially stable.
- Has high standards of ethics and honesty.
- Has knowledge of importing, and selling your type of products.
- Has good communication skills.
- Has the ability to thoroughly cover the assigned territory or accounts.
- Holds adequate stock.
- Has technical capabilities.
- Handles complementary or related products.
- Has the ability to forecast sales.
- Can design a marketing plan.
- Can assist in translation.

***Note: Protect your information and trademark.**

- If you need to disclose confidential information, sign a confidentiality agreement in advance.
- If trademarks or service marks are important, consider registering them in the local country before speaking with a potential representative. Many countries trademark rights belong to the first to file or register for them.
- For general information on protecting your patents and trademarks, contact the Commerce Department for the Basic Guide to Exporting. For specific measures, seek legal advice.

WAYS TO FIND A REPRESENTATIVE OR DISTRIBUTOR

- ❑ Unsolicited letters received directly from a potential trading partner.
- ❑ Unsolicited inquiries received through your company website.
- ❑ Through trade shows.

Note: Oftentimes, manufacturers receive unsolicited inquiries from potential representatives or distributors overseas seeking to expand their product line. These contacts can prove to be valuable, however it is critical to conduct due diligence before entering into any type of agreement.

Take the initiative:

- ❑ Inquire about “best” distributors or representatives from customers.
- ❑ Ask your distributor or representative in neighboring countries of their contacts in the targeted country.
- ❑ Ask your international freight forwarder to inquire of their contacts in the targeted country.
- ❑ Ask your customs broker to inquire of their contacts in the targeted country.
- ❑ Ask your bank to inquire of its correspondent bank in the targeted country.
- ❑ Contact the U.S. Department of Commerce Export Assistance Center, which is charged with the mission of helping U.S. companies export. Ask about the International Partner Search (IPS) and the Gold Key Service (GKS).

Export Assistance Center
U.S. Department of Commerce
213 Court Street, Suite 903
Middletown, CT 06457-3382
Tel: 860-638-6950
Fax: 860-638-6970

- ❑ Contact foreign embassies, consulates and trade offices in Washington, D.C. and other major cities. Ask their Commercial Officer for leads. Visit the embassy website at: www.embassy.org
- ❑ Contact the various overseas Chambers of Commerce. To get a directory write to Chambers of Commerce Worldwide, P.O. Box 455, Loveland, CO 80537 or take a look at their website at: www.uschamber.org/international.
- ❑ Tap into your trade or industry association. As more and more U.S. trade associations “go international” they are beginning to provide information on representatives or distributors in key overseas markets. Look in the *Directory of National Trade & Professional Associations* to identify organizations in your field of

interest. Or, identify trade associations in the targeted market and ask them for their membership lists. They may even publish your search in their newsletter.

- ❑ Look into the U.S. Department of Agriculture's *Computerized Information Delivery Service*. Agriculture trade leads, market reports, statistics, etc. Call 202-720-5505 for this free service.

Trade publications and directories are also great sources for identifying trade partners:

- ❑ Directories from conventions, trade shows, exhibitions.
- ❑ Lists of trade show attendees, available after the shows from the show sponsor or show organizer.
- ❑ Kompass Directory at www.kompass.com
- ❑ International telephone directory yellow pages, available at many libraries. Or take a look at the website www.whothere.com/wwphone/world.html.
- ❑ *Export Leads*, a monthly newspaper listing hundreds of overseas leads. Call (301) 652-8811.
- ❑ Many trade facilitation organizations overseas publish directories of importers and exporters.

Advertise, advertise, advertise

- ❑ Advertise through the *Thomas Register*, a publication of U.S. manufacturing and service companies, which is widely available at U.S. Department of Commerce Commercial libraries located in U.S. embassies and consulates. See their website at www.thomaspublishing.com.
- ❑ Get listed in the *American Export Register* published by Thomas International Publishing Company, Phone (212) 290-7343. It is the most comprehensive directory of U.S. products and services available for export. Contact U.S. firms that make complementary, not competitive, products for leads. It also lists air/sea carriers, freight forwarders, consulates, and banks. Qualified manufacturers can get free listing on the Thomas Global Register, a directory of over 500,000 manufacturers and distributors. See their user-friendly website, which is available in six languages at www.aernet.com/english/exporting.
- ❑ Place ads in trade journals that are published in the U.S. and have overseas circulation (call the trade journal and ask about its overseas circulation).
- ❑ Place ads in foreign papers or foreign trade journals to seek candidates.
- ❑ Put an ad in *Commercial News USA*, a monthly publication featuring new U.S. products. For \$495 (black and white) or \$695 (color) you may place an 80-word ad, with photo, of your product. CNUSA is distributed to over 140,000 screened business readers in embassies and consulates in more than 155 countries. In addition it is available to more than 2 million electronic bulletin board users worldwide. Check out their website at: www.cnewsusa.com

Fee Based Services available through the U.S. DEPARTMENT OF COMMERCE to help you export:

- ❑ **International Partner Search (IPS)** is a customized search overseas of interested and qualified foreign representatives conducted by Commercial Specialists on behalf of U.S. exporters. Commercial Specialists abroad prepare a report identifying up to six foreign prospects that have examined the U.S. firm's product literature and have expressed interest in representing the U.S. firm's products. The U.S. company is given the names and addresses of the foreign firms, names and titles of contact persons, contact information, information on company size, other products represented by the company, bank references, company references, and a distribution proposal. The report also comments on the potential distributor. To learn more, contact your U.S. Department of Commerce, Export Assistance Center in Middletown, CT (860) 638-6950.
- ❑ **Gold Key Service (GKS)** is a custom-tailored scheduling service for business appointments in the target market. Through the GKS you will have efficient and effective meetings with prospective foreign representatives, partners, customers and local government officials. This service helps companies save valuable time from "wandering" around the country for days, knocking on doors and hoping to make the right contacts. To learn more, contact your U.S. Department of Commerce, Export Assistance Center in Middletown, CT (860) 638-6950.
- ❑ **International Buyer Program.** The International Buyer Program is designed to help your company achieve its international marketing goals through your participation in domestic trade shows. Each year, the U.S. Department of Commerce selects more than 20 leading U.S. trade shows to promote worldwide through its global network of offices. Commercial specialists at U.S. embassies and consulates abroad conduct intensive promotion campaigns for each International Buyer Program show. Qualified buyers and prospective representatives and distributors are recruited from all over the world to travel to the show and see you and your products firsthand. To learn more, contact your U.S. Department of Commerce, Export Assistance Center in Middletown, CT at (860) 638-6950.
- ❑ **Trade Fair Certification.** Exhibiting at a trade show abroad can lead to tremendous export opportunities for U.S. companies. But researching the options on which countries to target and which shows to choose is not easy for small and medium-sized companies. The aim of the Trade Fair Certification Program is to help companies make important exhibiting decisions and free you of many of the concerns you may have about exhibiting outside the United States. The U.S. Department of Commerce carefully selects events in the countries and industries with the best opportunities for U.S. exporters. And it certifies only major shows within a given industry -- those that have proven to be well-established, high-quality events. To learn more, contact Export Assistance Center in Middletown, CT at (860) 638-6950.
- ❑ **Multi-State/Catalog Exhibition Program.** If you're looking for sales leads or representation in high-growth export markets, the Multi-State/Catalog Exhibition Program can help. The U.S. Department of Commerce, in cooperation with state economic development offices, will present your company's product literature to hundreds of interested business prospects abroad and send the leads directly to you. For more information, contact your U.S. Department of Commerce, Export Assistance Center in Middletown, CT at (860) 638-6950.
- ❑ **Trade Missions.** The U.S. Department of Commerce sponsors several trade missions every year. These are scheduled in select countries worldwide and are tailored to help find representatives, dealers and distributors. Many times, the missions include technical seminars specially designed to promote sales in

specific markets. Each year, the 20 to 30 missions help about 175 businesses establish overseas contacts. Contact your Export Assistance Center in Middletown, CT at (860) 638-6950 to learn more.

- ❑ **Matchmaker Missions.** These are trips to a country or two made by 15 to 20 firms in a specific industry sector (i.e. Medical, Sporting Goods, Computers, Automotive, etc.). The mission is accompanied by an industry specialist from U.S. Department of Commerce headquarters and is arranged by the U.S. Embassy in the targeted country/countries. The overseas Commercial Service widely promotes the event and participating firms meet on a prearranged basis with potential business partners. Contact your U.S. Department of Commerce, Export Assistance Center in Middletown, CT at (860) 638-6950 to learn more.
- ❑ **Flexible Market Research.** A FMR report provides US firms with customized information on targeted overseas markets. The research provides information on market size, market trends, contact lists, sales channels, market entry issues, standards and product registration, regulatory issues and competition. An FMR includes answers to questions specifically posed by a US company.
- ❑ **BuyUSA.com** BuyUSA, the U.S. Department of Commerce/IBM e-marketplace, is a service which provides a full, end-to-end international business platform to match U.S. exporters with international buyers, distributors or other business partners. BuyUSA is a "one-stop" web portal integrating the full complement of Government-to-Business (G2B) and Business-to-Business (B2B) functions necessary to transact international business electronically. BuyUSA.com helps U.S. exporters of products and services to initiate and expand their international sales, while at the same time assisting foreign firms find trusted U.S. suppliers. U.S. exporters can access the full capabilities of BuyUSA for an annual subscription of \$300/year.

Services available through the U.S. Department of Agriculture:

- ❑ If you are interested in agricultural trade, contact The Foreign Agricultural Service (FAS). They are headquartered in the U.S. Department of Agriculture in Washington, D.C. Call (202) 447-7103 for more information on their services or visit their website at: www.fas.usda.gov. The Foreign Agricultural Service has 72 offices covering more than 100 countries.

INTRODUCTION “PACKAGE” FOR POTENTIAL FOREIGN REPRESENTATIVES

An excellent way to screen and select prospective trading partners is to use an introduction “package”. This “package” should be used whenever the U.S. firm receives a legitimate inquiry from overseas about representation. This “package” can also be used as a handout at trade shows for limited and selective distribution.

It is not necessary to write a customized letter every time an inquiry is received. An introduction “package” will suffice and is fully acceptable in modern international business. Many times U.S. firms will receive inquiries about distributorship or representation and will respond by asking the inquirer to provide further information and references, usually not asking for specific information. To fully screen a prospective trading partner, it is vital to gather detailed information about the prospective partner.

An introduction package should consist of the following three parts:

- ❑ A one sheet "prospectus" or fact sheet that says three things:
Who you are -- What you do – What type of representation you are seeking
- ❑ The firm's literature or catalog depicting and describing the product or service offered.
Price information or price lists may or may not be appropriate.
- ❑ A questionnaire (see example). The questionnaire solicits in-depth information that you need to make an informed business decision.

This introduction “package” can be put in an envelope and kept on the shelf ready to drop in the mail without the need to draft a customized letter for each prospective trading partner. If the prospectus or fact sheet is carefully done, the prospective foreign representative will have a good idea of who you are, what you do, and the type of representation that you are seeking. The potential foreign partner will know how you sell, what your commissions are, and how your representative agreements are structured.

Check your literature for applicability in foreign markets. For example, if company literature highlights guarantees or warranties which company will not honor outside the US, that literature should not be used for potential representatives. Selling points based on meeting US safety or environmental standards should be reviewed for relevance overseas.

- ❑ When establishing overseas representation be sure to check on local requirements. For example, the European Union has stringent product guarantee requirements for consumer goods and many other goods now require the CE Mark. For information on local requirements, please contact the Export Assistance Center in Middletown, CT at (860) 638-6950 to learn more.

**** COMPANY LETTERHEAD ****

SAMPLE "PROSPECTUS" OR "FACT SHEET"

(Keep on one page and in simple English)

Better Health, Inc. is a leading U.S. manufacturer of x-ray equipment for professional use. Better Health offers table base x-ray machines that are used by doctors, technicians, nurses, etc. The firm was founded 8 years ago and annual sales this past year totaled \$8 million. The company employs 100, including 13 engineers and technicians.

Better Health 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. Warranty and non-warranty service must be provided. The dealer must have adequate test equipment and be willing to not only carry an inventory of x-ray machines, but service materials as well.

Better Health, Inc. prefers to deal with mutually exclusive dealers in each defined territory. Better Health grants a 25 % discount from their recommended or suggested list prices (25 % commission).

Better Health 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" (case-by-case) basis for a trial period of time, usually six months. If the relationship is mutually profitable, it is policy to enter into a written, mutually exclusive agreement.

Enclosed is a questionnaire. It is mandatory that it be filled out completely and returned to the company. Upon receipt and review, the company will contact you.

Again, this letter clearly states:

- Who you are**
- What you do**
- What type of representation you are seeking**

COMPANY LETTERHEAD

SAMPLE

*****REPRESENTATIVE, DISTRIBUTOR QUESTIONNAIRE*****

Please return completed questionnaire to:

Key Contact Person
Title
Company name
Company address
Telephone/Fax number
Email Address
Website

GENERAL INFORMATION

Name and address of your company:

Telephone:

Fax:

E-mail:

Country :

Type of Organization:

Proprietorship: ____ Corporation: ____ Partnership: ____ Limited Liability: ____

Date Organized:

Principal officers or owners:

1. Name: _____
Address: _____
Telephone: _____

Title: _____
Fax: _____

2. Name: _____
Address: _____
Telephone: _____

Title: _____
Fax: _____

3. Name: _____
Address: _____

Title: _____

Telephone: _____

Fax: _____

If you are a subsidiary, list name and address of your parent company:

Describe your company's major business activity:

List all of 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:

Total number of employees?

TECHNICAL INFORMATION

Do you have your OWN service facility/warehouse for stocking? YES/ NO

If ~NO~, do you contract with an outside service workshop? YES/ NO

If ~YES~, give name and address of outside workshop/warehouse

Company:

Address:

Telephone:

Fax:

Contact Person:

Title:

If you do not have a service facility/stocking warehouse, are you willing to establish one? YES /NO
Comments ?

If ~YES-, when ?

Please describe your technical capabilities:

OTHER INFORMATION

How did you learn about our company?

What interests you most about our company?

Do you have an interest in:

- Touring our facilities in the U.S.?
- Attending a trade show where we exhibit?

Comments:

FINANCIAL INFORMATION

Sales (USDOLS) for last year:

Sales (USDOLS) for current year:

Sales forecast (USDOLS) for next year:

Your company's paid-in capital (USDOLS):

Bank name and complete address:

Trade/Business Reference in U.S., including name, address, key contact, phone and fax:

~ Please attach current financial statement and/or annual report

MARKETING INFORMATION

Are you currently a representative, dealer or distributor in medical equipment? YES/ NO

Describe the types of equipment sold, including brand names:

How long have you been in the medical products business?

Who are your principal clients?

Are you currently representing any other company, which manufactures products similar to Better Health's products? YES /NO

If ~YES~, name companies:

What percentage of your business does each company contribute to turnover?

Do you have any objection to us contacting any such principals? YES/ NO

Comments?

What is your geographic sales area for the above listed equipment?

Projected sales of products for next fiscal year (in USDOLS):

Will you maintain equipment for demonstration in your country? YES /NO

Comments?

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

What is the market potential for Better Health over the next three years?

KNOW YOUR CUSTOMER !!!

Before doing business overseas or committing your company to a partnership with a foreign entity, check the U.S. Department of Commerce, Bureau of Export Administration (BXA) regulations. Determine whether your product requires a validated export license before shipping, and know who your customers are!!!

Website: www.bxa.doc.gov

Determine whether or not your product requires a validated export license

A relatively small percentage of exports and reexports requires the submission of a license application to BXA. License requirements are dependent upon an item's technical characteristics, the destination, the end use, and the end user. Determining whether a license is required for export is easier under the newly drafted regulations which consolidate license requirements previously scattered throughout the regulations. Once a classification has been determined, exporters may use a single chart to determine if licenses are needed for a country. The revised regulations include answers to frequently asked questions, detailed step-by-step instructions for determining if a transaction is subject to the regulations, how to request a commodity classification or advisory opinion, and how to apply for a license.

“Denied Persons” List. Doing business with a person that is listed as a “Denied Person” is in violation of the Export Administration Regulations and is strictly forbidden.

Violating this regulation by transacting business with such “Denied Persons” or any embargoed countries (see Special Designated National List) is subject to criminal prosecution or civil monetary penalties which range up to 10 years in prison, \$1 million in corporate and \$250,000 in individual fines.

Entity List. End users on this list have been determined to present an unacceptable risk of diversion of weapons of mass destruction or the missiles used to deliver those weapons.

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."

*BXA has issued the following guidance on how individuals and firms should act under this knowledge standard. This guidance does not change or revise the Export Administration Regulations (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 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 no "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 BXA, 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 BXA in the form of an application for a validated license or in such other form as BXA may specify.

* Industry has an important role to play in preventing exports and re-exports contrary to the national security and foreign policy interests of the United States. BXA 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 BXA's Office of Export Enforcement through their 24 hour hotline at 1-800-424-2980.

WHAT TO LOOK FOR IN AN EXPORT TRANSACTION

Use this as a check list to discover possible violations of the Export Administration Regulations. You may also wish to visit BXA's webpage that provides "Know Your Customer Guidance" at www.bxa.doc.gov.

- ❑ The customer or its address is similar to one of the parties found on the Commerce Department's [BXA's] list of denied persons.
- ❑ The customer or purchasing manager 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.
- ❑ The customer declines routine installation, training, or maintenance services.
- ❑ 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 re-export.

If you have reason to believe a violation is taking place or has occurred, you may report it to the Department of Commerce, Bureau of Export Administration, Office of Export Enforcement by calling its 24 hour hot line: 1-800-424-2980. Any information you submit will remain confidential.

U.S. COMPANIES PROVIDING FINANCIAL AND OTHER INFORMATION ON FOREIGN FIRMS

Once a possible partner, representative or distributor has been identified, conduct a due diligence background investigation on the prospective partner.

The U.S. Department of Commerce provides background reports on foreign firms called "International Company Profiles" (ICPs). The ICP offers you a proven way to evaluate potential business partners by providing a detailed report on overseas companies which have been personally visited, if feasible, by a overseas commercial specialist of the U.S. Department of Commerce. Through this service, you can request answers to detailed questions about overseas companies on a variety of issues, and receive expert advice from our commercial specialists about the relative strength of the firm in its market and its reliability.

To order an ICP, contact:

- ❑ Export Assistance Center
U.S. Department of Commerce
213 Court Street, Suite 903
Middletown, CT 06457-3382
Tel: 860-638-6950
Fax: 860-638-6970

The cost per report is varies by country, up to about \$600. Most reports take 10-15 working days to complete.

The following is a listing of U.S. companies that also provide background reports. This list does not constitute an endorsement or recommendation for these firms.

- ❑ Dun and Bradstreet Corporation
988 Eaton Avenue
Bethlehem, PA 18025
Tel: 1-800-234-3867
Fax: (512) 794-7670
Website: www.dnb.com

Remarks: Types of reports available and pricing structures vary. Reports provided via mail, fax, or online.

- ❑ Graydon America
116 John Street, Suite 3300
New York, New York 10038
Tel: 1-888-graydon
Fax: (800) 882-9300
Website: www.graydonamerica.com

Remarks: Provides individual reports for most countries via mail, fax, or online. Concentrates on Latin American countries.

- ❑ The Keller Business Information Group, Inc.
817 Main Street, 3rd Floor
Cincinnati, Ohio 45202

Tel: 1-800-444-6361
Fax: (513) 723-8907

Remarks: Provides credit reports on companies worldwide via mail, fax or online. Focuses on Latin America, Middle East, Eastern Europe, Africa, and Asia.

- ❑ Owens OnLine, Inc.
2511 Lyndhurst Street
Dunedin, FL 34698
Tel: (813) 738-1245 or (800) 745-4656
Fax: (813) 738-8275
Website: www.owens.com

Remarks: This firm sells "Owens OnLine" and "Global Scan" foreign credit reports.

- ❑ Standard and Poor's Rating Service
Ratings Information Products and Services
25 Broadway
New York, New York 10004
Tel: (212) 208-1146
Fax: (212) 412-0505
Website: www.standardandpoors.com

Remarks: Provides various credit analysis reports via mail, fax, or online.

- ❑ Standard and Poor's Compustat
Custom Business Unit
7400 South Atlon Court
Englewood, Colorado 80112-2394
Tel: (303) 721-4819
Fax: (303) 694-4021

- ❑ Remarks: Provides customized financial and other company data on publicly traded foreign firms.

- ❑ Veritas Business Information Inc.
121 Whitney Avenue, 2nd Floor
New Haven, Connecticut 06510
Tel: (203) 781-3850 or (800) 929-8374
Fax: (203) 781-3838 or (800) 929-7779
Website: www.veritas-usa.com

Remarks: Provides individual reports for most countries via mail, fax, or online. Is also noted quite worthwhile for reports on Latin American companies.

CHECKLIST FOR REPRESENTATIVE/DISTRIBUTOR AGREEMENTS

One of the most important considerations is to ensure that the agreement clearly states the nature of the relationship—representative or distributor. (Please refer to definitions on page 4).

The rights and duties of the different relationships are very significant. Given the distinctions, any agreements should state very plainly and clearly what relationship is being established. The Agreements should also clarify the terms and conditions for selling the products.

IMPORTANT: Seek legal advice from an experienced international business attorney before preparing and entering into foreign agreements as each country has some form of laws or regulations governing representation and distributorships. Seek legal advice on applicable US and foreign laws regarding electronic commerce and the enforceability of email and Internet based agreements.

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

- Clear introduction of all the parties to the agreement.
- Date when the agreement goes into effect.
- Duration of the agreement.
- Duties of the representative or distributor including minimum purchase requirements (for distributors) and minimum sales generated (for representatives.)
- Duties of your company in supporting the representative or distributor.
- Description of product lines included.
- Definition of sales territory—market where the representative's/distributor's performance will be measured, evaluated and supported. Note: The sales territory can be defined as a geographic territory, market segment, a particular industry, specific distribution channels, or a specific list of customers.
- Delivery and shipping terms.
- Returned goods or obsolescence policy.
- Distributor's inventory requirements.
- Sales promotion and advertising policy.
- Product guarantees and warranties. Determine who pays for shipment of warranted products that cannot be repaired in country.
- Maintenance of appropriate service facilities.
- Restrictions on the manufacture and sale of similar and competitive products.
- Designation of responsibility for patent and trademark negotiations and/or policing.
- Specification whether the relationship is exclusive versus non-exclusive.
- Issues of payment for the products (in the case of a distributor) and for payments of commissions (in the case of representatives).
- Currency in which payments are to be made and address currency fluctuation issues.
- Official language of the contract.
- Provide specific provisions regarding renewal of the agreement, including specific parameters for performance, promotional activity and notice of desire to renew.
- Provision for termination of the agreement and reasons for termination, i e, failure to perform to the terms of the contract. Advanced notice prior to terminating the contract must be specified. (Be careful with this provision. Some foreign countries restrict or prohibit termination without just cause or compensation.)
- Termination process for the end of the agreement period.
- Workable and acceptable dispute settlement clauses.

- ❑ Country of contract jurisdiction in the case of dispute. Make sure award will be binding in distributor's country.
- ❑ Specification of whether or not intellectual property rights are being licensed or reserved.
- ❑ Prohibition, without sellers consent, on the contract being assigned to another party (sub representatives or sub- distributors.)
- ❑ 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.

Additionally, the agreement should indicate that:

- ❑ Distributor or representative shall indemnify U.S. firm from and against all claims, losses and liability arising out of damage to property or injury to, or death of persons, occasioned by or in connection with, the acts or omissions of representative/distributor or his associates or employees. Such indemnity shall extend to any professional expenses such as attorney's expenses.
- ❑ Distributor or representative will refer all inquiries received from outside the designated sales territory to the U.S. firm for appropriate action.
- ❑ The manufacturer shall not be liable for inability to timely fill an order due to any cause beyond the control of U.S. manufacturer.
- ❑ The manufacturer reserves the right to make design changes, improve design, or change specifications. Also, the manufacturer reserves the right to change prices, terms and conditions at any time.
- ❑ The manufacturer owns all intellectual property in its products or services, including any translations, adaptations, enhancements, and new versions.
- ❑ The local partner will notify the manufacturer immediately upon learning that a third party is infringing or threatening infringement of the manufacturer's intellectual property.

Electronic Commerce Considerations

- ❑ The agreement should include specific provisions for e-commerce with definitions for electronic sales territory. For example, failing to specifically exclude electronically received inquiries from the defined territory could lead to charges of breach of contract if the supplier accepts orders from the representative's territory via its Website. Alternatively, the agreement could grant commission to the exclusive representative for such sales. Companies should check applicable US and foreign laws (which are evolving quickly) and investigate what terms apply for agreements conveyed electronically.

EVALUATING YOUR REPRESENTATIVE OR DISTRIBUTOR

It is important to evaluate overseas distributors on an annual basis, which means being vigilant in monitoring their performance.

The following is a brief evaluation checklist of attributes of an ideal distributor, your company may wish to design an evaluation form that might include some of the following points:

- ❑ Has the ability to develop and implement agreed strategy.
- ❑ Delivers agreed targets.
- ❑ Has excellent market coverage including a well-trained and dedicated sales force with good market and product knowledge.
- ❑ Is effective in managing key accounts.
- ❑ Has strong relationship with key decision makers.
- ❑ Updates market database, tracks trends well, updates information on competition.
- ❑ Serves as a technical reference point.
- ❑ Motivated to sell company products.
- ❑ Holds no competitive lines, although synergistic lines acceptable.
- ❑ Holds appropriate level of demo stock, as well as stock for sale.
- ❑ Is willing to invest in inventory in anticipation of sales.
- ❑ Produces quality and regular reports, including supplying appropriate budget/forecast/and other relevant information. Takes initiative to update principals on any new developments.
- ❑ Maintains complete range of promotional materials. Takes initiative to produce materials that are locally adapted. Maintains exhibition materials.
- ❑ Has good service infrastructure, including well trained service engineers supported by adequate service spares inventory.
- ❑ Has financial capabilities to meet any business needs and obligations, including timely payment of bills. Pays bills on time. Never exceeds credit limit.

To evaluate performance over time:

- ❑ Compare ratios of your sales with competitor sales.
- ❑ Match sales against past performance.
- ❑ Monitor inventory turnover ratios.
- ❑ Compare notes with retailers on your distributor's sales efforts.
- ❑ Check local media for effectiveness of advertising and to ensure that ads are indeed being placed.
- ❑ Compare short-term and long-range effectiveness of distributor's activities.

MOTIVATING YOUR DISTRIBUTOR OR REPRESENTATIVE

By keeping your distributor or representative motivated, your company can increase sales and profits in a highly competitive foreign market.

The following are some examples to motivate your distributor or representative. Depending upon the nature of the product line, the personality of the distributor, and other market factors, a firm should be flexible in using these techniques:

- ❑ Reply to all correspondence/inquiries from your distributor immediately.
- ❑ Visit the distributor periodically. Company executives, regional representatives and marketing experts should visit the distributor personally. There is no better way to truly understand a specific market than to visit. Every distributor wants and expects a visit from his supplier. Likewise, invite distributor or representative to the U.S., to foreign plants or to major regional offices.
- ❑ Send information to the distributor. While this is often neglected, the distributor hopes to receive periodic information from the U.S. suppliers on the company, the products, the people and the industry.
- ❑ Develop the distributor or representative's identity within your company.
- ❑ Make them proud to be your representative by communicating their importance to the corporate goals, taking them into your confidence on future plans, soliciting their input for improving the business.
- ❑ Publicize recognition in the company newsletter.
- ❑ Hold regional distributor/representative conferences.
- ❑ Send giveaways and free samples to distributor or representative bearing the company name.
- ❑ Offer incentive prices for expanded sales.
- ❑ Share costs of translating sales and product literature into language of distributor's home country.
- ❑ Share advertising and promotion costs.
- ❑ Reward good performance with cash prizes, trips abroad, certificates or plaques.
- ❑ Cover costs of club or professional memberships.

Over the longer term, after your partners have proven themselves:

- ❑ Reward a successful distributor with an exclusive contract.
- ❑ Modify product or introduce new products to suit the market.
- ❑ Provide training to develop more advanced skills in product management, market research and general business.
- ❑ Offer credit terms that are competitive or better, both in length and method of payments, such as open account for 60 days or longer.
- ❑ Take advantage of direct wire transfers. Accept partial payment upfront with full payment to be made 2-3 days prior to product being shipped.
- ❑ Assist by securing financing.
- ❑ Use financing tools available through the U.S. Export-Import Bank and the Small Business Administration.
- ❑ Ship semi-manufactured good for local finishing to get lower tariffs and greater margins for the distributor.

USEFUL WEBSITES BY REGION

Asia

- ❑ China External Trade Development Council (CETRA) (Taiwan)
<http://www.cetra.org.tw>
CETRA is the leading trade promotion organization and Taiwan's largest non-profit trade promoter for the past 30 years. CETRA's website provides information on trade shows in Taiwan, access to a database of 180,000 importers and exporters in Taiwan and trade statistics.
- ❑ Hong Kong Trade Development Council
<http://www.tdc.org.hk>
The Hong Kong Trade Development Council (TDC) promotes Hong Kong's trade in goods and services. It helps to develop Hong Kong's role as an information hub, a business center in the Asia-Pacific and a gateway to China.
- ❑ JETRO
<http://www.jetro.go.jp>
This site provides information on doing business in Japan, exporting to Japan, investing in Japan, facts about Japan, and Japanese Government Procurement.
- ❑ KOTRA
<http://www.kotra.or.kr>
Korea Trade-Investment Promotion Agency site provides information on Korean organizations, companies and trade shows.

Europe

- ❑ CEEBIC
<http://www.mac.doc.gov/eebic/ceebic>
Central & Eastern Business Information Network. This site provides trade leads, contacts and market research. CEEBIC, under the U.S. Department of Commerce offers a variety of services to the U.S. business community to facilitate trade and commercial development between the United States and Central and Eastern Europe.
- ❑ BIZ EUROPE
<http://www.bizeurope.com>
The site contains leads from buyers worldwide. Full contact details are available to BizEurope business club members at \$100 per year. Membership gives access to:
 - All buyer leads
 - All catalog requests from importers/distributors
 - All overstock requests from brokers/importers
 - All agency / agents requests
 - Company profiles of importers
 - Plus free company profile listing and link from the Business Site Register
- ❑ EUROPAGES
The European Business Directory
<http://www.europages.com/home-en.html>

This directory contains information on 500,000 companies in 30 European countries. This site also contains a company search by product.

❑ German American Trade Leads

<http://www.gaccwest.org>

This site provides information on how to enter German markets, as well as leads from Germany and the U.S. Advertise in “German-American Business Opportunities” to get in contact with German companies.

Middle East and Africa

❑ Arab World On-line

<http://www.awo.net>, arabdatanet.com

This site maintains a business directory, country information on 22 Arab countries, links to other related sites, and addresses of Arab Chambers of Commerce.

❑ U.S. Africa Technology Network (USATN/USAID)

<http://www.usgtn.org>

This service is operated by USAID's Global Technology Network. Learn about potential partnerships in African countries. Call 202-466-0758, Fax: 202-466-4597.

❑ Mbendi - Information for Africa

<http://www.mbendi.co.za>

MBendi Information Services assists companies and business people around the world to do business in and with Africa. In their pages you will find information on business opportunities and challenges in the countries of Africa, the companies and organizations active in various industry sectors, the leading business and government personalities, details of events, conferences and exhibitions, a directory of products and services, the larger development projects currently underway in Africa, key African publications, and information on the African Stock Exchanges.

Western Hemisphere

❑ Brazil InfoNet

<http://www.brazilinfo.net>

Comprehensive information about Brazil. This site also provides a business directory and trade leads.

❑ ChilNet

<http://www.chilnet.cl/chilnet>

Chilnet is one of the most extensive directories of businesses anywhere on the Internet. Chilnet provides a directory of thousands of Chilean companies, classified by industry.

❑ The IPL Trade Directory - The Business Connection to Latin Markets

http://www.latinsynergy.org/interbusiness_index.htm

This site offers information on doing business in Latin America. Provides links to other valuable sites. Particularly good for companies interested in environmental technologies.

❑ Latin Export

<http://www.latinexport.com/>

This site contains a database of exporters and importers from the Mercosur regions of Brazil, Argentina, Bolivia, Chile, Paraguay and Uruguay. You can search for suppliers by product category (SIC Code) or company name. This site also contains directories of other organizations involved in international trade; trading firms, services companies and industry associations.

❑ MAQUILA GUIDE

<http://www.maqguide.com>

The Maquila Guide or "Maqguide" is a directory of maquila manufacturing plants and suppliers in Mexico.

General Matchmaking, Trade Lead Sites and Resources

❑ BuyUSA

<http://www.buyUSA.com>

Electronic matchmaking with US suppliers and qualified international buyers and representatives. Internet site is partnered with support from Export Assistance Center staff throughout the US and Commercial Officers and specialists at US Embassies and Consulates around the world.

❑ American Trading Network

<http://www.atnworld.com/home.htm>

Subscription. Trade Leads. ATN provides member companies direct access to buyers, distributors, investors, joint ventures, manufacturers, trading networks and preferred sources worldwide.

❑ Center for International Trade

<http://www.centretrade.com>

Membership. CIT has over 3,300 members from every corner of the world. Members include embassies, government agencies, trade associations and companies. Site offers trade leads as well as regulatory, finance and freight information.

❑ Export-Leads

<http://www.export-leads.com/expleads.html>

Subscription. Export Leads is a monthly international newspaper featuring nearly 10,000 export sales leads a year. Publisher "Interdata" also publishes international directories of importers, commodities, and mailing lists.

❑ Gbot

<http://www.gbot.net/>

Trade Lead Compiler and international Trade Lead Bulletin Board. The GBOT AutoSubmitter™ robot will automatically distribute your trade lead to various webs, e-mail and newsgroup based trade lead compilers throughout the world. Rather than manually entering your trade lead once a day for each bulletin board, enter it once at the Global Board of Trade AutoSubmitter. Just select your user-defined trade lead, select your AutoSubmitter list and the Global Board of Trade will distribute your lead instantly. Your submission results will be emailed to you to record the accuracy and success of the posting.

❑ IMEX Exchange

<http://www.imex.com>

This site includes trade opportunities, marketing and advertising opportunities and country specific information.

❑ The Federation of International Trade Associations.

<http://www.fita.org/>

FITA offers a network of over 300,000 companies belonging to 300 international trade associations in the U.S.A, Canada and Mexico. Links to hundreds of other trade lead sites.

- ❑ Global Trade Center
<http://www.tradezone.com>
The Global Trade Center provides valuable international trade information for manufacturers, importers and exporters. This site offers free trade leads.
- ❑ KOMPASS
<http://www.kompass.com>
Kompass offers listings of 1.5 million companies, 23 million products and services references, 2.7 million executive names, and 400,000 trade and brand names in over 60 countries.
- ❑ Owens OnLine
<http://www.owens.com/>
Owens Online is an international credit reporting agency, plus much more. Owens offers international credit reports, and links to 90+ countries, 150 million companies, people, and corporate records.
- ❑ Replink
<http://www.replink.com>
This is an award winning matchmaker site for manufacturers, sales representatives, wholesalers and distributors.
- ❑ TradePort
<http://www.tradeport.org/ts/>
TradePort is designed to be an easy-to-use tool for comprehensive trade information, trade leads, and company databases. TradePort is an international trade/defense conversion initiative of BAYTRADE, managed by the Bay Area Economic Forum, and LA TRADE, managed by the Los Angeles Area Chamber of Commerce.
- ❑ TS Central
<http://www.tscentral.com>
TS Central is an internet-based provider of information for worldwide trade events. This site covers trade shows, seminars and conferences, as well as extensive directories of suppliers, venues and facilities.
- ❑ WTM-WORLD TRADE MARKETS
<http://www.wtm.com/>
World Trade Markets has adapted the WTM renowned Trade/Search system to search, capture and disseminate Trade Point Trade Leads (ETO's-Electronic Trade Opportunities) throughout the world.