Contents

List of Figures xiii

Foreword by Eugene J. Schreiber xvii

Preface xix

Acknowledgments xx

Part I
Organizing for Export and Import Operations 1

Chapter 1. Organizing for Export and Import Operations 3
    A. Export Department 3
    B. Import Department 4
    C. Combined Export and Import Departments 4
    D. Manuals of Procedures and Documentation 8
    E. Record-Keeping Compliance 9
    F. Software 13
    G. Federal, State, International, and Foreign Law 14

Part II
Exporting: Procedures and Documentation 15

Chapter 2. Exporting: Preliminary Considerations 17
    A. Products 17
    B. Volume 18
    C. Country Market and Product Competitiveness Research 18
    D. Identification of Customers: End Users, Distributors, and Sales Agents 18
    E. Compliance With Foreign Law 19
        1. Industry Standards 20
        2. Foreign Customs Laws 20
        3. Government Contracting 21
        4. Buy American Equivalent Laws 21
        5. Exchange Controls and Import Licenses 22
Contents

6. Value-Added Taxes 22
7. Specialized Laws 22

F. Export Controls and Licenses 22
G. Patent, Trademark, and Copyright Registrations and Infringements 23
H. Confidentiality and Non-Disclosures Agreements 23
I. Antiboycott Compliance 24
J. Employee Sales Visits to Foreign Countries—Immigration and Customs Compliance 24

K. Utilization of Freight Forwarders and Foreign Customs Brokers 28
L. Export Packing and Labeling (Hazardous Materials) 30
M. Terms of Sale 32
N. Consignments 36
O. Leases 36
P. Marine and Air Casualty Insurance 37
Q. Methods of Transportation; Booking Transportation 38
R. Country of Origin Marking 45
S. Foreign Warehousing and Free Trade Zones 45
T. Export Financing and Payment Insurance 45
U. Tax Incentives 46
V. Export Trading Companies, Export Trade Certificates of Review, and Export Management Companies 46
W. Translation 57
X. Foreign Branch Operations, Subsidiaries, Joint Ventures, and Licensing 57
Y. Electronic Commerce 57

Chapter 3. Exporting: Sales Documentation 60

A. Isolated Sales Transactions 60

1. Importance of Written Agreements 60
2. Telex or Facsimile Orders 61
3. The Formation of Sales Agreements 61
4. Common Forms for the Formation of Sales Agreements 63

a. Price Lists 63
b. Requests for Quotations 63
c. Quotations and Costing Sheets 65
d. Purchase Orders 65
e. Purchase Order Acknowledgments, Acceptances, and Sale Confirmations 70
f. Pro Forma Invoices 73
g. Commercial Invoices 81
h. Conflicting Provisions in Seller and Buyer Sales Documentation 81
i. Side Agreements 84

B. Ongoing Sales Transactions 84

1. Correlation With Documentation for Isolated Sales Transactions 85
2. Important Provisions in International Sales Agreements 86

a. Selling and Purchasing Entities 86
b. Quantity 87
c. Pricing 87
d. Currency Fluctuations 90
e. Payment Methods 90
f. Export Financing 92
g. Security Interest 95
h. Passage of Title, Delivery, and Risk of Loss 95
i. Warranties and Product Defects 95
j. Preshipment Inspections 96
k. Export Licenses 97
l. Import Licenses and Foreign Government Filings 97
m. Governing Law 97
n. Dispute Resolution 99
o. Termination 101

C. Export Distributor and Sales Agent Agreements 101
   1. Distinction Between Distributor and Sales Agent 101
   2. Export Distributor Agreements 103
      a. Territory and Exclusivity 103
      b. Pricing 106
      c. Minimum Purchase Quantities 107
      d. Handling Competing Products 107
      e. Effective Date and Government Review 107
      f. Appointment of Subdistributors 107
      g. Use of Trade Names, Trademarks, and Copyrights 108
      h. Warranties and Product Liability 108
   3. Export Sales Agent Agreements 109
      a. Commissions 109
      b. Pricing 109
      c. Shipment 112
      d. Warranties 112
      e. Relationship of the Parties 112

D. Foreign Corrupt Practices Act Compliance 112

Chapter 4. Exporting: Other Export Documentation 114
   A. Freight Forwarder's Powers of Attorney 114
   B. Shipper's Letters of Instructions 114
   C. Commercial Invoices 116
   D. Bills of Lading 118
   E. Packing Lists 120
   F. Inspection Certificates 120
   G. Marine and Air Casualty Insurance Policies and Certificates 120
   H. Dock and Warehouse Receipts 133
   I. Consular Invoices 133
   J. Certificates of Origin 133
   K. Certificates of Free Sale 162
   L. Delivery Instructions and Delivery Orders 162
   M. Special Customs Invoices 162
Contents

N. Shipper's Declarations for Dangerous Goods 169
O. Precursor and Essential Chemical Exports 169
P. Animal, Plant, and Food Export Certificates 169
Q. Drafts for Payment 175
R. Letters of Credit 175
S. Shipper's Export Declarations 181
T. Freight Forwarder's Invoices 195

Chapter 5. Export Controls and Licenses 197
A. Introduction 197
B. Scope of the EAR 198
C. Commerce Control List 198
D. Export Destinations 203
E. Customers, End Users, and End Uses 210
F. Ten General Prohibitions 210
G. License Exemptions and Exceptions 212
H. License Applications and Procedures 213
   1. Documentation From Buyer 213
   2. License Application Form 215
   3. Procedures 223
I. Re-Exports 223
J. Export Documentation and Record-Keeping 223
K. Special Comprehensive Licenses 225
L. Technology, Software, and Technical Assistance Exports 230
M. Violations and Penalties 232
N. Munitions and Arms Exports 232

Part III
Importing: Procedures and Documentation 237

Chapter 6. Importing: Preliminary Considerations 239
A. Products 239
B. Volume 240
C. Country Sourcing 240
D. Identification of Suppliers 241
E. Compliance With Foreign Law 242
   1. Foreign Export Controls 242
   2. Exchange Control Licenses 242
   3. Export Quotas 243
F. U.S. Customs Considerations 243
   1. Utilization of Customs Brokers 243
   2. Importation Bonds 244
   3. Importer's Liability and Reasonable Care 250
   4. Application for Importer's Number 250
   5. Ports of Entry 250
   6. Import Quotas 254
# Contents

7. Antidumping, Countervailing, and Other Special Duties 255
8. Classification 256
9. Valuation 256
10. Duty-Free and Reduced Duty Programs 257
11. Column 2 Imports 258
12. Deferred Duty Programs (Bonded Warehousing and Foreign Trade Zones) 258
13. Temporary Importations 259
15. Assists 260
16. Specialized Products 262
17. Record-Keeping Requirements 262
18. Customs Rulings 262

G. Import Packing and Labeling 262
H. U.S. Commercial Considerations 263

1. Prevailing Market Price 263
2. Buy American Policies 264

I. Terms of Purchase 264
J. Consignments 266
K. Leases 267
L. Marine and Air Casualty Insurance 267
M. Method of Transportation; Booking Transportation 268
N. Import Financing 268
O. Patent, Trademark, and Copyright Registrations and Infringements 268
P. Confidentiality and Non-Disclosure Agreements 269
Q. Payment 269
R. Translation 270
S. Foreign Branch Operations, Subsidiaries, Joint Ventures, and Licensing 270
T. Electronic Commerce 276

## Chapter 7. Importing: Purchase Documentation 280

### A. Isolated Purchase Transactions 280

1. Importance of Written Agreements 280
2. Telex or Facsimile Orders 281
3. The Formation of Purchase Agreements 281
4. Common Forms for the Formation of Purchase Agreements 282

a. Price Lists 283
b. Requests for Quotations and Offers to Purchase 283
c. Quotations 283
d. Purchase Orders 284
e. Purchase Order Acknowledgments, Acceptances, and Sales Confirmations 284
f. Commercial Invoices 285
g. Conflicting Provisions in Seller and Buyer Sales Documentation 285
h. Side Agreements 286
Contents

B. Ongoing Purchase Transactions 286
   1. Correlation With Documentation for Isolated Purchase Transactions 287
   2. Important Provisions in International Purchase Agreements 288
      a. Purchasing and Selling Entities 288
      b. Quantity 288
      c. Pricing 289
      d. Currency Fluctuations 291
      e. Payment Methods 292
      f. Import Financing 294
      g. Security Interest 294
      h. Passage of Title, Delivery, and Risk of Loss 294
      i. Warranties and Product Defects 295
      j. Preshipment Inspections 295
      k. Export Licenses 296
      l. Governing Law 296
      m. Dispute Resolution 298
      n. Termination 299

C. Import Distributor and Sales Agent Agreements 299
   1. Distinction Between Distributor and Sales Agent 300
   2. Import Distributor Agreements 300
      a. Territory and Exclusivity 300
      b. Pricing 301
      c. Minimum Purchase Quantities 301
      d. Handling Competing Products 301
      e. Appointment of Subdistributors 302
      f. Use of Trade Names, Trademarks, and Copyrights 302
      g. Warranties and Product Liability 302
   3. Import Sales Agent Agreements 303
      a. Commissions 303
      b. Pricing 303
      c. Shipment 303

Chapter 8. Import Process and Documentation 305
   A. Bills of Lading 305
   B. Commercial Invoices 307
   C. Pro Forma Invoices 307
   D. Packing Lists 307
   E. Inspection Certificates 309
   F. Drafts for Payment 309
   G. Arrival Notices 309
   H. Pick-Up and Delivery Orders 309
   I. Entry/Immediate Delivery 311
   J. Entry Summary 311
   K. Other Entries 317
   L. Reconciliation 322
Contents

M. GSP, CBI, ATPA, AGOA—Special Programs 322
N. NAFTA Certificate of Origin 322
O. Specialized Products Customs Entry Forms 324
P. Examination and Detention 324
Q. Liquidation Notices 334
R. Notices of Redelivery 334
S. Requests for Reliquidation 334
T. Requests for Information 339
U. Notices of Action 339
V. Protests, Supplemental Information Letters, and Post-Entry Amendments 339
W. Administrative Summons 345
X. Search Warrants 345
Y. Grand Jury Subpoenas 350
Z. Seizure Notices 350
AA. Prepenalty Notices 353
BB. Penalty Notices 353
CC. Customs Audits 353
DD. Prior Disclosure 362
EE. Court of International Trade 365
FF. Appeals 365
GG. Offers of Compromise 365
HH. ITC and Commerce Questionnaires 372

Part IV
Specialized Exporting and Importing 373

Chapter 9. Specialized Exporting and Importing 375
   A. Drawback 375
   B. Foreign Processing and Assembly Operations 382
   C. Plant Construction Contracts 385
   D. Barter and Countertrade Transactions 387

Appendices 389

Appendix A. Government Agencies and Export Assistance 391
Appendix B. International Sales Agreement (Export) 409
Appendix C. Correct Way to Complete the Shipper’s Export Declaration 417
Appendix D. Automated Export System (AES) and AES Direct 437
Appendix E. U.S. Customs Reasonable Care Checklists 455
Appendix F. Harmonized Tariff Schedules (Excerpts) 465
Appendix G. International Purchase Agreement (Import) 483
Appendix H. Rules for Completing an Entry Summary 491
Appendix I. Rules for Constructing Manufacturer/Shipper Identification Code 525
Appendix J. Customs Audit Questionnaires 533
Contents

Appendix K.  List of Export/Import-Related Web Sites  541

Glossary of International Trade Terms  547

Index  571

About the Author  583
List of Figures

1–1. Export organization chart. 5
1–2. Export order processing—quotation. 6
1–3. Export order processing—order entry. 7
1–4. Export order processing—shipment. 8
1–5. Export order processing—collection. 9
1–6. Interrelationships with outside service providers. 10
1–7. Export manual table of contents. 11
1–8. Import manual table of contents. 12
2–1. Report of request for restrictive trade practice or boycott—single transaction. 25
2–2. Report of request for restrictive trade practice or boycott—multiple transactions (and continuation sheet). 26
2–3. Application for carnnet. 29
2–4. Examples of Incoterm usage. 33
2–5. Diagram of the Incoterms. 34
2–6. Ocean marine insurance coverage. 39
2–7. Sample steamship tariff. 40
2–8. Booking confirmation. 44
2–9. Application for Export-Import Bank insurance. 47
2–10. Application for export trade certificate of review. 50
2–11. Export trade certificate of review. 54
3–1. Formation of sales agreements. 62
3–2. Quotation request. 64
3–3. Export quotation worksheet. 66
3–4. Quotation. 67
3–5. Quotation. 68
3–6. Quotation. 71
3–7. Purchase order. 74
3–8. Purchase order. 75
3–9. Purchase order acceptance. 77
3–10. Pro forma invoice. 82
3–11. Commercial invoice. 83
3–12. International credit terms/payment methods. 93
3–13. Legal comparison of distributors and agents. 102
List of Figures

3-14. Financial comparison of using distributors and sales agents. 103
3-15. Foreign distributorship appointment checklist. 104
3-16. Foreign sales representative appointment checklist. 110
4-1. Power of attorney. 115
4-2. Shipper's letter of instructions. 117
4-3. Contents of a commercial invoice. 118
4-4. Inland bill of lading. 121
4-5. Ocean bill of lading. 124
4-6. International air waybill. 126
4-7. "House" air waybill. 128
4-8. Packing list. 130
4-9. Preshipment inspection worksheet. 131
4-10. Preshipment inspection certificate. 132
4-11. Marine insurance policy. 134
4-12. Marine insurance certificate. 153
4-13. Standard form for presentation of loss or damage claim. 155
4-14. Request for information for insurance claim. 157
4-15. Dock receipt. 158
4-16. Consular invoice. 160
4-17. Certificate of origin. 161
4-18. NAFTA certificate of origin and instructions. 163
4-19. Certificate of free sale. 165
4-20. Delivery instructions. 166
4-21. Delivery order. 167
4-22. Special customs invoice (Canada). 168
4-23. Shipper's declaration for dangerous goods. 170
4-24. Shipper's certification of articles not restricted. 171
4-25. DEA import/export declaration. 172
4-26. Export certificate—animal products. 174
4-27. Meat and poultry export certificate. 176
4-28. Instructions for documentary collection. 177
4-29. Sight draft. 178
4-30. Time draft. 178
4-31. Letter of credit instructions. 179
4-32. Common discrepancies in letters of credit. 181
4-33. Checklist for a letter of credit beneficiary. 182
4-34. Letter of indemnity. 186
4-35. Advice of irrevocable letter of credit (confirmed). 187
4-36. Advice of irrevocable letter of credit (unconfirmed). 188
4-37. Letter of credit. 189
4-38. SWIFT letter of credit codes. 191
4-39. Shipper's export declaration. 192
4-40. Shipper's export declaration (in-transit). 193
4-41. Freight forwarder's invoice. 196
5-1. Sample pages from the Commerce Control List (ECCN 2B001). 201
5-2. Country group A. 204
List of Figures

5–3. Country group B.  205
5–4. Country group D.  206
5–5. Country group E.  208
5–6. Excerpts from Commerce Country Chart.  209
5–7. Red flags.  211
5–8. Decision tree for exporters.  214
5–9. Import certificate (U.S.).  216
5–10. Statement by ultimate consignee and purchaser.  217
5–11. Multipurpose application.  218
5–12. Item appendix.  221
5–13. End user appendix.  222
5–14. Sample export license.  224
5–15. Delivery verification certificate.  226
5–16. Statement by consignee in support of special comprehensive license.  228
5–17. Reexport territories.  229
5–18. Customs export enforcement subpoena.  233
6–1. Power of attorney for customs broker.  245
6–2. Importer’s letter of instruction.  246
6–3. Application for customs bond.  247
6–4. Customs bond.  248
6–5. Owner’s declaration.  251
6–6. Application for importer’s number and instructions.  252
6–7. Exportation of articles under special bond.  261
6–8. Application for letter of credit.  271
6–9. Applicant’s checklist for letter of credit.  275
6–10. Instructions by importer’s bank to correspondent bank in seller’s country regarding opening of letter of credit.  277
8–1. Import process.  306
8–2. Pro forma invoice.  308
8–3. Arrival notice.  310
8–4. Pick-up order.  312
8–5. Entry/Immediate Delivery form.  313
8–6. Order for public sale.  314
8–7. Entry summary and continuation sheet.  315
8–8. Transportation entry.  318
8–9. Application for foreign trade zone admission.  320
8–10. Application for foreign trade zone activity permit.  321
8–11. GSP declaration.  323
8–12. FDA Form 2877.  325
8–13. FCC Form 740.  327
8–14. U.S. Department of Agriculture Form 368 Notice of Arrival.  329
8–15. U.S. Fish and Wildlife Service Form 3-177.  330
8–16. Textile declaration form—single country.  331
8–17. Textile declaration form—multiple countries.  332
8–18. Notice of detention.  333
**List of Figures**

8–20. Courtesy notice of liquidation. 336
8–21. Notice of redelivery. 337
8–22. Request for information. 340
8–23. Notice of action. 342
8–24. Protest and instructions. 343
8–25. Administrative summons. 346
8–26. Summons notice to importer of record. 347
8–27. Affidavit. 348
8–28. Search warrant. 349
8–29. Grand jury subpoena. 351
8–30. Notice of seizure. 354
8–31. Consent to forfeiture. 359
8–32. Petition for remission or mitigation. 360
8–33. Prepenalty notice. 361
8–34. Notice of penalty. 363
8–35. Court of International Trade summons. 366
8–36. Information statement. 369
8–37. Transmittal to the Court of International Trade. 371

9–1. Drawback entry. 377
9–2. Delivery certificate. 379
9–3. Notice of intent to export. 381
9–4. Declaration by foreign shipper and importer's endorsement. 383
9–5. Foreign repairer's declaration and importer's endorsement. 384
9–6. Foreign assembler's declaration. 386