

EXPORTING THROUGH SALES REPRESENTATIVES

Exporting offers immense opportunities to grow your business. Using foreign sales representatives offers excellent access to overseas markets for businesses that are just starting to export.

What is a sales representative? A *sales representative* is someone who, by agreement with you, sells your goods to others. There are three types of sales representatives: agents, distributors, and consignees. Each type has advantages and disadvantages. No one type is best for everyone. Deciding which is best for you will depend on your circumstances.

Agents An *agent* is someone who acts under your direction and control. The agent has no authority to enter into binding agreements on your behalf without your prior permission. This means that you, not the agent, establish the price and all other terms of the sale. Until the sale is accomplished, you, not the agent, retain ownership of the goods. This means that you, not the agent, bear most of the economic risk if something goes awry (such as, for example, the goods are lost, stolen, or impounded at customs, or if you do not get paid). Agents are usually paid a commission. Depending on your deal with the agent, the commission may be due when the agent sends you the order, when you receive payment, or at any time in between.

Distributors A *distributor* is someone who purchases your goods from you for resale to others. The distributor acts under its own direction and control. This means that the distributor establishes the resale price and all other terms of the sale. After your sale to the distributor is complete, the distributor bears the economic risk if something goes awry. Determining the point at which the risk passes to the distributor may depend on when, under your deal, the distributor becomes the owner of the goods. This can occur when the goods are ready for shipment at your U.S. facility, at the distributor's foreign facility, or at any place in between.

Consignees A *consignee* combines elements of an agent and a distributor. Like an agent, a consignee never owns the goods. Therefore, you will generally bear the economic risk if something goes awry. Generally, you control the sale price and all other terms. However, like a distributor, the consignee acts under its own direction and control regarding the marketing and sale of the goods, and so has the power to consummate a sale.

Why should you use a sales representative? Exporting through a sales representative has advantages and disadvantages compared with setting up a joint venture with a foreign partner, establishing a branch office of your business, or establishing a separate foreign company. By using a sales

representative, you will incur less up-front expenses and you will minimize the possibility that your business might become subject to foreign laws. You will also reduce the risk of instability that might occur within the foreign country and you will reduce the extent to which foreign taxes and U.S. foreign tax rules apply to you.

You do pay a price for relative safety. You will probably have less control over an independent sales representative than you would over an employee. If you are not producing the goods in your foreign market, you may be subject to import and export rules, customs, and duties. Finally, you may forgo deferral or reduction of U.S. income taxes.

Finding and Selecting a Sales Representative Finding a foreign sales representative may not be easy. The College of DuPage International Trade Center, located in Glen Ellyn, is probably the best place to start. Another good starting point is the United States Department of Commerce (USDC) and USDC commercial officers. The USDC publishes two excellent resources, the World Trade Data Report (WTDR) and the National Trade Data Bank (NTDB). Other sources include the American Chambers of Commerce located in your target country (found in the NTDB), the NTDB foreign traders index, foreign trade associations, foreign trade shows, and for Europe, the European Commission Host Organization (ECHO) web site, located at <http://www.cec.lu/> and <http://www.2.echo.lu/echo/en/menuecho.html>.

You should be very careful when selecting a sales representative, because the representative will be far away and you do not want anything to occur that might damage your reputation. Therefore, you should question potential sales representatives regarding the following aspects of their business: expertise with selling similar goods; gross and net sales for the past 3-5 years; methods for soliciting sales; customer base; sales targets for the next 2-5 years and how these will be accomplished; current number of employees and independent contractors, and those people's levels of experience and training; nature of the business facilities; foreign and U.S. trade and credit references; trade association memberships and memberships in similar organizations; and any litigation that is currently active or that has taken place within the past 5-10 years. Finally, ask the sales representative for a copy of its standard representative's contract. While you may ultimately use your own contract, the sales representative's contract will give you insight into the representative's negotiating position and can be the starting point for your final deal.

Elements of a sales representative's contract

Your contract with a sales representative may be governed by the laws of the foreign country regardless of your agreement to the contrary. Therefore, before you decide to export to a particular country, you should hire a lawyer who is familiar with the laws of that country (usually a lawyer located in that country) to inform you about any potential legal pitfalls. For example, many foreign countries will not let you terminate a sales representative without paying compensation or without "just cause."

After you have made sure that there are no overly adverse foreign laws, your contract will need to contain many provisions. Describing all of them is beyond the scope of this article.

The following are some examples:

- whether the representative is an agent, distributor, or consignee
- whether the representative may assign or delegate any duties
- whether the representation is exclusive or nonexclusive
- the scope of the representative's territory
- who may approve orders, including timing of delivery, price, terms of payment, and all other terms and conditions
- who will deliver and install the goods
- who has title to the goods and when title passes
- how much and what type of security (such as a bond or letter of credit) will assure performance
- what you will pay, including currency and exchange rates
- where disputes will be resolved, which country's law and what language will be used

Conclusion The rapid growth of foreign economies offers almost limitless possibilities to expand your business. However, taking advantage of these opportunities is not easy and has many perils.