

Export Licensing

Understanding the Rules of Trade

This section explains what's involved with applying for an export license, protecting your intellectual property rights overseas and other laws affecting exporters.

Applying for an Export License

All goods and services leaving the United States require some form of export licensing. An export license is essentially an authorization from the U.S. government for you to export your products. Through the granting of export licenses, the U.S. controls exports and re-exports of goods to protect national security, foreign policy, and short supply.

The Bureau of Export Administration (BXA) regulates and controls the export of most types of products through the Export Administration Regulations (EAR). The Regulations control the movement of U.S. dual-use commodities, software, and technology. Dual-use products are those that are not specifically designed for military purposes, but may be used for such applications. Most products exported from the United States fall under the dual-use description, and this section focuses primarily on those products.

What type of license do you need?

The Export Administration Regulations (EAR) identify two types of export licenses: the general license and the validated license. The general license is a broad grant of authority, or an umbrella license, issued for certain types of products to particular destinations. There is no application to complete and no document is issued. Still, you must verify for certain that your product requires a general license.

The validated license is a specific grant of authority, issued on a case-by-case basis. These licenses explicitly permit the export or reexport of particular goods or technology, from one party to another for a particular end use. You must complete an application and receive documentation and a license number to ship under a validated license.

How to find out if you need a general or validated license

It is your responsibility to correctly identify the type license you need. You will need to become very familiar with the EAR, keeping your product in mind as you read the relevant sections. You can access the EAR on the [National Trade Data Bank](http://w3.access.gpo.gov/bis/ear/ear_data.html).
http://w3.access.gpo.gov/bis/ear/ear_data.html

In the EAR, the **Commerce Control List (CCL)** (Part 799 Supplement No. 1) describes export controls for all commodities, software, and technical data. Refer to the CCL to find out if you need a general or validated license.

The Detailed Procedure

The following procedures and information, excerpted from the EAR, Part 799, explain how to read the Commerce Control List (CCL), find the ECCN number for your product, and determine if you need a general or validated license.

To ensure that you select the correct license and understand the controls placed on your exports, you need to become extremely familiar with the CCL, and review its categories carefully and completely.

Introduction

The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which includes all items (commodities, software, and technical data) subject to BXA export controls. The CCL does not include those items exclusively controlled for export by another department or agency of the U.S. Government. For example, arms, ammunition, and implements of war are controlled by the Office of Defense Trade Controls, U.S. Department of State. See 770.10 for a listing of exports controlled by other U.S. Government departments and agencies.

The CCL and related information are contained in supplements to this Part 799. Supplement No. 1 is the CCL. Supplement No. 2 includes the General Technology and Software Notes. Supplement No. 3 contains definitions, and Supplement No. 4 is a cross reference from pre-September 1, 1991, entries on the CCL to post-September 1, 1991, entries.

Structure of the CCL

To identify controls on a product, you must first understand how the CCL is structured.

The CCL is divided into 10 general categories, numbered from 1 to 10, as follows:

1. Materials
2. Materials Processing
3. Electronics
4. Computers
5. Telecommunications and Cryptography
6. Sensors
7. Avionics and Navigation
8. Marine Technology
9. Propulsion Systems and Transportation Equipment
10. Miscellaneous

There are five groups of products within each category, identified by the letters A through E as follows:

- A - Equipment, Assemblies and Components
- B - Production and Test Equipment
- C - Materials
- D - Software

- E - Technology

Within each group, paragraphs are numbered using a two digit format. Although each set of digits represents a particular type of control, there may also be other controls that affect the same items. For example, a COCOM controlled item may also be controlled for missile or foreign policy reasons. The basic paragraph numbering system is as follows:

- 01-19---COCOM controls
- 20-39---Missile technology controls
- 40-59---Nuclear non-proliferation controls
- 60-79---Chemical and biological weapons controls
- 80-99---Other controls

The four digit number will be followed by a code letter. This code letter is a key to the documentation requirements of Part 775, and is used by many exporters as a data processing code to indicate the country group level of control for CCL entries. The letters used and the respective country controls are as follows:

Code Letters	Country Groups for Which a Validated License is Required
A	QSTVWYZ (Cooperating Countries)
B	QSTVWYZ (other)
C	QSTVWYZ, except specified countries
D	QSTVWYZ and Canada
E	SZ and countries listed in certain Supplements to the EAR
F	SZ and certain other specified countries
G	SZ
H	Z
I	None

Export Control Classification Number (ECCN)

Using this numbering system leads to a five character ECCN for each entry. For example, the first subparagraph in group A category 1 would have an ECCN of 1A01A. When that entry is followed by a unilateral missile control entry, the ECCN would be 1A21B, and a related nuclear entry might be 1A41E. The next multilateral entry would be 1A02A.

Requirements List and List of Items Controlled

The requirements for each category tell why and where the ECCN is controlled, including the following:

1. Validated license requirements by country group and, at times, special country lists or individual destinations. By identifying the countries subject to validated license, this also tells the exporter when General License G-DEST is available for commodities. Note that G-DEST is never available for software or technology.
2. Unit of quantity or value to use on an application for export license.
3. Reason for control. The following symbols are used:
 - NS--National Security
 - MT--Missile Technology
 - NP--Nuclear Proliferation
 - CB--Chemical or Biological Warfare
 - FP--Other Foreign Policy Controls
 - SS--Short Supply
4. General Licenses.

For commodities, there are descriptions of eligibility for General Licenses GCT, GFW, and GLV. For software and technical data, the descriptions of eligibility for general licenses are set forth as GTDR, which means General License GTDR with written assurance, and GTDU, which is used to indicate General License GTDR without written assurance. The General License indicators in the list of items controlled provides only information specific to each particular entry. It is the exporters responsibility to read Part 771 before making any shipment under a General License. It is important that the exporter knows what countries are eligible for General Licenses GLV, GFW, and GCT, and all other rules applicable to each general license, before applying the entry-specific information to a given export. It is equally important to read Part 779 and understand the limits of GTDR before exporting software or technology.
5. Group W Favorable Consideration. Favorable consideration license processing applies to all commodity exports to civil end-users in Country Group W, except for those commodities specifically excluded from the procedure. Where necessary to describe an exclusion from eligibility, the necessary information will be inserted in the requirements.
6. (vi) Notes. When there are complexities in any element of the requirement, you will be referred to the notes. Here you find any extra restrictions or exemptions that apply. For example, the notes may tell you that certain countries within a controlled country group are not subject to validated license, or that the general eligibility for General License GCT is restricted for certain goods.
7. The list of items controlled follows the Requirements heading and describes the commodities, software, and technical data in sufficient technical detail to allow accurate identification.

The Abbreviation "n.e.s."

The abbreviation "n.e.s." appearing in various CCL entries means "not elsewhere specified." If an item you intend to export appears to be covered by a CCL entry and the description carries the limitation "n.e.s." you should not use that CCL entry until you determine whether another CCL entry specifically covers that item.

Combining Items on License Applications

The new CCL does not include Processing Codes for entries because assignment of cases to licensing officers is now done by computer based on the ECCN. However, there are still limits on which items can be combined on a single application for export license. Any items may be listed on an application if they are licensed by a single branch of the Office of Export Licensing. The branches and the categories they license are:

- Computer Systems Branch: Category 4
- Electronics Branch: Category 3 and 5
- Capital Goods Branch: Categories 1, 2, 6, 7, 8, 9, and 10

Export Control Classification Requests

If you've gone through the Commerce Control List and have been unable to locate your ECCN or are unsure, you can submit a request for a written classification. The process generally takes a couple of weeks, after which you will receive a piece of paper with the ECCN of the product or technical data. The procedure is detailed in the following paragraphs.

Identifying the proper CCL entry

First, the exporter must attempt to identify which ECCN covers the commodity proposed for export. The general characteristics of the commodity, software or technical data will usually guide the exporter to the appropriate Category. Once the appropriate Category is identified, the particular characteristics and functions of the equipment should be matched to a specific ECCN. The index to the CCL may also help to match a general description to a specific entry. All items subject to BXA licensing jurisdiction are included in the CCL, either in a specific item listing or in an "other, n.e.s." entry at the end of each Category.

BXA classification requests

The Bureau of Export Administration (BXA) will respond to properly submitted requests for verification of the proper ECCN within ten working days after receipt of the request. To ensure that the request will be acted upon expeditiously, it will be necessary for the requester to do the following:

- The requester must submit a recommended classification for the item(s) and explain the reason for this classification. This explanation must contain an analysis of the classified item(s) in terms of the technical control parameters specified in the appropriate ECCN. If the requester cannot determine the appropriate classification, then the requester must explain the reason for failing to recommend an appropriate classification. This explanation should include an identification of ambiguities or deficiencies in the regulations that precluded making a classification;
- The requester must attach descriptive literature, brochures, technical papers, or specifications that provide sufficient technical detail to enable BXA personnel to verify or correct the classification;
- The item(s) to be classified must be clearly listed by model number in the request. No more than five items will be considered in a single request. Exceptions may be made on a case-

by-case basis for several related products if the relationship between these products is satisfactorily substantiated and documented;

- The request must be mailed to the following address: Bureau of Export Administration, P.O. Box 273, Washington, D.C. 20044; and
- Request(s) must be clearly marked at the top of the first page and on the lower left-hand corner of the envelope "Commerce Classification Request". Any request that omits essential information, or is otherwise incomplete, will be returned to the requester specifying the reasons for the return.

Units of Measure

Most measurements used on the Commerce Control List are expressed in metric units, frequently followed by an approximate inch-pound measurement in parenthesis, except where other units are in general usage or specified by law. Whenever there is a difference between the metric and inch-pound figures, the metric standard will be used for classification or export licensing procedures.

Once you've determined the type of license you require, there are specific procedures you will need to follow for a:

Applying for a General License

Let's assume you have consulted the Commerce Control List (799.1 of the EAR) and Part 771 (the schedule of country groups), and you have determined that you can ship your product under a general license authorization. Your next step is to find out if you need to prepare and file a Shipper's Export Declaration (SED). An SED is generally required for validated license exports, and usually required for general license shipments under certain circumstances.

The SED serves two purposes.

1. It provides the Bureau of the Census with data on exports. This data is compiled and published monthly, showing what types of commodities are exported to which countries. (Usually there is no need to prepare or file an SED before exporting technology.)
2. The SED serves as an export control document. You will be required to show on the SED either the general license symbol (e.g., G-DEST) or, if a validated license was required and issued, the license number assigned by Commerce. By placing the general license symbol or validated license number on the SED, you are certifying that the shipment meets the conditions of the general license authorization or of the validated license. This note assists the Department and the U.S. Customs Service in their efforts to assure compliance with the Export Administration Regulations. You can find out if an SED is required by reading Part 786 of the Regulations. Note particularly Part 786.3, on the preparation of the SED.

The Destination Control Statement

The final step before exporting under a general license authorization is to find out if a Destination Control Statement must be placed on your commercial invoice and your bill of

loading or air waybill. Find the requirements for Destination Control Statements and examples of their wording in Part 786.6 of the Regulations.

Applying for a Validated License

Once you've determined that your product requires a validated license, and you have a firm order, or a very good chance of securing a firm order, you must prepare an Application for Export License and submit it to the Bureau of Export Administration (BXA) for approval. Follow the procedures in the EAR, Part 750 to fill out the application. Be sure to fill out the license correctly and completely to avoid delays in receiving your license. Be sure that you:

- Sign the application.
- Type, rather than handwrite the application.
- Describe your product completely and concisely where required.
- Describe the end use for your product completely and concisely.
- Include all required support documentation

(Read the instructions on the application instruction sheet in EAR Parts 772 and 775. Part 775 will tell you whether you need an International Import Certificate or a Consignee/Purchaser Statement or other documentation.)

Once approved, the validated export license will be mailed to you. Be sure to place the Export Authorization Number on the Shipper's Export Declaration (SED). All shipments under a validated license require the SED.

Remember that validated licenses are granted only for specific orders, in specific quantities, and to certain destinations. They are not "blanket" or "open-ended" licenses.

Obtain an application for an export license (Form BXA-748P) [from the BXA](http://www.bxa.doc.gov/Licensing/facts4.htm).
<http://www.bxa.doc.gov/Licensing/facts4.htm>

Additional Restrictions

Once you've determined the ECCN and the type of license you require, you will need some specific information about your customer. You must verify that your customer is NOT:

- on the Table of Denial Orders (TDO).
- on the list of Specially Designated Nationals (SDN).
- located in an embargoed country.
- involved with the production of nuclear, chemical or biological weapons.

At present, Cuba, Iran, Libya and North Korea are embargoed destinations and cannot receive U.S. products and services. Contact the Bureau of Export Administration (714-660-0144) or the Office of Foreign Assets Control (202-535-6020) for more information on embargoes.

It is also very important to clarify the end use and end-user of your products, and ensure that your customer will not violate any provisions in the EAR. You can be held responsible if your customer violates the EAR.

Be sure to maintain a paper trail of support documents indicating your efforts in checking the end-use and end-user of your products.

Various agencies regulate the control of exports that are non-dual-use:

- [Defense Articles and Defense Services](#) - State Department Office of Defense Trade Controls <http://pmdtc.org/reference.htm>
- [Dangerous Drugs and Narcotics](#) - Drug Enforcement Agency <http://www.dea.gov/pubs/csa.html>
- [Endangered Plants and Wildlife](#) - Fish & Wildlife Service <http://endangered.fws.gov/whatwedo.html#General>
- [Radioactive Materials](#) - Nuclear Regulatory Commission <http://www.nrc.gov/materials.html>

Protecting Your Intellectual Property Rights

Do your customers recognize your product by its brand name? Is your product based on a licensable technology or design? If your answer is yes to these questions, then how closely you guard your Intellectual Property Rights will factor into your success with exporting. Intellectual Property Rights can help protect you against those who try to steal your product name, or the technology or design your product is based on. Some industries that rely on intellectual property protection include high technology firms, pharmaceutical firms, record companies, and computer software companies.

This section reviews the four items that protect your Intellectual Property Rights: copyrights, trademarks, patents, and trade secrets. Each protect your intellectual property differently, and the type of property you wish to protect often determines which is most appropriate.

We'll describe each type of protection and explain changes to its meaning as a result of the GATT Uruguay Round Agreement on Trade Related Aspects of Intellectual Property Rights. Objectives for this agreement, called TRIPS, are to implement:

- Standards of protection for patents, trademarks, copyrights, and trade secrets
- Effective enforcement measures of Intellectual Property Rights
- Effective dispute settlement provisions

Keep in mind that this section is an overview of Intellectual Property Rights. Please consult an attorney who specializes in intellectual property for detailed information about your situation.

Copyright

What is a Copyright?

A copyright protects an author's original work that exists in any tangible medium of expression. It prohibits others from copying how authors express their ideas, but not the ideas themselves. Copyrightable items include:

- literary works (including computer programs and advertising material)
- musical works, including any accompanying words
- dramatic works, including any accompanying music
- pantomimes and choreographic works
- pictorial, graphic, and sculptural works
- motion pictures and other audiovisual works
- sound recordings
- architectural works

International Protection

Works created in the U.S. on or after January 1, 1978, are automatically protected by a U.S. copyright from the moment of creation. This protection lasts for the author's life plus fifty years. Internationally, the place where the author first published the work is important when determining its copyright status. The United States participates in international agreements for universal copyright that depend on where the work was published. These include:

- **The Berne Convention for the Protection of Literary and Artistic Works** - Works that are published on or after March 1, 1989 are automatically copyright protected in the 80 countries that belong to the Berne Convention.
- **Universal Copyright Convention** - Works that display the copyright notice (the copyright symbol ©, the word, "copyright", the author's name, and the year of publication) are automatically protected in about 75 member countries.
- **Buenos Aires Convention** - Works that have copyright in their own country are protected in 17 Latin American Nations when they include the statement, "all rights reserved."

The TRIPS Agreement and Copyrights

The TRIPS Agreement resolves key trade problems for U.S. copyright-based industries by:

- Protecting computer programs, whether in source or object code as literary works under the Berne Convention, and requiring databases to be protectable as compilations
- Requiring Members to grant owners of computer programs and sound recordings the right to authorize or prohibit the rental of their products
- Establishing a minimum term of 50 years for the protection of sound recordings; and setting a minimum term of 50 years for the protection of motion pictures and other works where companies may be the author.

The TRIPS Agreement also obligates Members to comply with the substantive provisions of the 1971 Paris text of the Berne Convention for the Protection of Literary and Artistic Works, other than the Berne Convention's requirements on moral rights of authors.

For More Information, contact the [U.S. Copyright Office](http://www.loc.gov/copyright/). <http://www.loc.gov/copyright/>

Trademark

What is a Trademark?

A trademark is a word, phrase, symbol or design, which identifies and distinguishes the source of the goods or services of one party from those of other parties. A service mark is the same as a trademark except that it identifies and distinguishes the source of a service rather than a product.

When you use a trademark in connection with some product, it is protected automatically under common law. You can also protect your trademark by registering it with the Federal Government, but you must prove bona fide intended use, or already be using it. Registered trademarks are granted for 10 years, and must be renewed at the end of the term.

International Protection

Trademarks are not protected under all nations, and there is no central authority to register trademarks. The U.S. participates in conventions that help to simplify the trademark filing procedure. Under these c

Registering a trademark is not very costly, and if you intend to sell in certain countries, you may want to go ahead and register it there. This is possible because, unlike the United States, using the trademark is not a requirement to register it. But, since use of the trademark is a Member concerned which has been obtained as a result of the promotion of the trademark." Moreover, Article 16 (3) applies Article 6 bis of the Paris Convention to "goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use."

For More Information, consult an attorney specializing in Intellectual Property Rights, or contact the [Bureau of Economic and Business Affairs](http://www.state.gov/e/eb/) at the US Department of State. <http://www.state.gov/e/eb/>

Patents

What is a Patent?

A patent is a grant by a government giving an inventor the right to prevent others from making, using, and selling his or her invention for a set period of time. In the United States, patents are valid for 20 years from the filing date. Once this date has passed, the patent cannot be renewed and others are free to duplicate the invention.

To qualify for a patent, the item must be useful, new, and unobvious. Unobvious inventions are those that would not be readily identifiable, or obvious, by industry experts. Inventions that are eligible for patents include new processes or machines.

The process for filing patents can be complicated and expensive. We suggest that you hire a patent attorney to help you complete the patent application and facilitate the entire patent filing process. If you are considering patenting your invention, be sure that you file before, or within one year of the first sale, public commercial use, or publication about the product. Filing for the patent before the public use of the invention increases the validity of your patent application.

International Protection

U.S. patents are not automatically recognized and protected in foreign countries, and each country has its own patent filing system. However, the U.S. adheres to treaties and conventions that can help to simplify the patent filing process in foreign countries.

- **Patent Cooperation Treaty** allows you to use the patent application you file with the U.S. Patent and Trademark office to apply for patents in other countries participating in the treaty.
- **European Patent Convention** allows you to file a single patent application with the European Patent Office in Munich, and designate which European countries will receive the patent.
- **Paris Union International Convention** allows you to file a patent within one year of the U.S. filing date in a Paris Convention country, and receive the same rights as citizens of the country in which you are filing. 88 countries belong to the Paris Convention.

The TRIPS Agreement and Patents

The TRIPS Agreement resolves many long-standing international issues surrounding U.S. patent interests, especially with pharmaceutical and agricultural chemical companies. Some of these benefits include:

- product and process patents must be available for virtually all types of inventions, including product patent protection for pharmaceuticals and agricultural chemicals
- meaningful limitations are imposed on compulsory patent licensing
- patents must have a term of at least 20 years from the date of filing. World Trade Organization Members are required to adhere to the substantive obligations of the Paris Convention for the Protection of Industrial Property (Stockholm, 1967 text).

A particularly noteworthy provision is Paragraph 1 of Article 27 which provides that "...patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether patents are imported or locally produced." This provision requires, inter alia, that importation satisfy any domestic working requirement and prohibits compulsory licensing regimes that apply to only certain fields of technology.

For More Information, consult a patent attorney, or contact the [Bureau of Economic and Business Affairs](http://www.state.gov/e/eb/) at the US Department of State. <http://www.state.gov/e/eb/>

Trade Secrets

What is a Trade Secret?

When a business keeps certain information confidential that is relevant to their success, that information is considered a trade secret. United States law defines a trade secret as "any formula, pattern, device, or compilation of information which is used in one's business, and which gives opportunity to obtain an advantage over competitors who do not know or use it."

Common types of trade secrets include processes, methods, techniques, and formulas a business may use to produce a product. Businesses strive to protect their trade secrets by enacting corporate security measures and confidentiality clauses in employment, technology licensing, distributorship, and joint venture agreements.

The basic premise of a trade secret is that if information remains confidential, others cannot copy it because they don't know about it. But, once a trade secret becomes public knowledge, it is not protected and is no longer considered a trade secret. Protection of trade secrets relies on the ability to keep the information confidential.

International Protection

Other than the U.S., few countries provide protection of trade secrets. Protect your trade secrets with foreign distributors with a trade secret licensing agreement that prohibits disclosures of the trade secret by the licensee or its employees. Be sure to pay attention to the foreign country's regulations and controls regarding licenses.

The TRIPS Agreement and Trade Secrets

The TRIPS Agreement, under Protection of Undisclosed Information, obligates member countries to provide persons lawfully controlling trade secrets with procedures to prevent such information from being disclosed to, acquired by, or used by others without their consent "in a manner contrary to honest commercial practices." (Article 39) According to footnote 10 of Article 39, "a manner contrary to honest commercial practices shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition." This provision should be quite helpful in those countries, particularly developing countries, having only contract-based systems of protection for unpatented proprietary information.

Other Laws Affecting Exporters

Exporters must be aware of the many international laws that can affect their export activities. This section overviews five of the more prominent laws and agreements that may influence your

decisions and actions in international business. These are brief descriptions, designed to give you a general understanding of the law. You may wish to contact an attorney if you need extra help with any of these.

Antitrust Laws

Antitrust laws ensure that consumers receive the lowest prices for goods and services, while allowing businesses to remain profitable.

The U.S. antitrust statutes are a broad set of principles that are applied to the specific facts and circumstances of a business transaction. There are two main standards concerning antitrust laws:

- **Per Se Violations**
Some types of trade restraints, or per se violations, are illegal. These include price fixing arrangements and conspiracies, divisions of markets by competitors, and certain group boycotts and tying arrangements.
- **Rule of Reason**
The rule of reason requires that certain acts occurred, and that those acts had an anticompetitive effect. Factors such as business justification, impact on prices and output in the market, barriers to entry, and market shares of the parties may be examined to determine if acts are anticompetitive.

International Transactions

Many countries have their own antitrust laws that U.S. firms must comply with when exporting. Although most international business transactions do not pose antitrust problems, be aware of the following situations where antitrust issues may arise:

- Overseas distribution arrangements
- Overseas joint ventures for research, manufacturing, construction, and distribution
- Patent, trademark, copyright, and know-how licenses
- Mergers and acquisitions involving foreign firms
- Raw material procurement agreements and concessions

For More Information, contact the [Antitrust Division](http://www.usdoj.gov/atr/) of the Department of Justice.
<http://www.usdoj.gov/atr/>

Antiboycott Regulations

Under U.S. Antiboycott Regulations, the U.S. government opposes and does not participate in boycotts of countries friendly with the U.S.

Antiboycott Prohibitions

U.S. companies, citizens, overseas subsidiaries of companies, U.S. subsidiaries of overseas companies, and U.S. Federal, State and Local governments cannot:

- Refuse to do business with boycotted countries that are friendly to the U.S.
- Discriminate against and furnish information regarding race religion, sex, or national origin to comply with a boycott request.
- Furnish business information about blacklisted countries and companies in response to boycott requests.
- Implement letters of credit that contain prohibited conditions.

Antiboycott Incidents

You will most often encounter boycott incidents when working with countries in the Middle East, but be aware that some Asian countries also participate. Situations that can potentially put you in violation of antiboycott regulations may involve:

- appointing a local agent or distributor
- government tender
- other contractual arrangements
- letters of credit
- certificates of origin
- specific requests for information on company employees pertaining to nationality and religion

What you should do: Do not provide any information to the requested party, as you will be in violation of the regulations and can be fined, imprisoned or lose your exporting privileges. Report the incident to the [Office of Antiboycott Compliance](http://www.bxa.doc.gov/AntiboycottCompliance/Default.htm) at the Bureau of Industry and Security (US Department of Commerce)
<http://www.bxa.doc.gov/AntiboycottCompliance/Default.htm>

Foreign Corrupt Practices Act

The Foreign Corrupt Practices Act (FCPA) prevents any person or firm in the United States from making a corrupt payment to a foreign official to obtain or keep business. Any firm, officer, director, employee, agent of the firm, or any stockholder acting on behalf of the firm in the United States must abide by the FCPA.

Corrupt Payment

Corrupt payment is bribery. The antibribery provisions of the FCPA prohibit paying, offering, or promising to pay (or authorizing to pay or offer) money or anything of value. The person making the payment must have a corrupt intent, and the payment must be intended to induce the recipient to misuse his official position to wrongfully direct business to the person offering the payment. The FCPA does not require that a corrupt act succeed in its purpose. The offer of a corrupt payment can constitute a violation of the statute.

Penalties for Violations

Both the company and individual employees can pay large penalties for violating the FCPA. Companies who violate the FCPA's antibribery provisions pay fines of up to \$1 million, while individuals who act on behalf of the company may pay fines of up to \$10,000 and serve prison terms of up to 5 years. Fines imposed on individuals may not be paid by the firm. The government can also seek civil penalties and an injunction against any act or practice of a firm that violates the antibribery provisions.

A person or firm found in violation of the FCPA, or merely indicted, can be barred from doing business with the federal government, and may become ineligible to receive export licenses.

Guidance from the Government

The Department of Justice has an Opinion Procedure by which any party may request a statement of the Justice Department's present enforcement intentions under the antibribery provisions of the FCPA regarding any proposed business conduct. Under this procedure, the Attorney General is required to issue an opinion in response to a specific inquiry from a firm within 30 days of the request. (The 30-day period does not begin until the Department of Justice has received all the information it requires to issue the opinion).

Conduct for which the Department of Justice has issued an opinion stating that the conduct conforms with its current enforcement policy will be entitled to a presumption, in any subsequent enforcement action, of conformity with the FCPA.

For further information, go to the Department of Justice [FCPA site](http://www.usdoj.gov/criminal/fraud/fcpa.html) <http://www.usdoj.gov/criminal/fraud/fcpa.html> .

World Trade Organization (WTO)

The World Trade Organization (WTO), established on January 1, 1995, is the legal and institutional foundation of the multilateral trading system. The WTO is a direct outgrowth of the Uruguay Round. The Uruguay Round substantially expands and enhances global trading rules and established the WTO to administer and enforce the new rules. The WTO succeeds the General Agreement on Tariffs and Trade (GATT) and operates in much the same manner.

The purpose of the WTO is to create a more open market by implementing trade agreements that the Uruguay Round reaches and bring them under one umbrella. The WTO requires that all countries fully participate in one new trading system, and provides a permanent forum to discuss issues facing international trade. Countries that wish to participate in the WTO must be a contracting party to GATT, adhere to all Uruguay Round Agreements, and submit schedules of market access commitments for industrial goods, agricultural goods, and services.

The Dispute Settlement Process

Prompt settlement of disputes is essential to the effective functioning of the WTO. The WTO establishes a strong, detailed dispute settlement process applicable to all Uruguay Round multilateral trade agreements. When WTO members have disputes against agencies that violate

trade rules, they seek recourse through the multilateral dispute settlement system, instead of taking action individually.

The Dispute Settlement Body of the WTO General Council handles the disputes that arise from any agreement contained in the Uruguay Round. The Dispute Settlement Body has the sole authority to establish panels, adopt panel and appellate reports, maintain surveillance of implementation of rulings and recommendations, and authorize retaliatory measures in cases of non-implementation of recommendations.

For More Information, see the Department of Commerce [Ensuring a Level Playing Field](http://www.commerce.gov/field.html) site. <http://www.commerce.gov/field.html>

North American Free Trade Agreement (NAFTA)

NAFTA establishes Canada, Mexico and the United States as a free trade area for the purpose of expanding trade flows and eliminating trade barriers among the three countries. Within 15 years, Canada, Mexico, and the United States have agreed to lift all tariffs and duties on North American manufactured products. Many see NAFTA as the first step towards economic intergration of the Americas.

NAFTA's objectives are to:

- Eliminate barriers to trade in, and facilitate the cross border movement of, goods and services between Canada, Mexico, and the United States.
- Promote conditions of fair competition in the free trade area.
- Increase substantial investment opportunities in Canada, Mexico, and the United States.
- Provide adequate and effective protection and enforcement of intellectual property rights in each country.
- Create effective procedures for the implementation and application of the NAFTA agreement, and for its joint administration and the resolution of disputes.
- Establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of NAFTA.

Rules of Origin

NAFTA's Rules of Origin ensure that NAFTA will benefit its member countries by establishing which goods can be treated as "North American" for trade purposes and are thus eligible for preferential tariff rates under NAFTA. The Rules of Origin prevent other countries from passing their goods through the United States to take advantage of NAFTA's benefits. Generally, the agreement considers goods of North American origin to be:

- Obtained, produced, or fabricated from originating materials in the United States, Canada, or Mexico.
- Goods made of non-originating materials that have undergone transformation sufficient to change their tariff classifications.

- Goods made of non-originating materials that have not only undergone transformation sufficient to change their tariff classifications, but also meet a specified regional content criterion.

NAFTA Certificate of Origin

The NAFTA Certificate of Origin is a declaration of the origin of goods, and is essential to receive tariff and duty rate reductions under NAFTA's terms. It is the exporter's responsibility to complete the Certificate of Origin and determine if the goods are eligible for NAFTA benefits.