

International Business Transactions

Direct Sales

Sale of products directly to the customer in the other country

Issues:

- Need a sales contract
- Determine what law applies to sales contract
(for U.S., options would be:
U.C.C. for the relevant state
or
CISG
or
law of the other country)
- Follow export & import regulations (responsibility falls to different parties in the relationship)
- Determine the carriage of goods/issues - use commercial terms (like F.O.B. or C.I.F.) defined by chosen law
(For U.S., options are:
UCC definitions
Incoterms (ICC))
also COGSA or Hague Rules for carriage of goods
- Arrange for financing to be handled by letters of credit
(responsibilities of buyer; issuing/ confirming/paying/advising banks;
documentary transaction)

The law of letter of credit transactions has developed over time and is captured in several forms - for U.S. options would be:

UCC provisions
UCP (ICC)

As long as there is no local representative for the seller, the risks of the deal are defined according to the sales contract, the contracts for transport/carriage and the letter of credit. With regard to each contract, the parties choose the applicable law.

In addition to the contract issues, a party doing business from any country needs to be sensitive to its regulatory law - for example, export and import regulations, antitrust or competition law. The U.S. also has two other laws that it applies (along with antitrust and export administration

laws) on an extraterritorial basis – the Foreign Corrupt Practices Act (FCPA) and the Anti-Boycott Act.

Distribution/Agency Agreements: To go beyond direct sales, you need a local representative in the target market.

Forms: Sales Representative - can represent the product abroad; can take orders but not bind the Seller

Agent - a representative of the seller who acts on its behalf in another country; is an employee of seller; can bind seller; the goods remain the property of the seller

Distributor - a party in the target country who acts on its own behalf; buys the goods from seller and then markets

Despite the differences in types of local representatives - the laws of some countries treat agents and distributors the same, or similarly, for the purposes of protecting them. Such laws are called “dealer protection” laws and cover potentially:

- compensation issues
- choice of law on the contracts
- termination (including a statutory definition of good cause; notice; damages)

Distribution agreements cover two main issues:

- Sales

Part of the distribution agreement is a sales contract for the goods

- Relationship

The parties usually establish whether the distributor is exclusive or not; expectations regarding sales; warranties; after-sales service expectations

Of course, an important component of the agreement is also dispute settlement - choice of law; choice of forum (courts v. arbitration)