



# FOREIGN REGULATORY COMPLIANCE

INTERNATIONAL TRADE CENTER 

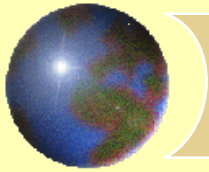
**GLOBAL MARKET SERIES  
EXPORT CERTIFICATE PROGRAM**

**DANIEL MARK OGDEN, ESQ.**  
**North Texas District Export Council**

**November 13, 2008**



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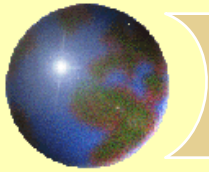
## Presentation Overview

- **Foreign Regulatory Compliance Overview**
- **Importer of Record Status**
- **Foreign Regulatory Compliance Issues**
- **Specific Foreign Regulatory Environments**



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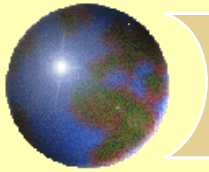
# FOREIGN REGULATORY COMPLIANCE

## Foreign Regulatory Compliance Overview

- **Nature of Regulatory Compliance**
  - **Can be extremely overwhelming in an international context**
  - **Regulatory obligations, unlike those entered into under a contract, subject exporters to mandatory sanctions if not satisfactorily complied with**
  - **Can only be properly managed by developing a highly granular approach**



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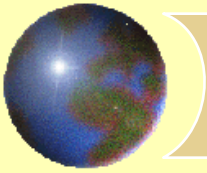
# FOREIGN REGULATORY COMPLIANCE

## Foreign Regulatory Compliance Overview

- **Approach to Foreign Regulatory Compliance**
  - **Risk management in general**
  - **Determine who is the importer of record in individual export transactions**
  - **Understand the types of compliance issues which pertain to your industry, your products, and your business model**
  - **Analyze the specific countries to which your export shipments are being made to determine particular compliance requirements**



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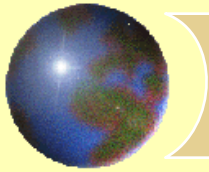
# FOREIGN REGULATORY COMPLIANCE

## Foreign Regulatory Compliance Overview

- **Reasons for Foreign Regulatory Compliance**
  - **Avoidance of costly sanctions**
  - **Uneventful export transactions**
  - **Customer retention**
  - **Competitive marketing advantages**
  - **Company reputation**



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# FOREIGN REGULATORY COMPLIANCE

## Foreign Regulatory Compliance Overview

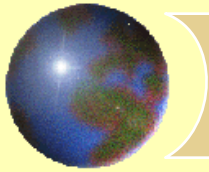
### ■ Terminology

- Terminology used in regulatory context quite often has different meanings than common usage
- Exporter ≠ Seller/Export ≠ Sale
- Importer ≠ Purchaser/Import ≠ Purchase



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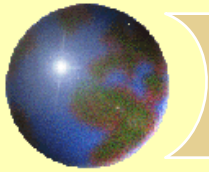
# FOREIGN REGULATORY COMPLIANCE

## Importer of Record Status

- **The degree of foreign regulatory compliance obligations will depend to a major extent on whether the exporter is also the importer of record in an export shipment.**
- **If the exporter is also the importer of record in the foreign country, then the exporter will maintain additional regulatory obligations that the exporter would otherwise not have if it is not the importer of record**



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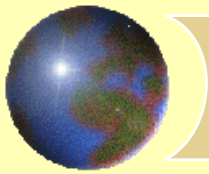
# FOREIGN REGULATORY COMPLIANCE

## Importer of Record Status

- **Importer of record compliance obligations**
  - **Is responsible party for clearing goods through Customs**
  - **If an exporter is the importer of record in an export shipment, then the exporter must clear goods through Customs in the country to which an export shipment is sent**
  - **Is also the primary party responsible for complying with all Customs regulations in foreign country pertaining to imports into that country**



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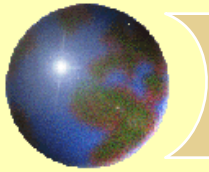
# FOREIGN REGULATORY COMPLIANCE

## Importer of Record Status

- While Customs brokers are generally employed by importers of record to clear goods through Customs, the importer of record still maintains the ultimate responsibility for clearance through Customs and compliance with Customs regulations in that country
- The party who is the importer of record is generally the party who maintains documentary title when the goods are cleared through Customs in the foreign country



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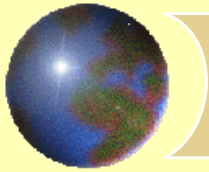
# FOREIGN REGULATORY COMPLIANCE

## Importer of Record Status

- **Documentary Title**
  - **Determined by either the bill of lading or air waybill**
  - **Person listed as the consignee on the bill of lading or air waybill**
  - **If a bill of lading is negotiable, and in letter of credit shipments, quite often the consignee will change prior to the goods clearing Customs in the foreign country**



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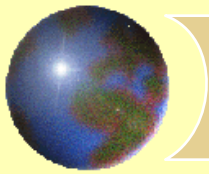
# FOREIGN REGULATORY COMPLIANCE

## Importer of Record Status

- **Types of shipments in which an exporter maintains documentary title**
  - **Most common types of export shipments-EXW/FOB/CIF-do not result encounter this situation as documentary title generally is not maintained by the exporter**
  - **DDU/DDP export shipments**
  - **Letters of credit shipments when L/C is not paid**
  - **Shipments to a foreign branch office or subsidiary**



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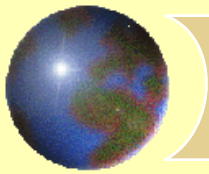
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## Foreign Regulatory Compliance Issues

- **Exporters who are also importers of record will have a higher degree of compliance obligations**
- **Exporters who are sellers of goods in foreign countries will also have a higher degree of compliance obligations**
- **Even in a export transaction where the sale occurs prior to the import, it is nevertheless advisable for marketing purposes for an exporter to ensure it complies with any domestic regulatory requirements in the foreign country**



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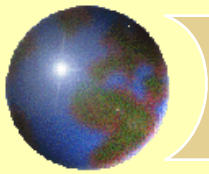
## Foreign Regulatory Compliance Issues

- **Import Customs clearance**
- **Import security control**
- **Import licenses/quotas/special duties**
- **Export documentation**
- **Pre-Shipment inspection**
- **Foreign exchange controls**
- **Intellectual property protection**
- **Labeling/packaging/marketing requirements**
- **Consumer product health & safety requirements**
- **Product & quality standards requirements**
- **Product warranty & specification requirements**
- **Agent/distributor requirements**



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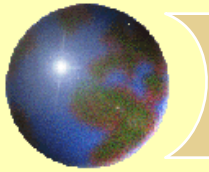
# FOREIGN REGULATORY COMPLIANCE

## Foreign Regulatory Compliance Issues

- **Import Customs Clearance-Duty Determination**
  - **Classification**
    - **Harmonized System (Tariff Schedule)**
      - **The Harmonized Commodity Description and Coding System (HS) is administered by the World Customs Organization**
      - **Implemented into law by individual countries (134 as of 10/08)**
  - **Appraisalment**
    - **Differing methods used to determine valuation of imported goods**



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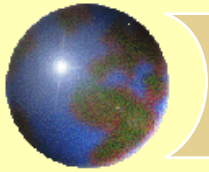
# FOREIGN REGULATORY COMPLIANCE

## Foreign Regulatory Compliance Issues

- **Import Customs Clearance-Entry Process**
  - **Common entry documents**
    - **Evidence of right to make entry-bill of lading/carrier's certificate**
    - **Commercial/pro forma invoice**
    - **Entry declaration/manifest/summary**
  - **Common types of entries**
    - **Consumption**
    - **Transportation**
    - **Temporary importation under bond**
    - **Warehouse/FTZ**



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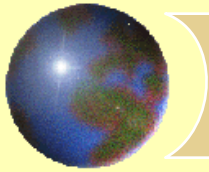
# FOREIGN REGULATORY COMPLIANCE

## Foreign Regulatory Compliance Issues

- **Import Security Control**
  - **Container Security Initiative (CSI)**
    - **Multilateral program designed to help increase security for containerized cargo shipped around the world**
    - **Addresses the threat to border security and global trade posed by the potential for terrorist use of a maritime container to deliver a weapon**



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# FOREIGN REGULATORY COMPLIANCE

## Foreign Regulatory Compliance Issues

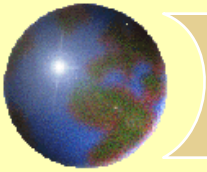
### ■ Import Security Control

#### • Container Security Initiative (CSI)

- Identify high-risk containers through the use of automated targeting tools to identify containers that pose a potential risk for terrorism, based on advance information and strategic intelligence
- Prescreen and evaluate containers before they are shipped as early in the supply chain as possible, generally at the port of departure
- Large-scale X-ray and gamma ray machines and radiation detection devices are used to prescreen high-risk containers to ensure that screening can be done rapidly without slowing down trade



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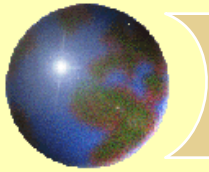
# FOREIGN REGULATORY COMPLIANCE

## Foreign Regulatory Compliance Issues

- **Import Security Control**
  - **Container Security Initiative (CSI)**
    - **Japan and Canada currently station their Customs personnel in some U.S. ports as part of the CSI program**
    - **The World Customs Organization (WCO), the European Union (EU), and the G8 support CSI expansion and have adopted resolutions implementing CSI security measures introduced at ports throughout the world**



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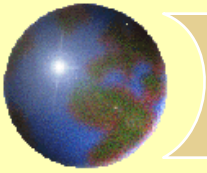
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## Foreign Regulatory Compliance Issues

- **Import Licenses/Quotas/Special Duties**
  - **Licenses**
    - Used to control the import of certain types of goods
    - May be required to import goods into a particular country
  - **Quotas**
    - Used to control the volume of certain imported goods
    - If volume is exceeded, may result in a higher import duty
  - **Special Duties**
    - **Antidumping/Countervailing Duties (AD/CVD)**



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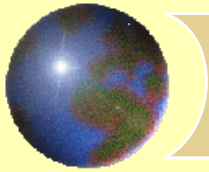
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## Foreign Regulatory Compliance Issues

- **Export Documentation**
  - **Pro forma invoice**
    - **Preliminary invoice used to verify export transaction information and to provide notice that an export transaction will occur in the near future**
  - **Commercial invoice**
    - **Formal entry document generally required by foreign Customs and is used to specify export transaction terms and details**



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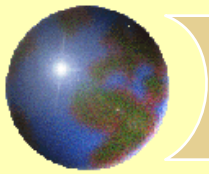
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## Foreign Regulatory Compliance Issues

- **Export Documentation**
  - **Bill of lading/Waybill**
    - **Contract for carriage of goods, specifies who has documentary title**
  - **Certificate of origin**
    - **Certifies country of origin of exported goods**
  - **Consular legalization**
    - **Process where foreign consulates “legalize” documents**



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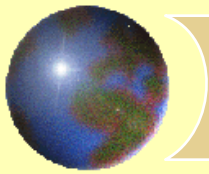
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## Foreign Regulatory Compliance Issues

- **Pre-Shipment Inspection (PSI)**
  - **Foreign regulatory requirement**
    - Ensures foreign import compliance requirements
    - May result in quicker clearance of imported goods
    - Countries requiring-[www.export.gov/logistics/exp\\_inspections.asp](http://www.export.gov/logistics/exp_inspections.asp)
  - **Contractual requirement**
    - Ensures foreign product specification and warranty requirements
  - **Generally conducted by private organizations at exporter's site**



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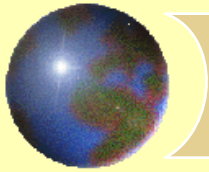
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## Foreign Regulatory Compliance Issues

- **Foreign Exchange Controls**
  - **Always desirable for exporters to be paid in their own currency**
  - **Used by countries as a means to control the value of their currencies or to prevent foreign currency shortages**
  - **Requires advance financial planning of the part of exporters to ensure that their profit margins on their export transactions are satisfactory**



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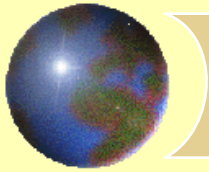
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## Foreign Regulatory Compliance Issues

- **Intellectual Property Protection**
  - **May need to indicate proof of either a patent, trademark or copyright license, or ownership of a patent, trademark or copyright, that is related to the exported goods in order to be able to export goods to certain countries**
  - **Desirable for a foreign purchaser to be a licensee or sublicensee of any IP for which an exporter is the owner or licensee**
  - **Desirable for an exporter to obtain trademark protection for goods or services in any country to which an export occurs**



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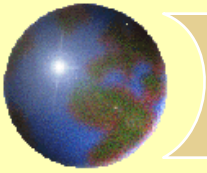
# FOREIGN REGULATORY COMPLIANCE

## Foreign Regulatory Compliance Issues

- **Labeling/Packaging/Marking Requirements**
  - **Labeling-product/supplier information**
  - **Packaging-hazardous materials/electronics**
  - **Marking-country of origin/product standards compliance**



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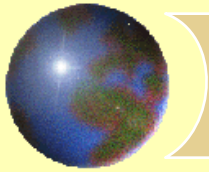
# FOREIGN REGULATORY COMPLIANCE

## Foreign Regulatory Compliance Issues

- **Consumer Product Health & Safety Requirements**
  - **Generally only apply to goods sold to end-user consumers**
  - **Quite often will apply not only to retailer but also to previous parties in the chain of distribution including manufacturers**
  - **Even if exporters do not sell directly to end-users, compliance is nevertheless often advisable from a marketing standpoint**



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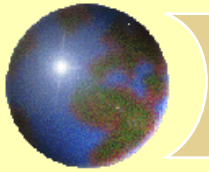
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## Foreign Regulatory Compliance Issues

- **Product & Quality Standards**
  - **Technical & physical standards**
  - **ISO certification**
  - **Electronics/Electrical standards**



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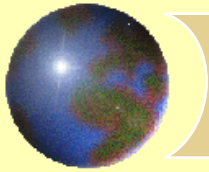
# FOREIGN REGULATORY COMPLIANCE

## Foreign Regulatory Compliance Issues

- **Product Warranty & Specification Requirements**
  - **Type & length of warranty**
  - **Warranty requirement as relates to chain of distribution**
  - **Product specific requirements**
  - **While exporters may not jurisdictionally be subject to these requirements, from a marketing standpoint compliance may be nevertheless desirable**



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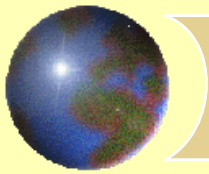
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- **Agent/Distributor Requirements**
  - **Length of term**
  - **Termination**
  - **Compensation**
  - **Exclusivity**



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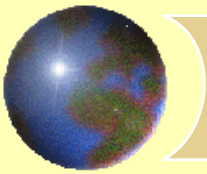
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## Specific Foreign Regulatory Environments

- **European Union**
  - **Import Licenses**
    - **Generally not required unless imported products are subject to import surveillance, quantitative restrictions or other safeguard measures**
    - **Textiles/Tobacco/Agricultural products**
  - **Import Quotas**
    - **Quantitative restrictions in place with respect to certain products coming from various countries**
    - **Textiles/Agricultural products**
    - **Tariff quotas**



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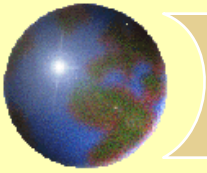
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## Specific Foreign Regulatory Environments

- **European Union**
  - **CE marking requirement**
    - Is a declaration by manufacturer that goods comply with EU product directives on standards, health, safety and environment
    - Required for most goods imported into EU from non-EU countries
    - Most EU importers will not import goods without CE mark
  - **Directive 1985/374-Liability for Defective Products**
    - Applies to “producers” of products including manufacturers and EU distributors/importers
    - Liability is for personal injuries only



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## Specific Foreign Regulatory Environments

- **European Union**

- **Proposal for a Directive on Consumer Rights (10-2008)**

- **Consumer sales and guarantees**

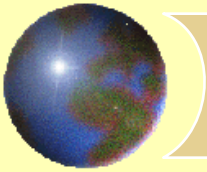
- **Sellers of consumer goods within the EU are obliged to guarantee the conformity of the goods with the contract for a period of two years after the delivery of the goods. The final seller, who is responsible to the consumer, can also hold the producer liable in their business relationship.**

- **Distance Selling**

- **Puts consumers who purchase goods or services through distance communication means in a similar position to consumers who buy goods or services in shops.**



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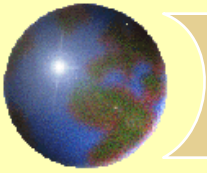
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## Specific Foreign Regulatory Environments

- **Mexico**
  - **Import licenses-generally not required**
  - **Product standards**
    - **Compliance with Mexican Official Standards is required**
    - **Technical standards and labeling requirements are published in the Mexican Official Gazette (Diario Oficial de la Federacion)**
  - **Pre-shipment inspection (PSI)**
    - **PSI required for certain exports to Mexico that do not qualify for NAFTA treatment**



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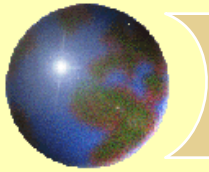
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- **Mexico**
  - **Agency requirements**
    - Mexican agents are provided same protection as employees for unjustifiable termination, including right to compensation
    - Agent may be entitled to compensation should termination damage the agent
    - Indefinite terms are required to be specific noted in agreement
  - **Distributor requirements**
    - Minimum termination notice is 60 days for indefinite terms



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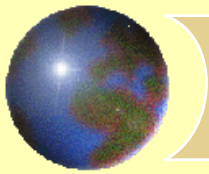
# FOREIGN REGULATORY COMPLIANCE

## Specific Foreign Regulatory Environments

- **Brazil**
  - **Minimum reference prices**
    - Have been historically required in order to obtain import license
    - Brazil claims this has been removed but has yet to codify removal
  - **Import licenses-automatic & non-automatic**
    - Non-automatic require filing an application for an import permit (Guia de Importação) accompanied by the exporter's pro forma invoice
  - **Labeling and marking requirements**
    - Must provide various product information in Portuguese



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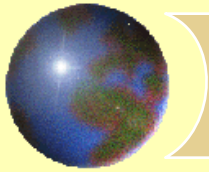
## Specific Foreign Regulatory Environments

- **Brazil**
  - **Agency requirements**
    - **Agreements are required to be registered with the government if they contain exclusivity and non-competition provisions**
    - **Agent compensation is limited to 10% of sales of industrial goods and 3% of sale of non-industrial goods**
    - **Total sales by agents must be reported to the government**
    - **Agents can not be terminated without “just cause”**
    - **Notice of termination is required-if not provided agent is entitled to compensation**
    - **One month notice is required when an agreement has been in force for over 6 months along with a compensation payment**



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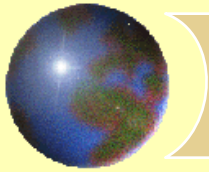
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## Specific Foreign Regulatory Environments

- **India**
  - **Foreign exchange controls**
    - Reserve Bank of India maintains tight control over foreign exchange
    - As a requirement of import clearance, exporters are required to provide to the RBI a declaration indicating the transaction currency and terms of payment
    - Advance payments to exporters prior to import can only occur if importer obtain a bank guarantee covering amount of payment
  - **Import licenses**
    - Not required for most goods but are exceptions



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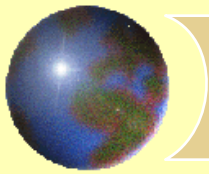
# FOREIGN REGULATORY COMPLIANCE

## Specific Foreign Regulatory Environments

- **India**
  - **Labeling requirements**
    - **Country of origin marking**
    - **Indicate compliance with standards of weights and measures**
    - **Month & year of either manufacture or packing of goods**
    - **Maximum retail sales price to ultimate consumer**
  - **Standards requirements**
    - **Increasing emphasis in various industry sectors**
    - **Certification and testing by Bureau of Indian Standards required for certain imported products including household electrical appliances**



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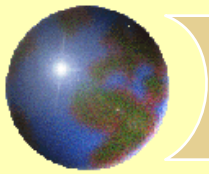
# FOREIGN REGULATORY COMPLIANCE

## Additional Sources of Information

- **U.S. Export Assistance Centers (USEAC)-[www.buyusa.gov](http://www.buyusa.gov)**
- **North Texas USEAC-[www.buyusa.gov/northtexas](http://www.buyusa.gov/northtexas)**
- **North Texas District Export Council-[www.exportexas.com/northtexas](http://www.exportexas.com/northtexas)**
- **Foreign Consuls-[www.state.gov/s/cpr/rls/fco/index.htm](http://www.state.gov/s/cpr/rls/fco/index.htm)**
- **Trade Links-[www.internationaltradeattorney.com/links.htm](http://www.internationaltradeattorney.com/links.htm)**
- **Presentation-[www.internationaltradeattorney.com/articles.htm](http://www.internationaltradeattorney.com/articles.htm)**



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# FOREIGN REGULATORY COMPLIANCE

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