Potential Pitfalls for Exporters Using Ex Works

Many exporters like to sell under the Incoterms rule Ex Works (EXW) because it seems to require the least obligation or responsibility for the seller. Taken at face value, Ex Works may appear to be the best, no-hassle choice for exporters that don't want the added burden of arranging transportation and ensuring export compliance. However, appearances can be deceiving. Exporters should use caution when selling under Ex Works, due to these potential pitfalls.

Loading

Ex Works assigns the buyer with the risk for loss and damage to the goods during loading. Though the seller normally loads the merchandise as common procedure, under Ex Works, it is the buyer who's at risk if the goods are damaged during loading. At first, this scenario may seem preferable from the seller's standpoint. In reality, it leaves the sales relationship very vulnerable. If goods are damaged during loading, it could cause serious conflict between seller and buyer, possibly jeopardizing the sales relationship.

Export Controls

Under Ex Works, the buyer is responsible for arranging export formalities and clearance. Again, one would assume this to be preferable for the seller/exporter, who perhaps sees these obligations as too much of a hassle. However, most exporters don't realize the potential compliance issues that this arrangement creates.

Let's start with the most obvious issue: if the buyer is overseas, one can assume that this person is not familiar with the U.S. Export Administration Regulations (EAR). Therefore, it's going to be very difficult for that foreign buyer to understand how to comply with U.S. export laws and regulations. This increases the possibility for incorrect or insufficient export filing. Why should the exporter be concerned about this? As the U.S. Principal Party of Interest (USPPI), the exporter is still responsible for the shipment's compliance, regardless of whether a foreign agent/buyer arranges the export formalities (see 15 CFR 758.3). Failing to obtain the proper export license, for example, could mean stiff penalties or loss of export privileges for the exporter.

Another disadvantage to Ex Works is that it increases the chances of the exporter being audited or penalized for violations. Under Ex Works, the foreign buyer arranges transportation of the goods. In the U.S., when a foreign entity controls the transportation of exported goods, the government considers the shipment a routed export transaction.

Due to the potential security risks involved, all routed export transactions are carefully scrutinized by the Bureau of Industry and Security and U.S. Customs and Border Protection. While exporters are required by law to maintain full compliance with U.S. laws and regulations for all shipments, routed export transactions must be all the more compliant because they are so closely examined by the government. Thus, in the case of routed transactions, Ex Works actually adds to the exporter's/U.S. seller's compliance burdens.

Payment

If selling using a letter of credit, documentary sight, or time draft, exporters need to maintain control of the international bill of lading in order to get paid by the bank. Unfortunately, under Ex Works, the exporter has no say in how these documents are prepared. If a bill of lading has a mistake, the exporter has no recourse for obtaining corrections, as the forwarder who prepared the document is employed by the buyer. The buyer's forwarder is under no obligation to make corrections on the seller's behalf. Without a correct bill of lading to present to the bank, the exporter will be charged discrepancy fees, or worse, not be paid at all.

Better alternative to Ex Works: CPT

For the compliance-savvy exporter, Carriage Paid To (CPT) is a better alternative to Ex Works. The advantages are many.

1. The seller/exporter controls the transportation all the way to the named destination point, with risk for loss passing to the buyer when the goods are handed over to the first carrier in the U.S. In many cases this happens at the seller's warehouse, as the goods are loaded on the truck.

2. The goods are loaded by the seller, at the seller's risk, removing this burden from the buyer.

3. The seller or exporter controls the export formalities and export compliance—such as filing the Electronic Export Information (EEI)—thereby minimizing the potential for penalties and sanctions.

4. The shipment is no longer considered a routed export transaction, eliminating the additional compliance burdens that such a designation would require.

5. If selling under a letter of credit, sight, or time draft, the exporter will control international transport, and thus, the documentation needed to receive payment from the bank.

6. An added benefit of controlling the international freight under CPT is that the exporter can choose the freight forwarder. Working with a preferred freight forwarder gives the exporter the advantage of additional expertise regarding export compliance, best routing, and required export documentation. This is extremely helpful for smaller and less experienced exporters but can also be beneficial for larger exporters.

Exporters should consider the benefits of selling using CPT, which actually reduces risk and allows for peace of mind on export compliance.

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MOHAWK GLOBAL TRADE ADVISORS teaches export companies how to maximize their use of Incoterms through on-site training programs.