

# International Business News – September 2004

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## **ANATOMY OF A PERFECT “FIRST-TIME” EXPORT LICENSE APPLICATION From Institute of Management & Administration’s Report on Managing Exports – May 2004**

If a product requires a license to be exported, obtaining the license in a timely way is crucial, since delays could potentially sink a sale. However, as many export pros know all too well, the application process can be daunting and time consuming.

Worst of all, license applications can come back with requests for more documentation or questions months after being sent in. To help U.S. exporters, the recent Update Conference of the Bureau of Industry & Security (BIS) brought together export-licensing experts from the Commerce, State, Defense, and Energy Departments.

The goal of the session, “Anatomy of a Perfect License Application,” was to provide export pros with a better understanding of what each agency needs so applications can be filled out correctly and completely the first time around.

Panelists were Gene Christiansen from Commerce ([gchristi@bis.doc.gov](mailto:gchristi@bis.doc.gov); 202-482-2944); Lisa Wenger from State ([wengerls@t.state.gov](mailto:wengerls@t.state.gov); 202-647-1837); Michael Laychak from Defense ([Michael.Laychak@osd.mil](mailto:Michael.Laychak@osd.mil); 703-325-4116); and Edward Fox from Energy ([Edward.Fox@hq.doe.gov](mailto:Edward.Fox@hq.doe.gov); 202-586-2144).

### Commerce-BIS License Process

“Commerce’s BIS is the primary licensing agency for dual-use exports—commercial items which could have military applications,” Christiansen explains. Of those exports and re-exports subject to the Export Administration Regulations (EAR), a relatively small percentage requires the submission of a license application. “License requirements are dependent upon an item’s technical characteristics, the destination, the end-use, the end-user, and other activities of the end-user,” Christiansen says. You will need the following five facts to determine your obligations under the EAR, and using the following set of questions as a checklist can eliminate or minimize licensing delays.

#### 1. What is the item you intend to export or re-export?

“You must provide BIS with a complete description of the item or items, describe it in terms of the ECCN

controls, provide the quantity in the units of export per ECCN, and explain over what period the export will take place,” Christiansen says.

#### 2. Where is it going?

#### 3. Who will receive it?

#### 4. What will they do with it? “

Exporters should be prepared to answer the following questions,” says Christiansen: “Is there balance between capability of the item and its proposed end use? Would a lesser item satisfy the customer’s requirements? Is there excess capability involved? Why? What is the risk of diversion, what controls are in place to prevent it, and are these realistic? Who will monitor the controls? Do all parties understand the controls and are they documented?”

#### 5. What other activities is the end-user involved in? “

Know as much as possible about all parties to the transaction,” Christiansen stresses. “Identify all parties, describe their roles, report what you know about them, and describe your sources for such information.”

“Support documentation for all these claims and statements is crucial,” Christiansen explains. “Include items like an import or end-user certificate, letter of assurance, letter of explanation, transaction details, and a control plan if appropriate.”

Commerce also wants to know about your competitors:

“Tell us whether there are alternative foreign sources for the item and whether such products are comparable to yours,” says Christiansen. Other Agency Licensing Requirements Christiansen’s “checklist” is applicable to the other licensing agencies with only minor additions. For State, the Directorate of Defense Trade Controls (DDTC) licenses defense services and defense (munitions) exports. Lisa Wenger emphasizes three additional areas: “Items to be exported for foreign added value need a de minimis estimate for possible further licensing requirements, items for demonstration or temporary export must be clearly indicated, and models of equipment trading close to the U.S. munitions list should have a commodity jurisdiction (CJ) determination before applying to export,” she explains.

A CJ request is used to determine whether an item or service is subject to the export licensing authority of Commerce or State. Wenger advises, “If you’re not completely sure of the export licensing jurisdiction of an

item, or if you believe that jurisdiction of an item has been incorrectly assigned and should be transferred to another agency, request a CJ determination." Detailed instructions for CJ submissions are on the DDTC ([www.pmdtc.org](http://www.pmdtc.org)) and BIS ([www.bis.doc.gov](http://www.bis.doc.gov)) Web sites.

"For Defense, the Defense Threat Reduction

Agency-Technology Security is responsible for the development and implementation of policies on international transfers of defense-related technology and reviews certain dual-use export license applications referred by Commerce," Laychak explains. "Provide detailed specs of items to be exported," he stresses.

The Office of Arms Control and Nonproliferation's Export Control Division (Energy Department) licenses nuclear technology and technical data for nuclear power and special nuclear materials. Fox stresses that for such license applications "the exact sub-organization that will use the equipment is necessary" and also emphasizes the need for "technical specs or a Web link to them." Export licensing for both Commerce (SNAP) and State (D-Trade) is now electronic (see Web sites). All the panelists encourage exporters to regularly follow up on the status of their license applications.

**BLACK ECONOMIC EMPOWERMENT (BEE)  
IN SOUTH AFRICA  
by: Felicity Nagel  
Report Date: 08/23/2004**

**BACKGROUND**

After the first democratic elections in 1994, the South African Government began introducing BEE policies in an attempt to reintegrate historically disadvantaged individuals (the majority of South Africans) into the market place and to correct extreme income disparities. The term "Black persons" is generic, and also includes indigenous Africans, Colored and Indians of South African descent.

Some of the measures being used by the Government include formal legislation and regulation, preferential procurement, financial and other incentives, and preferential procurement. The Government is also engaging with the private sector (including trade unions and community-based organizations) in an effort to accelerate the process of BEE, by developing partnerships and charters. The Government also recognizes that due to the complexity of each sector and differing skills, a flexible approach is required in the implementation of BEE. Examples of concluded partnership agreements include the Mining Charter signed between the Government and mining industry, Petroleum Charter signed with the petroleum industry ([www.dme.gov.za/minerals/mining\\_charter.htm](http://www.dme.gov.za/minerals/mining_charter.htm)). Other charters also include the Financial Services Charter and ICT charter ([www.ictcharter.org.za](http://www.ictcharter.org.za))

**Definitions of Black Economic Empowerment (BEE)**

The Black Economic Commission defines BEE as a Government strategy to substantially increase black participation at all levels of the economy. The objective of the BEE policy which looks at correcting the imbalances of the economy under the previous regime by transferring ownership, management and proportionate control of South Africa's financial and economic resources to the majority of the people. The intention is for the formerly disenfranchised to enjoy a broader and more meaningful participation in the economy. This policy is similar to the efforts of the United States Minority Business Development Agency (MBDA) with its 8A certification program.

A Black Company is described as one, which is 50.1 percent owned by black persons and where there is substantial management control. Ownership refers to economic interest while management refers to the membership of any board or similar governing body of the enterprise

A Black-owned Company is one that has at least 25.1 percent ownership by black persons and where there is substantial management control. Ownership refers to economic interests. Management refers to executive directors. This is whether black enterprise has control or not.

A black woman-owned enterprise has at least 25.1 percent representation by black women within the black equity and management portion

A community or broad-based enterprise has an empowerment shareholder who represents a broad base of members such as a local community or where the benefits support a target group, for example black women, people living with disabilities, the youth and workers. Shares are held via direct equity, non-profit organizations and trusts

A co-operative or collective enterprise is an autonomous association of people who voluntarily join together to meet their economic, social and cultural needs and aspirations through the formation of a jointly owned enterprise and democratically controlled enterprise.

Sources: Country Commercial Guide, US Commercial Service, South Africa  
Black Economic Empowerment Commission

**For more information on doing business in South Africa, go to the official South Africa Website of the U.S. Commercial Service**

<http://www.buyusa.gov/southafrica/en/>  
U.S. Commercial Service, South Africa  
15 Chaplin Road  
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27 11 442-3770  
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**NEW INCOME TAX LAWS IN SAUDI ARABIA**  
by: Mawada Alwazir  
Report Date: 08/17/2004

The Council of Ministers in Saudi Arabia approved a new income tax law on 12 January 2004, lowering the tax rate on foreign investors from a maximum of 30 per cent to a flat rate of 20 per cent. The new Saudi income tax law was published in the official gazette (Umm Al Qura) on Friday 30 April 2004. The new tax law is effective from 29 July 2004 and will apply to taxpayers in respect of accounting periods beginning on or after the effective date. The by-laws of the new income tax law were published in the local newspapers on August 15, 2004.

The law applies to Saudi and non-Saudi shareholders (persons or corporations) in companies involved in commercial, professional or handicraft businesses or any similar activity with the aim of making profit, regardless of whether they reside in the Kingdom or not. The tax law is part of Saudi Arabia's efforts to reform its welfare-dominated economy and diversify state revenues away from oil sales, which account for 80 percent of its income.

Withholding tax due should be deposited with the Department of Zakat and Income Tax (DZIT) by the resident paying entity within the first 10 days of the month following the month in which the taxable payment was made. Failure to deduct or, having deducted, failure to deposit such tax will result in imposition of a late payment penalty and delay fine on the paying entity. The new tax law incorporates the Natural Gas Investment Tax (NGIT) regulations that were issued in 2003 as a separate law. The new tax law will supersede the separate NGIT law.

The salient features of the new tax law are summarized below:

- A flat tax rate of 20 percent will apply to the tax base of the following: (a) Foreign partner's (shareholder's) share in a resident capital company, (b) A resident non-Saudi natural person who does business in the Kingdom, (c) A non-resident that does business in the Kingdom through a permanent establishment.
- The tax rate on companies engaged in natural gas investment activities will be 30 percent. Such companies will also be subject to the NGIT where the rates range from 30 percent to 85 percent based upon the rate of return.
- The tax rate on companies engaged in the production of oil and other hydrocarbons productions will be 85 percent.

For a full English translation of the new bylaws, please contact:

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**INTRODUCING THE EUROPEAN UNION'S NEW  
INTERNET ADDRESS TOP LEVEL DOMAIN**  
by: Martin Whitehead  
Report Date: 08/25/2004

1. What is ".eu"?

It is a new Internet address Top Level Domain (TLD) that will complement, not replace, existing national TLDs like ".be" and ".fr". It should not be confused with the ".eu.com", which is a sub-domain of ".com."

2. Why has ".eu"? been established?

It is part of a broader initiative by the European Union to encourage online activity. The idea is that companies can underscore their pan European marketing presence by registering ".eu" Internet addresses.

3. Who can register a ".eu" address?

Any EU resident or undertaking with its "registered office, central administration or principal place of business within the Community." The "Community" is eurospeak for the European Union and refers to all twenty-five EU Member States.

4. Who will manage the system?

The European Commission has selected EURid (the European Registry for Internet Domains) to administer the ".eu" registry. EURid will accredit registrars who will be responsible for handling applications and forwarding them to the Registry.

5. When will the registration process begin?

Probably not before Spring 2005. At the time of writing (24 August 2004) the European Commission still has to sign a contract with EURid. Once that happens the Registry will need to complete its preparations, which include accrediting Registrars. Registrars will only be able to forward to EURid those applications they receive after their accreditation date: no pre-registrations are possible.

6. Where will companies go to register names in the ".eu" TLD?

Companies will need to channel their application via one of the accredited Registrars, which EURid will list on its website. The Registry will not accept applications directly.

7. How will the addresses be assigned?

On a first come, first served basis – a registrar who receives more than one request for the same address shall forward the requests to the Registry in the chronological order in which they were received.

8. How will existing rights holders be protected?

The ".eu" implementing Regulation (Link 1) specifies that prior rights holders should be able to register in advance. The recently adopted Public Policy Rules (Link 2) have fleshed out this arrangement by fixing a "phased registration" period that will precede the general registration. During the "phased registration" holders of prior rights, such as trade marks, will be able to register ".eu" domain names before the registration process is opened to all.

9. How long will the phased registration period last?

Four months. During the first two months registration will be open exclusively to: holders of registered national and Community trademarks; geographic indications; and to public bodies wishing to register themselves and/or the territories they are responsible for. In the second two-month period holders of these prior rights can continue to register but the process will also be open to other rights holders, such as company's with trading names protected by national law.

10. How much will it cost to register a name in the ".eu" domain?

EURid will be responsible for setting fees and states on its website (Link 3): "in its response to the Call for expressions of interest for the selection of the ".eu" TLD Registry, EURid proposed a registration fee of € 10 (ex. VAT) during the first year of operations. This is the price that will be charged by EURid to the ".eu" registrars and does not take into account the additional services by the registrar for his customer. Therefore it is estimated that the ultimate retail price charged by the registrars will be higher". Indeed.

#### Key Links

1) ".eu" implementing legislation  
[http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l\\_113/l\\_11320020430en00010005.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_113/l_11320020430en00010005.pdf)

2) ".eu" Public Policy Rules  
[http://europa.eu.int/information\\_society/topics/ecom/all\\_about/todays\\_framework/public\\_resources/names\\_addresses/doc/euTLD\\_PublicPolicy874\\_2004en.pdf](http://europa.eu.int/information_society/topics/ecom/all_about/todays_framework/public_resources/names_addresses/doc/euTLD_PublicPolicy874_2004en.pdf)

3) EURid  
<http://www.eurid.be/index.html>

For further information or feedback please do not hesitate to contact the U.S. Commercial Service at the United States Mission to the European Union. We are located at Boulevard du Regent 27, Brussels B-1000, Belgium, and can be contacted via e-mail at: [brussels.ec.office.box@mail.doc.gov](mailto:brussels.ec.office.box@mail.doc.gov); For further information on the services provided by the Commercial Service at the European Union please visit our website: [www.buyusa.gov/europeanunion](http://www.buyusa.gov/europeanunion).

#### OTHER ITEMS OF INTEREST

Following is a list of international business articles available from our office. If you would like to receive any of these reports, please contact us at 501-324-5794, fax 7380, or [little.rock.office.box@mail.doc.gov](mailto:little.rock.office.box@mail.doc.gov) and let us know which items you would like:

#### Argentina Temporary Import Regulations

This 2-page document tells of the Argentine Customs Bureau's program, which allows duty free admission of primary and intermediate goods into Argentina for use in export production or for applying finishing procedures on goods destined for re-exportation. U.S. exporters of processed and unprocessed inputs into Argentine export production can take advantage of this program.

#### The Taxman Cometh Canada's Withholding Tax

Canada's Withholding Tax regulations have caught more than a few US companies by surprise as they found their payments from Canadian customers of lesser amounts than expected. This 3-page report describes the tax and provides advice on how to avoid the deduction.

#### Dominican Republic Joins Five Central American Countries in Historic Free Trade Agreement with U.S.

On August 5, 2004 the United States, the Dominican Republic, and representatives of five Central American nations signed the U.S. – Dominican Republic – Central America Free Trade Agreement (DR-CAFTA). This historic agreement creates the second-largest free trade zone in Latin America for U.S. exports. Please contact us for information on the DR-CAFTA agreement, and on doing business with the Dominican Republic.

Dominican Republic - Best Prospects for U.S. Exports

Sporting goods and recreational equipment, Fabrics, Cosmetics and toiletries, Telecommunications equipment. Hotel and restaurant equipment.

Agricultural Products: Wheat, Corn, Lumber, Tobacco, Soybean meal and oil, Animal fat, Sweeteners, Value added products

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