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## **Import & Export Glossary of Terms**

**Agency/Distributor:** A direct market entry method where the exporter contracts a partner or representative in the country of import to sell and/or represent their products. Although the terms agent, sales agent, sales representative, distributor, etc. are often misused interchangeably, there are some important differences to note.

**Agent/Sales Representative:** Overseas, a sales agent or sales representative is the equivalent of a manufacturer's representative in the United States. The representative uses the company's product literature and samples to present the product to potential buyers. A representative usually handles many complementary lines that do not conflict. The sales representative usually works on a commission basis, assumes no risk or responsibility, and is under contract for a definite period of time (renewable by mutual agreement). The contract defines territory, terms of sale, method of compensation, reasons and procedures for terminating the agreement, and other details. The sales representative may operate on either an exclusive or a non-exclusive basis. Firms in the US, and other developed countries have stopped using the term "agent" and instead rely on the term "representative," since agent can imply the authority, perhaps even a power of attorney, to make commitments on behalf of the firm he or she represents.

**Cash in Advance:** An international payment method where payment for goods is received via wire transfer from the buyer before the exporter ships the goods. This payment method results in zero risk for the seller and 100% of the commercial risk for the buyer.

**CCC Mark:** An acronym for China Compulsory Certification mark. A symbol printed on a product or product label by its manufacturer or importer declaring compliance with the requirements of various Chinese government laws for manufactured products related to human life and health, animals, plants, environmental protection and national security.

**CE Mark:** A mandatory European product marking and certification system. When affixed to a product and product packaging, CE marking indicates that a particular product complies with all applicable European product safety, health and environmental requirements within the CE marking system. CE marking covers approximately half of all US products exported to Europe. Over 50% of all US products sold to Europe require CE marking.

**Certificate of Origin:** A statement signed by the exporter or the exporter's agent and attested to by a local Chamber of Commerce, indicating that the goods being shipped, or a major percentage of them were produced in the exporter's country. The Certificate of Origin may be asked for by the customs authorities of the country of import, because it proves the country of manufacture for particular goods.

**Distributor:** The foreign distributor is a merchant who purchases goods from a US exporter (takes title of the goods and often at a substantial discount) and resells it for a profit. The foreign distributor generally provides support and service for the product, thus relieving the exporter of these responsibilities. The distributor usually carries an inventory of products and a sufficient supply of spare parts and also maintains adequate facilities and personnel for normal servicing operations. Distributors typically handle a range of non-conflicting but complementary products. End users do not usually buy from a distributor; they buy from retailers or dealers.

**Documentary Collection:** This payment term is known by a number of names including documentary collections, cash against documents and payment against documents. When the product is shipped, the seller forwards the documents to the foreign buyer's bank which holds the documents until the payment term is met. The payment term may be at sight, which means the buyer must pay prior to taking possession. The payment term also may be against acceptance of a time draft payable a predetermined number of days from the date of shipment. Unlike letters of credits (L/Cs), there is no commitment from the buyer's bank to make payment upon presentation of the documents.

**Ex-Im Bank:** The Export-Import Bank of the United States (Ex-Im Bank) is the official export credit agency of the United States. Ex-Im Bank's mission is to assist in financing the export of US goods and services to international markets. Ex-Im Bank enables US companies — large and small — to turn export opportunities into real sales that helps to maintain and create US jobs and contribute to a stronger national economy.

Ex-Im Bank does not compete with private sector lenders but provides export financing products that fill gaps in trade financing. We assume credit and country risks that the private sector is unable or unwilling to accept. We also help to level the playing field for US exporters by matching the financing that other governments provide to their exporters. Ex-Im Bank provides working capital guarantees (pre-export financing); export credit insurance; and loan guarantees and direct loans (buyer financing). No transaction is too large or too small. On average, 85% of Ex-Im Bank transactions directly benefit US small businesses.

**Harmonized System (HS):** The Harmonized System (HS) of tariff nomenclature is a product classification system used as a basis for the collection of Customs duties and international trade statistics by almost all countries. Use of the HS ensures that a Customs administration produces statistics in exact accord with international classification standards. Currently 179 countries and Customs or Economic Unions (including 104 Contracting Parties to the HS Convention), representing about 98% of world trade, use the Harmonized System. It is therefore one of the most important instruments in world trade.

**Developed as a multipurpose nomenclature by the World Customs Organization (WCO), the HS is now used as the basis for:**

Customs tariffs

Collection of international trade statistics

Rules of origin

Collection of internal taxes

Trade negotiations (e.g., the WTO schedules of tariff concessions)

Transport tariffs and statistics

Monitoring of controlled goods (e.g., wastes, narcotics, chemical weapons, etc.)

**Harmonized Tariff Schedule (HTS):** Also known as the harmonized Tariff Schedule of the United States (HTSUS). The US International Trade Commission (Office of Tariff Affairs and Trade Agreements) is responsible for publishing the Harmonized Tariff Schedule of the United States Annotated (HTSA). The HTSA provides the applicable tariff rates and statistical categories for all merchandise imported into the United States; it is based on the international Harmonized System, the global system of nomenclature that is used to describe most traded goods. An organized listing of goods and their duty rates which is used as the basis for classifying imported products and identifying the rates of duty to be charged on them. It is based on the international Harmonized System Convention.

The HTS comprises a hierarchical structure for describing all goods in trade for duty, quota, and statistical purposes. This structure is based upon the international Harmonized Commodity Description and Coding System (HS), administered by the World Customs Organization in Brussels; the 4- and 6-digit HS product categories are subdivided into 8-digit unique US rate lines and 10-digit non-legal statistical reporting categories. Classification of goods in this system must be done in accordance with the General and Additional US Rules of Interpretation, starting at the 4-digit heading level to find the most specific provision and then moving to the subordinate categories.

**Hedging Tools:** Hedging tools provide a way to protect against the potential currency exchange risks of the market. The frequently used hedging tools for international trade are netting, forward contract, futures contracts

and currency options. Regarding exports from the US, it is an agreement with a bank whereby the exporter is guaranteed a definite rate of exchange upon presentation of a specified foreign currency on a predetermined rate.

**Incoterms:** Created by the International Chamber of Commerce (ICC), Incoterms are international rules that are accepted by governments, legal authorities and practitioners worldwide for the interpretation of the most commonly used terms in international trade. They either reduce or remove altogether uncertainties arising from differing interpretations of such terms in different countries. The scope of Incoterms is limited to matters relating to the rights and obligations of the parties to the contract of sale with respect to the delivery of goods sold, but excluding “intangibles” like computer software. They define the division of risk, cost and responsibility in an international shipment. In Incoterms 2010 (the latest version) there are 11 terms – EXW, FAS, FCA FOB, CFR, CIF, CPT, CIP, DAT, DAP, DDP.

**International Monetary Fund (IMF):** The International Monetary Fund (IMF) was established by international treaty in 1945 to help promote the health of the world economy. Headquartered in Washington, D.C., it is governed by its almost global membership of 184 countries. The IMF is the central institution of the international monetary system—the system of international payments and exchange rates among national currencies that enable business to take place between countries.

The IMF’s statutory purposes include promoting the balanced expansion of world trade, the stability of exchange rates, the avoidance of competitive currency devaluations, and the orderly correction of a country’s balance of payments problems. It aims to prevent crises in the system by encouraging countries to adopt sound economic policies; it is also—as its name suggests—a fund that can be tapped by members needing temporary financing to address balance of payments problems.

**International Trade Administration (ITA):** As part of the US Department of Commerce, the mission of the International Trade Administration is to help US businesses participate fully in the growing global marketplace. The ITA oversees the Commercial Services that is a global network of professionals charged with promoting US exports, Manufacturing and Services that is the government’s link to American industry and that has industry sector specialists can help identify trade opportunities for specific US products or services, and the Market Access and Compliance that keeps world markets open to US products and that has country specialists can help you benefit from our trade agreements with other countries.

**International Joint Venture:** One of the strategies for entering international markets is through joint ventures—where the risks, costs, management, and success of the venture are shared by the partners. The international nature of joint ventures subjects them to a multitude of statutes, regulations and legal requirements which must be understood by the players: the US business executive, the overseas partner, the investment banker, and their professional advisors. Add to this the complex business considerations which must be satisfied—often within the framework of a foreign culture and foreign practices—and you have a situation in which informed guidance is essential.

**Letter of Credit (L/C):** A L/C is a commitment, usually by a bank on behalf of a client, to pay a beneficiary (usually the exporter) a stated amount of money provided the beneficiary has complied with all the terms and conditions of the letter of credit. This usually involves the exporter presenting specified trade documents such as the commercial invoice, bill of lading, inspection and insurance certificates, etc. The foreign buyer applies for issuance of a letter of credit from the buyer’s bank to the exporter’s bank and therefore is called the applicant; the exporter is called the beneficiary. An Irrevocable Letter of Credit cannot be changed or amended unilaterally by either the applicant (buyer) or the beneficiary (seller) unless both parties mutually agree and is the most common form of L/C. A Confirmed Letter of Credit adds the payment guarantee of the exporter’s bank in case the buyer and the buyer’s bank cannot make payment when the exporter has complied with the terms of the L/C. A Standby Letter of Credit is a continuous “back-up” letter of credit that guarantees the exporter will receive payment by the issuing bank if the importer defaults on the order.

**Licensing:** Licensing is a contractual arrangement in which the licensor's patents, trademarks, copyrights, trade secrets, or other intellectual property may be sold or made available to a licensee for compensation that is negotiated in advance between the parties. This compensation, or royalties, may be a lump sum royalty, a running royalty (royalty that is based on volume of production), or a combination of both. US companies frequently license their technology to foreign companies that then use it to manufacture and sell products in a country or group of countries defined in the licensing agreement. Licensing is not limited to the manufacturing sector. Franchising is also an important form of technology licensing used by many service industries. In franchising, the franchisor (licensor) permits the franchisee (licensee) to employ its trademark or service mark in a contractually specified manner for the marketing of goods or services. The franchisor usually continues to support the operation of the franchisee's business by providing advertising, accounting, training, and related services and in many instances also supplies products needed by the franchisee.

**Schedule B:** In the United States, numbers used to classify exported products are called "Schedule B" numbers. The US Bureau of Census is responsible for publishing the Schedule B codes. Schedule B commodity codes are 10-digit numeric codes used to identify products that are exported to other countries from the US and it is based on the international Harmonized System. Transactions are classified under approximately 8,000 different products leaving the United States. Every item that is exported is assigned a unique 10-digit identification code.

**US Commercial Service:** The US Commercial Service is a Department of Commerce and International Trade Administration agency that helps US Companies, particularly small and medium-sized businesses make sales in international markets. Founded in 1980, the agency's network includes 107 US Export Assistance Centers throughout the country, and more than 150 offices overseas. The US Commercial Service provides a multitude of export assistance services for US companies such as the Gold Key Matching Service, the International Partner Search, Commercial News USA, BuyUSA.com and the export.gov trade portal.

**US Small Business Administration (SBA):** The Small Business Administration (SBA) provides financial assistance to US exporters. SBA targets its assistance to small companies and strives to assist those businesses that otherwise might not be able to obtain trade financing. Applicants must qualify as small businesses under the SBA's size standards and meet other eligibility criteria. SBA's Export Working Capital Program gives lenders the comfort they need so small businesses can get the financing they need. Under the program, the SBA backs up a loan request with its repayment guaranty. The SBA guarantees up to \$1 million or 90 percent of the loan amount, whichever is less; offers exporters preliminary commitments (PCs) that encourage lenders to provide credit; and offers a simplified application form. SBA's International Trade Loan SBA guarantees commercial lenders up to \$1.25 million in combined working capital and fixed asset loans, including any other current SBA loan guarantees. Working capital may be made according to the provisions of the Export Working Capital Program or as a permanent working capital loan.

**World Trade Organization (WTO):** Created in 1995 as a result of the Uruguay Round of the GATT, and hosted in Geneva, Switzerland, the World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations. At the heart of the system – known as the multilateral trading system – are the WTO's agreements, negotiated and signed by a large majority of the world's trading nations, and ratified in their parliaments. These agreements are the legal ground-rules for international commerce. Essentially, they are contracts, guaranteeing member countries important trade rights. They also bind governments to keep their trade policies within agreed limits to everybody's benefit. But their purpose is to help producers of goods and services, exporters, and importers conduct their business.

# International Exhibit & Export Management

## GUIDE TO THE PRODUCT LIABILITY LAW (Law No.85, 1994)

### 1. Introduction of the Product Liability System

Through the rapid development of science and technology and aggressive innovation in economic activities, Japan has attained a society of mass production and mass consumption. On the other hand, because consumers use and consume high-tech and complicated products daily, their safety primarily depends on product manufacturers.

Therefore, in order to change the principle of liability for damages in product-related accidents from "negligence" to "defect", and relieve the injured persons in a swift and appropriate manner, the Product Liability Law shall come into force from July 1, 1995. With the introduction of the Product Liability system, it is expected that the way of thinking and the approach concerning product safety of both the industry business segment and the consumer segment will change and improve.

### 2. What is Product Liability?

#### (1) Definition of Product Liability

Product Liability shall be defined as liability for damages in such case as follows:

In the case where due to a defect in the delivered product, a life, a body or property of another person (including a third party not using or consuming the product directly, and a legal person as well as a natural person) is injured, the person who manufactured, processed, imported or put his name, etc. on the product as business is liable for damages of the injured person.

#### (2) Significance of Introduction of the Product Liability Law

Previously in Japan, claims for damages have usually been made based on the Civil Code Article No.709 in case the injury is caused by a defect in the product. The Civil Code Article No.709 employs the "fault-based liability (negligence) principle", and requires the "intention or fault" of the manufacturer, etc. as a condition for liability.

The Product Liability Law takes the "defect in the product" as a condition for liability instead of the "intention or fault" of the manufacturer, etc. Therefore, after introduction of the Product Liability Law, the injured has only to verify the "defect in the product" for claiming damages.

Civil Code Article No.709	Product Liability Law
<ul style="list-style-type: none"><li>• The damage</li><li>• The intention or fault of the accused</li><li>• The causal relationship between the damage and the intention or fault</li></ul>	<ul style="list-style-type: none"><li>• The damage</li><li>• The defect in the product (at the time distribution commences)</li><li>• The causal relationship between the damage and the defect</li></ul>

The Product Liability Law can be said to employ the "liability without fault principle", that is, the manufacturer, etc. is liable for damages if the injury is caused by a defect in the product regardless of whether it was his intention or fault. However, the manufacturer, etc. is not liable when there is no defect in the product.

As the Product Liability Law is a means for claiming damages, the plaintiff side bears the burden of proof for the above-mentioned 1) - 3). The enactment of the Product Liability Law means a change in the liability rule from **fault-based liability principle -To- defect-based liability principle**

### **3. Points of the Product Liability Law**

#### **(1) Scope of the product**

By definition, "product" means movable property manufactured or processed. Therefore, incorporeal property such as services, information, software, electricity, etc., and immovable are not the object of the Law. Moreover, agricultural, forestall, marine and mineral products which are not processed artificially are not the object of the Law.

#### **(2) Parties subject to liability**

Parties subject to liability are as follows:

##### **Manufacturer Importer**

Any person who puts his name, etc. on the product with such titles as "manufacturer" or "importer", or any person who puts his name, etc. on the product in a manner mistakable for its manufacturer or importer (For instance, any person selling OEM products using his company brand name) Any person who, by putting his name, etc. on the product, may be recognized as its manufacturer-in-fact, in the light of a manner concerning manufacturing, processing, importation or sales, and other circumstances (For instance, any person, even though he puts his name, etc. on the product with such titles as "seller" or "sales agency", who is socially recognized as its manufacturer-in-fact or is a sole distributor of the product)

#### **(3) Concept of the term "defect"**

A "defect" does not mean mere lack of quality of the product, but means lack of safety in the product which may cause the injury to life, body, or property. In the law, the term "defect" is defined as "lack of safety that the product ordinarily should provide," taking into account "the nature of the product", "the ordinarily foreseeable manner of use of the product", "the time when the manufacturer, etc. delivered the product", and other circumstances concerning the product. These three above-mentioned circumstances include such respective factors, as are presented below. In the actual trial, while the weight of each factor is different depending on individual cases, these factors are comprehensively taken into account in judging whether the product is defective or not. Meaning of "the nature of the product" This means the circumstances of the product itself, including factors such as the following: representation of the product (instructions, warnings, etc. to prevent accidents) effectiveness and usefulness of the product (compared to its danger) cost vs. effect (the safety standard of products in the same price range) probability of occurrence of accident and its extent ordinary use period and durable period of the product Meaning of "the ordinarily foreseeable manner of use of the product" This means the circumstances concerning use of the product, including factors such as the following reasonably foreseeable use of the product possibility of preventing damage from occurring by the product user Meaning of "the time when the manufacturer, etc. delivered the product" This means the circumstances when the manufacturer, etc. delivered the product, including factors such as the following: situation at the time the product was delivered (the safety level required in society at the time the product was delivered) technological capabilities(the prior state of safety regulations and possibility of alternative design)

#### **(4) Exemptions**

Development Risk Defense, The Product Liability Law admits "Development Risk Defense" as an exemption. This means the manufacturer, etc. shall not be liable for damages, if the manufacturer, etc. proves that the state of "scientific or technical knowledge" at the time when the manufacturer, etc. delivered the product was not such as to enable the existence of the defect in the product to be discovered. "Scientific or technical knowledge" means all the established knowledge that could influence the decision on the existence of the defect, and not the knowledge held by a peculiar person but the total knowledge that objectively exists in society. Component or Raw Material Manufacturer's Defense Insofar as components or raw materials are "products" movable property manufactured or processed, their manufacturers are also subject to liability in the Law. However, if the manufacturer, etc. of a component or raw material proves that the defect is substantially attributable to compliance with the instructions concerning the specifications given by the assembling manufacturer who incorporates the component or raw material into another product, and that the manufacturer, etc. is not negligent on occurrence of the defect, the manufacturer of the component or raw material shall not be liable for damages.

## (5) Time Limitations

The right for damages provided in the Law shall be extinguished by prescription if the injured person or his legal representative does not exercise their rights within the following period: A period of three years from the time when the injured person or his legal representative becomes aware of the damage and the liable party for the damage (short-term negative prescription) A period of ten years from the time when the manufacturer, etc. delivered the product (long-term liable period)

*Concerning introduction of the Product Liability Law, the cooperation of all divisions of a company are indispensable. Namely, not only development, design, manufacturing and quality control divisions, but also general affairs, law and consumer divisions, etc. are recommended to cooperate with each other on product safety measures.*

*In case injury to life, body, or property is caused by a defect in the product, all product-related manufacturers as well as the assembling manufacturer of the finished product shall be liable jointly and severally for the damages described in the Law.*

### Comparison the Product liability Law with Product Liability System of EU and U.S.

	Japan	European Union	USA
	The P L Law	EC Product Liability Directive (Council Directive of 25 July 1985)	(Judicial Precedents)
<b>Principle Liability for Damages</b>	Liability without Fault Principle (Defect-based Liability Principle)		
<b>Burden of Proof (Adoption of Presumption Rule)</b>	The plaintiff side bears the burden of proof of damage, defect and causal relationship between defect and damage.		
	No	No	No
	(flexible application of empirical rules and inference)		Preponderance of the Evidence Discovery
<b>Adoption of Development Risk Defense</b>	Yes	Yes	Yes
		(option: adopted by 12 of 14 countries)	(state of the art defense)

<b>Liabile Period</b>	10 years from the delivery of the product (10 years from the time the damage arises in case such damage as caused by accumulation of substances or others)	10 years from the delivery of the product	10 years from the delivery of the product (in many states)
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**The Product Liability Law (Law No.85, 1994)**

**Article 1: Purpose**

The purpose of this Law is to relieve the injured person by setting forth liability of the manufacturer, etc. for damages when the injury on a life, a body, or property is caused by a defect in the product, and thereby to contribute to the stabilization and improvement of the people's life and to the sound development of the national economy.

**Article 2: Definitions**

- (1) As used in this Law, the term "product" means movable property manufactured or processed.
- (2) As used in this Law, the term "defect" means lack of safety that the product ordinarily should provide, taking into account the nature of the product, the ordinarily foreseeable manner of use of the product, the time when the manufacturer, etc. delivered the product, and other circumstances concerning the product.

(3) As used in this Law, the term "manufacturer, etc." means any one of the following:  
 any person who manufactured, processed, or imported the product as business (hereinafter called just "manufacturer"); any person who, by putting his name, trade name, trade mark or other feature (hereinafter called "representation of name, etc.") on the product presents himself as its manufacturer, or any person who puts the representation of name, etc. on the product in a manner mistakable for the manufacturer; apart from any person mentioned in the preceeding subsections, any person who, by putting the representation of name, etc. on the product, may be recognized as its manufacturer-in-fact, in the light of a manner concerning manufacturing, processing, importation or sales, and other circumstances.

**Article 3: Product Liability**

The manufacturer, etc. shall be liable for damages caused by the injury, when he injured someone's life, body or property by the defect in his delivered product which he manufactured, processed, imported or put the representation of name, etc. as described in subsection 2 or 3 of section 3 of Article 2 on. However, the manufacturer, etc. is not liable when only the defective product itself is damaged.

## **Article 4:Exemptions**

In cases where Article 3 applies, the manufacturer, etc. shall not be liable as a result of Article 3 if he proves; that the state of scientific or technical knowledge at the time when the manufacturer, etc. delivered the product was not such as to enable the existence of the defect in the product to be discovered; or in the case where the product is used as a component or raw material of another product, that the defect is substantially attributable to compliance with the instruction concerning the specifications given by the manufacturer of the said another product, and that the manufacturer, etc. is not negligent on occurrence of the defect.

## **Article 5:Time Limitations**

(1) The right for damages provided in Article 3 shall be extinguished by prescription if the injured person or his legal representative does not exercise such right within 3 years from the time when he becomes aware of the damage and the liable party for the damage. The same shall also apply upon the expiry of a period of 10 years from the time when the manufacturer, etc. delivered the product.

(2)The period in the latter sentence of section 1 of this Article shall be calculated from the time when the damage arises, where such damage is caused by the substances which are harmful to human health when they remain or accumulate in the body, or where the symptoms for such damage appear after a certain latent period.

## **Article 6:Application of Civil Code**

In so far as this law does not provide otherwise, the liability of the manufacturer, etc. for damages caused by a defect in the product shall be subject to the provisions of the Civil Code (Law No.89, 1896).

## **Supplementary Provisions**

This Law shall come into force the day after one year from the date of promulgation, and shall apply to the products delivered by the manufacturer, etc. after this Law comes into force. Partial Amendment of the Law on Compensation for Nuclear Damage The Law on Compensation for Nuclear Damage (Law No.147, 1961) shall be partially amended as follows:

In section 3 of Article 4 of that Law, "and the Law relating to the Limitation of the Liability of ship owners (Law No.94, 1975)" shall be amended as ", the Law relating to the Limitation of the Liability of ship owners (Law No.94, 1975) and the Product Liability Law (Law No.85, 1994)".

**OBS: this a normal and common explanation of the law, we don't sell any type of insurance, and we do not represent any insurance company or agent, also we do not services liability, do not bridge services insurance, and no one person or company may offer insurance in our behalf.**