

# The Worldwide Talent Pool Creates Opportunities Plus National Security Challenges for U.S. Firms



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AS THE GLOBAL TRANSFER OF PEOPLE, PRODUCTS and technology increases, organizations of all sizes are likely to see an increase in concerns about import and export control regulations. Of course, hand-in-hand with these concerns, there is now an increased focus on the need for greater customs controls and concerns for national security and protections for U.S. consumers and businesses against the importation of potentially hazardous products and/or services.

Since the transformation of the Legacy Immigration and Naturalization Service (INS) in 2001 into the U.S. Department of Homeland Security (DHS), greater focus and emphasis has been, and continues to be, placed on “immigration” and “customs” compliance, deemed export rules and enforcement.

One reason for this greater focus has been the ability of the DHS to receive significant funding from the federal government to enable this massive administrative agency to invest in and develop new technological infrastructure. Additionally, the DHS has been able to slowly move away from a previously paralyzing and schizophrenic administrative philosophy to a more focused enforcement-oriented mission. This new enforcement “face” of the DHS continues to manifest itself in: (1) investigations of employers about unauthorized employees (I-9 audits); (2) investigations of employer sites regarding H-1B and religious worker visas and by the Fraud and Detection and National Security Division of the U.S. Citizenship and Immigration Services (USCIS); and (3) increased scrutiny of persons and products entering the borders of our nation by U.S. Customs and Border Protection (CBP).

CBP is charged with the management, control and protection of U.S. borders at and between the official ports of entry. CBP conducts post-entry audits of goods in situations where, for example, there is a reported increase in certain goods being imported to the United States. CBP also monitors company procedures regarding the handling of safety requirements and recall. CBP is only one of the administrative agencies whose jurisdiction impinges in this important realm.



By proactively addressing the burgeoning issues in the import/export arena, U.S. firms will be able to avert delays in the hiring of skilled, foreign national personnel and the importation of high-value goods and services.

The enforcement efforts of various other U.S. administrative agencies (including, but not limited to the DHS) can result in significant civil and/or criminal penalties for organizations that are not mindful of immigration, import and export control regulations. Organizations that are involved in international trade in persons, products and/or technologies should properly explore the parameters of the U.S. federal regulations impinging upon their business practices. One burgeoning area that may inadvertently ensnare an unwary organization involved in the international trade arena is the “deemed export” regulations.

What is a “deemed export” you ask? A deemed export is a term of art that refers to the release of technology to a foreign national in the United States. Such a release is considered an export to the foreign national’s country of citizenship (and, in some cases, residence or birth). The most common example is releasing blueprints, schematics, source code or other technical data to a foreign national employee whether through conversations, e-mails, access to a database, or by some other means.

As with physical exports or electronic transfers, a deemed export may require a license from the U.S. Government. Failures to comply with the regulations can be significant and range from \$250,000 in civil cases and up to \$1,000,000 and 20 years of imprisonment for criminal violations.

Effective on Feb. 20, 2011, the USCIS requires U.S. employers filing I-129 petitions to sign a revised I-129 form that certifies compliance with deemed export rules. This certification is applicable for H-1B, H-1B1, L-1 and O-1 petitions. Although the new question in Part 6 of the form does not alter existing deemed export rules, this certification potentially increases employers’ liability for erroneous deemed export licensing determinations.

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ment for companies that process or assemble components imported into Mexico for later export. According to the U.S. Federal Register, Oct. 28, 2010, nearly 50 percent of all Mexican imports come from the United States.

Two Latin American countries that exemplify only some of the potential in that region are Brazil and Colombia. Brazil presents real growth opportunities for mid-sized U.S. companies. The Brazilian economy is particularly robust at present, and its rapidly expanding affluent sector is creating a strong demand for goods and services. Colombia is another Latin American country with solid economic growth and good ties with the U.S., which presents critical opportunities for U.S. companies interested in doing business in the region.

In the Asia-Pacific region, India and Greater China offer potential for growth for mid-sized business. A groundbreaking trade agreement between Taiwan and China allows Taiwan to export goods to China with reduced tariffs. Taiwan, in turn, will lower tariffs on certain goods from China. This agreement makes it particularly favorable for U.S. companies to do business with China through Taiwan.

Eastern European countries, such as Poland and the Czech Republic, have excellent ties with the United States, and strong regional growth makes them ideal targets for U.S. companies hoping to establish a foothold internationally.



Opening a yen account in Japan proved to be a logistical challenge that encompassed time zone considerations, language barriers, and Japanese banking practices.

Mid-sized companies taking advantage of business opportunities abroad frequently require guidance on how to navigate the complexities of doing business country by country. By working with a banking partner experienced at supporting business operations around the world, a company venturing into the global market is planning for an efficient and effective international business experience. ■

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As a result of this new change to the I-129 Form, organizations are now required, at a very early stage, to determine whether the prospective employment of a non-migrant worker will trigger a deemed export license requirement. Some organizations handle export control issues in-house through their legal, export or shipping

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departments. However, it continues to be likely that some organizations, without dedicated export control personnel, may need assistance to identify and implement controls to address the new certification requirements.

The deemed export control regulations are only one example of the way that the regulations in the immigration and international trade regulation worlds converge. As the world continues to shrink and as trade in persons, products and technologies increases, our nation will increase import and export regulations to ensure national security and our nation's commercial global dominance.

Addressing the challenges of the myriad of regulations takes time and resources. However, organizations that proactively address burgeoning issues in the import/export arena will be able to avert delays in the hiring of foreign national personnel and the importation of goods and services. ■

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