The Global Business Series

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Distribution strategies for exporting to the US
Page 24

How to export to America

How to determine whether your company is export-ready
Page 02

Practical Considerations for Exporting to America
Page 07

CONCISE GLOBAL BUSINESS GUIDE WRITTEN BY INDUSTRY EXPERTS

Table of Contents

02 Assessing Export Readiness: A Guide for South African Businesses
ITRISA

04 Benefitting from AGOA Trade Benefits
TRADE LAW CHAMBERS

07 Practical Considerations for Exporting to America
AFRICA BUSINESS GROUP

11 Importing of Food to the USA. Six Critical Points for Compliance Success
GLOBAL IMPORT AGENT

16 Legal and Tax Considerations for Exporting to America
HOGAN LOVELLS

20 How to calculate American import duty tax and sales tax
IMPORT EXPORT LICENSE

24 Distribution Strategies for Businesses Exporting to the US
RE:TRADE

28 Government grants to support exporters
IMPORT EXPORT LICENSE

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ITRISA

Assessing Export Readiness: A Guide for South African Businesses

Assessing Export Readiness: A Guide for South African Businesses
In today's global market, the potential for expansion through exporting can transform a company. However, before diving into the complexities of international trade, it's crucial for South African businesses to assess their export readiness. This article draws on insights from the International Trade Institute of Southern Africa (ITRISA), a trade training and consultancy leader across Southern Africa.

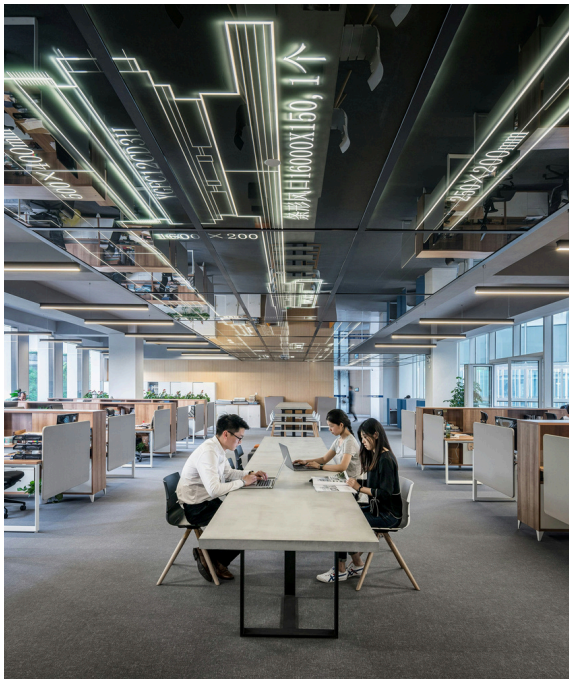
Understanding Export Readiness
Export readiness transcends mere willingness; it encompasses a spectrum of prerequisites that ensure sustained success in foreign markets. It starts with evaluating your company's capacity to meet larger order volumes and the robustness of your financial resources to handle the extended cash flow cycles typical in export operations.

Key Areas to Evaluate

Operational Capacity: Can your production handle bigger orders without compromising quality? This includes checking if your manufacturing processes meet international standards that are often higher than local ones.

Product Exportability: This involves assessing whether your products meet the needs of potential markets. Consider factors like price, quality, functionality, and compliance with international standards. For example, specific adaptations may be needed, such as altering product designs to fit cultural preferences or modifying packaging to meet foreign regulatory requirements.

Market Research: Understanding the target market is fundamental. This includes cultural nuances, consumer behaviour, and legal environments. Conduct thorough market research to pinpoint potential challenges and opportunities in your target regions.



Financial Stability: Ensure your financial health is robust enough to withstand the initial lack of returns. Exporting often requires upfront investment in marketing, compliance, and logistics, with returns that can be slow to materialize.

Regulatory Compliance: Navigating the maze of international trade laws and regulations is crucial. This includes understanding tariffs, import restrictions, and product standards specific to your target market.

Export readiness is not an instantaneous state but a continuous process of alignment and improvement. South African businesses considering export must critically assess their readiness and leverage resources like those provided by ITRISA to ensure a successful international expansion. Companies can capitalize on the global markets' immense opportunities by preparing thoroughly to drive growth and profitability.

ABOUT ITRISA

For businesses looking to become export-ready, ITRISA offers comprehensive training modules and bespoke consultancy that cover these critical areas. ITRISA has been operating for over 27 years and has helped shape the export operations of several prominent South African corporations. Its programmes are designed to equip companies with the necessary skills and knowledge to navigate the complex international trade landscape effectively. By choosing to study through ITRISA, participating in its trade development programmes or leveraging the expertise of its associates, businesses can gain a competitive edge, ensuring they not only enter but succeed in the global market.

itrisa.co.za

International Trade Institute of Southern Africa

Trade Law Chambers

Benefitting from AGOA Trade Benefits

South African exporters face increasing competition from other exporters in their traditional export markets. They therefore need to constantly search for new opportunities and trade benefits that can help them to remain competitive in existing markets or to successfully enter new markets.

An ideal opportunity is the trade benefits extended to South African exporters through the United States (US)' African Growth and Opportunity Act (AGOA). AGOA provides exporters from most Sub-Saharan African (SSA) countries including South Africa with duty-free access to the US market for thousands of tariff lines, which gives them a big competitive advantage over other exporters that have to pay the general US import tariffs.

Unlike bilateral/regional free trade agreements (FTAs) that are negotiated between countries, AGOA is a unilateral trade programme established by the US to benefit SSA countries that comply with various "best practice" criteria such as the removal of barriers to US trade and investment, the rule of law, anti-corruption measures, protection of IP rights, workers' rights etc.

AGOA provides South African exporters with duty-free access to the US market for more than 1 800 tariff line items, in addition to the 4 600 items already enjoying duty-free status under the US Generalized System of Preferences (GSP). This includes various products of interest to South African exporters such as apparel, footwear, luggage, handbags, vehicles and agricultural products. South African agricultural exports that have successfully been exported under AGOA to date include citrus fruit, nuts, wine, grapes, edible ice, ethyl alcohol, cane sugar, fruit juices as well as preserved fruit and vegetables.

The main requirements that exporters have to comply with in order to benefit from AGOA are to register as an AGOA exporter with South African Customs and to meet the AGOA Rules of Origin (RoO). Rules of Origin or RoO are rules for determining the 'nationality' or origin of a product and ensure that only products that have been grown, produced or manufactured in a qualifying country can benefit from the preferential treatment. This excludes so-called 'screwdriver' operations, with exporters having to show that there was at least 35% value-added in the country of export before a product can be deemed to have been produced in that country. Apparel exports are furthermore subject to additional strict product-specific Rules of Origin.

AGOA was enacted in 2000 for a fixed period of time but has been extended a number of times and is currently still in place until June 2025. While AGOA is expected to be renewed again before then, the US has for years been pushing South Africa to enter into negotiations to replace AGOA with a bilateral FTA. South Africa has been reluctant to agree thereto as it would mean South Africa having to also open up its market to US exporters.

Due to this and more recently in reaction to certain South African foreign policy decisions, a number of stakeholders in the US have been lobbying for the removal of South Africa from the AGOA beneficiary country list. The good news is that in April this year draft legislation was introduced in the US to renew AGOA for a further 16 years until 2041.

South African exporters that want to make use of the AGOA trade benefits and take advantage of these valuable opportunities to access the lucrative US market are encouraged to obtain legal advice on their products' correct tariff classification and eligibility for duty-free treatment under AGOA as well as on complying with the strict AGOA Rules of Origin.

ABOUT TRADE LAW CHAMBERS

Trade Law Chambers
In association with Geldenhuys Joubert Attorneys

Trade Law Chambers is rated as the leading international trade law firm in South Africa. We specialise in international trade, corporate, commercial and investment law as well as international commercial dispute resolution.
Our professionals at Trade Law Chambers are international trade lawyers, practising South African attorneys with Geldenhuys Joubert Incorporated Attorneys as well as qualified solicitors of England and Wales. This allows us to deliver unparalleled legal advice on international and domestic legal issues and to pursue trade and transactional disputes before international tribunals and South African courts.

Our clients include local, foreign and multinational businesses, non-governmental stakeholders, business associations as well as domestic and foreign government departments, agencies and regional organisations. We have years of experience in the agricultural, financial services, energy, food, beverage, tobacco, manufacturing, mining, private equity, technology and other services industries.
Our lawyers' extensive experience in their specialisations will ensure that we provide your business with the best legal advice on the complex international and domestic legal and regulatory environment in multiple countries and jurisdictions.

tradelawchambers.com

Africa Business Group

Practical Considerations for Exporting to America

EAs a trusted trade partner, ABG helps companies to trade under AGOA through these 10 steps listed below:

1. **Understand the Industry and Study the Market**

Exporting products to the United States presents an exciting opportunity for businesses, but it requires careful planning and a deep understanding of the industry and market dynamics. It requires you to research the current state of your industry in the United States and identify trends, leading companies, consumer behaviours, and any recent changes. You are also required to determine who your customers are, their demographics, purchasing behaviours, and preferences. Knowing your audience helps tailor your products and marketing efforts. Don't forget to research your competition. Understand who they are, what they offer, and their unique selling points. This information helps you differentiate your products.

2. Identify the Appropriate Industry Cluster/ Key Regional Areas of Activity

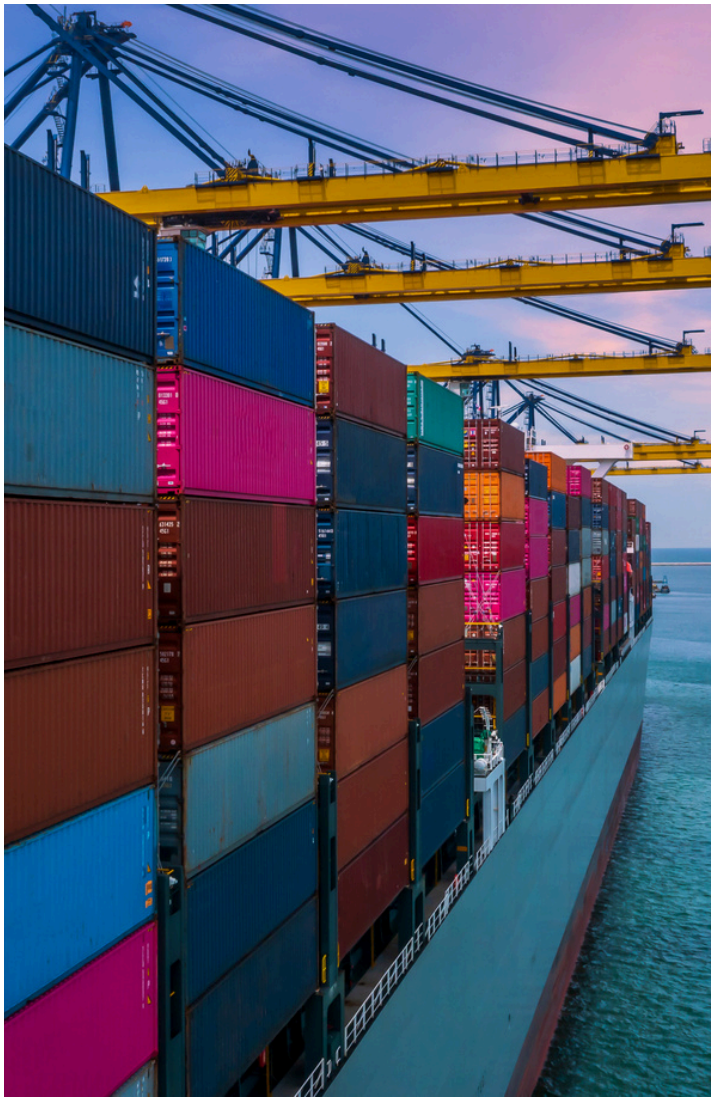
When planning to export to the USA, it's advisable to identify key industry clusters in the country that align with your product or service. Look into regions known for specific industries, such as Silicon Valley for technology or Detroit for automotive. The U.S. has regional differences in terms of industry focus, business culture, and market needs. Thus, studying these variations is good for identifying the best region for your product.

3. Determine/ Understand the Role of the State and Local Governments

Ensure you familiarize yourself with U.S. import regulations. This includes customs duties, tariffs, and any special licenses or permits needed for your product category. Your products should comply with U.S. safety standards and regulations. State governments may offer different business incentives, such as tax breaks or grants, while local chambers of commerce and economic development organizations can provide guidance and networking opportunities.

4. Understand the Role and Function of the National Trade Associations

It's advisable to know some national trade associations relevant to your industry in the US and join them, as they can offer insights into market trends, provide networking opportunities, and help you understand the regulatory environment. You should plan your event calendar well and participate in industry events and conferences to build relationships and better understand the market.

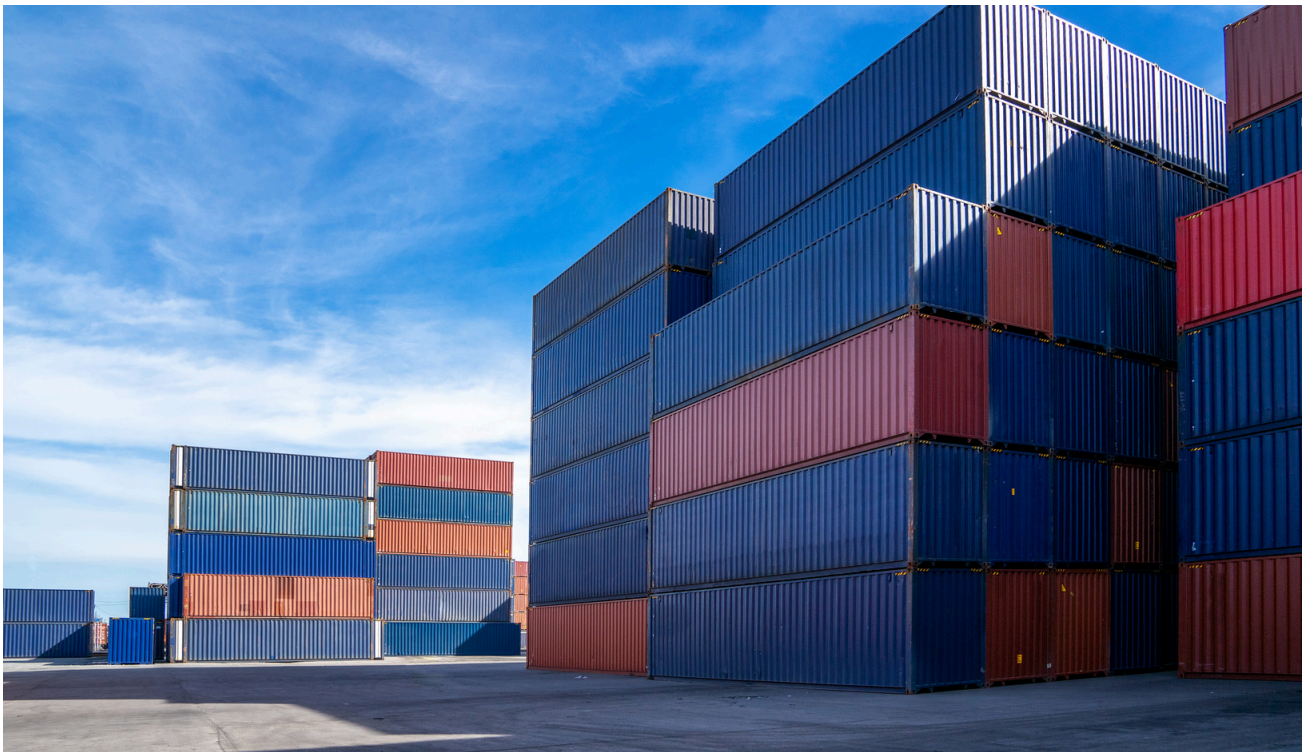


5. Identify and Understand the International

Business Development Programs of the U.S. Government – Federal and State and its Private Sector
Some Agencies like the U.S. Department of Commerce and the Small Business Administration (SBA) offer programs to support international business development. These include trade missions, market research, and financial support. Additionally, states in the US often have their own international business development initiatives, like the Africa Trade Expansion Program Center for International Trade Development – Miami. You can explore these for additional support when exporting to the USA.

6. Develop an Outline of the Proposed Project/ Transaction

You should create a detailed business plan outlining your export strategy, including market research, competitive analysis, marketing, and sales strategies. Remember to include plans for meeting U.S. regulations, including customs and import requirements.



7. Visit the Market/ Confirm the Opportunity

After understanding the market through research, it's good to visit the U.S. to gain firsthand market knowledge, meet potential partners, and understand customer preferences. This will help to build relationships with local businesses and industry leaders.

8. Identify/ Recruit a Project Feasibility Development Team

In order to understand the US export market and all key processes involved in the export business, you should engage with local experts, such as business consultants, legal advisors, and logistics partners, to assess the feasibility of your project. You should partner with local companies or industry stakeholders to strengthen your market position.

9. Develop a Risk Mitigation Strategy

Export business has its own challenges, and you should consider risks such as currency fluctuations, regulatory changes, and market competition. It's important to have strategies to mitigate these risks, including insurance, currency hedging, and diversification of market segments.

By engaging with Africa Business Group today, you will be offered seamless services designed to facilitate trade and investment between Africa and the United States of America (USA) through our 10 steps to help you establish strong partnerships abroad.

10. Commence Implementation

The final step is implementing your business plan, focusing on initial market entry, sales, and marketing activities. You can combine digital marketing (social media, search engine optimization, email campaigns) with traditional methods (trade shows, industry conferences, and print advertising). You should consider working with local agents or distributors who understand the local market and have established connections. Conducting a trial shipment is also advisable to ensure your product meets U.S. import regulations, customs requirements, and logistical demands.

You may check if tax incentives, grants, or other benefits exist for businesses that invest in specific U.S. regions and whether your export business qualifies for them. Also, determine whether it's more cost-effective to hire local staff or to send existing employees to the U.S. Don't forget to consider factors like visa requirements, cultural integration, and training.
Ensure compliance with federal, state, and local labor laws, including minimum wage, health benefits, and workplace safety. Remember to continuously monitor your progress and be prepared to adapt your strategy based on feedback and market changes.

By engaging with Africa Business Group today, you will be offered seamless services designed to facilitate trade and investment between Africa and the United States of America (USA) through our 10 steps to help you establish strong partnerships abroad.

ABOUT AFRICA BUSINESS GROUP

As an economic private sector consulting firm with over 20 years of experience, the Africa Business Group (ABG) bridges the gaps by providing tailored support for national and international enterprise businesses, including across continents through its expertise in cross-sectoral projects spanning agriculture/agribusiness, renewable energy, business tourism, healthcare, manufacturing, and more

Africa Business Group leverages international trade agreements, like the African Growth and Opportunity Act (AGOA), to open up opportunities for Africa-based businesses to thrive in global markets like the USA while aiding foreign companies in navigating the African market successfully. Africa Business Group also facilitates increased private sector involvement in implementing the continent's economic development through fostering greater public-private collaboration and partnership.
By engaging with Africa Business Group today, you will be offered seamless services designed to facilitate trade and investment between Africa and the United States of America (USA) through our 10 steps that will help you establish strong partnerships abroad.

www.abghq.com

Primority Ltd / Global Import Agent

Importing of Food to the USA - Six Critical Points for Compliance Success

The USA is the largest economy in the world and presents an amazing business opportunity for companies who wish to sell their products in the US. However, it is also one of the most regulated markets globally and this can present significant barriers to trade.
These Six Critical Points are for any food producer who wishes to export, or import, to the US in simple, easy-to-understand terminology, giving you the confidence to go for it and benefit from the opportunities available.

Food safety laws and compliance
There are many food safety laws in the US, but the main one is FSMA (Food Safety Modernization Act) which was introduced in 2011 by President Barack Obama. FSMA is an overarching law which has more than 18 individual "Rules" which focus on specific areas of food safety. In general, all farmers, growers, packhouses, food manufacturers, importers, distributors, and traders need to follow the Rules relevant to them. This is the case for ALL food and dietary supplements for both humans and animals.

Here are our six critical points for exporting/importing to the US:

1. FDA Registration

Foreign suppliers (manufacturers, packers, warehouses, etc) of food products are required to register with the FDA if they process, hold / store, pack or label food products that are to be imported to the USA. As the foreign supplier is in a non-US jurisdiction they must also, by law, have a US-based Agent who is responsible for managing the FDA registration and communicating with the FDA on behalf of the foreign supplier.
A common issue with FDA registration is that all facilities required to register, including US food businesses, must have a Unique Facility Identifier (UFI). FDA has adopted the use of the DUNS number as the UFI. This is a free and unique business identifier that can be obtained from Dun and Bradstreet. More information can be found on DUNS numbers at this link including how you can get a DUNS number.
The main point to remember about FDA Registration is that part of the rules on FDA registration is that the facility agrees to an inspection by the FDA at a time of their choosing. A facility cannot refuse inspection or FDA will suspend or cancel the registration. This would effectively debar a business from exporting to the US.

2. FSVP - US Based Importer

For exporters looking to export food products to the US, the main Rule to be aware of is FSVP (Foreign Supplier Verification Program). FSVP is the responsibility of the US-based importer of food products, and the US-based importer is inspected by the US FDA (Food and Drug Administration) to ensure that they are compliant with the FSVP Final Rule. FSVP requires the US-based importer to ensure that the products they import are produced in a facility that is operating to the same food safety standards that US-based companies producing the same product are expected to adhere to. FSVP involves the US-based importer having a documented FSVP in place and being able to provide this within 24-48 hrs to FDA upon request. FDA routinely inspects US importers to check that they have FSVP in place and checks are also carried out at US Customs who work closely with FDA and USDA.

The main things a US importer needs to do under FSVP are as follows:

a. Determine known or reasonably foreseeable food safety hazards for each food they import.
b. Evaluate the risk posed by a food, based on the hazard analysis and the foreign supplier (manufacturers) performance.
c. Use the evaluation to approve suppliers and determine appropriate verification activities on the supplier.
d. Conduct supplier verification activities.
e. Conduct corrective actions.

The FSVP must be documented and detailed records kept for presentation to the FDA upon request. When the FSVP information is requested as part of an FDA Inspection it must be provided in English and it must be delivered to FDA 'promptly', i.e. within 24-48hrs. This means that knowledge of the FSVP requirements is important to the foreign manufacturer as the food safety and operational standards they are working to will be assessed by the US importer and ultimately by the FDA during an on-site inspection at the manufacturing facility (more on that later). Here is a link to a video which explains FSVP in more detail.

3. FDA Labelling Rules

Food product labels for all products sold to consumers in the US are subject to strict rules under the Nutrition Labelling and Education Act (NLEA), on what you must, can, and cannot put on the product label. Getting this wrong may result in detention or import refusal at US customs. FDA can, and does, carry out routine label and food safety compliance inspections at US customs.

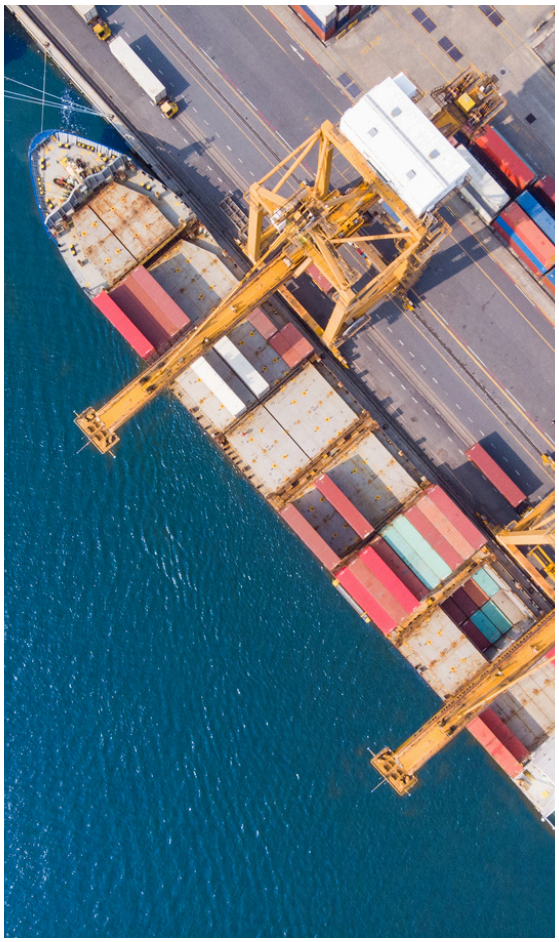
You can find the basics of the rules here. In a nutshell, however, food and dietary supplements (which have very specific additional rules) must clearly state the following:

a. Principal Display Panel (Usually Front of Pack)
    i. Statement of Identity
    ii. Net Weight or Volume
b. Information Panel
    i. Nutrition or Supplement Facts in US Format
    ii. Ingredient statement
    iii. Allergen statement
    iv. Name and address of manufacturer or distributor.
    v. Country of Origin

Certain font sizes must be used in certain situations, and you must be careful not to make any unauthorised health claims or you risk being misbranded as a drug. It is easy to make mistakes on US labelling and it is one of the most common reasons for import refusal.

4. USDA Import Permits

USDA (US Department of Agriculture) regulates dairy, meat, poultry, and plant products (amongst other things) and requires import permits for these from certain Countries and in certain situations. Therefore, it is also critical to check if your product contains any ingredients that may require an import permit. You can check if your product requires an import permit at this link.



5. The Import Process

Failure to understand the import process can cause many problems and incur large, unexpected costs due to import detention, refusal, storage charges and even fines of up to 4X the product import value if the product is destroyed. This happens more often than you may think. Therefore, it is important to get this right the first time.

Here are the key steps:

a. Make sure you file an FDA Prior Notice before the product arrives in the US. You will need a lot of information for this, and the process is not user friendly the first time you do it. Failure to do this will result in detention at the very least and you, or your customs broker, will have to do it under time pressure which is when mistakes are made which can further delay your customs clearance.

b. Ensure that you have identified who the key parties are:
   i. Exporter
   ii. US Importer of Record
   iii. US FSVP Agent (if selling on Amazon)
   iv. US Consignee (i.e. who owns the goods at
   v. entry).
   vi. Value of the goods
   vii. Packing list
   viii. HS Codes
   FDA Prior Notice Confirmation (Customs will check that you have filed and FDA prior notice).

c. Document all the information on a Commercial Invoice you can provide to US Customs to make their job easier and ensure that you don't have delays or detentions. If you would like to receive a template for this, get in touch with us.

6. FSVP Agent

Where you do not have a US Consignee who has purchased, or agreed to purchase, your product at the point of entry to the US then you must, by law, have an FSVP Agent. This is the case when the foreign supplier still owns the product at the point of entry to the US (i.e. at US Customs). For example; when you are selling on an online marketplace like Amazon, or through fulfilment providers like ShipBob, and when sending stock to a US warehouse where you still own the stock you need an FSVP Agent.

An FSVP Agent must be based in the US and is responsible for ensuring that the FSVP compliance rules are being followed.

The FSVP Agent must:

a. Implement an FSVP for all products they agree to act as Agent for.
b. Ensure the compliance of each shipment that enters the US.
c. Communicate with the FDA and Customs on any FDA compliance issues on behalf of the foreign supplier.
d. Facilitate FDA inspection on the FSVP for all products they represent in the US to demonstrate to FDA that they are acting within the law with respect to FSMA and FSVP.

An FSVP Agent can only be appointed through an agreement called a Statement of Consent which details the role and responsibilities of the FSVP Agent, the foreign supplier and other salient conditions of compliance.

For these reasons an FSVP Agent needs to have knowledge of all shipments entering the US under their FSVP Agency to ensure that only approved products are imported in their name. Note also that when a foreign supplier still owns the goods at the point of entry to the US then they become the Foreign Importer of Record. This means that there are special requirements for clearing customs. Here is a link to a video which explains this in more detail. The above Six Critical Points cover most of the key requirements for importing food and dietary supplements into the US but there may be additional aspects which must be considered depending on the nature of the product. I hope you find it useful and can share with others.

ABOUT PRIMORITY LTD & GLOBAL IMPORT AGENT

About the Author: James Flynn is the Founder and CEO of Primority Ltd – doing business as a Global Import Agent. He has 30 years of experience in food safety and regulatory compliance and has built Global Import Agent's regulatory services from the inception of FSVP in 2017.

About Primority Ltd: Primority Ltd is a specialist food safety company based in the UK and the US, through its Global Import Agent division. Every year we help thousands of brands successfully comply with FDA, USDA, and other regulatory needs with respect to FSVP, Import Permits, FDA-compliant labels and general regulatory and food safety consulting.

www.primority.com
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Legal and Tax Considerations for Exporting to America

The U.S. stands out as one of the most business-friendly environments globally, maintaining its position as the premier choice for foreign direct investment. Regulatory hurdles are typically low, making the process of setting up a branch or company swift and straightforward. Additionally, labour and employment regulations are notably favourable to employers compared to many other advanced economies. Moreover, the legal framework is robust and characterized by transparency. Nonetheless, prospective investors should be mindful of specific barriers to entry and operational challenges before committing to investments or business ventures in the U.S.

The openness of U.S. markets to foreign investment

Investors can typically establish or acquire U.S. businesses without local partnerships, but U.S. government restrictions exist to safeguard national security. The President has broad authority to block or regulate certain foreign investments, overseen by the Committee on Foreign Investment in the United States (CFIUS). CFIUS monitors transactions that could result in foreign control of U.S. businesses, investments in critical technology or infrastructure, and specific real estate deals near sensitive facilities or ports, aiming to balance security concerns with international investment opportunities (so-called "covered transactions").

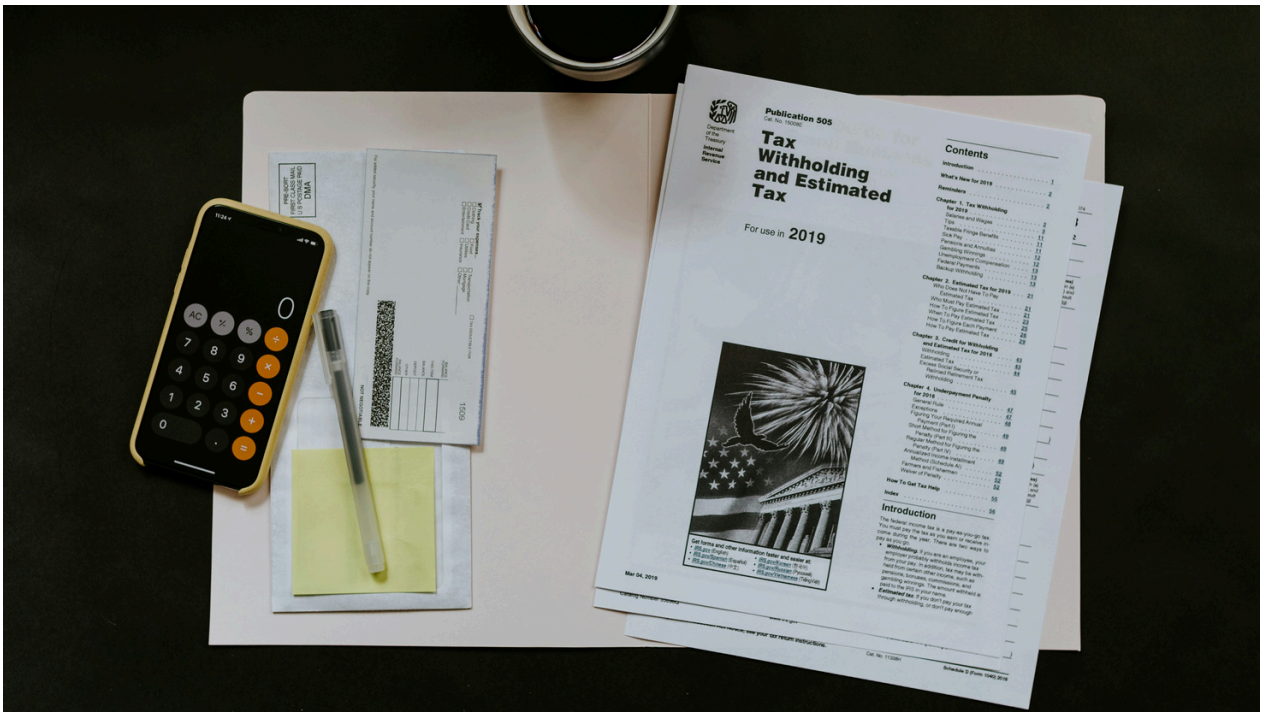
Under CFIUS regulations, parties must submit a filing if their transactions fall under its jurisdiction and meet the criteria of either of its two mandatory filing programmes. No transaction size thresholds apply, and there are no limitations on CFIUS's jurisdiction. Failure to submit a required filing can lead to civil penalties of up to US$250,000 per violation or the value of the covered transaction. Parties to a transaction involving foreign investment in the U.S. should seek counsel's advice to: (i) determine whether their transaction is subject to the mandatory filing programs; (ii) determine whether their transaction is otherwise subject to review; (iii) assess the potential national security issues arising from the transaction; and (iv) assist with the drafting and submission of a filing.

Direct or indirect market and choice of entity
Business structuring involves a key decision: whether to operate directly in the U.S. or form a U.S. entity, which is largely driven by tax and liability concerns. Direct operations may subject the company to U.S. tax jurisdiction and filing obligations while forming a U.S. subsidiary is opaque from a tax perspective and offers limited liability protection. Distribution arrangements require careful consideration to navigate licensing requirements, regulatory compliance, and intellectual property protection while dealing carefully with any franchise law implications.

Jurisdiction of Formation
The absence of a federal legal framework for U.S. entities means there's no uniform U.S. corporate law. Instead, laws from any of the 50 states or the District of Columbia may apply, depending on where the entity is formed. The state of formation can significantly impact litigation regarding internal decisions, such as shareholder rights, without any requirement for operations or principal place of business in that state.

While Delaware remains a popular choice due to its flexible statutes, robust judicial system, and efficient processing of filings, it may not be ideal for private businesses without operations there. Additionally, every state where a business operates requires qualification, involving annual filings and associated costs typically amounting to several hundred dollars.

Commercial contracting
In the U.S., commercial disputes often end up in litigation, as it is a common law jurisdiction where case law and precedent are given equal weight to the statutory framework. Key components of enforceable contracts include an offer, acceptance and consideration, with courts assessing parties' intent and contract clarity. Contracts are typically interpreted and enforced based on their terms alone, known as the "four corners" doctrine. Parties generally have the freedom to choose the governing law and dispute venue, with the limitation that the transaction must relate to the chosen jurisdiction. New York stands out by allowing parties to select its law for contracts involving at least US$250,000 in obligation or consideration.



Other considerations

There are a number of other issues that will need to be carefully considered before doing business in the U.S. These include labour and employment law considerations, immigration laws, U.S. antitrust laws, anti-money laundering laws, bankruptcy, export control and economic sanction laws, other applicable sector legislation and regulations as well as U.S. antidumping and countervailing duty laws.

States and municipalities often offer economic development incentives such as tax increment financing, job training and job creation grants, public financing for infrastructure improvements, corporate income tax credits, investment tax credits, real estate tax abatements and utility tax exemptions.

Our capabilities in the United States

As a part of the oldest and largest international law firm founded in Washington, D.C., our U.S. practice leverages over a century of experience and expertise to address our clients' most intricate legal and commercial challenges.

With more than 1,000 of our 2,600 lawyers based in the United States, we offer a comprehensive range of legal services supported by in-depth local and industry-specific knowledge. Our focus spans over 50 distinct practice areas, covering regulatory, litigation, corporate and finance matters, catering to clients across major industries.

Hogan Lovells, with 14 strategically located offices across the United States, is uniquely positioned to provide sophisticated assistance to companies seeking to expand their operations in the country. From Miami to New York, and from Los Angeles to Washington, D.C., we mobilize our resources to deliver insightful, fully integrated services to our clients.

Each office offers comprehensive legal counsel to local, domestic and multinational clients. Recognized consistently in the top tier of U.S. legal providers by Chambers USA and The Legal 500, and honoured by leading publications across major markets we serve, we strive to deliver exceptional legal solutions and support to our clients.

ABOUT HOGAN LOVELLS

As one of the top 15 largest law firms in the world, we have over 100 years of history, our 2,600 lawyers operate out of 45 offices in 22 countries as a fully integrated enterprise. We deliver creative solutions to complex problems in a practical way. We do this by leveraging our global and local knowledge, and our vast experience of advising in highly regulated sectors and markets. Our regulatory practice is one the largest market offerings of its kind globally.
Our deep industry sector knowledge enables us to stay ahead of the latest topics, often at the cutting edge of technology. Our market-leading industry sector strategy enables our partners to collaborate across practices and offices.

Hogan Lovells

We prioritize innovation and make significant investments in technology and talent. As a result, we've been consistently named as one of the most innovative law firms in North America and in Europe by the Financial Times. Through ELTEMATE, our tech subsidiary, we also develop bespoke technology solutions using AI, machine learning, analytics, robotic process automation, and data visualizations.
Focused on Diversity, Equity and Inclusion, and Responsible Business our team has a wide range of backgrounds. Around the world, our people are making a difference through pro bono activities, community investment, and social justice. We are committed to playing a leadership role in driving inclusive and sustainable growth and contributing to the achievement of the UN Sustainable Development Goals (SDGs), including in the way we run our own business.

www.hoganlovells.com

How to calculate American import duty tax and sales tax

Understanding and accurately being able to calculate American customs import duty tax is required for exporters to determine the correct landed cost of their product and calculate at what price they can profitably offer their product to the market. In this article we will delve into the fundamental principles behind calculating American customs import duty tax and discuss other forms of taxation that may apply to imported goods.

Understanding Customs Import Duty Tax

Customs import duty is a tax imposed by all governments on specified goods imported into their country. The duty rate is determined by various factors, including the tariff code, the country of origin and the declared value.
Customs publishes the rate of import duty tax liable per product in their tariff book according to the items tariff code. The tariff code, also known as a Harmonized Systems code or HS code, is an international classification system used to categorize goods for importation. Each product is assigned a specific tariff code and the exporter needs to accurately identify the tariff code, preferably on their invoice, for customs clearance.

Many countries have entered into trade agreements with America. These agreements may lower the duty tax that is imposed on a product. For each tariff code the American customs tariff book will indicate the trade agreements applicable and any associated import duty tax savings. To qualify, products need to originate from a country that has a trade agreement with America and have the associated proof of origin. South Africa is part of both the AGOA (African Growth and Opportunity Act) trade agreement which uses the AGOA stamp on the invoice as proof of origin and the GSP (General System of Preferences) trade agreement which uses a form A certificate as proof of origin.

Calculating American Duty Tax:

Customs can charge import duties in four ways, namely:
1. Free (no import duty or tax payable);
2. Rated or specific;
3. Ad valorem; or
4. Compounded (combination of rated and ad valorem)

Table 1 provides an example of how each duty works.

TYPE OF DUTY	EXAMPLE
Rated or specific	"10 cents per square meter" or "3 cents per dozen"
Ad valorem (fixed percentages of the value)	"10% of the value" or "25% of the value"
Compound (combination of rated and ad valorem duties applicable to goods mention in the same tariff heading)	"20% + 8 cents per kg" or "50 cents per square meter less 20%"

Follow these steps to calculate the customs duty:

1. Obtain the declared value of the imported goods from the commercial invoice.
2. Use each item's tariff code to look up the corresponding duty rate in the American tariff book.
3. Apply the appropriate duty calculation methodology (ad valorem, specific, or compound) based on the tariff code and any relevant trade agreements.

Example from the American Tariff Book:

Below is an excerpt from the American tariff book for Durum wheat seed. The tariff code is given in the first column titled "Heading/Subheading". The general rate of duty is given in the column marked "General". The "Special" column indicates the applicable trade agreement. The GSP trade agreement is indicated by the symbol "A+" and the AGOA trade agreement is indicated by the symbol "D". Column 2 is for countries listed in general note 3(b) of the tariff book and does not include South Africa.

Harmonized Tariff Schedule of the United States Revision 11 (2023)

Annotated for Statistical Reporting Purposes

II
10-2

Heading/ Subheading	Stat. Suf-fix	Article Description	Unit of Quantity	Rates of Duty 1 General	Rates of Duty 1 Special	Rates of Duty 2
1001		Wheat and meslin:				
		Durum wheat:				
1001.11.00	00	Seed	kg	0.65¢/kg[1/]	Free (A+, AU, BH, CL, CO, D, E, IL, JO, KR, MA, OM, P, PA, PE, S, SG)	1.5¢/kg

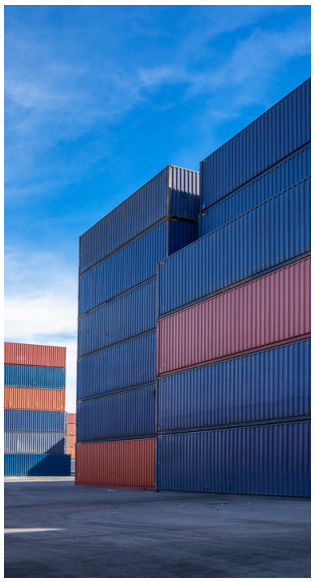
In the example of Durm Wheat originating from South Africa, the customs duty tax would be free if the import is associated with the correct proof of origin. Countries without a trade agreement with America would need to pay the rated duty tax of 0.65c/kg of wheat seeds imported.

Other forms of customs taxation and sales tax

In this article we only covered general customs import duty tax which is the most common form of customs taxation and the only form applicable to most products. In addition to customs import duty tax applicable products may attract excise duties, anti-dumping duties, countervailing duties, environmental duties, or other product or situation-specific customs taxes. Some products may also benefit from duty tax rebates for manufacturing or incentive programs.

Some of these custom taxations, including American excise duties, are not the same throughout America but differ from state to state.

Sales taxation also needs to be taken into account when pricing a product for the end consumer. Sales tax is managed at the state level with each state having different rates and rules for sales tax. Sales tax is a percentage of the sales price. Once you have determined the sales tax percentage for the state that the product will be sold in then you can apply that to determine the total sales tax due.



What do South African exporters need to have in place before exporting to America?

1. All South African exporters need to be registered with South African customs as an exporter before their first export.
2. To make use of the AGOA or GSP trade agreements the exporter first needs to be registered with South African customs for that trade agreement.
3. For shipments sent under the AGOA trade agreement, notify your freight agent that they need to get an AGOA customs stamp on the invoice prior to shipment.
4. For shipments sent under the GSP trade agreement, a physical Form A certificate of origin needs to be obtained and sent with every shipment.

Import Export License can assist with all of the above as well as practical advice tailored to an exporter's unique situation.

Conclusion

By familiarizing themselves with the principles outlined in this article, exporters can navigate the American customs tariff book and calculate the general import duty tax for their products. Further guidance or consultation may be needed regarding added state-level excise tax, sales tax, additional product or situation-specific taxes or applicable tax incentives that may be used.

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- Company registration
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Distribution Strategies for Businesses Exporting to the US

Expanding beyond domestic borders is a significant challenge for South African businesses venturing into the global market. Moving into new territories introduces complexities such as trade barriers, regulatory nuances, and heightened uncertainty. Navigating these hurdles is crucial for maintaining competitiveness in international markets. Among the primary challenges facing South African businesses expanding into the US is establishing the correct distribution channels and navigating local customs procedures.

Exporting to the US market demands meticulous consideration of various distribution strategies to ensure business success. Several approaches provide cost-effective solutions aligned with business objectives:

Direct Exporting:
Direct exporting involves selling products directly to buyers in the US market. This can be achieved through establishing a local sales office, hiring sales representatives, or utilizing e-commerce platforms. The benefits of direct exporting include maximized control of the brand image, pricing strategy, faster response to market changes, and control over the distribution channel. However, drawbacks include higher initial investment, market entry barriers, limited local market knowledge, and logistical complexities.

Indirect Exporting:
In this strategy, intermediaries such as agents, distributors, or trading companies are employed to sell products in the US market. The main benefit is that intermediaries handle tasks such as marketing, sales, and distribution. However, there is limited control over distribution, risk of channel conflicts, and dependence on intermediaries.

Joint Ventures and Strategic Alliances:
Partnering with US-based companies through joint ventures or strategic alliances provides access to their distribution networks, local market knowledge, and resources. This approach facilitates quicker and more effective entry into the US market. Benefits include access to local expertise, shared resources and costs, risk mitigation, and opportunities for market expansion. Drawbacks include complex decision-making, potential misalignment, loss of control, and conflicts with partners.

Online Marketplaces:

Utilizing popular online marketplaces like Amazon, eBay, or Etsy can be a cost-effective way to reach US consumers directly. Many of online marketplaces provide different options for product distribution, so you can choose an option best suited to your business and type of product. Popular distribution options include:

- A warehousing solution so you can ship to them in bulk and have the products delivered locally to your customer.
- Shipping individual orders to the online marketplace and using their distribution network for local delivery.
- Exporting the product directly to the customer, the online marketplace normally is included in the shipment tracking.

The benefits of using online marketplaces include extensive customer reach, cost-effective marketing, streamlined logistics, and access to data and analytics. However, drawbacks include increased competition, dependency on the platform, restricted customer relationships, and limited flexibility in product showcasing and differentiation.

Wholesale and Retail Distribution Channels:

Selling products through wholesale distribution channels involves selling large quantities to retailers who then sell to end consumers. Retail distribution entails selling directly to consumers through brick-and-mortar stores or online platforms. Benefits include wide market coverage, efficient market penetration leveraging the distributor's infrastructure, reduced logistics burden, and maintaining customer relationships. Drawbacks include lower profit margins due to distributor cuts, brand dilution or misrepresentation, and limited market insights. When choosing a distribution strategy, consider factors such as product type, target market, budget, regulatory requirements, and long-term business goals. Thorough market research and expert advice are essential to determine the most suitable approach for exporting to the US.

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Export Grants for Exporting to America

The South African government offers citizens a number of export grants through the export marketing & investment assistance (EMIA) scheme. The EMIA's purpose is to help develop new and grow existing export markets for South African products and services and to attract foreign direct investment (FDI). The EMIA does this by assisting South African traders with:

- Marketing;
- Market research to identify new export markets;
- Patent registration, quality mark, and product mark support; and
- FDI missions and research to grow FDI.

Who qualifies for South African export grants?

- South African manufacturers and exporters (product content must comprise at least 35% local materials).
- South African export trading houses that represent three or more Small, Medium, and Micro-sized Enterprises (SMMEs) or businesses owned by Historically Disadvantaged Individuals (HDIs).
- South African commission agents that represent three or more SMMEs or HDI-owned businesses.
- South African export councils, industry associations, and joint action groups (JAGs) that represent five or more South African entities.

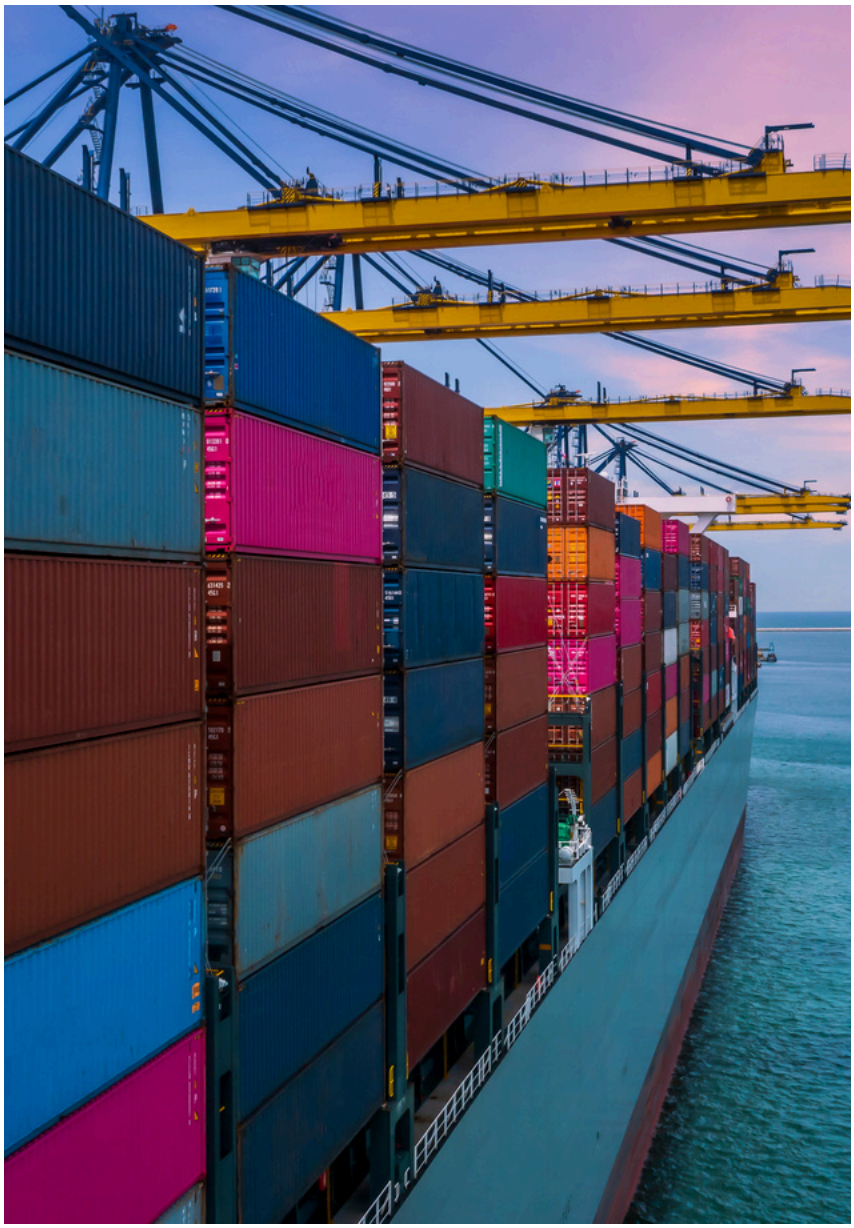
In addition to the above-mentioned criteria, the EMIA will assess each applicant based on general qualifying criteria, including:

- Export readiness
- Export and/or production performance
- Export and marketing competence of the person appointed to visit the foreign country (export country)
- Available and accessible production and export capacity
- Quality of export marketing planning
- Type of export product, and the product's performance in the local market
- Product complexity (labour absorption, location, and technological requirements)
- The industry in which the business operates
- Timely and complete submission of qualifying documentation and adherence to criteria stipulated for each EMIA offering

Mandatory requirements and restrictions:

It is important to meet the following EMIA requirements and adhere to restrictions to ensure that you have the best chance of obtaining a grant:

- Your business must have been trading for one or more financial years (for SA pavilions, 2 financial years);
- Your business must be a registered South African legal entity (except in the case of sole proprietorship or partnerships);
- You must be a registered taxpayer in good standing with SARS and able to provide a tax clearance certificate;
- Your application must be submitted to the Department of Trade and Industry and Competition (DTIC) two months before the commencement of your planned export event (for SA pavilions, 6 months).
- Exporters that wish to market and export to South African Customs Union (SACU) countries do not qualify for grants;
- If applying for an individual participation grant, you are limited to 4 applications per calendar year.
- Only one representative from your business will qualify for support (a senior executive who has the authority to conclude contracts on behalf of the firm).



WHICH EXPORT GRANTS SHOULD I APPLY FOR?

The EMIA categorises export grants as follows: 1) Individual participation incentive schemes, and 2) Group participation incentive schemes. Table 1 lists the schemes that fall under each category.

List of EMIA individual and group participation incentive schemes:

INDIVIDUAL PARTICIPATION INCENTIVE SCHEMES	GROUP PARTICIPATION INCENTIVE SCHEMES
Individual exhibition (IE) and in-store promotions (IP)	Group inward buying missions (IBM) and inward investing missions (IIM)
Primary market research (PMR) and FDI	National pavilons (NP)
Individual inward mission (IIM)	Outward selling mission assistance (OSM) and Outward investment mission assistance (OIM)

The type of grant you apply for will depend on your business needs. Below is a summary of the benefits of some of the most popular grants.

Individual exhibitions (IE) grant

Funding to assist exhibitors in marketing their products at recognised exhibitions or trade shows abroad, where Trade & Investment South Africa (TISA) does not provide for a national pavilion.

TYPE OF BUSINESS	COSTS COVERED
HDI and SMME	Sample transport
HDI and SMME	Subsistence allowance per day
HDI and SMME	Economy class airfare (return)
All other business entities	Exhibition costs
All other business entities	Marketing materials
Other costs that may be covered include:	• Stand construction • Exhibition space rental • Interpretation fees • Internet connection and telephone installation

National pavilions (NP) grant

Funding to assist exporters to exhibit their products at a national pavilion in a foreign market. A national pavilion allows exporters to market their products along with other South African exporters under the South African banner at selected trade shows. Each year, the DTI publishes a list of recognised national pavilions in that South African exporters can take part in. A benefit of exhibiting under a national pavilion is that the DTI arranges many of the logistical and marketing arrangements on behalf of the exporters.

TYPE OF BUSINESS	COSTS COVERED
HDI and SMME	Economy class airfare (return)
HDI and SMME	Subsistence allowance per day
All other business entities	Sample transport
All other business entities	Exhibition costs

Individual inward missions (IIM) grant

Funding to assist exporters to exhibit their products at a national pavilion in a foreign market. A national pavilion allows exporters to market their products along with other South African exporters under the South African banner at selected trade shows. Each year, the DTI publishes a list of recognised national pavilions in that South African exporters can take part in. A benefit of exhibiting under a national pavilion is that the DTI arranges many of the logistical and marketing arrangements on behalf of the exporters.

TYPE OF BUSINESS	COSTS COVERED
HDI and SMME	Economy class airfare (return) – maximum value differs depending on the type of entity
HDI and SMME	Subsistence allowance per day
HDI and SMME	Vehicle rental
HDI and SMME	Sample transport
HDI and SMME	Marketing materials

Outward selling mission assistance (OSM) and outward investment mission (OIM) grant

Funding to assist exporters in concluding export deals with foreign buyers or to encourage and attract new FDI by visiting the buyers/investors abroad. This grant applies to groups (maximum participant numbers depend on the budget agreed upon by the EMIA and the mission organisers). Usually, mission groups should be no larger than three (3) registered exporters, including the mission leader). Only one business executive with contracting authority per registered exporter will qualify for EMIA funding.

TYPE OF BUSINESS	COSTS COVERED
All other business entities	Economy class airfare (return) – maximum value differs depending on the type of entity
All other business entities	Subsistence allowance per day
All other business entities	Sample transport
All other business entities	Freight forwarding (for international trade initiatives only)
All other business entities	Venue hire and catering (for international trade initiatives only)
All other business entities	Mission brochure
All other business entities	Business facilitation fees for B2B meetings

Primary market research (PMR) and foreign direct investment (FDI) grant

Funding to assist exporters to develop new export markets, or attract new FDI, by visiting potential buyers/investors and attending trade shows or conferences abroad. This grant only covers the costs for one registered exporter (a business executive with the capacity to conclude contracts). Applicants must have a minimum of two appointments per day confirmed to qualify. Participation is limited to a maximum of three regions within the same country. No follow-up visits are allowed.

TYPE OF BUSINESS	COSTS COVERED
HDI and SMME	Economy class airfare (return)
HDI and SMME	Subsistence allowance per day
HDI and SMME	Sample and promotional material transport
HDI and SMME	Marketing materials
All other business entities	Product registration in a foreign market (e.g. patent applications or quality mark registrations)

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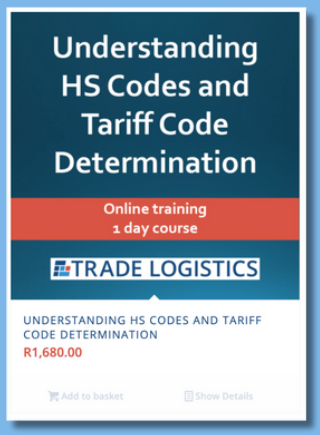

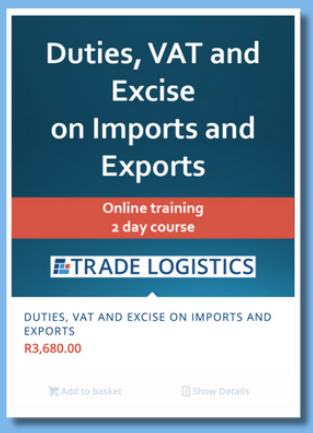

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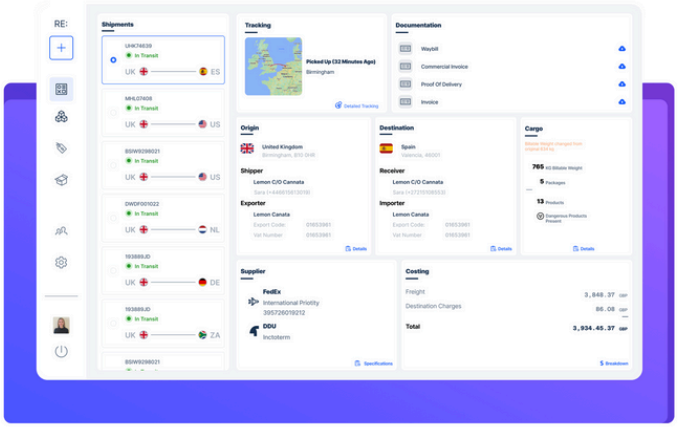

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