

**IS YOUR COMPANY COMPETING GLOBALLY FROM SOUTH CAROLINA?**

By David E. Dubberly

South Carolina-based businesses have much to offer in today's global economy. The state is home to industry leaders in computer software, paper, pharmaceutical research, steel, and textiles. South Carolina has ready access to international markets through facilities like the Port of Charleston, the 30th largest container port in the world, the United Parcel Service hub in Columbia, and international trade zones around the state. Despite South Carolina's economic strength, as recently as 10 years ago, relatively few of our companies had strategies to reach customers in other parts of the world. But today, many companies are growing by selling and licensing products, services, and technology globally, some from full-staffed overseas offices. And with increasing frequency, South Carolina companies are establishing strategic alliances and making equity investments in foreign firms with established names and regional distribution networks that need capital for modernization. As a result, exports of merchandise from South Carolina have increased 343 percent since 1987. While figures are not kept on service exports, South Carolina-based firms also derive substantial revenues by providing engineering, construction, and management services overseas.

**Selecting the Best Markets**

How can a firm with little or no international experience compete and grow in global markets? Because opportunities and risks vary from one country to another, begin by researching business conditions in selected countries. For each country ask:

- How big is the market for your products or services? Is the market growing?
- How many competitors will you have?
- Are there restrictions on getting paid in U.S. dollars and/or on remitting U.S. dollars to the United States?
- Can valuable intellectual property be protected?
- If licensing technology, does local law require contract terms favorable to licensee?
- If exporting, does local law protect representatives from termination?
- If providing services, what are the licensing and registration requirements?
- If producing locally, does the country offer incentives to attract investment? What role do labor unions play?
- What investment and tax treaties or trade agreements does the country have with the United States or other countries?

After completing the research phase, visit the best markets, look at competing products and services, and meet with potential local partners and customers. Then pick the three

or four countries in which the opportunities most outweigh the risks of doing business, and develop a strategic plan for being successful in each country.

### **Developing a Strategic Plan**

A strategic plan is needed for each market because international competition presents not only opportunities for growth, but also traps for the unwary. The strategic plan is your road map, and it should cover a few key points.

### **What Business Arrangements to Use in Each Country**

While variations abound, there are three basic ways to enter foreign markets:

- Make products here and export them to local end-users or to local distributors or agents.
- License trade secrets, trademarks, and/or copyrighted software to local manufacturers, service providers, or end users.
- Joint venture with a local partner to either manufacture and sell products, or provide services, in the foreign market.

Most companies new to international business begin by employing an export manager, who in turn hires distributors or agents in key markets. A distributor is an independent contractor who buys goods for its account and resells them. Distributors are responsible for warehousing and delivery, and bear the credit risk of customers; they earn a profit by buying at a discount and reselling at a higher price.

In contrast, agents function more like employees, soliciting orders and forwarding them. They do not take title to goods. Normally, the agent is compensated by commission, usually a percentage of sales.

Licensing to an entity owned by someone else is usually less expensive (and less profitable) than exporting. Also, licensing will get you less directly involved in foreign markets, because instead of selling your products there, you “sell” your knowledge of how to make the products. Depending on how much expertise the licensee has in the industry, you may provide technical assistance, but the licensee will run the operation.

Once exporters reach a certain level of market penetration, they may acquire their distributor or joint venture with a local producer. By producing locally, you can enhance your company’s presence and avoid or reduce tariffs and transportation costs. For example, Mercosur (the Argentina-Brazil-Paraguay-Uruguay trade block) has a 20 percent maximum common external tariff and no internal tariff on most products. If you produce within Mercosur, you do not have to pay the external tariff. Also, if you bid for a privatized company or participate in an infrastructure project, you will usually work with a local partner.

Good joint venture partners will take care of tasks that are more difficult or impossible for foreigners, such as:

- Dealing with governmental regulators.
- Selling to local government agencies, which are often required by law to buy local.
- Obtaining real estate and zoning permits.
- Managing employees.
- Adapting products and services to local requirements and tastes.

Joint ventures may be housed in a newly created company, separate from the owners. Typically, two parties contribute resources on a 50/50 basis in exchange for ownership. In other cases, the foreign partner may buy a large enough block of shares of a local company (at least 20 to 25 percent) to allow it to have an active role in management. Alternatively, partners might simply sign a contract to work cooperatively. Joint ventures may be formed to complete one project only (like a construction project), for the duration of a patent or concession, for a trial period, or for an indefinite period.

The particular business arrangements you choose might depend not only on your level of international experience, but also on your product or service. For example, some products are expensive to transport, and it may make more sense to license the technology behind them or to joint venture with a local manufacturer than to export. Other factors influencing how to do business in a country include: product liability and tax considerations, what customers need, what competitors are doing, capital and personnel available, operating control desired and laws protecting local businesses.

### **How to Find a Reputable Partner**

It is important to select the right local partner in each country and to develop and maintain a harmonious relationship. Meet potential local partners through trade missions and trade shows. Also, identify partners of successful suppliers, customers, and competitors.

Narrow the field by getting the U.S. Department of Commerce to prepare an International Company Profile on selected prospects. ICP's cost \$100 and contain information about the subject's reputation, organization, year of establishment, number of employees, product lines, principal owners, and financial and trade references. Eximbank, Dun & Bradstreet, Graydon America, Standard & Poor's Veritas Business Information, other United States and Latin American credit agencies, and the credit departments of major banks can also furnish data on a prospect.

Before choosing a partner, visit the places of business of the best prospects and analyze their sales, service, and production capabilities. Also, visit with key executives and get to know them as best you can. Be aware that some locals have less than honest intentions. They may want to make a deal and learn your trade secrets so they can then terminate the relationship and have the market to themselves.

### **How to Formalize Local Partner Relationships**

Local partners may want to do business based on a handshake or vague agreement. But it is best to negotiate written agreements covering the questions that inevitably arise when working with local partners. Issues to be covered in agency, distribution, and licensing agreements include: What products will be handled (agency and distribution)? What rights are granted (licensing) and how long? Who has marketing, service, and financial reporting duties (agency and distribution) or quality standards (licensing) responsibility? What are the grounds for early termination, including failure to meet minimum purchase (distribution) or sales (agency) quotas or failure to make royalty payments (licensing)? What are the consequences of termination? How to address territory, exclusivity, and payment?

Joint venture agreements usually cover the following main issues:

- Who will contribute what (may include cash, services, equipment, facilities, patents and trademarks, technical expertise, distribution network, supplies and materials), and what is the contribution worth?
- If buying part ownership, what is the local company worth?
- How many shares and directors will you get (assuming that the joint venture will be a corporation)?
- Who controls which decisions? Super majority approval is usually required for a handful of key decisions, such as selecting top managers, changing the product line, declaring dividends, monetary commitments over 10 percent of net worth, initiating lawsuits, and selecting accountants and lawyers.
- How will you be compensated? Parties can choose to distribute all profits as dividends based on percentage of ownership, to pay no dividends (at least for an initial period to allow the venture to build up capital), or to take as dividends a percentage of profits. You should also be paid for related licensing, management, or components supply agreements—based on a flat fee and/or a percentage of sales.
- What events trigger termination? How should shares be valued? And how should you finance the local partners' buy-out of your shares upon termination?

## **How to Protect Intellectual Property**

Before expanding overseas, register your trademarks in your name in each target market; do not let the local partner register your trademarks. Also register copyrights, and place appropriate copyright and confidentiality notices on information about processes, products or services, customers, and personnel. Then, in the agreement establishing the relationship with the local partner, provide that:

- You own all intellectual property in your products or services, including any translations, adaptations, enhancements, and new versions.
- No ownership will be transferred to the local partner.
- The local partner and its employees will sign confidentiality and non-compete agreements.

- The local partner will notify you immediately when a third party is infringing your intellectual property.

For years, many South Carolina-based companies have been underachievers in international business. But in today's economy, success, if not survival, requires establishing customer relationships and strategic alliances globally. While doing business internationally can be intimidating, the mechanisms available for managing risk, and the potential benefits of sales and profit growth, make it worth the effort. Armed with proper research and planning, South Carolina firms can take on the world.