



Importing and Exporting Beer

BY
ART DECELLE AND BETH HATEF

As the craft brewing industry continues to mature, forward-looking entrepreneurs are seeking better ways to use both their physical and intellectual capacities. As such, several craft brewers have successfully ventured “beyond the horizon” to develop a successful import or export business. If you are among those looking for opportunities to export your brands, or to identify and sell brands from other countries, a solid “back office” must be part of your plan.

Importing and exporting beer or other alcohol beverages involves multiple levels of government regulation and taxation. Some regulations, taxes, and reporting requirements mirror your existing compliance obligations as a brewery. Other obligations are unique and include government agencies that are not involved in regulating domestic producers, such as U.S. Customs and Border Protection (CBP) and the Commerce Department.

The nations you target for selling or importing can have layers of regulations just as daunting as they are in the U.S. Multinational trade agreements, treaties, and laws at the national, state, provincial, or municipal levels may apply to your activities and govern critical topics, including:

- Excise and other taxes
- Product classification and tariffs
- National support for domestic producers and exports
- Impediments to trade

In addition to government regulation, entering new import or export agreements with businesses requires diligence. Among other things, you will have to consider:

- Logistics and warehousing
- Options for sale, distribution, and payment
- Industry customs
- Intellectual property protection

Below are the key U.S. alcohol regulatory requirements that apply to companies seeking to import or export beer.

A BRIEF GUIDE TO IMPORTING BEER

First and foremost, a brewery or other company seeking to import beer into the U.S. must hold the proper licenses and permits. Specifically, you will need an Importer’s Basic Permit from the Alcohol and Tobacco Tax and Trade Bureau (TTB), the federal agency that regulates the production and distribution of alcohol. To obtain this permit, you must maintain a staff and office located within the U.S. If you plan to sell alcohol beverages at wholesale, apart from those that you will import, your company also will need to obtain a federal Wholesaler’s Basic Permit.

You will also need to submit an application to the TTB to register as an alcohol dealer (i.e., anyone who sells or offers to sell alcohol beverages to another dealer). Many states also require companies importing alcohol into that state from another country to obtain an importer’s license, a wholesaler’s license, or both. There may be state licensing requirements as well, depending on where the company is located and where beer is sold and shipped.

Finally, although not strictly an alcohol regulatory requirement in nature, note that the U.S. Food and Drug Administration (FDA) requires producers of all foods and beverages to be registered with the FDA. They also require importers to provide them with advance notice before products are imported, in accordance with the Bioterrorism Act of 2002.

Once you obtain proper licensing as an importer, you will need to ensure that you have the required product-specific approvals for the beers you plan to import. An importer must obtain a Certificate of Label Approval (COLA) for each malt beverage product, and accompanying label, it plans to import into the U.S. Certain products also require formula approval from the TTB. If a beer does not meet the definition of a “malt beverage”

under the Federal Alcohol Administration Act, 27 U.S.C. § 211(a)(7), labeling is subject to Food and Drug Administration regulations (21 C.F.R. Part 101).

All imported beer must arrive at the importer’s place of business or at a customs-bonded warehouse designated by the importer. To be cleared for removal from customs custody by U.S. Customs and Border Protection, all alcohol beverage shipments must include a COLA or COLA waiver letter issued by the TTB to the importer. Prior notice to the CBP is also required for all alcohol beverage shipments. Finally, all inbound commercial shipments to the U.S., including shipments of beer, require the consignee’s tax identification number.

Importers must comply with certain ongoing regulatory requirements, including:

- **Compliance with laws/regulations.** Importers must comply with a multitude of laws and regulations, including TTB regulations (e.g., 27 C.F.R. Part 1 [the TTB’s basic permit requirements] and Part 27 [the TTB’s importation requirements]). In particular, beer imported into the U.S. must be released from customs custody in accordance with the Federal Alcohol Administration Act and its implementing regulations (for example, regulations concerning labeling and advertising).
- **Recordkeeping.** Under TTB regulations, importers must keep daily records of their physical receipts and disposition of beer. These records must include the kind and quantity of beer released, name and address of the person receiving the beer from customs custody, and the date of release.
- **Taxes.** The CBP collects excise taxes and duties on imported goods, including beer. Excise taxes are imposed on imported beer upon removal of the beer from customs custody. The CBP uses the Harmonized Tariff System (HTS) to determine duty rates for any item imported into the U.S. If uncertain about the duty rate applicable to a certain product, companies can request a binding ruling from the CBP.
- **Changes after original qualification.** TTB regulations require basic permit holders to report any changes in ownership, name, address, etc. The specific requirements vary based on the type of change.

A BRIEF GUIDE TO EXPORTING BEER

The exact export requirements that apply to alcohol beverages vary depending on several factors, including the specific commodity at issue, whether the exporting party is also the producer of the product, and whether the product will be exported tax-paid or without payment of tax.

Beer may be exported without payment of federal excise taxes if it is actually exported, used as supplies on vessels and aircraft, transferred to a foreign trade zone, or shipped to the U.S. armed forces for use overseas. A brewer that intends to export beer without tax payment must file a form with the TTB (TTB F 5130.12). Pursuant to a TTB Industry Circular from 2004, a brewer may apply for and obtain approval from the TTB for an alternative procedure allowing the brewer to maintain export documentation at the brewery, rather than submitting such documentation to the TTB. This allows the brewer to submit monthly summary reports to the TTB electronically, simplifying the paperwork associated with the export process.

Prior to removal of the beer from the brewery, each container or case of non-taxpaid beer for export must be marked as such. In order to avoid incurring excise tax liability, the brewer must maintain and submit proof of exportation (for example, a customs certificate of lading and clearance) to the TTB.

Or, a brewer may instead choose to export taxpaid beer. To do so, the brewer will need to obtain a Wholesaler's Basic Permit

from the TTB and must otherwise comply with TTB export regulations (27 C.F.R. Part 28). Taxpaid beer intended for export must be marked in the same manner as beer removed from a brewery for domestic use. A wholesaler selling the taxpaid beer for export must notify the producing brewer that the beer is to be exported (to the extent the brewer does not already know this) and must give certain paperwork to the brewer upon removal for exportation.

The brewer then must file the paperwork with the TTB to execute a claim for "drawback" (i.e., a refund of the excise taxes paid on beer that is then exported). A brewer seeking drawback must provide proof of actual exportation.

In addition to the standard U.S. alcohol regulatory exportation requirements discussed above, many countries have requirements regarding the documentation that must accompany products, including beer, imported into those countries. To facilitate the ability of exporters to comply with these requirements, the TTB has an Export Certificate Program, which allows exporters to request a certificate attesting to the authenticity of an exported alcohol beverage product.

Export certificate requests must include an original signature, and the person signing

the request must have signing authority or a power of attorney for the company requesting the certificate. The request should be submitted to the TTB on company letterhead, and the address listed on the letterhead or certificate must match the address on file with the TTB for the company's basic permit. The TTB accepts email submissions of export certificate requests, and its stated goal is to process certificates within seven business days of receiving a request.

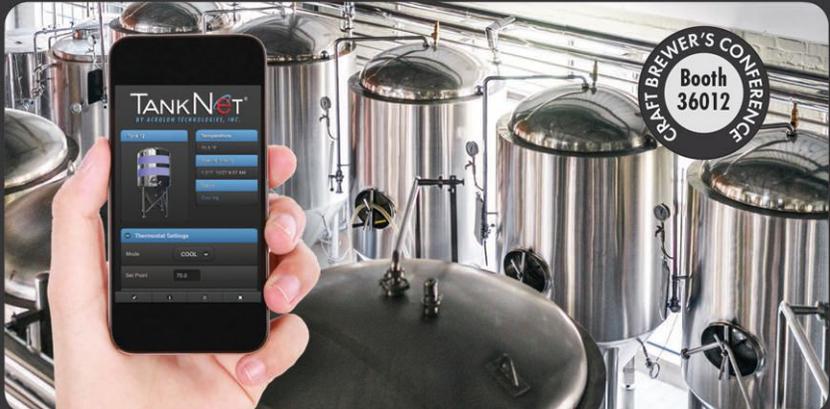
Art DeCelle is senior counsel in the law firm of Lehrman Beverage Law, PLLC in Washington, D.C. He co-wrote this piece while serving as counsel in the law firm of McDermott Will & Emery LLP. Beth Hatfield is a senior associate at McDermott Will & Emery. She is a member of the firm's Chambers-ranked Alcohol Regulatory & Distribution Group, where she concentrates her practice on a wide variety of regulatory and distribution issues involving alcohol beverage suppliers. Her practice includes counseling on distribution relationships, trade practice compliance, excise tax compliance, and alcohol regulatory and distribution risks associated with corporate transactions.

NB

RESOURCES

TTB regulations governing importation of distilled spirits, wine, and beer	27 C.F.R. Part 27
TTB regulations governing exportation of alcohol	27 C.F.R. Part 28
TTB import and export online guidance	https://www.ttb.gov/importers/importers-exporters-and-wholesalers-resources
TTB international import/export requirements	https://www.ttb.gov/itd/international-imports-exports-requirements
USDA Global Agriculture Information Network	https://gain.fas.usda.gov/
European commission summary of alcohol labeling regulations	ec.europa.eu/food/safety/labelling_nutrition/labelling_legislation/alcohol_en
Description of EU system of registered food and beverage products with protected geographic names	ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/quality-schemes-explained_en

CONTROL YOUR CRAFT FROM ANYWHERE



TANKNet[®]

CRAFT BREWER'S CONFERENCE
Booth 36012



Precise Temperature Control



Ferment Trending



Temp Profile Cold Crash



Alarm Notifications



Scheduled Boiler Start



Brew House Integration

www.acrolon.com ♦ 707-938-1300 ♦ info@acrolon.com