Navigating the US distribution system

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The United States is said to be the land of the free but its alcoholic beverage sector is anything but; it is very complex and highly regulated. This week we delve into the United States (US) three-tier system and examine the differences in regulations across states.

Prohibition's influence on the US distribution system

The laws regulating the US alcoholic beverages sector have their roots in the time of Prohibition and its repeal. Prohibition was a nationwide constitutional ban on the production, importation, transportation, and sale of alcoholic beverages that remained in place from 1920 to 1933.

Prohibition was intended to make the US a better place, but instead offered an opportunity for organised crime to flourish by providing illegal alcohol. At the time, the country was also in the grips of the Great Depression. Tax revenue from alcohol sales could go a long way to helping the US economy. In addition, wealthy people who wanted to drink also had the ear of politicians. Thus, Prohibition was repealed in 1933.

When Prohibition was repealed, the Federal Government created a complex three-tier system for the distribution of alcohol. Furthermore, regulations regarding sales and distribution of alcohol vary from state to state and individual municipalities may also have their own set of rules. Given that spirits, wine and beer are not regulated equally and have very different rules and regulations, it is fair to say that the US has more than 200 different regulatory frameworks for alcoholic beverage companies to comply.

The US Alcohol, Tobacco, Tax and Trade Bureau regulates the sale and movement of all alcoholic beverages in the US.

Three-tier system

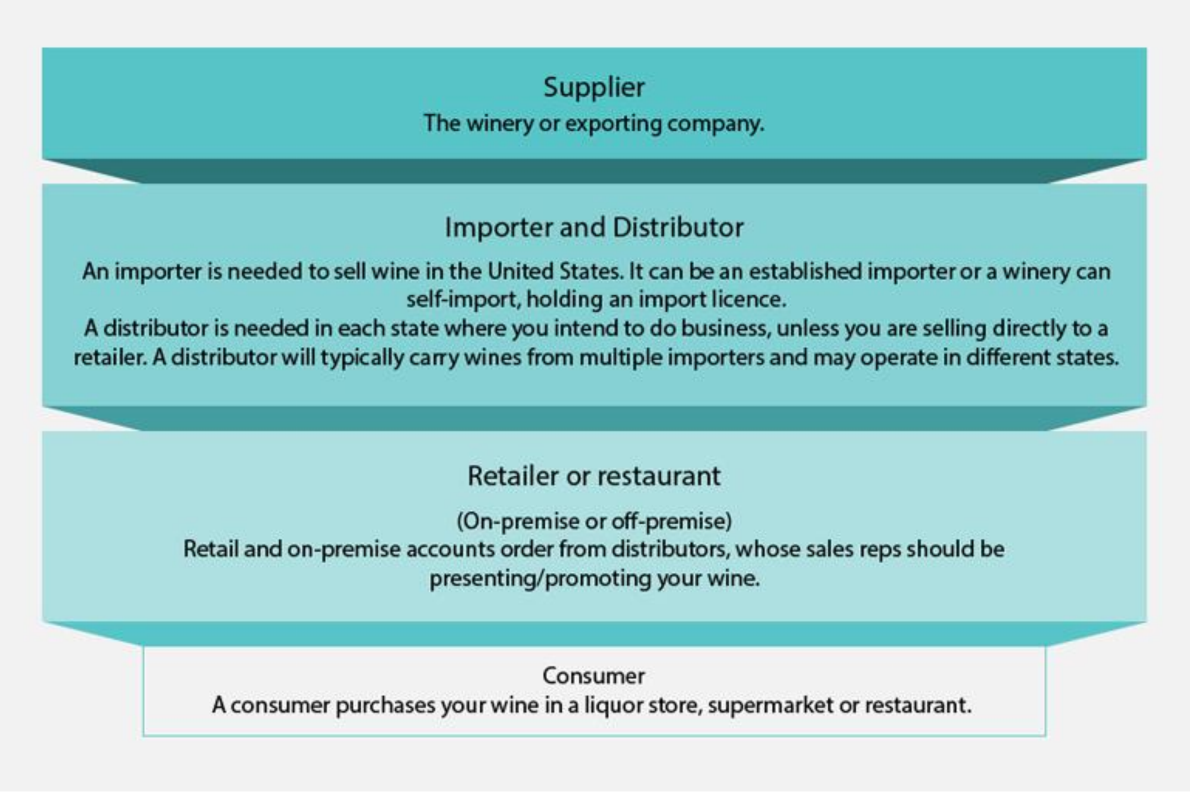
The first tier is the manufacturer, supplier or producer of the product. They sell to licensed importers, distributors and control boards (tier two). This first tier is responsible for making sure the liquid is safe for consumption and follows all relevant laws and regulations. Brand owners could be manufacturers or entities that contracted with a manufacturer. Federal Excise Taxes are collected when goods leave the premises of the manufacturer or the bonded facilities of an importer.

What are the implications for Australian wine producers? Wine can only be imported into the US by a licensed importer holding a basic permit. There are no exceptions to this requirement. Individual states, counties and cities may have specific taxes, compliance and licensing requirements that must be met. Refer to Wine Australia's Export Market Guide for more information.

The second tier is the importer, distributor or wholesaler who purchases the product from the supplier (tier one). They then in turn sell it to retailers (tier three). Licensed importers and distributors act in cooperation with the federal and state governments to help ensure that alcohol beverage taxes are reliably collected. Importers, distributors and control boards are only allowed to sell to licensed retailers. State Excise Taxes are collected at tier two.

The third tier is the retailers. In other words, licensed outlets like liquor stores, bars or restaurants. They ensure that alcohol is sold to those who are of legal age to purchase it. State Sales Tax is collected at tier three.

No individual or entity except the state regulator itself is allowed to own and operate more than one tier of the system.



Monopoly vs licence states

Following the repeal of national Prohibition in 1933, some states decided to continue their own prohibition against the production, distribution, and sale of alcohol beverages within their borders. Other states decided to leave the choice up to local jurisdictions (counties and/or cities), a practice called local option. Even today there are hundreds of dry counties across the US.

Among those states that did not choose to maintain complete prohibition, some chose to impose government monopolies over the sale of alcohol beverages within their borders. The other states chose to follow the more traditional American practice of free enterprise regulated by laws.

The majority of states in the US leave liquor sales and distribution to private businesses. Individual state laws regulating these private businesses are varied and complex and serve to determine the types of retailers that can sell liquor (e.g. dedicated liquor stores only or grocery stores too) and the hours they're permitted to operate etc. Decisions regarding which wholesalers/importers to buy from, which bottles to stock, and what prices to charge are generally left to individual retailers under this system.

Other states get more directly involved in the sales process. There are 18 of these monopoly or Alcoholic Beverage Control (ABC) states in total and they fall into two general groups.

The first group of beverage control states prohibits the sale of liquor in private stores, limiting it to government-owned outlets only:

- Alabama
- Idaho
- New Hampshire (sold tax-free, attracting many out-of-state customers)
- North Carolina (stores are run by individual counties and cities)
- Pennsylvania
- Utah
- Virginia
- Washington.

The second group permits the sale of liquor in privately owned stores, involved instead with wholesale/distributors effectively setting minimum prices and determining product selection state wide.

- Iowa
- Maine
- Michigan
- Mississippi
- Montana
- Ohio
- Oregon
- Vermont
- Wyoming
- West Virginia.

In addition to the states in these two major groups, there are a few states in which liquor stores are only government-run in a few areas, or are run by individual municipalities:

- Maryland (government-run stores in four counties only)
- Minnesota (some municipalities run their own liquor stores)
- South Dakota (some municipalities run their own liquor stores).

About one-quarter of the United States population lives in monopoly states and the share of total US wine consumption is similar (23 per cent). By far the biggest wine consuming monopoly states are Washington (11.1 million cases), Pennsylvania (10.2 million cases), Virginia (9.2 million cases), Ohio (8.8 million cases), Michigan (8.4 million cases) and Oregon (6.1 million cases).

In comparison, the biggest consuming states overall are non-monopoly states: California (49.8 million cases), Florida (27.7 million cases), New York (23.7 million cases), Texas (20.4 million cases), New Jersey (14.3 million cases), Illinois (13.9) and Massachusetts (12.1 million cases).

Independent vs chain markets

Some states allow for alcohol to be sold in chain retail outlets, while other states restrict multi-unit ownership and restrict owners to one or a small number of licences. Chain markets like Texas and Florida have fewer fine wine stores than independent states like New York and New Jersey.

Some states, such as Massachusetts and Colorado, have recently relaxed laws to allow for increased chain activity, which threatens their traditional base of independent fine wine stores.

For more information on the US market contact usa@wineaustralia.com.