

# USA

## Legal Provisions

Compiled by:

### Swiss Business Hub USA

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#### General Remarks

The United States' free market economy is subject to certain constraints. Some industries are regulated by either federal or state governments. They include banking, savings and loan associations, pharmaceuticals, insurance and utilities. In addition, businesses must comply with laws regulating antitrust, labor relations, environmental protection, consumer protection and civil rights.

At this time of financial crisis and recession, there are calls for more regulation in the financial sector. The U.S. government made the decision to support financial institutions as well as the auto industry. Its involvement in the private sector has increased to an extent unthinkable just a few months ago. This situation makes some people question whether such a situation is compatible with a free market economy and whether it is responsible to leave so much debt to future generations.

#### Customs: System, Rates of Duty / Source, Other Import Duties, Accompanying Documents

More than half the imports destined for consumption within the U.S. enter duty-free. Although most tariffs are levied on an ad valorem basis, some items are subject to tax at a specific amount per unit or other measure of quantity such as weight.

Items brought into the United States are subject to duty in accordance with their classification in the import tariff schedules. The product description of an import is the primary determinant of its tariff classification. On the basis of this classification, a duty rate is assessed against the import's value. Duty rates vary, depending on the product's country of origin, the type of product and other factors. U.S. Customs will provide binding rulings on the likely duty rates and values of goods before their export.

Articles from specific countries are granted preferential or free rates of duty under trade agreements. The United States and Canada entered into a free-trade agreement (CFTA) on January 1, 1989. Subsequently, on January 1, 1994, the North American Free Trade Agreement (NAFTA) was implemented, which supplanted CFTA and incorporated Mexico into a tri-national trade agreement. In addition to NAFTA, the U.S. has passed into law several trade preference measures, including the Agreement on Trade in Civil Aircraft. Regional and bilateral free trade agreements signed by the U.S. can be found on the website of the U.S. Trade Representative ([http://www.ustr.gov/Trade\\_Agreements/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Section_Index.html)).

Also, many products from developing countries are afforded duty-free entry under programs such as the Caribbean Basin Economic Recovery Act and the Andean Trade Preference Act. Most products other than those subject to the preferential or free rates mentioned above are dutiable under the most-favored-nation (MFN) rates or the Generalized System of Preferences (GSP). The remaining countries are subject to the highest rates, which apply when trade relations have not been normalized.

A listing of the U.S. treaties currently in effect can be viewed at <http://dosfan.lib.uic.edu/acda/state/> or obtained from the Government Printing Office <http://www.access.gpo.gov/>.

Within 10 days of importation, importers must file a number of documents with a U.S. customs officer, even if the imported goods are not subject to duties. Required documents include:

- an entry document to secure immediate delivery
- an entry summary document specifying the items being imported, their values
- and the provision of the U.S. Tariff Schedules applicable to each of them
- a bill of lading
- a customs bond to cover payment of duty
- a power of attorney

See: U.S. Customs and Border Protection: (<http://www.cbp.gov/>)

Harmonized Tariff Schedule of the United States: <http://www.usitc.gov/tata/hts/bychapter/index.htm>

### **Import and Export Regulations, Restrictions, Quotas, Licenses, Payment Procedures**

The Swiss exporter should make certain that the U.S. importer has provided the proper information to permit the submission of necessary information concerning packing, labeling, etc. and has made necessary arrangements for entry of the merchandise into the United States.

The importation of certain classes of merchandise may be prohibited or restricted to protect the economy and security of the United States, to safeguard consumer health and well-being, or to preserve domestic plant and animal life. Some commodities are also subject to an import quota or a restraint under bilateral trade agreements and arrangements.

Many of the prohibitions and restrictions on importation are subject, in addition to customs requirements, to the laws and regulations administered by other U.S. government agencies with which customs cooperates in enforcement. These laws and regulations may, for example, prohibit entry; limit entry to certain ports; restrict routing, storage or use; or require treatment, labeling or processing as a condition of release. Customs clearance is given only if these additional requirements are met. This customs clearance is required for all types of importation, including those made by mail and those placed in foreign-trade zones.

Imports may be subject to one of two types of quotas: absolute quotas and tariff-rate quotas. An absolute quota is a specified maximum quantity of a particular commodity that may be imported into the U.S. within a given time period. Tariff-rate quotas allow a specified quantity of a commodity to be imported during a designated period of time at a reduced tariff rate.

Imports limited by absolute annual quotas include some dairy products, animal feeds containing milk, cotton, cotton waste, textile articles and wearing apparel, peanuts, sugars, syrups, molasses, cheese, chocolate, ice cream, and wheat.

Under U.S. antidumping rules, the U.S. Department of Commerce imposes additional duties on imports priced below the foreign exporter's home-market price, or a typical or average third-country price if there is no home-market price, provided the U.S. International Trade Commission (ITC) rules that the imports sold at such prices injure or threaten to injure a U.S. industry.

Among imports subject to compulsory licensing are arms and ammunition and products of countries that are subject to trade restrictions imposed by the U.S. Department of State, Office of Foreign Assets Control.

See: <http://www.cbp.gov/>

## Currency Regulations / Restrictions

The monetary unit is the dollar, which is divided into 100 cents. The dollar is denoted internally by the symbol \$ and externally by the symbol US\$.

The U.S. dollar is fully convertible. The United States generally does not impose exchange controls or restrictions on the flow of currency into or out of the country. Moreover, no restrictions encumber the convertibility of most foreign currencies. However, an information return must be filed with a customs officer at the port of entry or with the Commissioner of Customs in Washington, DC, if amounts exceeding \$ 10'000 in currency or other monetary instruments are transported to or from the United States on any one occasion.

Financial and commercial transactions with certain countries require Department of the Treasury licensing.

See: <http://www.treas.gov/topics/international/>

## Registration Procedure for Products

With the exception of most meat and poultry, all food, drugs, biologics, cosmetics, medical devices, and electronic products that emit radiation, as defined in the Federal Food, Drug, and Cosmetic Act (FD&C) and related acts, are subject to FDA inspection when they are imported or offered for importation into the United States. Most meat and poultry products are regulated by the U.S. Department of Agriculture.

All imported products are required to meet the same standards as domestic goods. Imported foods must be pure, wholesome, safe to eat, and produced under sanitary conditions; drugs and devices must be safe and effective; cosmetics must be safe and made from approved ingredients; radiation-emitting devices must meet established standards; and all products must contain informative and truthful labeling in English.

Foreign firms must register and file processing information before shipping any low-acid canned food or acidified low-acid canned food to the United States. The Federal Import Milk Act requires a permit for milk and cream imported into the United States. Although it is not required for foreign drug firms to register their establishments, their products must be listed with the FDA. Drugs are restricted from importation unless they are covered under an Investigational New Drug Exemption (IND) or by an approved New Drug Application (NDA). Devices must meet FDA regulations prior to the importation of medical devices into the United States. All foreign firms (manufacturers of devices) are required to both register their establishments, identify a U.S. Agent, and individually list their devices before they may import them into the United States. Information concerning pre-market notification, radiation control standards or device listing and establishment registration is available at <http://www.fda.gov/cdrh/devadvice/>.

See also Bioterrorism Act including Prior Notice for food imports in the separate chapter below.

## **Standards, Technical Rules, Labeling Regulations**

The U.S. requires that foreign products imported into the U.S. be marked with the country of origin. Failure to do so can result in the imposition of additional duties. Complexities include products that are made in more than one country. Foreign sellers and domestic importers should seek advice and assistance from trade consultants or U.S. customs brokers regarding this important requirement.

See: Fair Packaging and Labeling Act: <http://www.fda.gov/opacom/laws/fplact.htm>;  
Alcohol and Tobacco Tax and Trade Bureau: <http://www.ttb.gov/labeling/index.shtml>

## **Taxes: Sales Tax, VAT, Income Tax, Taxes on Profit**

Taxation in the U.S. is complex and ever-changing. The federal government levies these taxes: income (broadly defined and including capital gains) on individuals, corporations, trusts, and estates (partnership income is taxed to the partners); estate (death); gift; payroll, such as social security, payable by both employer and employee, and unemployment insurance; excise taxes on tires, gasoline, communication services, weapons, lubrication oils, aircraft, trucks, aviation fuel, and air travel tickets; tariffs and customs duties; stamp taxes on alcoholic beverages, cigarettes, and the gambling industry. The rates of any of these taxes and the methods used to calculate them can change at any time.

Taxes imposed by state and local governments vary widely, but usually consist of income, payroll, property, sales and use, inheritance, severance, and transaction taxes. These state and local taxes can be significant. Their effects should be considered when any transaction is contemplated.

Congress legislates the federal tax law. The Internal Revenue Service (IRS), a branch of the U.S. Treasury Department, administers the law. This administrative function includes issuing rulings and regulations to clarify the law, developing and processing tax forms, auditing tax returns, and collecting delinquent taxes. The courts rule on tax issues when there are litigated disputes between the government and taxpayers.

See: <http://www.irs.gov/index.html>

## **Commercial Law / Law governing Commercial Representatives / possible Sources of Legal Assistance / Criminal Law / Patriot Act / Bioterrorism Act / C-TPAT / Container Security Initiative / Lacey Act**

See: <http://www.findlaw.com>  
<http://www.law.cornell.edu/>

The events of September 11, 2001 reinforced the need to enhance the security of the United States. Congress responded by passing the USA Patriot Act, signed by President Bush on October 26, 2001, and by passing the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act), which President Bush signed into law on June 12, 2002. Furthermore, the U.S. Customs and Border Protection have introduced the Customs-Trade Partnership Against Terrorism (C-TPAT) which engages the trade community in a cooperative relationship to secure the supply chain of goods entering the U.S.

The Patriot Act gives federal officials greater authority to track and intercept communications, both for law enforcement and foreign intelligence gathering purposes. It vests the Secretary of the Treasury with regulatory powers to combat corruption of U.S. financial institutions for foreign money laundering purposes. It seeks to further close the U.S. borders to foreign terrorists and to detain and remove those within the U.S. borders.

See: <http://www.epic.org/privacy/terrorism/hr3162.html>

The Bioterrorism Act requires domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States to register with the U.S. Food and Drug Administration (FDA) beginning December 12, 2003. Electronic registration via the internet is possible. The Act also requires that the FDA receive prior notice before food is imported or offered for import into the United States. Advance notice of import shipments allows FDA, with the support of the U.S. Customs and Border Protection (CBP), to target import inspections more effectively and help protect the nation's food supply against terrorist acts and other public health emergencies.

See: <http://www.fda.gov/oc/bioterrorism/bioact.html>

Certified C-TPAT companies may be eligible for Free and Secure Trade (FAST) program benefits. Effective July 15, 2005, C-TPAT has implemented a streamlined online application process for all C-TPAT membership enrolment categories. Companies must now apply for membership via the Online C-TPAT Application Process.

See: [http://www.cbp.gov/xp/cgov/trade/cargo\\_security/](http://www.cbp.gov/xp/cgov/trade/cargo_security/)

The Container Security Initiative (CSI) addresses the threat to border security and global trade posed by the potential for terrorist use of a maritime container to deliver a weapon. CSI proposes a security regime to ensure that all containers that pose a potential risk of terrorism are identified and inspected at foreign ports before they are placed on vessels destined for the United States. The Department of Homeland Security has stationed multi-disciplinary teams of U.S. officers from both Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) to work at foreign ports. Their mission is to target and prescreen containers and to develop additional investigative leads related to the terrorist threat to cargo destined for the United States.

See: [http://www.cbp.gov/xp/cgov/trade/cargo\\_security/csi/](http://www.cbp.gov/xp/cgov/trade/cargo_security/csi/)

The Lacey Act was introduced in 1900. It combats trafficking in "illegal" wildlife, fish and plants. The Farm Bill of May 22, 2008, amended the Lacey Act by expanding its protection to a broader range of plants and plant products. The Lacey Act now makes it unlawful to import certain plants and plant products without an import declaration.

See: [http://www.aphis.usda.gov/newsroom/hot\\_issues/lacey\\_act/index.shtml](http://www.aphis.usda.gov/newsroom/hot_issues/lacey_act/index.shtml)

## **Setting up Companies**

The nature of business structure is left to the 50 states. The primary business structures, which are similar in title and operation to similarly-named businesses in other countries and which are more or less uniform throughout the states, are sole proprietorship, partnerships, corporations, limited liability companies, branches, and joint ventures. A business might also be commenced through a merger or acquisition.

## **Joint Venture Opportunities**

A foreign company may form a joint venture with a company in the U.S. for a specific purpose for a particular length of time. The joint venture may be organized under partnership or corporation laws and will be taxed dependent on its predominant characteristics. A joint venture agreement should clearly describe the relationship between the parties and their respective responsibilities. The agreement also should provide for the resolution of disputes.

## Promotion of Investment

The United States encourages foreign investment. Financial assistance - under normal circumstances - can be obtained through a large banking system, venture capitalists, and the stock markets. Moreover, many local investment incentives are available. However, due to the current financial crisis, the banks are reluctant to lend and some sectors complain that they have difficulty in receiving the loans they need.

The federal government generally does not require foreign investors to obtain government approval before engaging in business in the United States. Foreign investment in such areas as communications, aviation, or mining and energy, however, may be reviewed by the Committee on Foreign Investment in the United States <http://www.treas.gov/offices/international-affairs/cfius/>, which is chaired by the Department of the Treasury. In addition, the President may suspend or block a foreign acquisition of a U.S. business for security reasons. Various states impose restrictions on foreign ownership in the banking, insurance and public utility industries. Some states also place limitations on foreign ownership of local real estate.

The federal government maintains a policy of neutrality with regard to encouragement toward foreign investment. The generally open economic system, which treats U.S. and foreign investors as equals, fosters inflow of investment.

State and local governments, however, offer extensive incentives to attract foreign investors. Such incentives commonly include income and real estate tax concessions, financing, and sometimes opportunities to purchase or lease operating facilities at greatly reduced prices. Specific information about these incentives can be obtained from development organizations or investment promotion offices. For the convenience of foreign investors, a number of states have established promotion offices in foreign countries.

## Entry Conditions, Work Permits, Residence Permits, Labor Law

Federal, state, and local law regulate employment in the United States. The federal government regulates employment through the Fair Labor Standards Act, the National Labor Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the 1992 Americans with Disabilities Act, and other legislation. The federal agencies that regulate employment are the Department of Labor, the Equal Employment Opportunity Commission, and the National Labor Relations Board.

Federal, state, and local agencies further influence business with thousands of regulations. No matter what enterprise one might enter, one should make a search for all the laws which impact that specific business to avoid major oversights.

All visitors must have a proper visa to enter the United States. This is so unless they are citizens of countries for whom a 90-day stay for business or pleasure is visa exempt. Those who wish to work in the U.S. or live in the U.S. as traders or investors must have visas authorizing such activities.

- E-1 Treaty traders This visa allows an alien to reside in the U.S. to carry on significant trade between the U.S. and the alien's own country. Switzerland has a treaty with the U.S.
- E-2 Treaty investors This visa is for citizens of treaty countries who make an investment in the U.S., or who are executives, managers, or essential employees of a treaty investor. The venture must be majority-owned by the foreign citizen or by other nationals of his country; the investment must be active (not passive such as real estate) and must be „substantial“ in relation to the nature of the particular enterprise. Otherwise the E-2 is similar to the E-1. E-2 countries include Switzerland.

- H-1B Workers in specialty occupations can be admitted to the U.S. under this visa. Holding a Bachelor of Arts or science degree in a professional discipline can usually qualify an applicant under this category. While the employer does not have to demonstrate that no U.S. citizen is available to perform the job, the employer must attest to the U.S. Department of Labor that the alien will be paid either the prevailing wage for that occupation or the actual wage paid by the employer for persons in the relevant occupation, whichever is higher. The employer must also show that the position requires a person of professional ability, and that the proposed employee has sufficient credentials. This visa is initially available for up to three years with extensions to six years possible.
- L-1 This visa category is used for a foreigner who has worked for a related company outside the U.S. for at least one year within the previous three years. The employer must be an international company doing business in the United States and at least one other country through a subsidiary, parent, affiliate, or branch office. The intra-company transferee category is available for executives and managers. Individuals with specialized knowledge may also qualify. The initial visa is issued for a three year period. It is possible to obtain extensions of up to seven years for managers and executives. Non-management holders of specialized knowledge are limited to a five year stay.
- F-1 A foreign student can easily obtain approval for practical training that is not available in the student's home country if he or she has attended a U.S. college as a foreign student. The time period allowed for the training will not exceed one year.
- H-2 This category is for temporary workers whose skills are in short supply, and the time required to perform the job is of limited duration. This visa is more difficult to obtain than the H-1B because the employer must apply to the Department of Labor for evaluation of the availability of U.S. workers to perform the job. The H-2 visa is for an initial period of one year with extensions available up to three years.
- H-3 and J-1 Temporary trainees can be admitted under an H-3 visa and trainees sponsored by an exchange program can be admitted with a J-1 visa. The H-3 is normally used to train an individual from a foreign country in a process that can be learned only in the United States. The program must include substantial classroom-style teaching and be relatively unproductive; such employment must not displace a U.S. worker. An H-3 visa is granted for the length of the training program, up to two years. A J-1 visa is for a student, scholar, trainee, teacher, or any other person coming to the U.S. to temporarily participate in a program authorized by the United States Information Agency. Some of these programs require employment, some permit it, and others prohibit it.
- O, P, and R U.S. immigration law authorizes a number of additional non-immigrant visas that permit work in the United States. An alien with extraordinary ability in the sciences, arts, education, business, or athletics may be eligible for the O visa. Athletes, entertainers, and other performers may be eligible for P visas. A religious worker may seek an R visa to work for a temporary period in the United States. Each visa has special eligibility criteria and time limits.

The U.S. immigration law is complicated. Like all laws, it is subject to change at any time. Before taking steps to obtain a visa under any category, one should obtain advice from a competent authority.

See: U.S. Citizenship and Immigration Services: <http://www.uscis.gov/portal/site/uscis>  
American Immigration Center: <http://www.us-immigration.com/>  
U.S. Department of State, Visa Services: [http://travel.state.gov/visa/visa\\_1750.html](http://travel.state.gov/visa/visa_1750.html)  
Swiss-American Chamber of Commerce: [http://www.amcham.ch/usa/m\\_usa\\_infos.asp](http://www.amcham.ch/usa/m_usa_infos.asp)

## **Procedures for Collecting Payment**

There are debt collection agencies with networks allowing them to act all over the United States.

See: Collection Agency Services: <http://www.collectionagencyervices.net/>

## **Sources of Information and Links**

Customs and Border Protection, Basic Importing & Exporting: [http://www.cbp.gov/xp/cgov/trade/basic\\_trade/](http://www.cbp.gov/xp/cgov/trade/basic_trade/)

U.S. Treasury: <http://www.ustreas.gov/>

Department of the Treasury, Internal Revenue Service: <http://www.irs.gov/>

American Immigration Center: <http://www.us-immigration.com/>

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