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& Associati

Marazzi & Associati

Rotonda dei Mille, 1
I - 24122 Bergamo
Tel. +39 035 210156
Italy

www.madv.eu
info@madv.eu

Exporting food and manufactured products in the United States, regulation compliance and strategy in an evolving trade environment

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I - 24122 Bergamo
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USA regulation for the export of Italian food & winery products

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1. General overview

1.1 Why the USA?

The United States of America represent the biggest world economy, with a GDP of 18,6 trillion dollars in 2016. With an area of 9.161.923 km² and 324 million inhabitants, the United States of America represent the third largest country and the fourth most populated in the world.

According to the *Index of Economic freedom*, released by *The Heritage Foundation*, the USA is, in 2017, ranked as 17th in the world for the global competitiveness and economic freedom.

The most critical factors in order to open a business in the USA, according to a scientific research, are considered for US entrepreneurs, respectively: access to funding, bribery, inflation rate, tax legislation and labour laws.

The conditions of the access to funding in the USA are favorable, even if the financing costs for companies increased in the last years. The average interest rate in May 2017 is above the 3%, according to the *Survey of Business Lending*.

1.2 Trump's Administration

The reinforcement of the economic growth and the raising of employment rate are two of the priorities mentioned by Trump's Administration, seeking a route towards deregulation of financial and energetic sectors. The data provided recently by the *BEA*, *Bureau of Economic Analysis*, confirm the strength of the US economic framework. The economic expansion started in the second half of 2009 has continued so far, with a raising GDP rate of the 2,6% on an annual basis.

The protectionist regulation, sought by Trump through the reinforcement of "Buy American", denies to non-US companies the right to participate in the tender procedures, including only the US enterprises. This rule affects especially the area of infrastructure.

From 2015, due to the increasing rise of import in the steel sector, the USA intensified the tariffs and duties for the import of products, even applying starting from the second half of 2018 tariff on steel and aluminum import

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from the European Community. In addition to it, tariffs involve significantly also the companies manufacturing baked products in the food sector.

1.3 Focus on Italy

The food industry is the second most profitable sector in Italy with 132 billion euros of turnover in 2016, only after the machinery one. The Italian food industry process the 72% of the raw materials of the country. Moreover, the 80% of the Italian export belongs only to major brands.

The worldwide share of food industry ranks Italy at the second place in terms both of market value and quantity served in the market. As for the winery sector, Italy is the first world producer of wines bottled in 2016.

The food export is concentrated, as 67% of exports are directed to the first ten Italian importers (USA and Germany holding the 30% followed by Japan, China, Netherlands, United Kingdom, France, Belgium, Spain, Russia and Canada). The countries that have increased the food import from Italy, the most in the last year are China, Romania and Poland.

1.4 Commercial relations between Italy and the USA

The USA represents a great opportunity for Italian companies thanks to the high income of Us consumer and interest in Italian products. The food industry is a building block for the commercial trade of the two countries, followed by the automotive, transport and fashion industries.

With 35.332 dollars per capita income per year, USA is the first large-sized country to guarantee a secure market for the trade of Italian products.

Italy is one of the main commercial partners for the USA, being ranked 20th as exporter and 10th as the importer. Among the EU countries, Italy is the fourth supplier of the USA, after Germany, England and France. In 2016, Italy exported a value of 36,9 billion euros of food products to the USA, recording an increase of 2,6% over 2015. On the other hand, the USA is the third commercial partner for Italy with the 6,5% of the total world Italian trade. Furthermore, they represent the third market export for Italy, with an 8,9% share of the total export.

The USA is still both the main stock investor and the main receiver of stock investments at a global level.. As for the FDI capital invested in Italy, the

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USA is ranked only as the 29th with 706 million dollars. Whereas, Italy is the 15th country for stock investments (16,4 billion dollars) and the 12th for the FDI capital invested in the USA in the world (2,8 billion dollars).

1.5 What to export to the USA

The United States represents almost the 30% of the overall consumption in the world, with expenses for retail items of approximately 11.670 billion dollars per year (63% of the US GDP).

Italy is a leader in the export of some kind of goods, like olive oil (42,2% of the market, 558 million dollars), pasta (33,8% of the market, 288 million dollars), cheese (24,4% of the market, 307.7 million dollars) and wine (32,4% of the market, 1.8 billion of Dollars).

1.6 *GI, Geographical Indication,* and *certification mark* in the USA

Omitted

2. US regulation for the food sector

2.1 US federal government departments

The food import rules in the USA are regulated by three departments of the federal government:

- *USDA, Department of Agriculture,* responsible for the development and fulfilment of federal policies related to rearing, agriculture and food (http://www.usda.gov). *HHS, Department of Health and Human Services*, *HHS* is articulated in different agencies, such as the *FDA*, *Food and Drug Administration* (http://www.fda.gov), which is the agency responsible for the regulatory and oversight of food, dietary supplements, drugs and vaccines security. The *HHS* is the most relevant body regarding the export of foodstuffs.
- *DHS*, *Department of Homeland Security* (http://www.dhs.gov), is branched off in bureaus, including the *CBP*, *Bureau of Custom and Border Protection*, the federal organism in charge of the control of goods and people at the customs and the *TTB*, *Alcohol and Tobacco Tax and Trade Bureau*, the body that deals with the import procedures for alcoholic and malt beverages.

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2.2 Customs authorities

Customs operations' management is the responsibility of the *Customs Service*, a federal agency, which controls the internal and external flow of products through the *CMCs*, *Customs Management Centers*, each of which is divided in different ports (*Service Port*, *Area Port* and *Port of Entry*)

Regarding the export of the products to the USA, the clearance procedures must be, necessarily, carried out by one of the following entities:

- The owner or exporter of the products.
- The buyer or importer of the products.
- An agent or intermediary named *customs broker*.

2.3 Clearance and documentation

The documentation that has to be shown at the *Port of Entry* coupled with goods must be drafted clearly in English in order to avoid sanctions and to speed up the customs procedures.

Namely, the required documents are:

1. *BOL*, *Bill of Landing* or *AWB*, *Airway Bill*.
2. *Customs Bond*.
3. *Prior Notice*.
4. Packing list.
5. Certificate or authorization for specific goods.
6. Transport documentation and forms.
7. Customs declaration.
8. Declaration supporting the right of entry.
9. Name of the Principal.
10. Identification code of the supplier.
11. *Commercial* or *proforma invoice*. The invoice must include:
    1. *Port of Entry*.
    2. *CoO*, *Country of Origin*.
    3. Description of the commodity.
    4. Composition of the commodity.
    5. Sales price in dollars.
    6. Name and address of the buyer or importer of the commodity.

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7. Cost of manufacturing.
8. Cost of packing.
9. Cost of transport and cost of insurance.
10. Other charges.
11. Discounts granted to the buyer or importer of the commodity.

An accurate invoicing may result in a fast clearance of the products. Mistakes and omissions of the invoice may even cause penalties. The lack of the *CoO* results in penalties against the buyer or importer of the products, to the extent of 10% of the commercial value of the product.

The description of the commodity should describe accurately: commercial value, type, weight, size and units of the product.

The declaration of the commercial value of the commodity represents a risk upon which the importer should pay high attention. In facts, according to the *Customs Modernization Act* or just the *Mod Act*, in the event that the customs consider the importer neglectful of mistaking, penalties might be heavy.

The *Customs Bond* is a financial guaranty that involves three parties: an Insurance company, the Principal and the *CBP*. The Insurance company ensures to the *CBP* the sum of money due by the Principal in case of non-payment of this latter. Moreover, the *CBP* takes action by allowing the Insurance company to use any legal means to collect money back from the Principal. The *Customs Bond* is required if the commercial goods are valued over 2,500 dollars. The easiest way to get the *Customs Bond* is to call in the *customs broker* or to do it alone by purchasing a bond from a Surety company licensed by the *Treasury Department*.

There are two main types of *Customs Bond*:

- *Single Entry Bond*. This bond is suitable for those companies that import a single shipment for a specific *Port of Entry*. This is the most-favored option for those companies that typically export less than four shipments into the USA per year.
- *Continuous Bond*. This bond works best for importers with several entries that utilize many *Ports of Entry* annually.

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2.4 Packaging and labelling

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2.5 The *BTA, Public Health Security and Bioterrorism Preparedness and Response Act*

The *BTA*, *Public Health Security and Bioterrorism Preparedness and Response Act* or just *Bioterrorism Act*, was approved on June 12, 2002.

The act includes a number of provisions designed "to improve the ability of the United States to prevent, prepare for and respond to bioterrorism and other public health emergencies". The *BTA* has inevitably impacted upon the export procedures to the USA. The improvement is enacted by the *FDA* in cooperation with the *CBP* in order to protect the food supply against terrorist acts and other threats.

The cornerstones of the *BTA*, concerning the food export, are:

1. The registration of facilities. The registration with the *FDA* (filled electronically on https://www.access.fda.gov/oaa/) acted by the foreign companies indicates only that those are in compliance with the *BTA*, but they are not necessarily in compliance with the *FDA* standards. The *FDA* reserves the right to inspect the commodity at the time of arrival at the *Port of Entry*.
2. The agent nomination. The foreign companies must designate a US agent or intermediary, named *customs broker*, specifically authorized by the owner or the buyer of the products through a special proxy, the so-called *power of attorney*. This entity will be the person in charge to keep the communications with the *FDA.*
3. The *Prior Notice*. It is mandatory to notify to the *FDA* the *Prior Notice* before the food products and alcoholic beverages enter the United States. Whenever the foreign company is ready to move the commodity to the USA, it must submit the *Prior Notice* to the *FDA* no more than five calendar days before the mentioned date of arrival.

2.5.1 The registration of facilities

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2.5.2 The agent nomination

After the firms' registration to the *FDA*, the foreign companies are obliged to name an agent representing the firm itself in the US market. It is not necessary that the agents are legal entities. An agent can be an individual, having a residence or business address in the United States, therefore, physically present in this country.

The agent or *customs broker*, being the vessel between the company and the *FDA*, take care of the relationship with the customs authorities and manages the files of the clearance procedures.

Whenever the procedure is followed by the *customs broker*, it is opportune to verify that the latter joins the *ABI*, *Automated Broker Interface*, an electronic system that allows the exchange of documents and information with customs authorities.

In the event that the procedures are not performed by a US agent, the competent customs office might require the payment of a sum in order to cover potential added tax payment consequent to the entry of the goods.

If the foreign company does not designate an agent and exports anyway to the USA, the *FDA* will not allow the goods to enter the country. Those goods will not be delivered to the importer or the recipient in the United States of America but will be held at the *Port of Entry*. Consequently, the costs associated with the storage are under the exporter's expenses.

2.5.3 The *Prior Notice*

Omitted

2.6 *Import Quotas*

The *Import Quota* represents a constraint on the amount of commodity imported.

Omitted

2.7*Import tariffs*

The import of goods to the USA is liable to the payment of an *Import Tariff*. The existence of a duty applicable to the specific product depends on its

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market class. Nevertheless, the majority of the goods imported to the USA are not subjected to any *Import Tariff*.

The commodity that do not require to be processed or reworked again in the USA and / or the commodity that will not be sold and will be re-exported within one year are exempted from the duty but under the Import Quotas.

There are four forms of *Import Tariffs* in the USA:

- *Ad valorem Tariffs*, calculated as a percentage of the value of the product.
- *Specific Tariffs*, computed on the physical quantity of the good being imported.
- *Mixed Tariffs*, expressed as either an *Ad valorem* or a *Specific* rate, depending on which generates the most revenue.
- *Compound Tariffs*, including both an *Ad valorem* or a *Specific* component.

The *Harmonized System*, is the classification code of the duties applicable to goods imported to the USA and shall assign a *Customs Code* to each product. The *HCDCS Customs Code* is a six-digit code and is universally used on international export documentation, useful to distinguish every kind of product.. The imposition of duties depends even on the specific country.

Hence, the *HCDCS* groups the duties into two columns:

1. The first column displays the duties applicable to the *MFN*, *Most Favoured Nations*, such as the European Union countries. Countries whose goods qualify for these rates are considered countries with which the USA has “Normal Trade Relations".
2. The second column displays the integral duty, known as the *statutory duty*, applicable to the countries with which the USA do not have good relationships. Currently, the only countries included in this column are Cuba and North Korea.

Here below are presented two samples of products largely exported to the USA, respectively “wine” and “pasta”, updated on June 12, 2018. It is clearly evident the rate gap between column 1 and column 2, especially as for the wine.

Heading/ Subheading	Stat. Suf-fix	Article Description	Unit of Quantity	Rates of Duty 1 General	Rates of Duty 1 Special	Rates of Duty 2
2204		Wine of fresh grapes, including fortified wines; grape must other than that of heading 2009:				
2204.10.00		Sparkling wine..........	....	19.8¢/liter 1/	Free (A*, AU, BH, CA, CL, CO, D, E, IL, KR, MA, MX, OM, P, PA, PE, SG) 8.8¢/liter (JO) 1/	$1.59/liter 1/

Heading/ Subheading	Stat. Suf-fix	Article Description	Unit of Quantity	Rates of Duty 1 General	Rates of Duty 1 Special	Rates of Duty 2
1902		Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni; couscous, whether or not prepared:				
		Uncooked pasta, not stuffed or otherwise prepared:				
1902.11		Containing eggs:				
1902.11.20		Exclusively pasta..........	....	Free		6.6¢/kg
		Product of a European Union (EU) country:				
	10	Subject to the Inward Processing Regime (IPR)..........	kg			

3. Specific industries

3.1 Winery and alcoholic products

Omitted

3.2 Carbonated soft drinks

Omitted

3.3 Canned foods

Omitted

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B) Nafta agreement and USA regulation for the export of manufactured goods

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