



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Washington, DC 20226

www.atf.gov

705030:DWM
5320

September 4, 2013

**REGISTERING AS A FOREIGN MANUFACTURER
PURSUANT TO 15 U.S.C. SECTION 376**

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has received correspondence from State Attorney Generals and legal counsel representing foreign manufacturers requesting ATF's position on whether or not Foreign Manufacturers must register with the Attorney General of the United States pursuant to the Prevent All Trafficking Act (PACT Act). The PACT Act provides, in pertinent part:

15 U.S.C. §375. Definition

- (9)(A) The term interstate commerce means commerce between a State and any place outside the State, commerce between a State and any Indian country in the State, or commerce between points in the same State but through any place outside the State or through any Indian country.
- (B) Into a State, Place, or Locality. A sale, shipment, or transfer of cigarettes or smokeless tobacco that is made in interstate commerce, as defined in this paragraph, shall be deemed to have been made into the State, place, or locality in which such cigarettes or smokeless tobacco are delivered.
- (10) The term person means an individual, corporation, company, association, firm, partnership, society, State government, local government, Indian tribal government, governmental organization of such a government, or joint stock company.

15 U.S.C. §376. Reports to State tobacco tax administrator

- (a) Contents: Any person who sells, transfers, or ships for profit cigarettes or smokeless tobacco in interstate commerce, whereby such cigarettes or smokeless tobacco are shipped into a State...taxing the sale or use of cigarettes or smokeless tobacco or who advertises or offers cigarettes or smokeless tobacco for such sale, transfer, or shipment shall-

- (1) first file with the...the tobacco tax administrators of the State and place into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the... name, address, and telephone number of an agent in the State authorized to accept service on behalf of the person;

If a foreign manufacturer is shipping tobacco product into the United States in interstate commerce or into a State or locality for the sole purpose of offering for sale, this action would fall within the scope of the PACT Act, 15 U.S.C. 376(a). States must verify that the foreign manufacturer is selling tobacco product in interstate commerce; the assumption the foreign manufacturer intends to sell tobacco product in the United States is insufficient to require registration under the PACT Act. When the foreign manufacturer distributes the tobacco to an importer of record and does not control the process of shipping the tobacco into the United States or into a particular State and that process is controlled by the actual importer, the foreign manufacturer is not offering tobacco product for sale even though it will be sold in the U.S.

The importer who receives the foreign manufactured tobacco product and offers it for sale, transfer, or shipping for profit must file with the Attorney General of the United States and with the tobacco tax administrators of the State and place into which such shipment is made. If the foreign manufacturer and importer are the same and intend to sell the product in interstate commerce, then that foreign manufacturer must register pursuant to the PACT Act.

ATF welcomes any foreign tobacco manufacturers willing to register pursuant to the PACT Act. However, after carefully reviewing the State Attorney General and legal representative concerns, we cannot cite any legal statute or sections within the PACT Act that addresses the registration of foreign manufacturers who are not sellers of cigarettes in interstate commerce being required to register.

Therefore, pursuant to 15 U.S.C. §376, any person who sells, transfers, or ships for profit cigarettes or smokeless tobacco in interstate commerce, whereby such cigarettes or smokeless tobacco are shipped into a Statute, locality, or Indian country of an Indian tribe, must register with the Attorney General of the United States. Foreign Manufacturers are not required to register pursuant to the PACT Act if they are: (1) shipping tobacco product through customs to a bonded warehouse; (2) not the importer or distributor; (3) not offering product for sale; or (4) not bringing product in interstate commerce for sale. If a foreign manufacturer is both the importer and distributor and offers tobacco for sale in interstate commerce, then pursuant to the PACT Act registration is required.