
Mandated Exclusive Territories for Beer Are Good Public Policy

Exclusive Territories Substantially Advance Important Public Benefits:

In the beer industry, exclusive territories serve many important public policy goals. They support state alcohol laws that create three-tier and tied-house laws by creating a transparent and accountable distribution system. They also greatly facilitate the collection of excise and other taxes. These laws also enhance tremendous consumer choice.

- Exclusive territories are the backbone of a transparent and accountable regulated distribution system. If there is a trade practice violation, a tied house violation, a label violation, or an advertising violation, the state alcohol regulator knows immediately who is responsible for the violation.
- Exclusive territories help further state tax collection.¹ For example, if a retailer is delinquent in the payment of taxes, many states prohibit distributors from selling beer to delinquent retailers until they are current with all taxes. If a distributor sells beer in contravention of this prohibition, the state revenue collector knows immediately which distributor is responsible because of exclusive territories. For this reason, tax collection in the beer industry is far higher than most. Without these controls, the level of resources necessary to achieve any given level of tax compliance would be substantially greater.²
- Exclusive territories ensure that product recalls for beer are both quick and effective. Beer distributors can account by SKU number for each package sold to retail. Jim Koch of Boston Beer Company complimented beer distributors and the system for exceeding best

¹ For example, Texas: <http://www.window.state.tx.us/taxinfo/alcohol/>

² <http://www.nbwa.org/industry-tech/kpmg-tax-study>

expectations.³ Heineken also has recently issued a recall which utilizes exclusive territory laws to account for the entire affected product.⁴

- Exclusive territories eliminate alcohol bootlegging and counterfeiting in the United States. However, issues of fake or non-taxed alcohol are exploding around the world.⁵
- Exclusive territories create orderly regulated markets allowing regulators to allocate regulatory responsibility to alcohol industry participants at every stage.
- In states with bottle bills, exclusive territories are critical to a properly functioning and funded bottle bill collection program.

Exclusive Territories Have Numerous Positive Economic Effects:

Nearly all brewers utilize exclusive territories in their agreements with distributors. Suppliers in many other industries do so as well, particularly in those involving perishable products or with those products that require downstream servicing such as stock rotation or product maintenance. For instance, beer distributors are required to monitor expiration code dates on beer, rotate older product to the front of retail shelves and replace overage product with new product (at their cost). No distributor would assume these costly obligations if the distributor was not confident that it sold the beer to the retail account in the first instance.

- Due to the support for an independent distributor tier, there is more variety in alcohol beverages (nearly 63,000 choices) than any other consumer good.⁶
- Exclusive territories protect product quality. Beer is a perishable product with an expiration date. Every distributor under their distribution agreement is required to monitor these dates in the retail account and replace overage product at the distributor's own cost. In Indiana, the small brewers pushed for the state's exclusive territory law because stale and expired

³ <http://www.youtube.com/watch?v=-V73IIHydtE>

⁴ <http://www.mbwwa.org/>

⁵ <http://www.havocscope.com/alcohol-smuggling/>

⁶ Nielsen data

craft beer were being sold and ,without exclusive territories, there was no accountability for product quality in distribution.

- Research has shown that when the effects of all groups - consumers, retailers, wholesalers, and brewers-are measured, state mandates of exclusive territories for beer distributors raise social welfare on net.⁷
- Consumers benefit from intra-brand competition as brewers and distributors engaging in strong efforts to build brands and market them to retailers within the regulated alcohol system. With economic efficiency and tremendous choice from numerous selections.
- Exclusive territories are legal and have been upheld by the United States Supreme Court in cases such as *Sylvania v. GTE*. 433 U.S. 36 (1977).
- Some have noted potentially cheaper beer prices in other territories as a reason to throw out the exclusive territory system, but the difference in pricing reflects the price of the supplier to the distributor. A state law mandating that all suppliers sell beer at the same price and terms to every wholesaler in the state addresses this concern.