
Report to Congress on Administration of Craft Beverage Modernization Act Refund Claims for Imported Alcohol



Department of the Treasury
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I. Executive Summary

The Craft Beverage Modernization Act (CBMA) provisions of the Tax Cuts and Jobs Act of 2017 reduced excise taxes on all beverage alcohol producers, large and small, foreign and domestic. In 2020, Congress made CBMA's tax cuts permanent.¹ It also transferred responsibility for administering certain CBMA provisions for imported alcohol from U.S. Customs and Border Protection (CBP) to the Treasury Department after December 31, 2022.² In addition, importers will no longer be eligible for the lower CBMA tax rates at the time of entry. Rather, importers will be required to pay the full tax rate at entry and submit refund claims to Treasury to receive the lower rates.³ As required by law, Treasury submits this report detailing its plans to implement and administer the refund program starting in 2023.⁴ Treasury also notes that alternative legislative approaches, such as an income tax credit for small producers, could target benefits to smaller entities while eliminating the revenue risks and administrative challenges and costs related to foreign producer assignments.

Treasury currently intends for its Alcohol and Tobacco Tax and Trade Bureau (TTB or Bureau) to administer the new CBMA import claims program. This is because of the Bureau's familiarity with the law and its current authority over alcohol importers. Treasury notes, however, that implementation and administration will present TTB with challenges and require additional resources to avoid adversely affecting its existing mission. And even with sufficient resources, Treasury cannot overcome the inherent revenue risk in this statutory framework that provides quarterly tax benefits through claims from importers that are based on annual foreign producer assignments.

To administer the CBMA import claims program, TTB plans to develop two separate modules in its planned online filing system, "MyTTB."⁵ First, foreign producers seeking to assign CBMA tax benefits

¹ See The Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Division EE of the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260)); Pub. L. No. 115-97, sections 13801- 13808 (CBMA provisions of the law commonly known as the Tax Cuts and Jobs Act); Pub. L. No. 116-94, section 144 (Further Consolidated Appropriations Act, 2020 extending and amending CBMA provisions).

² See Section 107(e) of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Pub. L. No. 116-260, Division EE) ("The Secretary of the Treasury (or the Secretary's delegate within the Department of the Treasury) shall implement and administer sections 5001(c)(4), 5041(c)(7), and 5051(a)(6) of the Internal Revenue Code of 1986, as added by this Act, in coordination with the United States Customs and Border Protection of the Department of Homeland Security."); *see also* Section 107(f) ("The Secretary of the Treasury (or the Secretary's delegate within the Department of the Treasury) shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations to require foreign producers to provide information necessary to enforce the volume limitations under sections 5001(c), 5041(c), and 5051(a) of such Code.").

³ See Section 107(a)-(c) of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Pub. L. No. 116-260, Division EE) (in lieu of tax benefits, requiring refunds "determined for periods not less frequently than quarterly").

⁴ See Section 107(g) of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Pub. L. No. 116-260, Division EE) ("Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury (or the Secretary's delegate within the Department of the Treasury) shall, in coordination with the United States Customs and Border Protection of the Department of Homeland Security, prepare, submit to Congress, and make publicly available a report detailing the plans for implementing and administering sections 5001(c)(4), 5041(c)(7), and 5051(a)(6) of such Code, as added by this Act."). 180 days after the December 27, 2020 date of enactment is June 25, 2021.

⁵ TTB is currently engaged in a multiyear initiative to develop and deploy "MyTTB," a single, online interface for all industry transactions with TTB, including permit, label, and formula applications, as well as tax filings, payments, and claims. When complete, MyTTB will provide both industry and TTB with online access to a consolidated view of an industry member's records, approvals, and filings. TTB plans to deploy incremental releases beginning this fiscal year, building towards a fully functional system. The time to complete MyTTB depends on funding.

for their products will provide information directly to TTB through an online registration module.⁶ Second, an import claims module will allow importers to submit refund claims to TTB for CBMA tax benefits. Together, these two modules will enable TTB to receive import claims electronically and validate claims automatically by reconciling claim data with data submitted to CBP at the time of importation, as well as against the required assignments provided by foreign producers in the foreign producer module. Electronic claim filings will also enable TTB to develop risk targeting tools to help it identify high-risk claims for audit and investigation. Treasury's ability to fully implement this approach is contingent on receiving sufficient resources. Treasury currently estimates annual resource requirements of \$12 million - \$18 million and 35 – 45 FTE once fully implemented.

II. Background

A. CBMA Provisions

Beginning in 2018, CBMA made quantity-limited tax benefits available to all producers of distilled spirits, wine, and beer, domestic⁷ and foreign. Domestic industry members take advantage of CBMA tax benefits when they pay tax to TTB. Foreign producers must allocate or assign the applicable tax benefits to U.S. importers, who then elect to take advantage of the lower tax rates under CBP procedures. Under CBMA:

- Each foreign “distilled spirits operation”⁸ receives up to a total of \$4,620,800 in tax benefits in the form of reduced tax rates assignable to U.S. importers and apportioned among the first 22,230,000 proof gallons of that operation's product imported into the United States in a calendar year, subject to controlled group limitations.⁹ These rates are, for each foreign producer, \$2.70 per proof gallon on the first 100,000 proof gallons imported, and \$13.34 per proof gallon on the next 22.13 million proof gallons imported into the United States.
- Each foreign wine producer receives up to a total of \$451,700 in tax benefits in the form of tax credits assignable to U.S. importers and apportioned among the first 750,000 wine gallons of that producer's production imported into the United States in a calendar year, subject to controlled group limitations.¹⁰ The credits are, for each foreign producer, \$1 per wine gallon on the first 30,000 wine gallons of wine imported, 90 cents on the next 100,000 wine gallons imported, and 53.5 cents on the next 620,000 wine gallons imported. The tax credits apply to all wine tax rates,

⁶ See 26 U.S.C. 6038E (new provision authorizing Treasury to require that foreign producers must provide to Treasury information related to foreign producers' assignment of CBMA tax benefits to U.S. importers (including information about a foreign producer's controlled group structure)).

⁷ For domestic distilled spirits, both distillers and certain processors are entitled to a reduced rate. See 26 U.S.C. 5001(c)(1); see also Section 109 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Pub. L. No. 116-260, Division EE) (adding minimum processing requirements beginning in 2022).

⁸ CBP defines this term to encompass a broader universe of foreign entities than will be entitled to a reduced rate domestically beginning in 2022. Compare CBP, “Craft Beverage Modernization Act (CBMA) FAQ'S,” available at <https://www.cbp.gov/trade/programs-administration/entry-summary/craft-beverage-modernization-tax-reform-act-2017/FAQs> (defining “Foreign Distilled Spirits Operation” to include foreign bottlers) with Section 109 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Pub. L. No. 116-260, Division EE) (adding minimum processing requirements beginning in 2022).

⁹ 26 U.S.C. 5001(c)(3).

¹⁰ 26 U.S.C. 5041(c)(6).

except that CBMA provides for adjusted credits for imported wine eligible for the hard cider tax rate (6.2 cents, 5.6 cents, and 3.3 cents, respectively).

- Each foreign brewer receives up to a total of \$12,000,000 in tax benefits in the form of a reduced tax rate of \$16 per barrel assignable to U.S. importers on the first 6,000,000 barrels produced by that brewer and imported into the United States in a calendar year, subject to controlled group limitations.¹¹

The tax rates for both domestic and imported products are shown below:¹²

| BEER – Reduced Tax Rates on Domestic Removals or Imports (2018 to Present) | | |
|---|--|--|
| | Barrels per Calendar Year | |
| | First 60,000 (Rate per Barrel) | Over 60,000 up to 2,000,000 (Rate per Barrel) |
| Beer produced and removed by a domestic brewer who produces 2,000,000 barrels or less per calendar year | \$3.50 | \$16.00 |
| Beer removed by: <ul style="list-style-type: none"> • A domestic brewer who produces over 2,000,000 barrels per calendar year and who produced the beer • An electing U.S. importer with a reduced rate appropriately assigned to them by a foreign brewer | First 6,000,000 (Rate per Barrel) | |
| | \$16.00 | |
| BEER – General Tax Rate on Domestic Removals or Imports | | |
| Beer removed by: <ul style="list-style-type: none"> • A domestic brewer who did not produce the beer • A U.S. importer who is not assigned a reduced rate by a foreign brewer • A brewer who exhausted its own reduced rate entitlement for the calendar year or an importer who has already taken advantage of assigned reduced rates | All Barrels (Rate per Barrel) | |
| | \$18.00 | |

¹¹ 26 U.S.C. 5051(a)(4).

¹² See TTB, “Tax Rates,” available at <https://www.ttb.gov/tax-audit/tax-and-fee-rates>.

| WINE – Tax Rates and Tax Credits on Domestic Removals or Imports (2018 to Present) | | | | |
|---|---------------------------------|---|---|--|
| Tax Class | Tax Rate per Wine Gallon | Tax Credits per Calendar Year (and Effective Tax Rates per Wine Gallon After Applicable Credits) | | |
| | | <ul style="list-style-type: none"> • Domestic wine producers are entitled to tax credits on wine they produce and may transfer their tax credits to other wineries or to bonded wine cellars that receive their wine in bond • Electing U.S. importers may take advantage of tax credits appropriately assigned to them by a foreign winery | | |
| | | First 30,000 Wine Gallons | Over 30,000 up to 130,000 Wine Gallons | Over 130,000 up to 750,000 Wine Gallons |
| Still Wine | | | | |
| 16% and under alcohol by volume (0.392g CO2/100mL or less) | \$1.07 | \$1 credit (\$0.07) | 90¢ credit (\$0.17) | 53.5¢ credit (\$0.535) |
| Over 16 - 21% alcohol by volume (0.392g CO2/100mL or less) | \$1.57 | \$1 credit (\$0.57) | 90¢ credit (\$0.67) | 53.5¢ credit (\$1.035) |
| Over 21 - 24% alcohol by volume (0.392g CO2/100mL or less) | \$3.15 | \$1 credit (\$2.15) | 90¢ credit (\$2.25) | 53.5¢ credit (\$2.615) |
| Mead No more than 0.64g CO2/100mL; derived solely from honey and water; containing no fruit product or fruit flavoring; and containing less than (not equal to) 8.5% alcohol by volume | \$1.07 | \$1 credit (\$0.07) | 90¢ credit (\$0.17) | 53.5¢ credit (\$0.535) |
| Low alcohol by volume wine No more than 0.64g CO2/100mL; derived primarily from grapes or from grape juice concentrate and water; containing no fruit product or fruit flavoring other than grape; and containing less than (not equal to) 8.5% alcohol by volume | \$1.07 | \$1 credit (\$0.07) | 90¢ credit (\$0.17) | 53.5¢ credit (\$0.535) |
| Artificially Carbonated Wine | | | | |
| Over 0.392g CO2/100mL - injected or otherwise added | \$3.30 | \$1 credit (\$2.30) | 90¢ credit (\$2.40) | 53.5¢ credit (\$2.765) |
| Sparkling Wine | | | | |
| Over 0.392g CO2/100mL - naturally occurring | \$3.40 | \$1 credit (\$2.40) | 90¢ credit (\$2.50) | 53.5¢ credit (\$2.865) |
| Hard Cider | | | | |
| No more than 0.64g CO2/100mL; derived primarily from apples/pears or apple/pear juice concentrate and water; containing no other fruit product or fruit flavoring other than apple/pear; and containing at least 0.5% and less than (not equal to) 8.5% alcohol by volume | \$0.226 | 6.2¢ credit (\$0.164) | 5.6¢ credit (\$0.17) | 3.3¢ credit (\$0.193) |

| DISTILLED SPIRITS – Reduced Tax Rates on Domestic Removals or Imports (2018 to Present) | | |
|--|--|--|
| <ul style="list-style-type: none"> Proprietors of domestic distilled spirits plants (DSPs) may take advantage of reduced rates when they remove limited quantities of distilled spirits that they distilled or processed (beginning in 2022, processors must meet minimum processing requirements) Electing U.S. importers may take advantage of reduced rates appropriately assigned to them by a foreign distilled spirits operation | Proof Gallons per Calendar Year | |
| | First 100,000 Proof Gallons (Rate per Proof Gallon) | Over 100,000 up to 22,230,000 Proof Gallons (Rate per Proof Gallon) |
| | \$2.70 | \$13.34 |
| DISTILLED SPIRITS – General Tax Rate on Domestic Removals or Imports | | |
| <ul style="list-style-type: none"> Applies to DSP proprietors who remove distilled spirits that they did not distill or process (or beginning in 2022, processed only by bottling) Applies to U.S. importers who are not assigned a reduced rate by a foreign distilled spirits operation Applies to DSP proprietors who exhaust their reduced rate entitlement for the calendar year and to importers who have already taken advantage of assigned reduced rates | All Proof Gallons (Rate per Proof Gallon) | |
| | \$13.50 | |

Beginning in 2023, Treasury becomes responsible for administering the CBMA import claims. In order for a claim to be valid, a foreign producer must have assigned its entitlement to CBMA reduced rates to specific U.S. importers. Importers will pay the full rate of excise tax on beer, wine, and distilled spirits to CBP upon entry into the United States, but may then file refund claims with Treasury to receive the CBMA tax benefits based on assignments from foreign producers.¹³ Under the new provisions, Treasury shall determine the amount of refund at least quarterly.¹⁴ Consistent with these provisions, TTB plans to set a quarterly refund period and allow each importer to file a single claim following each period. TTB also plans to allow importers to file claims less frequently within an annual period, if they choose to do so. TTB will calculate the amount of the refund for each period by taking the amount of tax paid to CBP for the importer’s removals from customs custody during the relevant period and subtracting the amount of tax that would have been imposed if the importer had been eligible for assigned tax benefits when the tax was paid. TTB will pay interest on refunds, as required.¹⁵

¹³ 26 U.S.C. 5001(c)(4); 5041(c)(7); and 5051(a)(6) (effective January 1, 2023).

¹⁴ 26 U.S.C. 5001(c)(4)(A)(ii); 5041(c)(7)(A)(ii); and 5051(a)(6)(A)(ii) (effective January 1, 2023) (providing that the amount determined is allowed as a refund to the importer in the same manner as if such amount were an overpayment of tax).

¹⁵ Interest is allowed at an established overpayment rate, which is applied to the excess tax amount determined under statute “for the number of days in the filing period for which the refund . . . is being determined.” 26 U.S.C. 5001(c)(4)(B)(ii); 5041(c)(7)(B)(ii); and 5051(a)(6)(B)(ii) (effective January 1, 2023). Interest is disallowed in the case of refunds made within 90 days. 26 U.S.C. 5001(c)(4)(D); 5041(c)(7)(D); and 5051(a)(6)(D) (“Rules For Refunds Within 90 Days”) (effective January 1, 2023). Thus, TTB will not pay interest if a refund is issued within 90 days after a claim is filed.

TTB will calculate the 90-day period and allowable interest starting with the date a claim for refund is filed with TTB rather than the date of taxpayment to CBP because no overpayment exists at entry as importers are not eligible for the tax benefits at the time of entry. In addition, until the importer submits a claim at the end of the filing period, no “amount determined” exists to be treated as an overpayment. Absent an importer’s claim, Treasury would not know how much tax would have been imposed at entry if the importer had been eligible for the tax benefits at the time of entry. As a result, interest will be

B. Current CBP Import Process

CBP collects alcohol excise taxes from importers and currently administers the CBMA reduced rates. At present, importers may either: 1) take advantage of any assigned CBMA tax benefit when paying tax to CBP on each entry, or 2) pay the full tax rate to CBP and make a post-entry claim for a refund. In either case, importers with foreign producer assignments must have and maintain a CBMA spreadsheet, controlled group spreadsheet, and assignment certification demonstrating their eligibility for the CBMA tax benefits. CBP requires that importers submit this documentation upon request when claiming CBMA tax benefits upon entry or when claiming a refund via a post-summary correction. Importers must also submit this documentation as part of the customs protest filing when seeking a refund through protest.¹⁶ These documents include the following data:

Data elements from CBP CBMA Spreadsheet¹⁷

| |
|--|
| Entry Number |
| Entry Line Number |
| IOR Number |
| Protest Number (if applicable) |
| Alcohol Type |
| CBMA Tax Rate or Credit Assigned and Requested by Line |
| Quantity Claimed for CBMA Tax Rate or Credit by Line |
| Estimated Excise Tax Paid by Line for Quantity Claimed |
| Excise Tax Claimed to be Owed by Line for Quantity Claimed |
| Refund |
| Total Annual Assignment Received from Assigning Entity to Date |
| Total Annual Assignment Taken to Date |
| Total Annual Assignment Remaining to Date |
| FDA Manufacturer Name |
| Controlled Group Name |
| Assigning Entity Name |
| Assigning Entity Address Line 1 |
| Assigning Entity Address Line 2 |
| Assigning Entity City |
| Assigning Entity State/Province |
| Assigning Entity Postal Code |
| Assigning Entity Country |
| Assigning Entity Contact Person |
| Assigning Entity Phone Number |
| Assigning Entity Email |
| Date of Submission for Controlled Group Spreadsheet |
| Date of Submission for Assignment Certification |

applied to the lump-sum amount determined for each filing period rather than to varying amounts paid with individual entries.

¹⁶ See, e.g., CBP, “CSMS #45315560 - Craft Beverage Modernization Act (CBMA) – Procedures and Requirements 2021,” available at https://content.govdelivery.com/bulletins/gd/USDHSCBP-2b375e8?wgt_ref=USDHSCBP_WIDGET_2.

¹⁷ See CBP, “CBMA Spreadsheet,” available at <https://www.cbp.gov/document/template/cbma-spreadsheet>.

Data elements from CBP CBMA Controlled Group Spreadsheet¹⁸

| |
|---|
| IOR Number |
| Controlled Group Name |
| Controlled Group Member Name |
| Controlled Group Member Address Line 1 |
| Controlled Group Member Address Line 2 |
| Controlled Group Member City |
| Controlled Group Member State/Province |
| Controlled Group Member Postal Code |
| Controlled Group Member Country |
| Controlled Group Member Phone |
| Number Controlled Group Member Email |
| Foreign or Domestic Controlled Group Member |
| Annual Production Beer (Barrels) |
| Annual Production Wine and Cider (Gallons) |
| Annual Production Spirits (Proof Gallons) |

Data elements from CBP CBMA Assignment Certification¹⁹

| |
|---|
| I (PRINTED NAME AND TITLE), currently employed by (ASSIGNING ENTITY NAME AND ADDRESS) and authorized to bind the company, certify that (ASSIGNING ENTITY) is the producer/manufacturer of the imported (BEER/WINE/CIDER/DISTILLED SPIRITS) that is subject to a Craft Beverage Modernization and Tax Reform Act (CBMA) claim. |
| I certify that I assigned (IMPORTER NAME) to receive the (X REDUCED TAX RATE/CREDIT) for (X NUMBER OF BARRELS/WINE GALLONS/PROOF GALLONS) for (X CALENDAR YEAR). |
| I certify that this assignment and any other assignment given by (ASSIGNING ENTITY) during this calendar year does not exceed the production of (ASSIGNING ENTITY) during (X CALENDAR YEAR). |
| I certify that (ASSIGNING ENTITY) has not assigned more (BARRELS/WINE GALLONS/PROOF GALLONS) to this importer or any other importer, individually or collectively, to receive a reduced tax rate/tax credit than is permissible by the CBMA. |
| I certify that the information contained in this submission is accurate and complete to the best of my knowledge and belief. |
| I am aware that the information contained in this submission may be subject to verification. |
| I am aware that eligibility of the (ASSIGNING ENTITY) and (IMPORTER) for the reduced tax rate/tax credit under the CBMA can be revoked in the case of any erroneous or fraudulent information provided which is deemed to be material to qualifying for the reduced rate. |
| Signature |
| Date |

¹⁸ See CBP, “CBMA Controlled Group Spreadsheet,” available at <https://www.cbp.gov/document/template/cbma-controlled-group-spreadsheet>.

¹⁹ See CBP, “CBMA Assignment Certification,” available at <https://www.cbp.gov/trade/basic-import-export/craft-beverage-modernization-tax-reform-act-2017/certification>.

In addition to these requirements, in April 2021, CBP began requiring the following data elements in the Automated Commercial Environment (ACE) from importers who elect to take CBMA tax benefits:

Data elements collected by CBP in ACE²⁰

| | |
|---------------------------------|---|
| Controlled Group Name | The name that will be used for purposes of CBMA to identify the controlled group (e.g., parent company name). |
| Foreign Producer Identifier | Identifying code for the foreign producer/assigning entity named as foreign producer. |
| Foreign Producer Name | Name of the foreign producer/assigning entity as it appears on the assignment certification or the Food and Drug Administration (FDA) Manufacturer Name as specified on the FDA Message Set. |
| Allocation Quantity | The total annual assignment to the importer by the foreign producer/assigning entity for the alcohol type and rate, in barrels (for beer), gallons (for wine or cider), or proof gallons (for spirits). |
| Flavor Content Credit Indicator | An indication that the importer used an eligible flavor content credit rate when determining the actual effective tax rate and the overall amount (only applicable when the imported article is spirits). |
| CBMA Rate Designation Code | An ACE code that specifies a TTB product/tranche/rate. |
| TTB Tax Rate | The TTB Tax Rate in U.S. Dollars. This data element is used as confirmation of the TTB product/tranche/rate selected. |

Treasury understands that administering the CBMA import provisions has required a substantial investment of resources from CBP, with a significant amount of Headquarters FTE dedicated to implementing CBMA in 2018-2019. CBP presently has approximately 55 FTE reviewing CBMA claims.

C. Administration and Enforcement Challenges

CBMA created administrative challenges, opportunities to avoid tax, and potential for tax evasion with respect to both domestic and imported products. Because CBMA provides substantial tax benefits to each producer for certain quantities of each commodity, it creates incentives for producers to structure their businesses to reduce tax liability by dividing production across affiliated entities or through contractual arrangements with other producers. Either approach can increase the quantity of removals eligible for the lower CBMA tax rates. The CBMA controlled group and “single taxpayer”²¹ provisions

²⁰ See CBP, “Trade Information Notice - Craft Beverage Modernization Act,” available at https://www.cbp.gov/sites/default/files/assets/documents/2021-Mar/Trade_Information_Notice_Craft_Beverage_Modernization_Act_1.pdf; see also CBP, “CSMS #46807598 - PROCEDURES: CBMA Claim submission in ACE through ABI,” available at https://content.govdelivery.com/bulletins/gd/USDHSCBP-2ca3a2e?wgt_ref=USDHSCBP_WIDGET_2 (formula for “Foreign Producer Identifier”).

²¹ The “single taxpayer” rules at 26 U.S.C. 5051(a)(5)(C) (beer) and 5001(c)(2)(D) (distilled spirits) state, “Pursuant to rules issued by the Secretary, two or more entities (whether or not under common control) that produce [beer or produce or process distilled spirits] under a license, franchise, or other arrangement shall be treated as a single taxpayer for purposes of the

are intended to prevent industry members from exceeding the CBMA quantity limitations in this manner. Those provisions treat producers connected either by common ownership or certain contractual arrangements as a single producer. But the lack of reliable information on corporate affiliations and contractual arrangements makes it difficult to ascertain whether producers have exceeded their allotments to the claimed rates.

Administering CBMA tax benefits in the import context poses heightened challenges. The tax benefits are assigned to foreign entities over whom the U.S. government has no regulatory or enforcement authority.²² TTB estimates that as many as 19,000 foreign producers assigned CBMA tax benefits to importers in 2020.²³

Although foreign entities' assignable benefits are subject to quantity limitations by commodity, it is difficult to associate each foreign producer's assignments to specific customs entries and aggregate those entries across multiple importers and entries to prevent over-assignments and to identify excess claims. Further, the U.S. government does not have access to foreign alcohol producers' ownership data. This would be necessary to enforce controlled group limitations effectively. Any information obtained from foreign producers would be difficult to verify. In addition, even if Treasury had visibility into foreign corporate structures, the CBMA "single taxpayer" provisions (which treat parties in certain contractual arrangements as single producers) only apply to domestic producers, creating an advantage for foreign producers over domestic producers.

CBP has highlighted significant concerns with CBMA in ongoing communications to Congress and the trade community. In addition to citing difficulties administering the statute and low compliance rates among potential claimants (well over half of CBMA claims have been found incomplete or ineligible), CBP has noted that the law provides tax benefits to foreign entities with which there is little U.S. government jurisdiction, knowledge, or substantive engagement. Additionally, CBP has confirmed that the law sets limits on the tax benefits attached to controlled groups, which comprise foreign and domestic producers of which the agency had little oversight.

Specific challenges include:

1. Enforcing CBMA controlled group rules when a foreign producer is in a controlled group with other foreign producers. In this scenario, the foreign controlled group is subject to an overall cap on the tax benefits that it can assign to U.S. importers. Treasury continues to explore third-party sources of foreign company data that can be used to verify data collected from importers at entry and on self-reported data collected under the new 26 U.S.C. 6038E.

application of this subsection." *See also* 26 U.S.C. 5041(c)(3) (applying the rules to wine). The single taxpayer rules do not apply to foreign producers, who are not taxpayers.

²² CBMA envisions that Treasury would establish "procedures that allow for revocation of eligibility of the [foreign producer] and the importer for the reduced tax rate [or tax credits] . . . in the case of any erroneous or fraudulent information provided . . . which the Secretary deems to be material to qualifying for such reduced rate." *See* 26 U.S.C. 5051(a)(4)(B)(iv) (beer); 5041(c)(6)(B)(iv) (wine); 5001(c)(3)(B)(iv) (distilled spirits).

²³ In ACE, there are 1,400 foreign breweries, 16,600 foreign wineries, and 2,500 foreign distillers with foreign manufacturer IDs that assigned CBMA benefits to importers, including duplicate counts for foreign entities that may have produced more than one type of alcohol. The number of foreign producers who assigned CBMA benefits to importers is less than half of the total number of foreign producers who have foreign manufacturer IDs. Over 44,000 foreign producers have foreign manufacturer IDs, including approximately 3,200 brewers, 38,500 wineries, and 7,700 distillers.

2. Enforcing CBMA controlled group rules when a foreign producer is in a controlled group with a domestic producer. In a foreign-domestic controlled group scenario, a domestic producer's prior domestic removals would limit a related foreign producer's ability to assign tax benefits to U.S. importers (or vice versa). Enforcement against over-claimed tax benefits requires identifying these foreign-domestic controlled groups and reconciling TTB domestic tax collections with the CBMA importer refunds on a rolling basis.
3. Tracking and reconciling assignments made to multiple importers. Because foreign producers may assign tax benefits to many importers, ensuring that importers do not over-claim tax benefits requires aggregating claims made by all importers for each foreign producer.
4. Tracking assignments made to a single importer by multiple foreign producers. CBMA statutory provisions deeming the electing importer to be in a controlled group with the foreign producer²⁴ do not restrict an importer from being assigned tax benefits by multiple foreign producers. Preventing importers from over-claiming tax benefits is complicated because individual importers are not subject to any overall cap on the tax benefits that may be assigned by multiple foreign producers.
5. A statutory loophole facilitates tax avoidance and underpayment. Foreign products could obtain a tax advantage over domestic products because multiple unrelated foreign producers may produce under contractual arrangements with each other and each of those producers could legally assign the full quantity of allowable CBMA tax benefits to U.S. importers. In the domestic context, single taxpayer rules serve to limit such contract producers to a single quantity allocation. Alternatively, foreign entities could abet importer underpayment of taxes by providing false information. Treasury could not easily identify false registration and assignment information because Treasury has no oversight of foreign operations other than the statutory provision allowing Treasury to require information from the foreign producer about CBMA tax benefit assignments and controlled group information.
6. Importers are eligible for CBMA tax benefits based on annual allocations from foreign producers but may file claims for refund quarterly. Because these benefits may be spread across multiple importers and controlled group members over a year, it may not be possible to identify a potential over-allocation before paying quarterly refund claims.

D. Impact of CBMA Provisions to Date

If the pre-CBMA rates had continued to be in effect from 2018 through 2020, Treasury estimates that domestic revenue collections would have been \$1.3 billion higher over these three years. Overall, Federal excise tax collections for domestic alcohol have remained relatively constant at roughly \$8.2 billion since 2017, the year prior to CBMA enactment, through to 2020. Over this same time period, however, the volume of domestic taxable removals for wine and distilled spirits have increased on average by 4.2 percent and 6.4 percent, respectively, while the volume of beer removals have decreased by 2 percent, as compared to 2017 removals.

CBMA limited the quantity of removals eligible for tax benefits. Ostensibly, this was to target the benefits to "craft" production, but the tax break primarily has benefited large producers. The table

²⁴ See 26 U.S.C. 5051(a)(4)(C) (beer); 5041(c)(6)(C) (wine); 5001(c)(3)(C)(i) (distilled spirits).

below illustrates this with data for domestic removals in 2018. The vast majority of domestic industry members do not remove enough taxpaid alcohol to receive the maximum CBMA tax benefit for a particular commodity. For domestic distilled spirits and beer, less than a third of the CBMA benefits taken that year (i.e., the difference between what would have been paid at the full tax rate compared to what was paid with CBMA tax benefits) went to businesses with production levels below the threshold to receive the lowest CBMA rate for all of their removals. This disparity is even starker for wine, with less than seven percent of all CBMA wine benefits received by wineries with production levels below 150,000 wine gallons, the maximum number of gallons for which a winery could have taken the largest wine tax credit prior to CBMA. This disparity is expected to further increase as larger industry members react to the newly permanent provisions by changing their business models to avoid paying the full tax rate.

| Size of Firm by Amount of Production | Number of Firms | Percentage of Total Firms | Removal Quantity for These Firms* | Tax Benefit Share |
|--------------------------------------|-----------------|---------------------------|-----------------------------------|-------------------|
| Distilled Spirits | | | | |
| <100k Proof Gallons | 1,455 | 94.2% | 6,193,002 | 33.0% |
| 100k-22.23m Proof Gallons | 85 | 5.5% | 335,200,730 | 57.6% |
| >22.23m Proof Gallons | 4 | 0.3% | 150,325,439 | 9.2% |
| Beer | | | | |
| <60k Barrels | 4,928 | 98.6% | 9,658,609 | 30.7% |
| 60k-2m Barrels | 63 | 4.1% | 14,677,362 | 31.8% |
| >2m Barrels | 5 | 0.3% | 141,753,242 | 37.5% |
| Wine | | | | |
| <150k Wine Gallons | 5,247 | 95.8% | 51,524,029 | 6.9% |
| 150k-250k Wine Gallons | 71 | 4.6% | 13,910,242 | 10.6% |
| >250k Wine Gallons | 161 | 10.4% | 673,808,345 | 82.5% |

*Data reflects domestic removals in 2018

With regard to imports, as a percentage of revenue collections, the percent of revenue collected for domestic products as compared to imports has generally remained the same since 2017, the year prior to the CBMA provisions taking effect, at approximately 75 percent and 25 percent, respectively. Overall, revenue collections for imports totaled \$2.76 billion in 2020.

III. Treasury Plan to Administer CBMA Import Claims

At this point, Treasury intends for TTB to administer importers' CBMA tax refund claims. TTB has knowledge of the alcohol beverage industry, experience with the CBMA provisions, and existing jurisdiction over alcohol importers. TTB also currently has routine access to customs entry data for imported distilled spirits, wine, and beer in the ACE International Trade Data System through a Memorandum of Understanding with CBP. TTB plans to use this access to help validate CBMA import claims. TTB anticipates that this program will substantially increase its workload, estimating that importers will submit 6,000-7,000 complex claims per year for \$225 million to \$250 million in

refunds.²⁵ These refund claims would nearly double the volume of claims TTB otherwise processes each year.²⁶

TTB plans to administer this program by developing two new modules within its planned MyTTB system: 1) a foreign producer registration module, through which foreign producers would receive a registration number and submit information relating to their corporate affiliations and their assignment of CBMA tax benefits to importers, and 2) a CBMA import claims module, through which TTB would require importers to file claims electronically. As described more fully below, these modules will help TTB manage the increased claims workload by enabling the Bureau to employ automated validations and risk assessment tools. TTB also plans to expand its importer oversight and enforcement program to monitor claims and help prevent refunds to ineligible importers.

Contingent on funding, TTB could implement these modules in early 2023, including the online registration of foreign producers and submission of CBMA import claims via MyTTB. Within an additional year, TTB plans to implement additional automated validations and more complex risk analysis tools.

CBMA Registration Module for Foreign Producers. TTB plans to develop a new foreign producer registration module in MyTTB to collect information directly from foreign producers. TTB would require foreign producers to register with TTB to assign any CBMA benefits to an importer. As part of this process, TTB would also assign a TTB registration number to each foreign producer. Foreign producers would then be required to submit their CBMA assignments to importer(s) as well as their controlled group information through the module.

Assignment information collected directly from the foreign producer would be used to authorize refund claims submitted by the electing importers. While Treasury has statutory authority to revoke foreign producers' and importers' eligibility for tax benefits when "erroneous or fraudulent information" is provided,²⁷ Treasury's lack of jurisdiction over foreign producers would make it difficult to verify that foreign producers submit correct information and to prevent registrations by ineligible entities.

CBMA Tax Refund Claims Module for Importers. TTB plans to develop a new CBMA import claims module in MyTTB to allow importers to submit refund claims to TTB electronically, which would require claimants to provide the foreign producer's TTB registration number. Through this module, the foreign producer registration module, and in conjunction with data that TTB receives from CBP,²⁸ TTB would collect data similar to the data CBP currently relies on to substantiate importers' claims. The module would include data quality controls and validations based on importer information already on file with TTB to reduce data entry errors and to reject incomplete claims that delay processing. Further, to improve TTB's ability to auto-validate claims, TTB would require that importers

²⁵ Estimated claims and refunds are based on TTB's analysis of 2020 CBP data. TTB assumes that at least a similar number of importers that claimed the CBMA reduced tax rates in 2020 will file refund claims in 2023.

²⁶ TTB received an average of 4,907 claims per year in fiscal years 2011 through 2020.

²⁷ See 26 U.S.C. 5051(a)(4)(B)(iv) (beer); 5041(c)(6)(B)(iv) (wine); 5001(c)(3)(B)(iv) (distilled spirits).

²⁸ TTB understands that CBP intends to continue its current CBMA information collections in ACE from importers who are assigned tax benefits from foreign entities; TTB plans to rely on that data for claims processing and validation.

submit TTB import data, such as permit information, electronically at the time of importation.²⁹ TTB will need to engage in rulemaking for these new electronic filing requirements and obtain OMB approval of TTB's information collection.

TTB also plans to require importers to maintain documentation substantiating their foreign producer assignments, similar to the documents that CBP currently requires importers to maintain (see Section II.B above). Although importers would not be required to upload these documents into MyTTB as part of a claim, TTB may require that importers submit this documentation to support TTB's review and analysis of pending claims, as needed. TTB also will request these documents and rely on them during subsequent field audits and investigations, as described below. Importers are responsible for the validity of their claims and may incur additional liability if they submit claims based on fraudulent or inaccurate information.³⁰ TTB plans to deploy the CBMA import claims module by January 2023, but TTB will need another year to fully implement the planned auto-validation and risk targeting tools. This will likely slow the processing of CBMA importer claims in 2023 as compared to later years.

In addition, the controls that TTB will need to put into place to reduce improper payments of refund claims may delay the approval of claims and increase burden on importers, particularly compared to the current framework that allows importers to receive CBMA benefits at the time of entry. Although the planned approach enables TTB to build automated tools that can validate refund claims by verifying the claim data against CBP and other TTB data, minimizing the time and staff needed to process those claims, the effectiveness of the tools depends on importers submitting complete and accurate information to TTB and CBP. If the tools cannot verify claim information with other CBP and TTB data, TTB will either deny the claim or review the claim manually. TTB anticipates substantial delays for claims that require manual review, and TTB will reject CBMA refund claims from importers if the foreign manufacturer has not registered with TTB.

CBMA Importer Oversight and Enforcement. TTB plans to expand its importer oversight and enforcement program to monitor claims and prevent refunds where the importer is not eligible. TTB currently audits domestic alcohol producers and importers for CBMA compliance. These can be complex audits, involving multiple permits and permittees, domestic and foreign producers who are members of a controlled group, and multiple importers taking advantage of CBMA tax benefits from the same foreign producer. Because alcohol importers are currently eligible for the CBMA tax benefits at the time of entry, TTB has focused its risk analysis and related audits on assisting CBP and identifying importers that improperly took advantage of the CBMA tax benefits at time of entry. To date, TTB has conducted 121 audits of domestic alcohol producers and importers that identified over \$22 million in additional CBMA-related tax liabilities. Beginning in January 2023, TTB will expand its oversight and enforcement to include CBMA refund claims filed with TTB. TTB will use risk criteria to identify high-risk and potentially fraudulent claims that warrant further review prior to approving the claims. In addition, TTB will incorporate additional risk criteria and data analyses throughout the year to identify revenue risks associated with approved claims that warrant further TTB review.

²⁹ TTB's current regulations do not specifically require that importers file TTB-required import data electronically, but rather require importers to file data such as the TTB permit number and Certificate of Label Approval number electronically in ACE if filing TTB data electronically. *See, e.g.*, 27 CFR 27.48.

³⁰ *See, e.g.*, 19 U.S.C. 1592 (penalties for fraud, gross negligence, and negligence); 26 U.S.C. 7207 (criminal penalties for fraudulent returns, statements, or other documents).

IV. Additional Requirements Related to Treasury Administration of Importer Refunds

There are several additional critical issues that will need to be addressed to implement the above approach and help mitigate the revenue risk associated with CBMA claims as well as the risk that administering CBMA import claims poses to other TTB programs.

Interagency Data Sharing and Enforcement. CBP and TTB will need to develop a real-time, reliable data-sharing framework to protect the revenue. For example, CBP will need to know how much tax was paid to CBP and not refunded by TTB when processing substitution drawback claims based on the export of similar domestic goods. Similarly, TTB and CBP will need to develop procedures to identify and address scenarios where an importer may be attempting to concurrently file claims on the same entries with both TTB and CBP. TTB also plans to partner with CBP to improve the quality and reliability of data that TTB currently receives from CBP. This will be necessary for TTB to be able to implement any of the auto-validation capabilities described in the above section.

Extending Time of Liquidation. Because of the potential for ambiguity with regard to the finality of customs liquidation, and the potential for the finality of liquidation to prevent TTB from refunding Federal excise tax to importers once an entry has been liquidated by CBP at the full tax rate, importers may need to request per 19 CFR 159.12, extension of time for liquidation of entries on which CBMA benefits will be claimed pending TTB's processing and payment of importer refund claims.³¹ To do so, importers would need to continue to "elect" to take advantage of assigned CBMA tax benefits at the time of importation, as importers who do not make this election at the time of entry would risk having their entries liquidated by CBP at the full tax rate. If refunds are foreclosed following liquidation, TTB will need to verify the liquidation status of entries that are subject to importer refund claims prior to issuing refunds, delaying TTB's processing of these claims.

Importer Bonds. Given that CBMA benefits are based on an annual allocation from a foreign producer, and because these benefits may be spread across multiple importers and controlled group members, TTB may not have the ability to aggregate the relevant data across these entities to identify a potential over-allocation until after the end of the calendar year. At that point, quarterly claims have already been paid. As a result, to help TTB recover amounts paid on invalid claims, Treasury plans either to require that importers filing CBMA refund claims have a separate bond covering the amount of liability that could be over-claimed by importers³² or to establish through rulemaking that the obligors

³¹ When requiring that, beginning in 2023, importers must pay the full tax rate to CBP at entry and claim a refund from Treasury, Congress did not specify whether CBMA refund claims must be paid to importers prior to CBP's liquidation of the customs entry at the full tax rate. Currently, TTB pays importer refund claims under circumstances set forth in CBP regulations at 19 CFR 24.36(e) based on the 3-year statute of limitations for refunds under the Internal Revenue Code (IRC), *see* 26 U.S.C. 6511(a), without regard to whether CBP has liquidated the entry. Liquidation is CBP's "final computation or ascertainment of duties on entries for consumption," 19 CFR 159.1, which typically occurs 314 days after entry. The "duties" that are liquidated include "any internal revenue taxes which attach upon importation," *see* 19 CFR 101.1, such as the Federal excise tax imposed on imported distilled spirits, wine, and beer under IRC chapter 51.

The Tariff Act provides that entries of imported goods, as liquidated by CBP, are final with respect to "all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury." 19 U.S.C. 1514(a)(3). While there is an exclusion to this finality doctrine with respect to the assessment and collection of Federal excise tax on alcohol (*see* reference to 26 U.S.C. 6501 at 19 U.S.C. 1514(a)), this exclusion "only affects the statute of limitations regarding tax collection," *see Shah Bros., Inc. v. United States*, 770 F.Supp.2d 1367, 1370 (Ct. Int'l Trade 2011). As such, 19 U.S.C. 1514(a)(3) could prevent the issuance of CBMA refunds – or payment of any tax refund to importers – by TTB following liquidation of the entry by CBP.

³² Under the Tariff Act, the Secretary of the Treasury has broad authority to require bonds "deem[ed] necessary for the protection of the revenue." 19 U.S.C. 1623(a).

on importers' existing customs bonds (both principal and surety) are liable under 19 CFR 113.62(a)(1)(ii) for any over-claims.

Implementation Resources. TTB will need additional resources to implement a CBMA import claims program without significantly adversely affecting other TTB programs. Treasury currently estimates annual resource requirements of \$12 million - \$18 million and 35 – 45 FTE once fully implemented. Treasury is exploring various funding options, including offsets or similar funding mechanisms, to support this program. If TTB is required to divert current resources to implement the CBMA importer refund program, Treasury anticipates that performance will substantially decline across the Bureau's other programs and any other system development efforts will cease.

V. Conclusion

Treasury plans to administer the CBMA import provisions as efficiently and effectively as possible. It plans to use online systems, risk analysis tools, internal and external data sets, and interagency partnerships to provide as efficient an approach as possible for importers to submit the required information for a refund claim. Despite these measures, the net burden on importers will likely increase in 2023, when importers can no longer receive CBMA benefits at the time of entry. This is due to the controls and other requirements that TTB will need to implement to prevent and detect improper refund claims, due in part to the opportunities for malfeasance in a situation where one agency collects tax and another refunds it.

Further, even with the embedded controls and validation tools described above, the inherent revenue risk associated with a statutory framework that provides tax benefits through quarterly claims from importers that are based on annual foreign producer assignments remains. Treasury also expects that large companies will continue to receive the vast majority of CBMA benefits, particularly for imports, where multinational corporations are more likely to be able to restructure operations and production arrangements to legally expand their CBMA benefits, including by shifting domestic production to overseas contractual production arrangements. An alternative and simpler approach that could focus benefits to smaller entities while eliminating the revenue risks and challenges related to foreign producer assignments would be an income tax credit for small producers. This approach could also be fully compliant with international trade obligations.

Treasury is available to respond to any questions relating to its plan to administer the CBMA import provisions as well as provide technical advice regarding alternative legislative approaches to providing benefits to alcohol producers without the risks to the revenue, administrative complexity, and other concerns that CBMA presents.