DISTILLED
SPIRITS
COUNCIL

October 25, 2017

Mr. Edward Gresser
Chair, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

RE: USTR-2017-0013: Comments Regarding Foreign Trade Barriers to U.S. Exports – Submission by the Distilled Spirits Council of the United States, Inc. (82 *Fed. Reg.* 36069 (August 2, 2017))

Dear Mr. Gresser:

On behalf of the Distilled Spirits Council, I am pleased to submit a compilation of the major trade barriers confronting the U.S. distilled spirits sector. The Distilled Spirits Council is the national trade association representing the leading producers, marketers and exporters of distilled spirits in the United States. Our member companies export to more than 130 countries worldwide, with total U.S. exports in 2016 valued at almost $1.4 billion (FAS value).

Our submission responds to USTR's request for public comments and reflects the range of trade barriers to U.S. spirits exports, including with regard to import policies, market access barriers, technical barriers, and sanitary and phytosanitary and standards-related measures.

We very much appreciate the opportunity to provide these comments and will be pleased to supplement them in the future as the issues evolve.

Sincerely,

Christine LoCascio

Christine LoCascio
Senior Vice President
International Issues and Trade

Attachment

FOREIGN TRADE BARRIERS

TO

U.S. DISTILLED SPIRITS EXPORTS

Distilled Spirits Council
October 2017

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I. INTRODUCTION

Overview

Distilled spirits are processed agricultural products that fall within the scope of Chapter 22 of the Harmonized Tariff Schedule of the United States, the WTO Agreement on Agriculture, and the agriculture chapters of the free trade agreements the United States has negotiated with a number of key trading partners. The Distilled Spirits Council and its member companies have a strong and long-standing interest in agricultural trade, from a commercial perspective and from a policy perspective.

International trade has become increasingly important to the U.S. distilled spirits sector, and is instrumental to its long-term viability. In 2016, U.S. distilled spirits exports totaled $1.4 billion, making it the tenth consecutive year where exports surpassed the $1 billion mark. In volume terms, total U.S. spirits exports increased by 6.7 percent as compared with 2015. Comprising almost 68 percent of total U.S. spirits exports, whiskey continues to be the key growth driver of U.S. shipments. In 2016, the value of U.S. exports of whiskey totaled $974 million, which was a slight decrease from 2015 levels. This appears to be attributable in large part to the rising value of the dollar. However, in volume terms, American Whiskeys increased by 9.5 percent in 2016 relative to the previous year. Through August 2017, the value of U.S. distilled spirits exports has rebounded, increasing by 11.6 percent as compared with the same period in 2016 to just over $1 billion.

The Distilled Spirits Council and its members have strongly supported multilateral, regional, and bilateral agreements, as these are vital to opening new markets, and keeping them open, for U.S. spirits exports. Exports to our trading partners which have agreed, either through multilateral, regional, or bilateral trade agreements, to eliminate tariffs on U.S. spirits reached $1.2 billion in 2016, accounting for 86 percent of global U.S. spirits exports.

Specifically, the Distilled Spirits Council is a strong supporter of the World Trade Organization (WTO) and its ongoing efforts to further liberalize global trade and strengthen the rules-based multilateral trading system. Unquestionably, the package of agreements concluded in the Uruguay Round, which led to the establishment of the WTO in 1994, has significantly benefitted the U.S. distilled spirits sector. In particular, since the Uruguay Round agreements entered into force in 1995, global U.S. distilled spirits exports have increased nearly 256 percent through 2016.

The Distilled Spirits Council equally supports efforts by the U.S. government to secure the most rapid trade liberalization and enhanced rules through comprehensive bilateral and regional free trade agreements. Such comprehensive agreements have played a critical role in opening foreign markets and increasing U.S. distilled spirits exports. The export data clearly indicates that bilateral and regional trade agreements have contributed to the significant growth in U.S. distilled spirits exports. In 2016, U.S. distilled spirits exports to bilateral and regional free trade agreement partners totaled $448 million, accounting for nearly 1/3 of global U.S. spirits exports. In fact, between 2000 and 2016 exports to bilateral and regional trade agreement partners have grown at a faster rate (270 percent increase) than U.S. distilled spirits exports to non-FTA partners (172 percent increase). Certainly, trade agreements and the rules-based trading system have ushered in more opportunities for U.S. spirits exporters to access new markets by reducing or eliminating import tariffs and establishing rules for transparency, non-discrimination and equal access. However, several priority target markets maintain high tariffs and/or an array of non-tariff barriers to U.S. spirits, which inhibit the sector's long-term growth prospects. These barriers, which include discriminatory taxes, and regulations that impede U.S. spirits exports, are detailed in this submission.

Summary

As noted above, the U.S. distilled spirits sector has benefitted significantly from the comprehensive multilateral, regional and bilateral trade agreements the U.S. has concluded. The Distilled Spirits Council believes that the best way to improve access for U.S. distilled spirits in overseas markets is for the United States to negotiate more market-opening agreements and to continue its efforts to rigorously enforce trade rules and trade agreements. Such efforts will be key to the continued growth and long-term viability of the U.S. spirits sector. The Distilled Spirits Council strongly supports efforts by the United States to modernize the North American Free Trade Agreement, while preserving the important gains made by the distilled spirits sector. We look forward to working with the Administration as it examines new opportunities to open new markets and to continuing efforts to address the tariff and non-tariff barrier to U.S. spirits exports.

II. PRIORITY MARKETS FOR 2018

NORTH AMERICA FREE TRADE AGREEMENT (NAFTA)

The Distilled Spirits Council strongly supported the negotiation and implementation of NAFTA and enthusiastically welcomes the administration's efforts to modernize the agreement. To be sure, U.S. distilled spirits exporters have benefitted significantly from the terms of NAFTA. U.S. spirits exports to Canada and Mexico have grown exponentially since the agreement was implemented in 1994, thus supporting jobs in the manufacturing, hospitality, retail, and logistics sectors in the United States. Specifically, total U.S. spirits exports to our NAFTA partners increased from $34 million in 1995 to $228 million in 2016. It is therefore critical that the modernization of NAFTA preserve – and build upon – the gains that have already been achieved. The specific provisions of NAFTA that have benefited the U.S. spirits sector, as well as the specific objectives for negotiations to modernize the agreement are detailed below.

I. Tariffs

All U.S. distilled spirits exports to Canada and Mexico are duty-free. NAFTA eliminated tariffs on "Bourbon" and "Tennessee Whiskey" exports to Mexico immediately upon entry into force of the agreement. Tariffs on all other U.S. spirits exports to Mexico were eliminated over a five-year phase out period. Tariffs on U.S. exports of whiskey and rum to Canada were eliminated under the Canada – U.S. Free Trade Agreement (CUSFTA) in January 1989. Canadian tariffs on all other U.S.-origin spirits were scheduled to be eliminated over five or ten years, with all U.S. spirits to Canada being duty-free by 1998. In addition, since 1995 Canada has bound at zero its tariffs on whiskey, brandy and Tequila at the World Trade Organization (WTO) on a most-favored nation (MFN) basis. Thus, U.S. exports of "white spirits" such as rum, vodka and gin, have enjoyed preferential access to the Canadian market since the CUSFTA/NAFTA commitments entered into force in the late 1990s.

The tariff elimination on U.S. spirits to our NAFTA partners has contributed to the dramatic increase in exports to those markets. For example, U.S. spirits exports to Canada grew nearly 582 percent, from $28 million in 1995 to $191 million 2016. Of this, 23 percent is accounted for by American Whiskeys, 18 percent by rum, 12 percent by vodka, and 12 percent by liqueurs and cordials. Canada now ranks as **the largest** market globally for U.S. distilled spirits exports. Similarly, U.S. distilled spirits exports to Mexico grew nearly 470 percent since NAFTA was implemented, from just over $6 million in 1994 to $37 million in 2016, making it the tenth largest export market. American Whiskeys accounted for 45 percent of the total.

However, Canada and Mexico have not bound all of their tariffs on distilled spirits at zero under the WTO's General Agreement on Tariffs and Trade (GATT). Specifically, while Canada's WTO bound tariff for whiskey, brandy and tequila is zero, its bound rate for gin is 4.92¢/liter of absolute alcohol (laa), for rum is 24.56¢ per laa, and for vodka and liqueurs is 12.28 ¢/laa. Mexico's WTO bound rate is 45 percent *ad valorem* for all distilled spirits categories. In contrast, the United States has bound its tariffs under the WTO's GATT at zero on all spirits categories (except low value rum (HTS 2208.40.20 and 2208.40.60) and one "other" category (2208.90.80)).

Request: In order for all U.S. distilled spirits exports to continue to receive tariff free treatment in Canada and Mexico, it is critical that NAFTA 2.0 retain tariff free trade in distilled spirits throughout the three partner countries.

II. Other Issues

Distinctive Product Recognition

Also under NAFTA, Canada and Mexico agreed to recognize "Bourbon Whiskey" and "Tennessee Whiskey" as distinctive products of the U.S. In return, Mexico and the U.S. agreed to recognize "Canadian Whisky" as a distinctive product of Canada, and Canada and the U.S. agreed to recognize "Tequila" and "Mezcal" as distinctive products of Mexico (see Annex 313 (2) and (3)). The United States' decision to confer such recognition to these distinctive Canadian and Mexican spirits reflects the fact that these products cannot legally be made in the United States.

This recognition, which is implemented primarily through a country's domestic product marking and labeling laws, is a very important mechanism to ensure that products labeled as "Bourbon" or "Tennessee Whiskey" that are offered for sale in Canada and Mexico are, in fact, legitimate products that were produced in the U.S. in accordance with U.S. laws and regulations.

Request: Because American Whiskeys, such as "Bourbon" and "Tennessee Whiskey", account for 69 percent of total U.S. spirits exports globally, it is critical that this recognition be retained in NAFTA 2.0. In addition, the Distilled Spirits Council urges the U.S. government to secure and incorporate recognition by Canada and Mexico for "American Rye Whiskey" into NAFTA 2.0. Securing distinctive product recognition will help assure the producers of this rapidly growing category that only rye whiskeys made in accordance with U.S. laws and regulations will be able to be labeled and sold as "American Rye Whiskey" in Canada and Mexico.

Provincial Monopolies in Canada

NAFTA established certain commitments to ensure the fair and equal treatment of U.S. spirits by Canada's state-owned beverage alcohol distribution and retail monopolies. While many of the provisions are important to retain, several are in need of updating to reflect the current marketplace and to address new barriers that have arisen.

For example, currently the practices of certain provincial liquor boards with regard to product mark-ups appear to run counter to Canada's international trade obligations, which provide for transparent and standardized product mark-ups for all “like” or “directly competitive and substitutable” product. In ***British Columbia***, for example, while the wholesale portion of the markup is transparent, published, and standardized, the retail portion, which is applied by the BC Liquor Distribution Branch, is not. ***Saskatchewan*** has announced its intention to move towards the British Columbia model in the future. In addition, ***Nova Scotia*** operates a complicated supplier competition for certain subcategories of spirits, such as “economy vodka” or “economy white rum”, which can result in certain products not being subject to the posted standardized mark-up. The Liquor Control Board of ***Ontario*** (LCBO) notified suppliers in June 2016 of its intention to test the concept of “flexible mark-ups” for wine and spirits, a further deviation from the application of standardized and transparent product mark-ups. The LCBO issued a letter on July 11, 2016 announcing an indefinite extension to the timeline to submit supplier quotes under the agency’s proposed “flexible mark-up” initiative.

Furthermore, expanded retail access opportunities are provided to local producers in key provinces of British Columbia, Ontario and Quebec. Local beer, wine and spirits are now offered for sale in farmers’ markets in ***British Columbia*** and local wine and cider in ***Ontario***. ***Quebec’s*** Bill 88 permits the sale of local artisanal wine, cider and mead products to be sold in grocery and corner stores. ***British Columbia*** has auctioned new licenses for the sale of local wines on the shelves of grocery stores in violation of the maximum number of discriminatory wine stores established under NAFTA. To address some of these barriers, in January 2017 the U.S. government requested consultations with the Government of Canada under the WTO’s dispute settlement provisions raising concerns with British Columbia’s decision to expand access to British Columbia wines on the shelves of grocery stores while relegating all other beverage alcohol to a separate “store-within-the-store.”

Request: The Distilled Spirits Council requests that the U.S. government seek updated and strengthened rules in NAFTA 2.0 addressing Canada’s provincial beverage alcohol distribution and retail monopolies (*i.e.*, discriminatory product markups and retail access).

Discriminatory Taxes in Canada

On March 22, 2017, Canada’s federal government introduced a 2 percent increase on the federal excise tax on beverage alcohol and a yearly automatic increase tied to the Consumer Price Index (CPI). However, since 2006 wines made from 100 percent Canadian grown grapes or other fruits, (including ciders made from Canadian apples) have been exempt from any federal excise tax. Increasing beverage alcohol excise duties by 2 percent immediately and by the CPI annually thereafter, while continuing to maintain the exemption from federal excise tax on wines made from 100 percent Canadian grown grapes or other fruits, exacerbates the uneven playing field that exists in the Canadian market for beverage alcohol products. This disparity will grow wider as the tax rate increases on an annual basis. Such a scheme imposes new costs on U.S. spirits and wine imports, thus tilting the playing field even more to domestic wine, to the detriment of imported wines and spirits.

Request: The Distilled Spirits Council requests that the U.S. government work to secure Canada's commitment in NAFTA 2.0 to eliminate all of the discriminatory aspects of its excise tax pertaining to beverage alcohol products.

Rules of Origin

Request: The existing NAFTA "preferential" rule of origin for distilled spirits should be retained in NAFTA 2.0. In addition, new transit and transshipment provisions should be included to expressly permit minor processing in non-NAFTA members to include unloading, labeling, marking, reloading, etc., without losing the good's originating status. The goods should, however, remain under the control of the customs administration during this process.

Duty Drawback

Request: The Distilled Spirits Council supports removal on the prohibition on the use of duty drawback currently contained in NAFTA Article 303.

BRAZIL

I. Technical Barriers

Labeling

On May 22, 2017, Brazil notified a proposed labeling regulation for beverage alcohol products to the WTO (G/TBT/N/BRA/719) which included prohibitions on the use of certain images and statements, requirements that the lot code be preceded by "Lot" or "L" and amendments, among other things, to the existing ingredient labeling requirement and the mandatory alcohol content statement format. It would also require imported products to include the product name in a font-size that is twice what is required for domestically-produced products. Imported products will continue to be able to fulfill the labeling requirements by way of a sticker attached to the back of a bottle. In July 2017, the Distilled Spirits Council submitted a comprehensive comment in response to the proposal, which reiterated previous concerns the Distilled Spirits Council raised in response to a previous proposal circulated in 2009. The current proposal is scheduled to go into effect on November 16, 2017.

Request: We seek the U.S. government's assistance in urging Brazil to: 1) clarify how this proposal would apply to distilled spirits, given the existing labeling requirements that are established under a separate regulation (i.e., Decree 6.871); 2) exclude distilled spirits from any requirement to provide a list of ingredients; 3) eliminate the discriminatory font-size requirement for imported products; 4) eliminate the prohibitions on certain images and statements; 5) provide an eighteen-month transition period; and 6) confirm that products already in the marketplace may continue to be sold until they are depleted.

II. Other Barriers

Discriminatory Taxation

Brazil applies a 30 percent *ad valorem* rate for most spirits, including "Bourbon," "Tennessee Whiskey," and rum, whereas Cachaça, a distinctive product of Brazil, faces a 25 percent *ad valorem* rate. The current rates for spirits are listed below:

TIPI CODE	RATE (percent)
2208.20.00 (brandy/pisco)	30
2208.30 (whiskies)	30
2208.40.00 (Cachaça) 2208.40.00 (rum)	25 30
2208.50.00 (gin)	30
2208.60.00 (vodka)	30

2208.70.00 (liqueurs and cordials)	30
2208.90.00 (except Ex 01 and Ex 02)	30
2208.90.00 Ex 02 (ready to drink products with an a.b.v less than 8 percent)	20

Brazil's current excise tax is in violation of GATT Article III, paragraph 2, which mandates non-discriminatory treatment of imports in respect to internal taxes. In four WTO dispute settlement cases concerning internal taxation of beverage alcohol (Japan – Alcoholic Beverages (DS8, 10 and 11); Korea – Alcoholic Beverages (DS 75 and 84); Chile – Alcoholic Beverages (DS 87 and 110); and, most recently, the Philippines -- Taxes on Distilled Spirits (DS396 and DS403)) the WTO has clearly upheld the proposition that all products under the HTS 2208 sub-chapter, including whiskey, rum, vodka, gin, etc., are, at a minimum, directly competitive and substitutable products and should therefore be taxed similarly in compliance with GATT Article III, paragraph 2.

Request: The Distilled Spirits Council seeks the U.S. government's continued assistance in urging Brazil to abide by its WTO commitments and eliminate the discriminatory aspects its excise tax.

III. <u>Trade Statistics</u>

In 2016, U.S. spirits exports to Brazil were valued at nearly $10.2 million, reflecting a nearly 16 percent decrease from 2015 export values. In the January through August 2017 period, U.S. spirits were valued at $14.2 million, representing a 188 percent increase from the same period in 2016; whiskeys accounted for 63 percent of the total.

CANADA

I. Technical Barriers

Labeling

On December 12, 2016 Canada notified the WTO of an online survey seeking feedback on proposals to amend certain food labeling requirements (G/TBT/N/CAN/506). The proposals concern date-marking, legibility and placement of information, ingredient listings, origin of imported foods, standard container sizes, etc.

Request: The Distilled Spirits Council seeks the U.S. government's assistance in inquiring about the status of the proposals. In addition, the Distilled Spirits Council seeks the U.S. government's continued assistance in urging Canada to: 1) continue to provide manufacturers with flexibility how to list the ingredients information for those products where it is required; 2) allow colors to be listed by their common name or numerical identifier; 3) allow sugars to be listed in the list of ingredients according to proportion of weight, consistent with Codex; and 4) allow continued flexibility for voluntary serving size information or, if made mandatory, utilize a standard drink.

II. Trade Statistics

In 2016, U.S. spirits exports to Canada were valued at $191 million, ranking Canada as the largest export market for U.S. spirits exports. Exports through August 2017 reached $130 million, reflecting an 8.6 percent increase as compared with 2016.

CHINA

I. Sanitary and Phytosanitary Barriers

Certification

In June 2016, China's General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) issued announcements to various embassies in Beijing that it would begin requiring importers of food and beverages to provide an official certificate issued by the competent authority in the exporting country that the food complies with China's laws, regulations and standards.

Over the past year, AQSIQ has verbally indicated to the U.S. government that U.S-origin spirits would not be subject to the new requirement, as it would be fulfilled by virtue of the current U.S. government-issued certificates that accompany U.S. spirits exports to China. Specifically, the Alcohol and Tobacco Tax and Trade Bureau (TTB), U.S. Department of Treasury is required to issue a Certificate of Health/Sanitation, Certificate of Origin, and Certificate of Authenticity/Free Sale for exports of distilled spirits to China. However, AQSIQ has been unwilling to confirm the exemption for U.S.-origin spirits in writing.

On June 19, 2017, China notified the new certificate requirement, which did not include an exemption for U.S.-origin distilled spirits, to the WTO (G/TBT/N/CHN/1209). In response, the Distilled Spirits Council submitted a comment on August 18, 2017 urging AQSIQ to confirm the understanding that U.S. distilled spirits will not be required to provide any additional certifications. On September 25, 2017, China notified the WTO that it will delay implementation of its new certificate from October 1, 2017 to September 30, 2019 (G/TBT/N/CHN/1209/Add.1).

Request: The Distilled Spirits Council requests the U.S. government's continued assistance in urging China to confirm in writing that U.S.-origin distilled spirits products are exempt from the new certification requirement.

II. Technical Barriers

Standards

China's Food and Fermentation Institute (FFI) is revising its voluntary spirits definitions, which are utilized to ensure the appropriate classification for various spirits and to ensure that China's "classification criteria" are consistent with international standards. Some provisions of the current voluntary standard (which went into effect on June 1, 2009) are inconsistent with U.S. standards of identity. For example, the current voluntary standard includes aging requirements for grape brandy and rum, and does not include minimum alcohol content requirements.

In December 2015, China issued a report which indicates it may introduce voluntary standards for flavored vodka, liqueur, and "pre-blended alcoholic beverage/pre-blended cocktail." In May 2016, the Distilled Spirits Council provided preliminary views to China's FFI based on the existing voluntary standards and the December 2015 report. In February 2017, China's FFI issued a revised report concerning the voluntary standards and the Distilled Spirits Council again shared its views reiterating many of the same points previously raised. The report included, for the first time, a two-year minimum aging requirement for whiskey, which is inconsistent with the U.S. standards of identity for whisky. China has not notified the proposals to the WTO.

***Request*:** The Distilled Spirits Council requests the U.S. government's continued assistance in: 1) seeking an update on the status of the proposed revised voluntary standards; and 2) urging China to notify the proposed text to the WTO consistent with its obligations to ensure that all interested stakeholders will have an opportunity to provide input.

Labeling

On August 14, 2017, China notified its revised "Draft Regulation on the Implementation of the Food Safety Law" (G/SPS/N/CHN/1055) to the WTO. The Distilled Spirits Council's chief concerns with the previous draft were the requirements to label products prior to importation and the prohibition on the use of stickers. In a positive development, the revised draft no longer contains prohibitions on the use of stickers on imported food and a requirement that all prepackaged foods must have a Chinese label before being imported into China. It is unclear when the revised proposal will be implemented.

However, on September 13, 2017, China notified a separate regulation entitled "Measures for the Supervision and Administration of Import and Export Food Safety" (G/SPS/N/CHN/1056) to the WTO which includes a requirement that imported prepackaged foods shall have Chinese labels and the labels shall meet provisions of Chinese law. However, it is unclear at what point the label must be applied and whether a sticker is permitted.

Request: The Distilled Spirits Council seeks the U.S. government's assistance in seeking confirmation that the use of stickers is permitted and that they may be applied either at the point of origin or in bonded warehouses prior to release of the goods into the market.

III. Trade Statistics

In 2016, U.S. spirits exports to China were valued at nearly $10.4 million, reflecting a nearly 40 percent decrease from 2015 export values. In the January through August 2017 period, U.S. spirits were valued at $8.3 million, representing a 16 percent increase from the same period in 2016.

COLOMBIA

In January 2017, a law entered into force that eliminated Colombia's long-standing discriminatory excise tax on distilled spirits and ensures that its state-level alcohol monopolies (*i.e., departamentos*) can no longer discriminate against U.S. spirits. The beverage alcohol reform bill appears on its face to be consistent with Colombia's international trade obligations under the U.S.-Colombia Trade Promotion Agreement and the WTO. However, as discussed below, the law included several provisions which have not been fully implemented and are either unclear or potentially problematic.

I. Other Barriers

Exploitation Fees

Under the law, *departamentos* may collect an additional "exploitation fee" from the production and introduction of distilled spirits products in their *departamento*, which "shall be 2 percent of annual sales of the spirit drinks introduced, the same for all products, and shall not depend on volumes, prices, brands or types of product." The fee is to be collected in January 2018 for sales in 2017.

In a troubling development, in August 2017 Colombia's Ministry of Finance issued an interpretation to one of the *departamentos* stating that the "exploitation fee" will not apply to distilled spirits produced and sold by the *departamento*-owned distillery (i.e., licorera) within that *departamento*. This interpretation is in direct contradiction with the general non-discrimination principles included in the law as well as a provision that explicitly subjects the production and sales of distilled spirits by licoreras in its *departamento* to this fee.

Request: The Distilled Spirits Council seeks the U.S. government's continued assistance in ensuring that Colombia implements the law in a non-discriminatory manner and *departamentos* do not exempt distilled spirits produced and sold by the licorera within its *departamento* from the "exploitation fee."

II. Import Policies

Certificate of Good Manufacturing Practices

In 2009, Colombia notified Decree 1686 to the WTO (G/TBT/N/COL/121) which requires, among other things, that imported products be accompanied by a Certificate of Good Manufacturing Practices (GMP) or a certificate "equivalent to that used in the producer's country." Currently, the Tax and Trade Bureau of the U.S. Department of Treasury (TTB) is required to issue a Certificate of Analysis and Certificate of Free Sale for exports of U.S. distilled spirits to Colombia. The Distilled Spirits Council submitted comments in response to the original proposal as well as in response to subsequent revisions urging that it not be required for spirits because it would be duplicative of existing requirements.

Separately, under the beverage alcohol reform law referenced above, *departamentos* may not issue an introduction agreement for spirits if they are not accompanied by a Certificate of GMP or a certificate "equivalent to that used in the producer's country" as referred to in Decree 1686. However, on February 14, 2017, Colombia issued Decree 262 to delay implementation of Decree 1686 to February 14, 2019. Furthermore, reports indicate that Decree 1686 is being revised again.

Request: The Distilled Spirits Council requests the U.S. government's continued assistance in: 1) urging Colombia to notify the revised Decree 1686 to the WTO for comment and; 2) seeking confirmation that U.S. spirits exporters will not be required to provide the new Certificate of GMP as mandated under the beverage alcohol reform law since U.S. exporters already provide other certificates that are equivalent.

III. Trade Statistics

In 2016, U.S. spirits exports to Colombia were valued at nearly $2.7 million, reflecting a nearly 13 percent increase from 2015 export values. In the January through August 2017 period, U.S. spirits were valued at $2.7 million, representing a 35 percent increase from the same period in 2016.

EUROPEAN UNION

I. Other Barriers

Discriminatory Taxation

Under EU Directive 92/83, some member states are permitted to provide preferential tax benefits to certain spirits producers under "derogations" from general excise tax rates. The preamble to Directive 92/83 stipulates that derogations should not distort the market. These "derogations" may be classified in one of the following categories: 1) artisanal or home distillers; 2) all or certain spirits in specific regions; or 3) certain spirits in specific EU member states. Some of these derogations are permanent, while others must be reviewed and re-approved periodically. Such measures put U.S.-origin spirits at a considerable disadvantage in these markets, while affording protection to certain domestically-produced products, in contravention of the EU's WTO national treatment obligations. On August 28, 2015, the European Commission launched public consultations, which concluded on November 27, 2015, to evaluate Directive 92/83. The European Commission reviewed the feedback it received and in April 2017 opened a public consultation on the possible content of a legislative revision to Directive 92/83. The European Commission is expected to produce a report on both consultations sometime in the fourth quarter of 2017.

France: France imposes a reduced excise tax on rum from French Overseas Departments (FODs). The total excise tax on rum from FODs is €869.27 per hectoliter of pure alcohol (hlpa), while the tax on all other spirits, including rum from other countries, is €1,737.56 per hlpa. In 2014 the preference was extended until 2020. The quota allowed for rum from FODs amounts to 120,000 hlpa/year. The Commission is due to issue a mid-term review of the derogation by the end of 2017. In addition, France has applied to the European Parliament for a retroactive increase in its quota for run from FODs from 120,000 to 144,000 hlpa from January 1, 2016. A vote by the European Parliament is expected to take place in late October 2017.

Hungary: Hungary is allowed to grant a 50 percent reduction of the excise tax rate on palinka, a locally-produced fruit brandy, produced by households or in "for hire" distilleries for home consumption. In April 2014, the European Court of Justice (ECJ) ruled that Hungary's application of a zero excise tax rate on palinka produced in households or distilleries for personal use, up to a maximum of 50 liters a year, contravened EU law. In response to the ECJ's decision, Hungary amended its law in January 2015 and established a new derogation for palinka under which for home consumption palinka distillers pay a 50 percent reduction of the normal spirits excise tax. In January 2016, the structure of the tax was further amended so that individuals engaging in home palinka distilling are required to purchase at least five, but no more than 86 'tax tickets' from the Customs authorities at 50 percent of the normal excise tax rate. Each 'tax ticket' allows home distillers to produce one liter of palinka at 42 percent alcohol by volume at the reduced rate. However, there is concern that given the volume of permissible home produced palinka, some of it may enter the regular retail distribution chains and thereby compete with other spirits products that are taxed at the normal rate.

In January 2015, Hungary extended its ‘health tax’ to include most spirits, but exempted certain fruit spirits such as palinka, and certain herbal spirits, such as the locally produced unicom. The rates are applied based on the alcohol content of the product as follows;

- between 2percent-5percent, HUF20 per liter of product; >5percent-15percent, HUF100 per liter;
- >15percent-25percent, HUF300 per liter; >25percent-35percent, HUF500 per liter;
- >35percent-45percent, HUF700 per liter; >45percent, HUF900 per liter.

In April 2016, the European Commission opened a formal infringement proceeding against Hungary concerning the compliance of the ‘health tax’ with EU law. The case is still pending.

Greece: Greece imposes a reduced special consumption tax on ouzo of €1,225 per hlpa, compared with a rate of €2,450 per hlpa for all other spirits, which is legal under EU regulations. A “Chemists Fund” and Stamp Duty are applied on top of this, which further exacerbates the differential in the actual tax paid on these products to €1,275.18 per hlpa for ouzo and €2,550.35 per hlpa for all others. Greece further extends this reduced tax rate to spirits called tsipouro and tsikoudia, in violation of EU law as Greece does not have a formal derogation under Directive 92/83 for such products. In September 2015, the European Commission issued a “Letter of Reasoned Opinion” setting out in detail why the European Commission believes the measures for tsipouro and tsikoudia are inconsistent with EU law. Greece was given until the end of November 2015 to remove the discriminatory rate. However, Greece failed to remove the discrimination, and in February 2017 the European Commission referred the case to the Court of Justice of the ECJ. The case is still pending.

Romania: Romania provides a reduced excise tax on small distillers producing for households. On January 1, 2016, Romania reduced its excise tax on spirits by 30 percent. Romania charges excise and health taxes on most spirits of RON 3,306.98 per hlpa. In contrast, small distilleries pay a reduced excise rate of RON 1,653.49 per hlpa (max quantity 10 hlpa per year). Fruit spirits and brandy produced for household consumption and not sold commercially (max 50l per year) pay RON 1,653.49 per hlpa. This preferential tax facilitates illegal production and tax evasion, which distorts the Romanian spirits market as home-produced spirits are sold in the retail distribution chain.

Croatia: In December 2016, the European Commission issued a request to Croatia to amend its excise on spirits produced by small producers for their own consumption in a manner consistent with Directive 92/83. Croatia allows a reduced excise rate for small producers who produce up to 20 lpa per household for their own consumption. A flat rate is applied depending on the capacity of the boiler used for production (i.e. HRK 100 for a boiler capacity up to 100 litres and HRK 200 for any boiler larger than that). Because the reduced rate applied by Croatia is linked to the capacity of the boiler and paid on a flat rate basis, regardless of the actual amounts produced, it does not comply with Directive 92/83.

Request: As the four WTO dispute settlement proceedings (Japan, Korea, Chile, and the Philippines) have shown, all distilled spirits are, at a minimum, directly competitive and substitutable products and should be taxed similarly. The Distilled Spirits Council seeks the U.S. government's continued assistance in urging the European Union to end its tolerance of discriminatory tax regimes and to abide by its WTO commitments to tax all distilled spirits similarly.

II. Technical Barriers

Ireland – Public Health (Alcohol) Bill 2015

On June 9, 2016 Ireland notified its proposed Public Health (Alcohol) Bill 2015 to the WTO's TBT Committee (G/TBT/N/IRL/2). The proposal includes a wide range of provisions, such as minimum unit pricing (MUP) of alcohol, new labeling requirements, new restrictions regarding advertising, and a requirement to physically separate all alcohol products for sale from other items in off-premise establishments, among other things. Under the bill, the Minister of Health may issue regulations "taking into account any expert research" implementing the provisions of the bill. According to recent press reports, the government is seeking to finalize the bill soon.

***Request*:** The Distilled Spirits Council requests the U.S. government's assistance in urging Ireland to notify the amended bill and any draft implementing technical regulations to the WTO to ensure all interested stakeholders have an opportunity to provide input. Further, consistent with the WTO TBT Agreement, such notifications "shall take place at an early appropriate state" so that comments can still be considered before the regulation is finalized.

Italy – Labeling

On April 20, 2017 Italy notified a proposed regulation to the WTO requiring the mandatory indication of the name and address of the production facility or, if different, the packaging facility on the label of food products sold in Italy (G/TBT/N/ITA/29). However, EU law already requires food products to include on the label: 1) the name and address of the 'food operator' or the importer; and 2) the lot or batch number. The proposal includes a mutual recognition clause providing that the proposal does not apply to food products from another EU Member State, Turkey, Members of the European Free Trade Agreement or signatory of the European Economic Area. The proposal only applies to products produced in Italy and countries which are not members of one of the referenced trade agreements, including the U.S. In July 2017, the Distilled Spirits Council submitted a comment in response to the proposal urging Italy to reconsider the proposal as it is: 1) duplicative and unclear from a practical standpoint how the proposed additional labeling requirement will increase the effectiveness of a product recall; 2) inconsistent with the EU's national treatment commitments under the WTO Agreement on Technical Barriers to Trade and WTO General Agreement on Tariffs and Trade; and 3) would inhibit the free movement of goods within the EU single market. The proposal is scheduled to enter into force in January 2018.

***Request*:** The Distilled Spirits Council seeks the U.S. government's assistance in requesting that Italy reconsider the draft decree.

III. Trade Statistics

In 2016, the EU was the single largest destination for U.S. spirit exports. At $654 million, the EU market alone accounts for 46 percent of total U.S. spirits exports. In the January through August 2017 period, U.S. spirits were valued at $482 million, representing a nearly 16.5 percent increase from the same period in 2016; whiskeys accounted for 83 percent the total. In fact, since the U.S. and EU mutually agreed to eliminate their respective tariffs on most spirits in 1995, the value of U.S. spirits exports to the EU has more than tripled. Nonetheless, the EU's discriminatory excise taxes continue to affect U.S. spirits exports to the European market. Removing these barriers will allow U.S. spirits exports to continue the considerable expansion it has enjoyed over the past decade, and will reaffirm both sides' commitment to the rules-based international trading system.

INDIA

I. Import Policies

Tariffs

India's 150 percent *ad valorem* tariff severely restricts access to the Indian market for U.S. spirits exporters. Currently, total imports of bottled spirits represent only 1 percent of India's spirits market. This is particularly concerning since, according to Euromonitor, India ranks as *the largest whiskey market in the world*, both in terms of volume (1.6 billion liters in 2016) and value ($22.3 billion in retail sales in 2016).

Nonetheless, U.S. spirits producers have begun to make some solid gains, with exports increasing from $390,000 in 2001 to $5.2 million in 2016. Whiskey accounts for the majority of these exports, with a 93 percent share by value.

Additional Customs Duty: From April 2001 until July 3, 2007, India applied additional customs duties (ACD) on top of the basic customs duty, which is 150 percent *ad valorem*, on imports of bottled spirits, beer and wine. The ACD in effect from April 2003 – July 2007 ranged from 25 percent *ad valorem* or $53.20 per case, whichever was higher, to 150 percent *ad valorem*, in clear breach of India's tariff bindings.

India announced on July 3, 2007 that it would "exempt" beer, wine and spirits from the ACD, effective immediately. This action was unquestionably prompted by the U.S. WTO case (and similar action by the European Commission). However, the industry has not received assurances that India will not re-impose the ACD in any form and that the states will not introduce (and, where in effect, will rescind) duties and fees that discriminate against imported spirits.

Request**:** The Distilled Spirits Council seeks the U.S. government's continued assistance in urging India to reduce its prohibitive import tariff on U.S. spirits exports, and to permanently exempt spirits from the additional customs duty.

II. Technical Barriers

Standards and Labeling

On October 24, 2015, India's Food Safety and Standards Authority (FSSAI) issued for public comment a proposed mandatory beverage alcohol regulation covering standards and labeling requirements. India subsequently notified the proposal to the WTO on December 1, 2015. The Distilled Spirits Council submitted an extensive comment on January 29, 2016 highlighting the provisions of concern to U.S. distilled spirits exporters. On September 5, 2016, FSSAI published its new revised proposed draft standards, which did not incorporate any of the Distilled Spirits Council's previous comments. FSSAI did not notify the new revised proposed standards to the WTO, but provided an opportunity for interested stakeholders to submit comments through its domestic process. In response, the Distilled Spirits Council submitted a comment on October 7, 2016 reiterating many of the points previously raised. According to reports, another revised draft was circulated in mid-2017, but it has not been posted to the FSSAI website for public comment or notified to the WTO TBT Committee. The timeline for further review and adoption is unclear.

With regard to the proposed standards, the Distilled Spirits Council previously noted concerns with regard to the use of analytical parameters, minimum and maximum alcohol content requirements, permissible raw materials and flavorings, flavored spirits, and others, which are inconsistent with standard international practices for definition of various spirits categories.

Concerning the proposed labeling requirements, the proposed standard did not provide clarification whether distilled spirits labels are exempt from ingredient listing requirements, consistent with standard international practice, among other labeling matters. Since 2009 the Distilled Spirits Council has been seeking clarification from the Indian government on the applicable labeling regulations (i.e., Food Safety and Standards (Packaging and Labeling) Regulations, 2011) as they pertain to spirits. While the final food labeling regulations exempted distilled spirits from certain requirements, consistent with international practices, there was no clarity on issues pertaining to the list of ingredients and "date of manufacture or packing" requirements. Although the Distilled Spirits Council continued to request confirmation from FSSAI that spirits would be exempt from the ingredient list requirement, the issue was never clarified. Currently, all spirits are required to contain a list of ingredients in order to be available for sale in India.

Providing a list of ingredients is not standard international practice for the labeling of spirits. In fact, the subject of ingredient labeling of beverage alcohol products has been explored extensively in the United States and in other countries, such as Australia and New Zealand, and the respective governments concluded that such labeling would not be in the best interests of consumers.

Request: The Distilled Spirits Council seeks the U.S. government's continued assistance in urging India to: 1) ensure standards are not adopted which would unnecessarily prohibit the importation of U.S. distilled spirits into the Indian marketplace; 2) ensure that any revised spirits standards are notified to the WTO TBT Committee so that interested stakeholders can provide input, if needed; and 3) exempt distilled spirits from any ingredient listing requirements.

KOREA

I. Technical Barriers

Labeling

On September 3, 2016, Korea adopted proposed amendments to modify its existing warning statement requirements for beverage alcohol. Korea adopted the measure prior to conclusion of the comment period as provided for under the transparency and notice requirements established under the WTO TBT Agreement and the Korea – U.S. Free Trade Agreement (KORUS).

Request: The Distilled Spirits Council seeks the U.S. government's support in urging Korea to take into account the entire body of scientific literature and research regarding beverage alcohol consumption in determining the appropriateness of any warning statements.

II. Other Market Access Issues

Discriminatory Taxation

Revisions to Korea's Liquor Tax law, which entered into force on July 1, 2008, provide for a 50 percent reduction in the excise tax assessed on certain "traditional liquors," including distilled and diluted soju. Although the tax break is limited at this time to small producers, the U.S. spirits industry has serious concerns about providing preferential tax rates for domestically-produced spirits, including distilled and diluted soju, which the WTO Panel and Appellate Body determined to be directly competitive and substitutable with other distilled spirits in the Korea – Taxes on Alcoholic Beverages WTO dispute. Although a *de minimis* tax differential is permitted under WTO rules, in our view Korea's 50 percent tax reduction is not a *de minimis* difference.

Request: The Distilled Spirits Council seeks the U.S. government's continued support in opposing Korea's tax measure.

III. Trade Statistics

Korea represents the fourth largest spirits market in the world by volume and the ninth largest by value. Additionally, the whiskey category accounts for 16 percent of all spirits sales in Korea, making the country a critical market for U.S. spirits products. Since the Korea-U.S. Free Trade Agreement (KORUS) went into effect in 2012, which eliminated all duties on U.S. distilled spirits exports to Korea, exports have grown by almost 56 percent, totaling $13.1 million in 2016.

MEXICO

I. Technical Barriers to Trade

Standards

Distilled Spirits: On April 6, 2016, Mexico notified a proposed comprehensive mandatory beverage alcohol technical regulation (*PROY-NOM-199-SCFI-2015)* to the WTO TBT Committee (G/TBT/N/MEX/302). The proposal includes product definitions for all categories of spirits, new labeling requirements for liqueurs and distilled spirits specialty drinks, and new testing and certification requirements. The Distilled Spirits Council provided detailed comments in response to the WTO notification.

The proposed mandatory product definitions were based largely on existing voluntary standards. However, the proposed mandatory definitions are inconsistent with the U.S. standards of identity in a variety of areas, such as aging requirements for whiskey and rum, maximum alcohol content requirements, the use of analytical parameters to define product categories, and labeling requirements for specialty products that would establish minimum content requirements for label disclosure of the spirits used, among other things. The proposed labeling changes for distilled spirits specialties and liqueurs/cordials would mandate either a minimum 25 or 51 percent alcohol content in order for the spirit used to be disclosed on the product label, which is inconsistent with U.S. regulations for these products.

Tequila: Mexico's revised mandatory standard for Tequila (NOM-006-SCFI-2012) entered into force in February 2013. The Distilled Spirits Council noted concerns with possible requirements for on-site inspections, requests for data that might lead to disclosure of proprietary information, and other restrictions on U.S. bottlers of Tequila that appeared to disregard the provisions of the 2006 U.S. – Mexico Memorandum of Understanding (MOU) on Tequila. Mexico declined to accept the Distilled Spirits Council's comments, stating that the MOU does not limit the mandatory Tequila standard or its compliance assessment, but rather sets forth "special conditions" for the signatories to the MOU; Mexico also confirmed that the revised Tequila standard did not change the terms of the MOU.

The Distilled Spirits Council greatly appreciates the U.S. government's efforts to address and remedy the concerns that were raised with the revised mandatory standard, and welcomes the ongoing efforts to ensure that the MOU will continue to support these mutually beneficial commercial ties.

The mandatory standard for Tequila will be up for review and possible modification starting in 2018. The exact timeframe for the consultations and possible issuance of a revised draft are not yet known.

On a related matter, an April 2007 proposal concerning revisions to Mexico's "voluntary" standard for tequila-containing products (NMX-V-049-NORMEX), which is incorporated by reference into Mexico's mandatory Tequila standard (thereby effectively making it mandatory), included numerous problematic provisions. The proposed revision has not advanced, but the Distilled Spirits Council and its members remain seriously concerned about its contents.

***Request*:** The Distilled Spirits Council requests the U.S. government's assistance in continuing to raise the industry's concerns with regard to the proposed mandatory spirits standards (NOM-199). In addition, the Distilled Spirits Council seeks the U.S. government's continued assistance in monitoring for the issuance of a proposed revised mandatory Tequila standard and in ensuring that Mexico does not erect unnecessary obstacles to trade in Tequila.

II. Trade Statistics

U.S. spirits exports were valued at over $36.8 million in 2016, ranking Mexico as the 10th largest export market for U.S. distilled spirits. Through August 2017, exports totaled $27.6 million, an increase of 4.1 percent from 2016 levels.

NEPAL

I. Technical Barriers

Labeling

In February 2017, Nepal adopted a new beverage alcohol control policy entitled the "*National Policy on Regulation and Control of Alcohol 2017*" which includes a requirement to develop a graphic health warning label (GHWL) that must cover at least 75 percent of a beverage alcohol container and be accompanied by a new warning statement (i.e., "Drinking is injurious to health"). The draft also requires the establishment of minimum prices for alcohol and bans all advertising and marketing for beverage alcohol, among other things. If the law is approved by the President, regulations must be issued to implement the law.

The proposed GHWL and the new warning statement do not reflect the overwhelming scientific evidence that excessive consumption of alcohol may be harmful and that, for most individuals, moderate/responsible consumption is consistent with a healthy lifestyle and the majority of those who choose to consume beverage alcohol do so responsibly and in moderation.

Request: The Distilled Spirits Council respectfully requests the U.S. government's assistance in urging Nepal to: 1) revise the health warning statements to reflect the overwhelming scientific evidence that excessive consumption of alcohol may be harmful; and 2) notify any implementing regulations to the WTO TBT Committee so that all stakeholders will have an opportunity to provide comments.

RUSSIA

I. Technical Barriers

Standards, Certification and Labeling

Under the auspices of the Eurasian Customs Union, Russia, Kazakhstan, Belarus, Armenia, and Kyrgyzstan are drafting a technical regulation (TR) for beverage alcohol products, which covers standards, labeling, and certification requirements, among other things. While the TR has been greatly improved since the first draft issued in 2010, there remain a number of concerns with the most recent published draft which Russia notified to the TBT Committee on December 21, 2013. However, Russia did not provide a new comment period beyond a domestic consultation that had closed a year prior to the WTO notification. The Customs Union partners most recently met in April 2017, and according to industry reports, all procedural formalities have been completed. It is unclear when the formal signing will take place. A copy of the most recent draft is not available and it is unclear whether substantial changes have been made.

Request: The Distilled Spirits Council seeks the U.S. government's continued assistance in urging Russia to notify the revised draft TR on beverage alcohol to the WTO TBT Committee so that all stakeholders will have an opportunity to provide comments before it is finalized.

II. Trade Statistics

In 2016, Russia's imports of U.S. spirits were valued at $44 million (Global Trade Atlas), representing a 33 percent decrease from 2015. Imports of U.S. spirits have increased in the first half of 2017 by nearly 26 percent over the same period last year.

SOUTH AFRICA

I. Other Barriers

National Liquor Plan

On September 30, 2016, the South African Department of Trade and Industry (DTI) published Notice 1208 in the Government Gazette inviting public comment on its draft National Liquor Policy, which includes various policy proposals to amend the Liquor Act 59 of 2003. For example, the draft policy contemplates a range of proposals such as advertising and sales restrictions, establishing a strategy to combat illicit alcohol, prohibiting the sale of “very high alcohol content” beverages and extending liability to manufacturers, distributors or retailers if there is any unlawful activity, damage to property, death or injury to persons as a result of the product being sold by an unlicensed retailer.

Request: The Distilled Spirits Council seeks the U.S. government’s assistance in: 1) raising the industry’s concerns regarding the proposed prohibition on the sale of “very high alcohol content”; 2) inquiring regarding the possible labeling measures that are under consideration; 3) ensuring that any new draft technical regulations emanating from the new policy are notified to the WTO TBT Committee so that all interested stakeholders will have an opportunity to provide their views; 4) expressing support for efforts to combat illicit alcohol; and 5) urging the South African government to consult with industry representatives in this process.

II. Trade Statistics

Direct U.S. spirits exports to South Africa were valued at $12.9 million in 2016. Through August 2017, U.S. spirits exports were valued at $7.5 million.

TAIWAN

I. Other Barriers

Discriminatory Taxation

As part of its WTO accession commitments, Taiwan agreed to harmonize the tax rate on all distilled spirits, including distilled rice wine (such as mijui or michiu), at NT$185 per liter, ending years of blatantly discriminatory excise taxation that favored locally-produced distilled spirits. Although Taiwan argued at the time that distilled rice wine is generally used for cooking, it was confirmed that a significant amount of this product is consumed as a beverage and therefore, should be taxed similarly to other distilled spirits products.

Because the imposition of the new tax significantly increased the price of distilled rice wine, the Taiwanese government introduced various proposals to modify the excise tax structure for spirits, including suggested modifications to the definition of “cooking alcoholic beverages” so as to make these products suitable as beverages. Since Taiwan joined the WTO in January 2002, the following changes were implemented: 1) a reduction of the tax on “cooking alcoholic beverages” from NT$22 per liter to NT$9 per liter in 2008; and 2) in 2009, a modification of the tax rate on distilled spirits, including distilled rice wine, from NT$185 per liter to NT$2.5 per liter per degree of alcohol content, which resulted in a significant effective tax reduction for all spirits.

In 2010, Taiwan’s Legislative Yuan adopted a proposal to permit distilled rice wine to be subject to the tax rate applicable to “cooking alcoholic beverages” (*i.e.,* NT$9 per liter), effectively lowering the tax rate significantly on these products as compared to all other distilled spirits. However, “cooking alcoholic beverages” are in a completely different product category. Because of the minimum salt content requirement, they are not able to be consumed as beverages, unlike distilled rice wine.

Request: The Distilled Spirits Council urges the U.S. government to continue to oppose Taiwan’s current tax rate for distilled rice wine, which is in violation of Taiwan’s bilateral agreement with the United States and its WTO accession commitments.

II. Trade Statistics

U.S. spirits exports to Taiwan were valued at almost $7.4 million in 2016, representing a 24 percent decrease from 2015. In the January through August 2017 period, U.S. spirits were valued at $3.5 million, representing a 32 percent decrease from the same period in 2016. This is particularly low given that the Taiwanese spirits market, at the retail level, was valued at $3.2 billion in 2016 (Source: Euromonitor).

THAILAND

I. Technical Barriers

Labeling

In 2014, Thailand notified its "*Rules, Procedure and Condition for Labels of Alcoholic Beverages"* to the WTO (G/SPS/N/THA/221, and G/TBT/N/THA/437), which outlined various images and messages that are prohibited from being displayed on a label, package or packaging material for beverage alcohol. In response to the notifications, the Distilled Spirits Council submitted comments seeking clarification on several provisions which appeared vague or confusing. A guidance document was issued by the Thai government on September 30, 2015 which addressed some of the industry's questions, and another revision to the guidance document was issued in April 2017. However, many of the regulation's provisions remain unclear and/or open to interpretation.

According to reports, the Ministry of Public Health confirmed that the labelling notification (SPS/221) is unclear and unworkable, and pledged to convene a working group, led by the Deputy Director General of the Office of Disease Control and including the Department of Trade Negotiations and Department of Intellectual Property, to draft amendments to the guidelines to bring them into compliance with WTO principles. The working group will consult with stakeholders, including importers. Reportedly, the labelling notification will not be enforced until the amendment process is complete. However, other reports indicate that the regulation is, in fact, in force.

In August 2014, Thailand modified its draft notification regarding the labeling of beverage alcohol, which was previously notified to the WTO (*see* G/SPS/N/THA/221, January 20, 2014). The revised proposal reintroduced graphic health warning labels, a concept which had been previously proposed by Thailand in 2010 (*see* G/TBT/N/THA/332). The new proposal would mandate the inclusion of one graphic warning for all beverage alcohol. The picture and accompanying statement must account for 25 percent of the largest label on the container, and at least 25 percent of the total surface area for the package. Thailand's National Alcoholic Beverage Policy Committee reportedly announced in 2017 the winners of a photo contest for a graphic warning label. It is unclear whether Thailand will propose to use these images or whether any additional requirements will be proposed.

Request: The Distilled Spirits Council seeks the U.S. government's continued efforts in raising the industry's concerns with the regulation and in urging Thailand to notify any revised proposals to the WTO TBT and SPS Committees before they are adopted, so that all stakeholders will have an opportunity to provide comments.

II. Other Barriers

Discriminatory Taxation

Thailand has maintained a discriminatory excise tax system for distilled spirits for many years, imposing lower “applied” specific excise tax rates on domestically-produced “white liquor” and “blended liquor” than on imported spirits.

In December 2016, Thailand’s Cabinet approved a regulation overhauling the excise tax system establishing new "ceiling" rates, which are 30 percent *ad valorem* plus 1,000 Thai Baht per liter of pure alcohol for all distilled spirits. The new "applied" rates were subsequently published by the Thai Excise Department and entered into force on September 16, 2017. As noted below, the discrimination in favor of domestic white liquor remains:

APPLIED rates as of September 16, 2017

Product	*Ad Valorem*	(baht/liter of pure alcohol)
Local white liquor	2	155
All other distilled spirits	2	255

These taxes continue to discriminate against imported products and provide protection to domestic producers of local white spirits, in violation of the national treatment provisions of GATT Article III, paragraph 2.

Request: The Distilled Spirits Council urges the U.S. government to seek Thailand’s commitment to apply a single, nondiscriminatory tax for all distilled spirits products.

III. Trade Statistics

Direct U.S. spirits exports to Thailand were valued at $4.8 million in 2016. Through August 2017, direct U.S. spirits exports were approximately $3.6 million, a 5 percent increase compared with the same period in 2015.

TURKEY

I. Technical Barriers

Warning Statement

In June 2014, the Turkish government introduced a new mandatory warning statement on all beverage alcohol products that states "Alcohol is not your friend." The importer may affix the warning messages to the bottle at any point before placing the products on the market.

The Distilled Spirits Council remains concerned that this statement is unclear and does not provide any useful information to consumers. Importantly, the current wording does not appear to reflect the body of scientific evidence demonstrating that excessive use of beverage alcohol may be harmful. For most individuals, moderate/responsible consumption is consistent with a healthy lifestyle and the majority of those who choose to consume beverage alcohol do so responsibly and in moderation.

Request: The Distilled Spirits Council respectfully seeks the U.S. government's continued support in raising concerns regarding the specific wording of the warning statement and urging that the statement be modified to reflect the body of scientific evidence with regard to alcohol consumption.

II. Other Barriers

Discriminatory Taxation

In April 2009, Turkey revised the structure of its discriminatory tax by eliminating the *ad valorem* tax (275.6 percent) and lowering the minimum specific rates for all categories of spirits. On June 30, 2009, the European Union announced that Turkey agreed to harmonize the tax rates for spirits by 2018. The rates were scheduled to be harmonized according to the following timetable:

EU-Turkey Excise Tax Rate Harmonization Schedule (Turkey Lira per liter of pure alcohol)				
	As of April 14, 2009	April 2012	April 2015	April 2018
Whiskey	60	50	45	40
Liqueurs	55	50	45	40
Brandy	50	50	45	40
Gin/Vodka	40	40	40	40
Raki	36	38	39	40

The Distilled Spirits Council was extremely pleased that Turkey agreed to bring its tax system for spirits into compliance with WTO rules. However, Turkey has since increased the tax rates several times in connection with its biannual review of the producer price index. The most recent change occurred on July 1, 2017 when Turkey increased its excise rate for distilled spirits by approximately 7.8 percent, while maintaining the discriminatory aspects in favor of the domestically-produced spirit, Raki.

The current tax rates are as noted below:

Turkey – CURRENT Distilled Spirits Taxes (Turkey Lira per liter of pure alcohol)	
	As of July 1, 2017
Whiskey, rum and others not set out below	184.45
Gin/Vodka	164.03
Raki	159.93

Turkey's current taxation regime is in violation of GATT Article III, paragraph 2, which mandates non-discriminatory treatment of imports in respect of internal taxes. In four WTO dispute settlement cases concerning internal taxation of beverage alcohol Japan – Alcoholic Beverages (DS8, 10 and 11); Korea – Alcoholic Beverages (DS 75 and 84); Chile – Alcoholic Beverages (DS 87 and 110), and most recently the Philippines -- Taxes on Distilled Spirits (DS396 and DS403)) the WTO has clearly upheld the proposition that all products under the HTS 2208 sub-chapter, including whiskey, rum, vodka, gin, etc., are, at a minimum, directly competitive and substitutable products and should therefore be taxed similarly in compliance with GATT Article III, paragraph 2.

Request: The Distilled Spirits Council requests that the U.S. government urge Turkey to abide by its WTO commitments and remove the discriminatory tax regime without any further delay.

III. Trade Statistics

In 2016, U.S. direct exports of distilled spirits to Turkey were valued at over $10.6 million, down nearly 36 percent from 2015. However, for the period January through August 2017, direct U.S. spirits exports were valued at almost $8.9 million, representing an 11 percent increase from the same period in 2016.

UNITED KINGDOM

The United Kingdom (UK) is a very open market for U.S. spirits products by virtue of its membership in the European Union (EU). As the UK undertakes the process to formally leave the EU, the Distilled Spirits Council seeks the U.S. government's assistance in obtaining assurances that the current market access to the UK enjoyed by the U.S. distilled spirits sector will remain intact. This will provide much needed predictability and stability for U.S. spirits exporters to the UK market.

I. Tariffs

Since 1994, the U.S. and UK spirits industries have enjoyed duty-free access to each other's markets. This duty-free access was provided for under the "zero-for-zero" agreement negotiated in connection with the Uruguay Round by the U.S. and the EU (and subsequently several other countries) to eliminate tariffs on virtually all distilled spirits products on a most-favored-nation (MFN) basis.

Request: The Distilled Spirits Council seeks the U.S. government's assistance in seeking assurances from the UK government that the current duty-free market access enjoyed by the U.S. distilled spirits sector in the UK market will remain intact.

II. Distinctive Product Recognition

Also in 1994, the U.S. and the EU signed an agreement under which the EU agreed to recognize "Bourbon" and "Tennessee Whiskey" as distinctive products of the U.S. In return, the U.S. provided similar recognition to "Scotch Whisky" and other EU spirits. These commitments have been reflected in U.S. and EU internal regulations. The recognition for "Bourbon" and "Tennessee Whiskey" is reflected in Commission Regulation No. 936/2009.

Request: The Distilled Spirits Council seeks the U.S. government's assistance in seeking assurances from the UK government that protection for "Bourbon" and "Tennessee Whiskey" as distinctive products of the U.S. will remain intact.

III. Trade Statistics

In 2016, U.S. spirits exports to the United Kingdom were valued at nearly $122 million, reflecting a nearly 88 percent decrease from 2016 export values. In the January through August 2017 period, U.S. spirits were valued at $102.7 million, representing a 42 percent increase from the same period in 2016; whiskeys accounted for 75 percent of U.S. exports through August 2017.

VIETNAM

I. Import Policies

Import Licensing

On January 1, 2013, Vietnam's Decree 94 on "Liquor Production and Trading" entered into force. The Decree provides for three types of trading licenses: (1) liquor distribution licenses; (2) liquor wholesale licenses; and (3) liquor retail or retail agency licenses. Under the decree, quotas are in place for each category of trading license: the distribution license quota is 1 license per 400,000 people in each province/city; the wholesale license quota is 1 license per 100,000 people; and the retail license quota is set at 1 license per 1000 people. The quotas may be adjusted annually based on changes in population.

Only importers with liquor distribution licenses are permitted to import beverage alcohol products directly. In contrast, local producers may organize their own distribution networks and may sell their products at retail at their own shops/outlets without being required to obtain a distribution, wholesale or retail license.

The small quota for distribution licenses, as well as the quotas for wholesale and retail licenses, places imported spirits at a significant competitive disadvantage considering domestic producers' exemption from all trading license requirement. Domestic producers are required to obtain a production license, but it appears that there is no quota on the number of such licenses. Thus, even if an importer can secure the appropriate license, its wholesaler or distributor may not be able to do so because of the quotas which exist in their provinces. In this instance, importers are still at a competitive disadvantage vis-à-vis domestic producers, which are not subject to the same licensing and distribution requirements.

On August 26, 2016, Vietnam notified to the WTO TBT Committee a Draft Decree on Alcohol Trading (G/TBT/N/VNM/86). If adopted, this decree would replace Decree 94 referenced above. The draft removed:

- The quotas for distribution, wholesale and retail licenses based on the number of inhabitants;
- The restriction that one trader is only allowed to apply for one type of license;
- The sales restrictions from the vertical distribution system in Decree 94 (i.e. licensed distributor could only sell to licensed wholesaler, licensed wholesaler could only sell to licensed retailers, etc.) by restoring the trading rights of liquor traders (distributors, wholesalers, retailers) to buy from any licensed distributor /wholesaler/trader and sell to any licensed traders in addition to the rights of retail sales in licensed premises;
- Amended conditions for obtaining a distribution license. For instance, Decree 94 requires the distributor to have a system of distribution in at least 6 provinces with at

> least 3 liquor wholesalers in each province (Art 17.1.c), the Draft Decree (Art 23.5) requires the distributor to have a distribution system in at least 2 central provinces/cities, with at least 1 wholesaler or 5 retailers (if no wholesaler is available in this area) in each central province/city.

However, the draft still contains some restrictions for distribution license holders (i.e., importers), such as minimum requirements for geographical presence and specifications that the distributor can operate only "within granted provinces/areas." In addition, a distribution license applicant must provide at the time of application information about the participants in its distribution network, since importers can only sell to persons who have the appropriate trading license. However, commercial producers in Vietnam are not subject to the same limitations. The status of the draft regulation is unclear.

Request: The Distilled Spirits Council seeks the U.S. government's assistance in inquiring about the status of the draft decree.

II. Technical Barriers

Labeling

Since December 2014, a regulation requiring allergen labeling and ingredient listing requirements for distilled spirits has been in place. Such requirements are inconsistent with standard international practices for the labeling of distilled spirits.

Request: The Distilled Spirits Council seeks U.S. government assistance in raising the industry's concerns with the Vietnamese government.

III. Other Barriers

Taxation

On November 26, 2014, Vietnam's National Assembly passed the amended Special Consumption Tax (SCT) Law, which increases the rate for beer, wine and spirits. For beverage alcohol products containing 20 percent alcohol by volume and above (mainly spirits), the rate, which is currently 60 percent *ad valorem*, will increase to 65 percent as of January 1, 2018.

In August 2015, Vietnam issued a "Draft Law on Amendment of some articles of tax law" (Letter No. 11140/BTC-CST) that would impose changes to how the SCT for beverage alcohol is applied. Reportedly the proposal would change the taxable base from: A) the sum of the importers' price (CIF) + import duty to: B) the "selling price" by the importers (i.e., importers' price (CIF) + import duty + importer margin). The taxable base for domestic products reportedly is based only on the domestic manufacturer's price. In addition, the SCT would be levied at the point of importation and again when the importer sells the products into the domestic market. A refund mechanism to prevent double taxation is reportedly included, but it is unclear how this will work in practice. According to the reports, domestic producers must only pay the SCT once. The status of the draft law is unclear.

Request: The Distilled Spirits Council seeks U.S. government assistance in seeking additional information regarding the current tax proposal, and in urging the Vietnamese government to ensure that any changes which are adopted do not discriminate against imported spirits.

IV. Trade Statistics

Direct U.S. spirits exports to Vietnam reached $46.7 million in 2016, a significant increase from $16.7 million in 2015. Exports through August 2017 totaled $19.2 million, a 29.2 percent decrease as compared to the same period in 2016.

IV. OTHER MARKETS

ARGENTINA

I. Other Barriers

Discriminatory Taxation

Local spirits are assessed a VAT tax of 21 percent, whereas imported spirits are assessed a rate of 41 percent (21 percent VAT plus a 20 percent VAT "perception"). While the regular VAT generates a credit that can be redeemed after the product is sold to consumers, the procedures for obtaining the credit for the "perception" VAT applicable only to importers takes several months to recover.

Request: The Distilled Spirits Council seeks the U.S. government's assistance in urging Argentina to eliminate the discriminatory aspects of its tax scheme.

II. Trade Statistics

Total U.S. spirits exports were valued at $3.9 million in 2016, up 225 percent from 2015 levels. However, in the January through August 2017 period, U.S. exports were valued at $3.3 million, representing a 6 percent decrease from the same period in 2016.

COSTA RICA

I. Technical Barriers

Standards

On May 22, 2017, Costa Rica notified proposed amendments to its beverage alcohol standards to the WTO (G/TBT/N/CRI/167). The amendments contain some inconsistencies with the U.S. standards of identity which may prevent certain U.S.-produced spirits from entering the market. In addition, the regulation is inconsistent with Costa Rica's commitments under the U.S.-Central America Free Trade Agreement (CAFTA) to recognize both "Bourbon" and "Tennessee Whiskey" as distinctive products of the U.S. (Only "Bourbon" is recognized in the regulation).

Request: The Distilled Spirits Council seeks the U.S. governments assistance in urging Costa Rica to: 1) include explicit recognition for "Tennessee Whiskey" as a distinctive product of the United States consistent with its commitments under CAFTA; 2) eliminate the three-year aging requirement for whiskey; 3) eliminate the one-year aging requirement for rum; and 4) eliminate maximum alcohol content requirement for all spirits.

II. Other Barriers

Discriminatory Taxation

In January 2004, Costa Rica introduced a new specific excise tax for spirits that is calculated per percent of alcohol per liter, with different rates based on the category of spirit (*see* Ley 7972).

Costa Rican Specific Excise Tax Rates
(Rates as of February 1, 2016)

Alcohol Strength	Tax Rate per mL pure alcohol (in colones (¢))
Less than or equal to 15 percent a.b.v.	3.37
Greater than 15 percent to 30 percent a.b.v.	4.04
Greater than 30 percent a.b.v.	4.71

The local spirit, *guaro*, (which is produced in largest volume by the state-owned alcohol company) is bottled at 30 percent alcohol-by-volume (a.b.v.). The vast majority of internationally-traded spirits are bottled at 40 percent a.b.v., and consequently cannot ever qualify for the lower tax rate. Furthermore, local producers pay the specific tax and the "impuesto selectivo de consumo" within the first 15 days of each month on sales made during the month prior, while importers must pay the tax as a prerequisite for release of their product from Customs.

The Costa Rican tax system appears to violate the obligations of the WTO in two respects. First, by applying a lower rate of tax to *guaro* (¢3.53 per mL of pure alcohol) – the primary product category that is produced locally, than to mostly imported product categories such as whiskey, vodka, etc., (¢4.10 per mL of pure alcohol), the tax system has the effect of applying a lower rate of tax on local products than on directly competitive and substitutable imported spirits in a manner that provides protection to the domestic industry in contravention of GATT Art. III:2. In four WTO dispute settlement cases concerning internal taxation of beverage alcohol (Japan – DS8, 10 and 11; Korea – DS 75 and 84; Chile –DS 87 and 110; and the Philippines – DS 396 and 403), the WTO has clearly upheld that all products under the HTS 2208 sub-chapter are, at a minimum, directly competitive and substitutable and therefore should be taxed similarly.

Second, in the administration of the tax, domestic producers pay the tax on a monthly basis, while importers must carry the financial burden of paying the tax before imports can be released from Customs. To the degree that the difference in administration places a greater burden on importers than on the domestic industry, the Distilled Spirits Council is concerned that there may be a potential GATT violation.

Request: The Distilled Spirits Council requests that the U.S. government urge Costa Rica to remove the discriminatory excise tax for spirits.

III. Trade Statistics

In 2016, U.S. exports of spirits to Costa Rica were valued at $1.9 million representing a 45 percent increase from 2015 export values. In the January through August 2017 period, U.S. spirits exports valued at just under $1 million representing a 10 percent decrease from the same period in 2016.

EAST AFRICA

(KENYA, TANZANIA, UGANDA, RWANDA, BURUNDI)

I. Technical Barriers

Standards and Labeling

Kenya, Uganda, Burundi, Tanzania, and Rwanda, which comprise the East Africa Community, have been developing harmonized rum, whiskey, vodka, brandy, neutral spirit, and gin standards and labeling requirements since 2015. The most recent version of the standards, which was published in March 2017, include some potentially problematic requirements, which are inconsistent with standard international practice for the labeling of distilled spirits products.

The Distilled Spirits Council submitted comprehensive comments on the East African Standards in response to **Uganda's** and **Kenya's** notifications to the WTO in 2014 and 2015. In March 2017, the EAC issued revised proposed standards which **Kenya** (G/TBT/N/556-565) and **Tanzania** (G/TBT/N/TZA/78-88) subsequently notified to the WTO. In a positive development, the EAC revised its definitions of blended whiskey, gin, and vodka in response to the Distilled Spirits Council's comments. Unfortunately, the revised standards did not consider some key concerns such as eliminating the use of analytical parameters as part of product definitions, including protections for "Bourbon" and "Tennessee Whiskey" as distinctive products of the U.S., and confirming that the use of stickers is permitted. The Distilled Spirits Council submitted comments in May 2017 to Tanzania and Kenya which reiterated concerns raised in previous submissions. It is unclear when the standards will be finalized.

Request: The Distilled Spirits Council seeks the U.S. government's continued assistance in: 1) seeking an update on the status of the standards; and 2) urging the countries to refrain from adopting standards which would unnecessarily prohibit the importation of U.S.-produced distilled spirits into the East Africa marketplace.

II. Trade Statistics

Kenya is the single largest market for U.S. spirit exports to the region. According to the Global Trade Atlas database, imports of U.S. distilled spirits products into Kenya were valued at over $870,000 in 2016. There is no Global Trade Atlas data for the other EAC members.

ECUADOR

I. Other Barriers

Discriminatory Taxation

Since November 2011, Ecuador has applied a rate of $6.93 per liter of pure alcohol (lpa) for distilled spirits. However, if the ex-customs value or ex-factory value (for local spirits) exceeds $3.60 per liter, an additional 75 percent *ad valorem* tax is assessed.

As applied, Ecuador's tax rate appears to discriminate against imported spirits in favor of domestically produced products. The Distilled Spirits Council understands that the ex-factory value of domestically produced rum in Ecuador is generally between $2.50 and $2.70 per liter, and is therefore subject only to the $6.93 per lpa tax. However, the ex-customs value of all imported spirits will be at least $10 per liter. Thus, all imported spirits are subject to the additional 75 percent tax rate. This is a clear violation of GATT Article III, paragraph 2, which prohibits discrimination of imports with respect to internal taxation.

Request: The Distilled Spirits Council urges the U.S. government to engage with Ecuador to remove the discriminatory 75 percent additional tax, which appears to apply only to imported products.

II. Trade Statistics

In 2016, U.S. distilled spirits exports were valued at $3.9 million, representing an increase of 77 percent from 2015 levels. Through the January-August 2017 period, U.S. exports reached $4.1 million, reflecting a 90 percent increase relative to the same period in 2016.

HONG KONG

I. Other Barriers

Taxation

In February 2008, Hong Kong eliminated its excise taxes on beverage alcohol products with an alcohol content of 30 percent alcohol by volume (a.b.v.) or less. In effect, this action eliminated the excise taxes on beer and wine, while the excise tax on most distilled spirits remains at 100 percent *ad valorem*. Since the excise tax on wine was eliminated, Hong Kong has witnessed a surge in imports of wine and also has developed into the world's foremost wine auction center. The continued imposition of a 100 percent *ad valorem* excise tax on beverage alcohol products over 30 percent a.b.v. has, not surprisingly, led to significant price disparities between wine and spirits, distorting the beverage alcohol market. The market-distorting effect is magnified by the *ad valorem* nature of the tax, which, in effect, penalizes higher-value, higher-quality spirits.

Request: The Distilled Spirits Council seeks the U.S. government's continued support in urging Hong Kong to, at a minimum, close the gap between its tax rate on distilled spirits and wine and beer.

II. Trade Statistics

Hong Kong's tax policies have impeded U.S. distilled spirits exporters' access to the nearly $3.2 billion beverage alcohol retail market. Distilled spirits accounted for 18 percent of total beverage alcohol retail sales, while wine accounted for 47 percent of the market in terms of retail sales in 2016. In contrast, Singapore, which has a similar population and beverage alcohol market in terms of retail sales, but a single excise tax rate for wine and distilled spirits, recorded retail sales of distilled spirits that are 46 percent larger than in Hong Kong (Euromonitor). To compare the two markets, in 2016 direct U.S. spirits exports to Hong Kong were valued at only $5 million, while U.S. spirits exports to Singapore reached $30.2 million.

INDONESIA

I. Technical Barriers

Standards

In June 2015, Indonesia notified a proposal to revise its definitions for all food products, including beverage alcohol, to the WTO (*The Regulation of the Chairman NADFC RI No 1 Year 2015 concerning Food Safety*, G/TBT/N/IDN/101). The proposal details product standards for spirits, including brandy, rum, whiskey, gin, vodka, liqueurs, etc. Several aspects of the standards would have the unintended effect of barring the importation of various internationally-traded U.S. distilled spirits products. The Distilled Spirits Council provided comments regarding the proposed definitions of whiskey, gin, brandy, vodka, and proposed minimum alcohol content requirements, and limits on methanol. In November 2015, Indonesia responded to the Distilled Spirits Council's comments and agreed to eliminate the two-year minimum aging requirement for whiskey and to partially amend the definition of gin, among other things. The regulation was implemented in August 2016.

In June 2016, Indonesia notified a separate proposed comprehensive regulation for beverage alcohol to the WTO (G/SPS/N/IDN/111) which is overlapping and includes the same "product definitions" that Indonesia notified to the WTO in June 2015, and upon which the Distilled Spirits Council commented in August 2015. While the June 2016 proposal incorporates some of the Distilled Spirits Council's previous requests and some of what Indonesia agreed to in its November 2015 response, some of the proposed standards remain problematic. In particular, Indonesia failed to eliminate the two-year minimum aging requirement for whiskey. The regulation was implemented in July 2016.

Request: The Distilled Spirits Council seeks the U.S. government's continued assistance in urging Indonesia to eliminate the two-year minimum aging requirement for whiskey as it previously agreed to do.

II. Import Policies

Quota

Indonesia applies quantitative limits on the importation of beverage alcohol products and allocates import quantities amongst registered importers. The release of the quota is made annually by April 1 for the period through March 31 of the following year. Indonesia has three separate quotas based on alcohol content: 'Category A,' containing five percent a.b.v. or less; 'Category B,' containing more than 5 percent but less than 21 percent a.b.v.; and 'Category C,' containing 21 - 55 percent a.b.v. Distilled spirits products, with the exception of certain liqueurs and cordials, are classified in 'Category C.'

Indonesia's Ministry of Trade did not release its 2017-2018 quota until September 8, 2017 and only for the period through December 31, 2017 instead of through March 1, 2018. Due to the delay in its release of the quota for 'Category C' beverage alcohol products, the importation of distilled spirits was halted between April 2017 and September 2017. Also, the three-month window to import products under the new quota is insufficient for companies to adequately plan for the year as the next quota will presumably not be issued until April 1, 2018.

Request: The Distilled Spirits Council requests the U.S. government's assistance in urging Indonesia to issue its quota through March 1, 2018.

III. Other Barriers

Discriminatory Taxation

Since at least 2006, Indonesia has imposed a discriminatory tax regime favoring domestically-produced spirits. Since Regulation No. 207/2013 was issued in 2013 the highest taxes are assessed on imported spirits, as follows:

Current Excise Tax as of January 1, 2014 (Rp. Per liter)		
Alcohol Content	**Local**	**Imported**
Up to 5 percent a.b.v.	13,000	13,000
Between 5 percent and 20 percent a.b.v.	33,000	44,000
Greater than 20 percent a.b.v	80,000	***139,000***

This discriminatory taxation appears to be a violation of Indonesia's WTO obligations under Article III: 2 of GATT 1994. In four dispute settlement cases dealing with internal taxation of beverage alcohol (Japan, Korea, Chile, and the Philippines), the WTO has upheld the position that all products under the HTS 2208 sub-chapter, including rum, vodka, gin, whisk(e)y, brandy, tequila, etc., are, at a minimum, directly competitive and substitutable products and should be taxed similarly, as required by GATT Article III, paragraph 2.

Request: The Distilled Spirits Council seeks the U.S. government's assistance in urging the Indonesian government to remove the discriminatory aspects of its taxation regime for spirits as soon as possible.

IV. Trade Statistics

In 2016, Indonesia's imports of U.S spirits were valued at $526,623 (Global Trade Atlas), representing a 2 percent increase from 2015 levels. These imports have decreased nearly 37 percent in the first half of 2017 as compared to the same period last year.

MALAYSIA

I. <u>Technical Barriers</u>

On May 27, 2016, Malaysia published its final amendments to its food labeling regulations introducing a mandatory warning statement for all beverage alcohol products, banning the sale of beverage alcohol products that do not fall into a standardized category, and establishing a new product category, “compounded hard liquor.” The amendments, which were originally notified to the WTO in December 2015 (G/TBT/N/MYS/59 and G/TBT/N/MYS/60) go into effect in December 2017.

<u>Labeling</u>

The Distilled Spirits Council is concerned that Malaysia’s new warning statement, “Consumption of alcohol can be harmful to health,” does not reflect the overwhelming scientific evidence that <u>excessive</u> consumption of alcohol may be harmful. For most individuals, moderate/responsible consumption is consistent with a healthy lifestyle and the majority of those who choose to consume beverage alcohol do so responsibly and in moderation. In addition, the amendments do not include font size requirements that take into account differently-sized bottles.

Request*:* The Distilled Spirits Council seeks the U.S. government’s continued assistance in urging Malaysia to: 1) revise the health warning statement to reflect the overwhelming scientific evidence that <u>excessive</u> consumption of alcohol may be harmful; and 2) adopt font size requirements that take into account differently-sized bottles.

<u>Standards</u>

The standards of identity have been amended to ban the sale of beverage alcohol products that do not fall into a standardized product category. In addition, the standards establish a new product category known as “compounded hard liquor.”

The Distilled Spirits Council is concerned that because the current standards do not include definitions for commonly internationally-traded products such as flavored vodka, flavored gin, flavored rum, flavored whiskey, and flavored brandy etc., such products are not permitted for sale in the Malaysian marketplace.

Furthermore, the new “compounded hard liquor” category is problematic because it is a mixture of undenatured ethyl alcohol with flavorings, and/or small percentages of spirits. The Distilled Spirits Council is concerned that these products could be mistakenly viewed as mixtures of various spirits. Thus, the Distilled Spirits Council has urged Malaysia to modify the phrase “compounded hard liquor” to “compounded imitation distilled spirits” to more accurately describe the products.

Request: The Distilled Spirits Council requests the U.S. government's continued assistance in urging that internationally-traded products such as flavored vodka etc. be permitted for sale in the Malaysian marketplace and the definition of "compounded hard liquor" be modified, as noted above.

II. <u>Other Market Access Issues</u>

<u>Discriminatory Taxation</u>

On March 1, 2016, Malaysia adopted changes to the structure and rates of its discriminatory excise tax regime for beverage alcohol products. In a positive development, Malaysia changed the structure of its excise tax from a hybrid tax, with an *ad valorem* and specific rate component, to a specific tax based on alcohol content. However, Malaysia retained the long-standing discriminatory nature of its excise tax by continuing to assess a lower tax rate on domestic spirits (samsu, arrack, and other local spirits) than on imported products. For example, the excise tax on samsu (overwhelmingly produced locally) is 60.00RM per liter of pure alcohol, whereas the tax assessed on whiskey (the vast majority of which is imported) is 150.00RM per liter. The current rates for spirits are listed below:

Tariff Code	**Description**		**Excise Duty** (as of 03/1/16)
22.08	***Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80percent vol; spirits, liqueurs, and other spirituous beverages.***		**Rate (RM) per LPA**
2208.20		- Spirits obtained by distilling grape wine or grape marc:	
	100	Brandy	150.00
	900	Other	30.00/liter + 15percent
2208.30	000	Whiskeys	150.00
2208.40	000	Rum and tafia	150.00
2208.50	000	Gin and Geneva	150.00
2208.60	000	Vodka	150.00
2208.70	100	Liqueurs and cordials (not exceeding 57percent)	60.00
2208.90	300	Samsu (including medicated samsu)	60.00
2208.90	500	Arrack and pineapple spirits	90.00
2208.90	300	Bitters	9.00
		Compound Hard Liquor	60.00

Malaysia's current excise tax is clearly in violation of GATT Article III, Paragraph 2 which mandates non-discriminatory treatment of imports in respect to internal taxes. In four dispute settlement cases dealing with internal taxation of beverage alcohol (Japan, Korea, Chile, and the Philippines), the WTO has upheld the position that all products under the HTS 2208 sub-chapter, including rum, vodka, gin, whisk(e)y, brandy, tequila, etc., are, at a minimum, directly competitive and substitutable products and, therefore, should be taxed similarly, as required by GATT Article III, paragraph 2.

Request: The Distilled Spirits Council urges the United States to secure the elimination of the discriminatory aspects of Malaysia's excise tax regime.

III. Trade Statistics

In 2016, Malaysia's imports of U.S. spirits were valued at $2 million (Global Trade Atlas), representing a 16 percent decrease from 2015. These imports have decreased further in the first half of 2017 and are down nearly 70 percent over the same period last year.

PERU

I. Technical Barriers

Labeling

In June 2017, Peru's Congress proposed legislation, which is awaiting its final vote, to amend its beverage alcohol warning statements which have been in effect since 2010. The proposal would require: 1) the addition of the warning statement that "Driving in a State of Intoxication is a Crime" (the current warning is: "Drinking Alcoholic Beverages in Excess is Harmful"); 2) to increase the warning size from 10 percent to 20 percent of the label; and 3) a table to be included on the label to show the average amount of alcohol, according to weight and sex, that would result in a blood alcohol level over the legal limit to drive. Peru will have to issue regulations to implement the proposed table. The proposal has not been notified to WTO's TBT Committee.

Request: The Distilled Spirits Council respectfully requests the U.S. government's assistance in: 1) obtaining an update on the status of the legislation; and 2) urging Peru to notify the proposal and any implementing regulations for public consultation to the WTO.

II. Other Market Access Issues

Discriminatory Taxation

Since 2004, Peru has imposed a discriminatory tax (*Impuesto Selectivo al Consumo*, or ISC) that negatively impacts imported U.S. spirits. While most spirits were subject to a 20 percent *ad valorem* tax rate, domestically-produced pisco was assessed a specific rate of 1.50 Peruvian Nuevo Sol (PEN) per liter under Decreto Supremo N° 104-2004-EF.

This discrimination was exacerbated by an amendment in May 2013 that imposed a new excise tax structure requiring products other than pisco to face the higher of either a specific rate or an *ad valorem* rate (which was increased to 25 percent). The current rates are indicated in the following table:

<table>
<tr><th>Product</th><th>Alcohol by Volume</th><th>Specific Rate</th><th>Ad Valorem Rate</th></tr>
<tr><td>Pisco</td><td>-</td><td>1.50 PEN/liter</td><td>(none)</td></tr>
<tr><td rowspan="3">Other beverage alcohol products</td><td>0 percent to 6 percent</td><td>1.35 PEN/liter</td><td>30 percent</td></tr>
<tr><td>Over 6 percent to 20 percent</td><td>2.50 PEN/liter</td><td>25 percent</td></tr>
<tr><td>Over 20 percent</td><td>3.40 PEN/liter</td><td>25 percent</td></tr>
</table>

As noted above, the specific tax rate on pisco is much lower than the minimum rate of 3.40 PEN per liter for comparable spirits products (i.e., those containing over 20 percent alcohol by volume). This puts U.S. spirits at a considerable disadvantage compared to domestic pisco.

Peru's discriminatory taxation scheme is inconsistent with GATT Article III, paragraph 2 as well as the national treatment provisions contained in Article 2.2 of the U.S.-Peru Trade Promotion Agreement.

Request: The Distilled Spirits Council requests that the U.S. government continue to engage with Peru to urge elimination of the discriminatory practices as soon as possible.

III. Trade Statistics

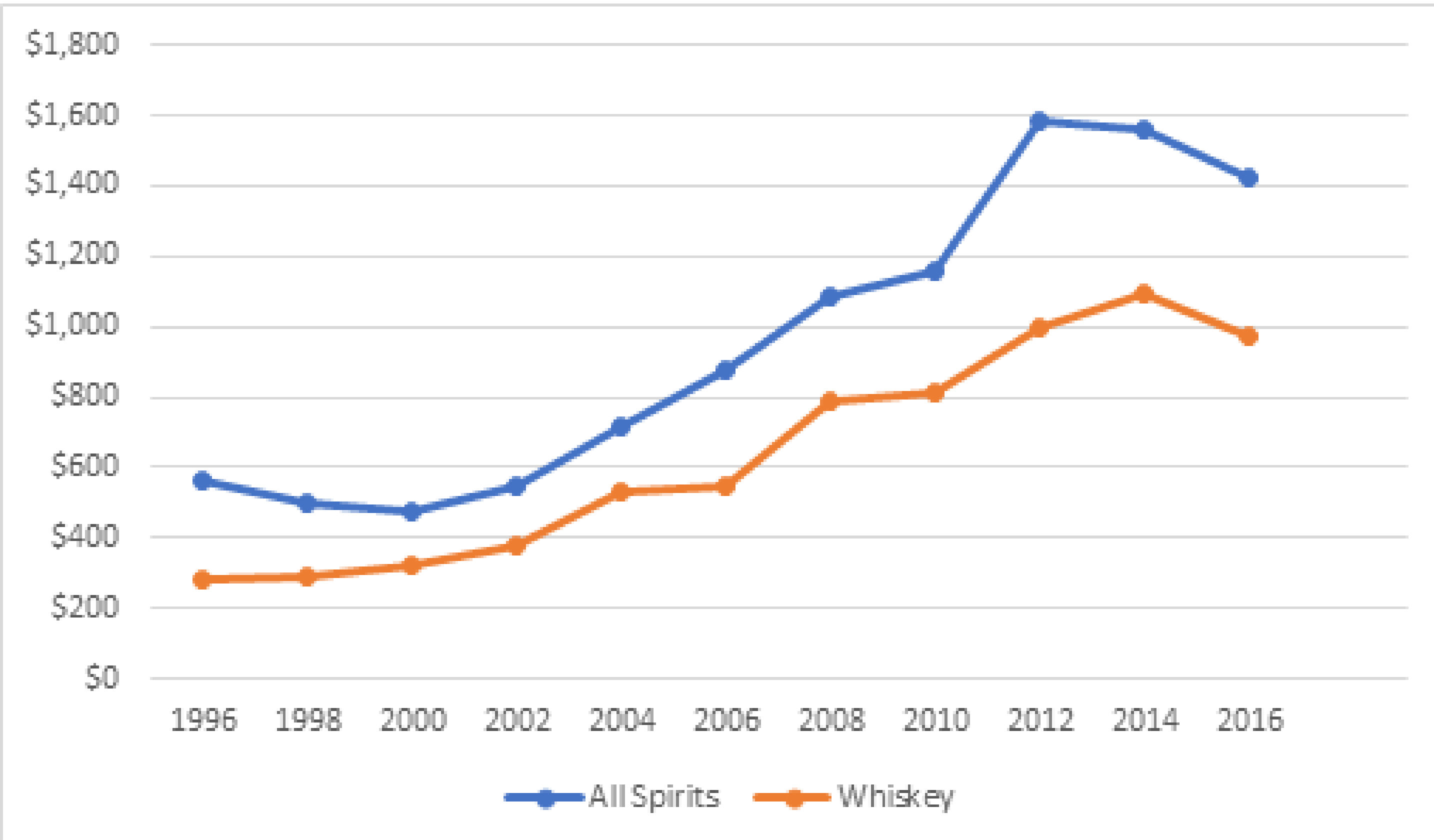
Direct U.S. exports of distilled spirits to Peru exceeded $2 million in 2016, down 25 percent from 2015. However, through August 2017 exports were valued at $1.4 million, up 7 percent over the same period in 2016.

V. U.S. SPIRITS EXPORT DATA

(Source: U.S. Department of Commerce, Compiled by the U.S. International Trade Commission)

U.S. Global Distilled Spirits Exports 1994-2016

In millions of U.S. dollars



The Top Ten Export Markets in 2016 in Volume:

72 Percent of Total *Export* Volume

Market	2016 Volume (proof liters) (in millions)
Canada	59
Spain	45
Australia	35
Germany	20
Mexico	16
Panama	16
Vietnam	14
Japan	14
United Kingdom	14
Netherlands	14

The Top Ten Exports Markets in 2016 in Value:

68 Percent of Total Export Value

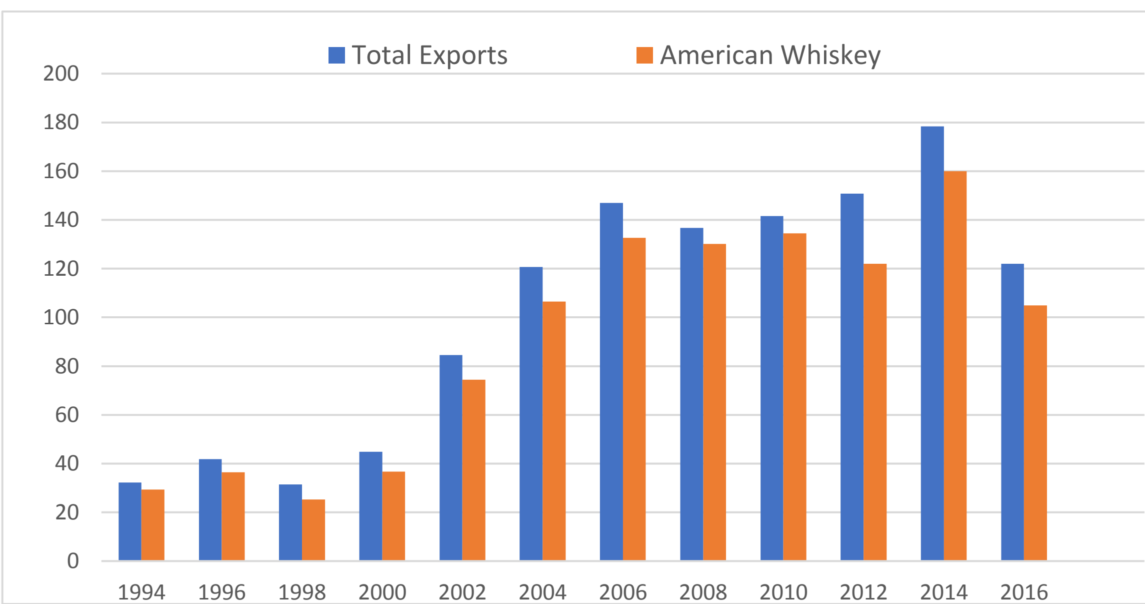
Market	2016 Value (in millions)
Canada	$191
United Kingdom	$122
Australia	$113
Spain	$103
Germany	$101
Japan	$98
France	$98
Netherlands	$59
Vietnam	$47
Mexico	$36

Top Five Export Growth Markets in 2016

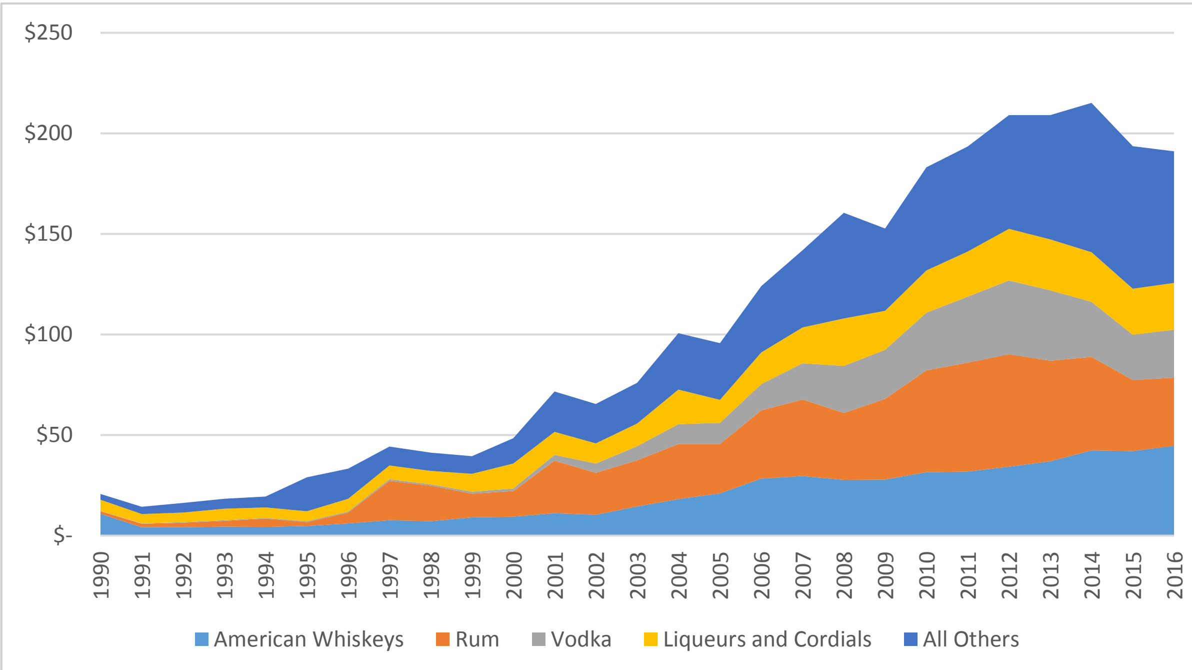
By Dollar	Value Growth 2015-2016 (USD millions)	2016 Total Value (USD millions)
Vietnam	30.7	47.5
Spain	17.2	102.7
Singapore	4	30.2
Romania	3.3	11.6
Korea	1.5	13.1
By Percentage *	**Percentage Growth 2015-2016**	**2016 Total Value (USD millions)**
Vietnam	+182.9%	47.5
Romania	+40.2	11.6
Spain	+20.2%	102.7
Singapore	+15.4%	30.2
Korea	+12.6%	13.1

**Among countries whose U.S. imports exceed $10 million*

US Spirits Exports to the UK: 1994-2016
(in million $)



U.S. Distilled Spirits Exports to Canada 1990-2016
($ millions)



U.S. Distilled Spirits Exports to Mexico 1994-2016
($ millions)