DISTILLED
SPIRITS
COUNCIL

October 30, 2018

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

RE: USTR-2018-0029: Comments Regarding Foreign Trade Barriers to U.S. Exports – Submission by the Distilled Spirits Council of the United States, Inc. (83 *Fed. Reg.* 42966 (August 24, 2018))

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 2017 valued at over $1.6 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 2018

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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 various 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 large part due to the comprehensive market-opening trade agreements that U.S. has achieved, U.S. spirits exports have expanded significantly over the past two decades; U.S. spirits are now exported from small, medium and large distillers located in 42 states, supporting the direct and indirect employment of an estimated 1.5 million people across America.

In 2017, U.S. distilled spirits exports totaled $1.6 billion, representing an increase of 15 percent compared with the previous year. Comprising almost 49 percent of total U.S. spirits exports in volume, whiskey continues to be the key growth driver of U.S. shipments. In 2017, the value of U.S. exports of whiskey totaled $1.1 billion, representing a 16 percent increase from 2016 levels.

Despite this progress, U.S. spirits continue to face an array of tariff and non-tariff barriers in priority exports markets. In addition, retaliatory tariffs recently imposed on U.S. spirits exports threaten to seriously impede the export progress that has benefitted our sector and created jobs across the country. The Distilled Spirits Council and its members continue to urge all parties to de-escalate the disputes and to resolve the retaliatory tariffs without further delay.

Trade Agreements: 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 $1.4 billion in 2017, accounting for 85 percent of global U.S. spirits exports.

Efforts by the U.S. government to secure comprehensive bilateral and regional trade agreements have contributed to the significant growth in U.S. distilled spirits exports. In 2017, U.S. distilled spirits exports to bilateral and regional free trade agreement partners totaled $489 million, accounting for nearly 1/3 of global U.S. spirits exports. In fact, between 2000 and 2017 exports to these trading partners have grown at a faster rate (304 percent increase) than U.S. distilled spirits exports to non-FTA partners (242 percent increase). Thus, the Distilled Spirits Council reiterates our enthusiastic support for the Administration’s intent to pursue new bilateral market opening agreements, which we believe will contribute significantly to the continued growth of our sector.

In addition, 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 by reducing or eliminating import tariffs and establishing rules for transparency, non-discrimination and equal access. Since the Uruguay Round agreements entered into force in 1995, global U.S. distilled spirits exports have increased almost 190 percent through 2017.

Retaliatory Tariffs and Other Barriers to Trade: Certainly, trade agreements and the rules-based trading system have ushered in more opportunities for U.S. spirits exporters to access new markets. Unfortunately, U.S. spirits exports worth an estimated $763 million (based on 2017 export data) are now the target of retaliatory tariffs by the EU, Canada, Mexico, China and Turkey. Specifically, U.S. whiskeys, including Bourbon, Tennessee Whiskey, and American Rye Whiskey, which account for the vast majority of total U.S. spirits exports, are facing tariffs ranging from 10 percent in Canada (our single largest export market), 25 percent in the EU, Mexico and China, and 140 percent in Turkey. In 2017, at $667 million, approximately 59 percent of all U.S. whiskey exports were to the EU alone.

Depending on how long these retaliatory tariffs are in place, the impact will be felt across the United States throughout the entire supply chain, from farmers to suppliers. As noted above, U.S. distilled spirits are exported from small, medium and large distillers located across 42 states; American Whiskey is exported from U.S. distillers located in 37 states. Thus, our top priority is to continue to urge Congress, the Administration and our trading partners to build upon the spirit of collaboration, that began with the July 25th U.S.-EU announcement on trade and continued through the successful negotiation of the U.S.-Mexico-Canada Agreement, to engage in further dialogue that will lead to the immediate removal of these tariffs.

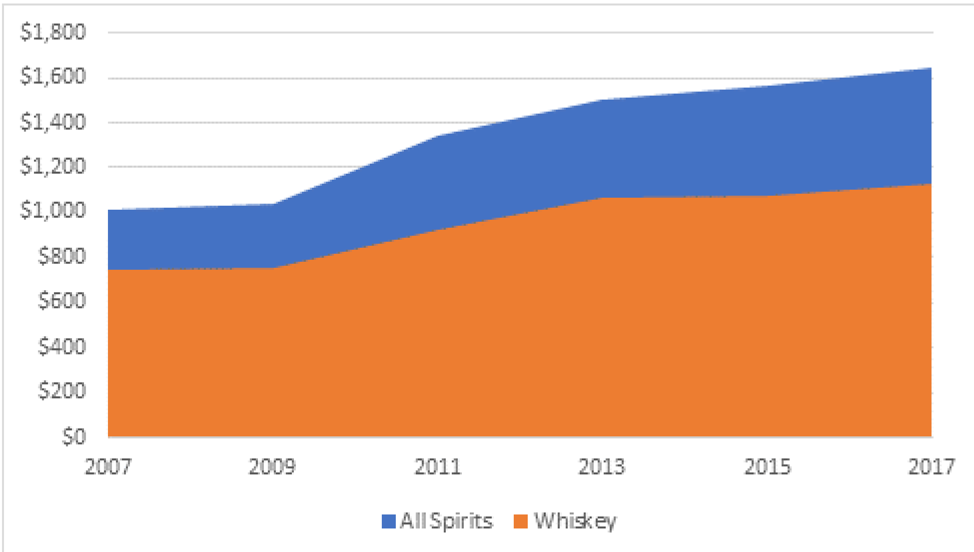
In addition to retaliatory tariffs, several priority target markets maintain high tariffs and/or an array of non-tariff barriers to U.S. spirits, which inhibit the sector's long-term growth prospects. These barriers, which include discriminatory taxes and regulations, are detailed in this submission.

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 strongly encourages all parties to resolve the trade disputes and eliminate the retaliatory tariffs on U.S. spirits exports as soon as possible. In addition, the Council strongly supports efforts by the United States to negotiate more market-opening and comprehensive trade agreements and to continue 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. We look forward to working with the Administration as it continues efforts to address the tariff and non-tariff barriers to U.S. spirits exports and explores opportunities to open new export markets.

II. U.S. SPIRITS EXPORT DATA AND RETALIATORY TARIFFS

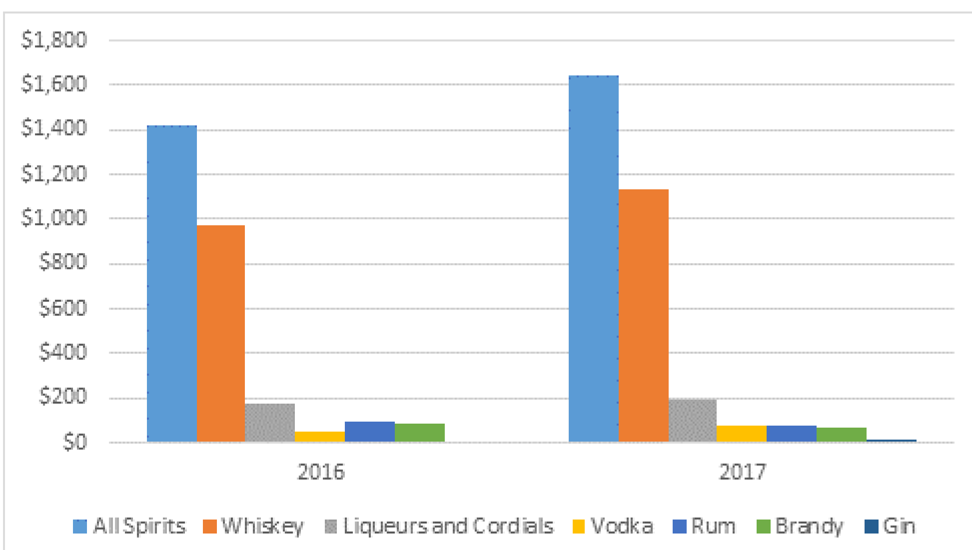
U.S. Distilled Spirits Exports 2007-2017

In millions of U.S. dollars



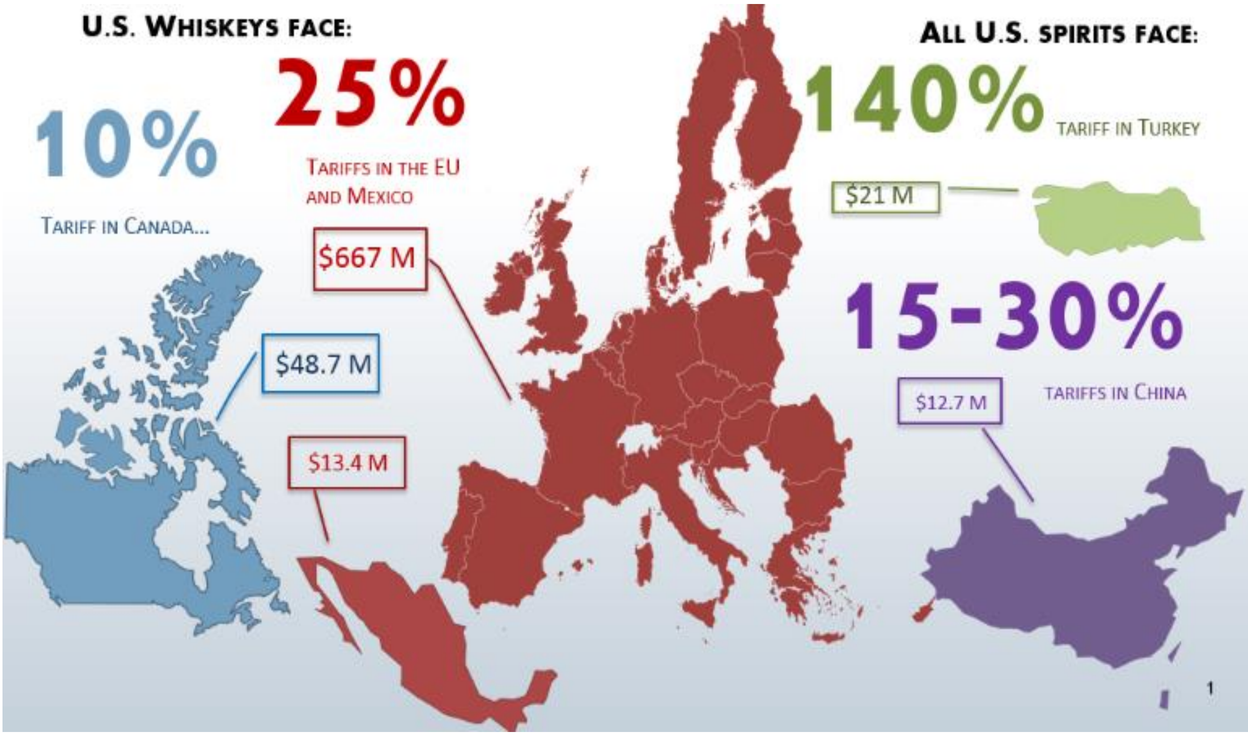
U.S. Distilled Spirits Exports 2016-2017

In millions of U.S. dollars



U.S. Spirits Exports and Retaliation

(retaliatory tariffs imposed beginning June 2018)



Impact of Retaliatory Tariffs

III. PRIORITY MARKETS

CANADA

I. Tariffs

Since July 1, 2018, Canada has been imposing a retaliatory tariff of 10 percent on all U.S. whiskey imports in response to the steel and aluminum tariffs. In 2017, total U.S. whiskey exports to Canada were valued at $48.7 million.

Request: The Distilled Spirits Council urges the United States to build upon the successful conclusion of the U.S.-Mexico-Canada Agreement to resolve the outstanding trade concerns with Canada so that the retaliatory tariffs on U.S. whiskeys can be lifted without any further delay.

II. U.S.-Mexico-Canada Agreement

The Distilled Spirits Council welcomed conclusion of a new trilateral trade agreement between the United States, Canada and Mexico, which reaffirms commitments concerning the internal sale and distribution of distilled spirits and tariff-free trade in spirits. In addition, the new Annex on alcohol beverages reaffirms very important "distinctive product recognition" protections for "Bourbon" and "Tennessee Whiskey" in Canada, and for "Canadian Whisky" in the United States. The Annex also contains new commitments on labeling and certification for spirits and wine, which will help to facilitate trade in spirits among the three countries. These commitments will serve as a list of agreed-upon best practices for the labeling and certification of distilled spirits, and a possible template for future trade agreements.

III. 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. It is anticipated that proposed amendments will be pre-published in the Canada Gazette in early 2019 and will include an opportunity for all interested parties to provide feedback on the regulatory proposal.

Request: 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.

IV. Other Barriers

Discriminatory Taxation

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 urge Canada to eliminate all of the discriminatory aspects of its excise tax pertaining to beverage alcohol products.

V. Trade Statistics

In 2017, U.S. spirits exports to Canada were valued at over $200 million, ranking Canada as the largest export market for U.S. spirits exports.

CHINA

I. Tariffs

Since July 6, 2018, China has been imposing a retaliatory tariff of 25 percent on U.S. whiskeys (on top of a 5 percent tariff, thus totaling 30 percent) in response to the Section 301 actions. American spirits imports into China were valued at $12.8 million in 2017; of this, $8.9 million was whiskey.

Since September 24, 2018, China has been imposing a 10 percent retaliatory tariff on U.S. gin, liqueurs, cordials, rum and vodka (on top of a 10 percent tariff, thus totaling 20 percent), and a 10 percent retaliatory tariff on U.S. brandy (on top of a 5 percent tariff, thus totaling 15 percent). American spirits imports into China of these products were valued at $3.8 million.

Request: The Distilled Spirits Council urges the United States and China to engage in a dialogue to resolve the outstanding trade concerns so that the retaliatory tariffs on U.S. spirits can be lifted without any further delay.

II. 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.

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.

III. <u>Technical Barriers</u>

<u>Standards</u>

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. Another draft revised standard was issued for public comment in April 2018, and the Council provided further comments in May 2018. China has not notified the proposal to the WTO.

***Request*:** The Distilled Spirits Council requests the U.S. government's continued assistance in 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.

IV. <u>Trade Statistics</u>

In 2017, U.S. spirits exports to China were valued at $12.4 million, representing a 19 percent increase from 2016 levels.

EUROPEAN UNION

I. Tariffs

Since June 22, 2018, the EU has imposed a retaliatory tariff of 25 percent on all U.S. whiskey imports in response to U.S. actions on steel and aluminum. Such tariffs will seriously impede the export progress that has benefitted the U.S. spirits sector since the U.S. and EU mutually agreed to eliminate their respective tariffs on most spirits in 1997. Since that time, American whiskey exports to the EU increased nearly 350 percent, from $148 million to $667 million in 2017. In fact, in 2017, U.S. spirits exports to the EU were valued at $789 million, accounting for 48 percent of total U.S. spirits exports and ranking the EU as the single largest destination for U.S. spirits exports.

Request: The Distilled Spirits Council eagerly welcomed the July 25th announcement by President Trump and President Junker on the establishment of an Executive Working Group on trade matters, and the pledge to "resolve the retaliatory tariffs." The Distilled Spirits Council urges the administration to build upon this spirit of collaboration through timely dialogue that results in the immediate removal of the tariffs. 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.

II. Other Barriers

Discriminatory Taxation

The European Union's excise tax rules and minimum rates for distilled spirits are set-forth in two EU Directives: 92/83 and 92/84. Under the directives, 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) small distillers or households that contribute fruit to a local distillery and produce spirits for personal consumption; 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 preliminary public consultations to evaluate Directive 92/83 which concluded on November 27, 2015. The European Commission reviewed the feedback it received and in April 2017 opened another public consultation on the possible content of a legislative revision to Directive 92/83. On May 25, 2018 the European Commission published its legislative proposal which <u>retains</u> the derogations for certain spirits producers. Next, the legislative proposal will be submitted to the European Parliament and the European Economic and Social Committee for consultation and to the Council of Minsters for adoption. The timeline for the adoption of a revised Directive 92/83 is unclear.

France: France imposes a reduced excise tax on rum from French Overseas Departments (FODs). The total excise tax on rum from FODs is €871 per hectoliter of pure alcohol (hlpa), while the tax on all other spirits, including rum from other countries, is €1,741.04 per hlpa. In 2014, the preference was extended until 2020 with an annual quota of 120,000 hlpa. In October 2017, the European Parliament approved a decision from the European Commission to retroactively increase the FOD rum quota from 120,000 hlpa to 144,000 hlpa from January 1, 2016 through December 31, 2020.

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 European Court of Justice (ECJ). The case is still pending.

Romania: Romania provides a reduced excise tax on small distillers producing for households. 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 tax 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 distillers 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 as a flat rate, regardless of the actual amounts produced, it is inconsistent with Directive 92/83.

Slovakia: In September 2018, the Slovak Parliament adopted legislation to legalize home distillation and to apply a reduced excise tax rate of 50 percent on home-distilled products. Directive 92/83 allows Slovakia to apply a reduced rate, of not less than 50 percent to certain fruit growers' distilleries producing ethyl alcohol from fruit supplied to them by fruit growers' households. However, there is no derogation for home distillation in Slovakia. Thus, the derogation is inconsistent 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 in Directive 92/83 and to abide by its WTO commitments to tax all distilled spirits similarly.

III. Technical Barriers

Ireland – Public Health (Alcohol) Bill

Ireland's Public Health (Alcohol) Bill was signed into law by the President of Ireland on October 17, 2018. Ireland has been working on its Public Health (Alcohol) Bill since at least 2015. In June 2016 the bill was notified the bill to the WTO (G/TBT/N/IRL/2). In December 2017, Ireland's Parliament made three significant changes to the bill and in January 2018 Ireland notified the revised bill through the EU's internal review system. The Distilled Spirits Council provided comments in June 2016 and April 2018.

The bill includes a wide range of provisions, such as minimum unit pricing of alcohol, new labeling requirements, new restrictions regarding advertising, and a requirement to physically separate all alcohol products for sale from other items in mixed retail 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, including the warning requirements.

***Request*:** The Distilled Spirits Council requests the U.S. government's assistance in urging Ireland to notify 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.

IV. Trade Statistics

In 2017, the EU was the single largest destination for U.S. spirit exports. At $789 million, the EU market alone accounts for 48 percent of total U.S. spirits exports.

INDIA

I. 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 (1.64 billion liters in 2017) and value ($24.6 billion in retail sales in 2017).

Nonetheless, U.S. spirits producers have begun to make some solid gains, with exports increasing from $390,000 in 2001 to $6.3 million in 2017. Whiskey accounts for the majority of these exports, with a 91 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 April 5, 2018 India's Food Safety and Standards Authority (FSSAI) published the final version of its mandatory beverage alcohol standards and labeling requirements (*The Food Safety Standards (Alcoholic Beverages) Regulations, 2018)*.

In October 2015, FSSAI issued a draft for public comment which was subsequently notified to the WTO on December 1, 2015 (G/TBT/N/IND/51). The Council submitted an extensive comment in January 2016. In September 2016, FSSAI published a revised draft standard, which did not incorporate any of the Council's previous comments. The revised proposal was not notified to the WTO, but India provided an opportunity for stakeholders to submit comments through its domestic process. In response, the Council submitted a comment in October 2016 reiterating many of the points previously raised.

In a positive development, the final standard issued in April 2018 addressed several of the Council's concerns, such as related to the definitions of vodka and liqueurs and cordials, the labeling declaration of alcohol content, and the requirement to list the number of standard drinks. However, it did not address concerns related to the general definition of whiskey, the requirement to provide an ingredient list, maximum alcohol content levels, the use of analytical parameters, and other required statements. In a particularly troubling development, the final draft did not provide explicit protection for "Bourbon" and "Tennessee Whiskey" as distinctive products of the United States.

Request: The Distilled Spirits Council seeks the U.S. government's continued assistance in continuing to raise the outstanding concerns with the final standard. In particular, we urge the U.S. government to secure India's agreement to recognize "Bourbon," "Tennessee Whiskey" and "American Rye Whiskey" as distinctive products of the United States.

MEXICO

I. Tariffs

Since June 5, 2018, Mexico has been imposing a retaliatory tariff of 25 percent on all U.S. whiskeys. In 2017, total U.S. whiskey exports to Mexico were valued at $13.4 million.

Request: The Distilled Spirits Council urges the United States to build upon the successful conclusion of the U.S.-Mexico-Canada Agreement to resolve the outstanding trade concerns with Mexico so that the retaliatory tariffs on U.S. whiskeys can be lifted without any further delay.

II. U.S.-Mexico-Canada Agreement

The Distilled Spirits Council welcomed conclusion of a new trilateral trade agreement between the United States, Canada and Mexico, which reaffirms commitments concerning the internal sale and distribution of distilled spirits and tariff-free trade in spirits. In addition, the new Annex on alcohol beverages reaffirms very important “distinctive product recognition” protections for “Bourbon” and “Tennessee Whiskey” in Mexico, and for “Tequila” and “Mezcal” in the U.S. Separately, Mexico agreed to consider granting distinctive product recognition for “American Rye Whiskey,” a rapidly growing category in the U.S. and around the world.

The Annex also contains new commitments on labeling and certification for spirits and wine, which will help to facilitate trade in spirits among the three countries. These commitments will serve as a list of agreed-upon best practices for the labeling and certification of distilled spirits, and a possible template for future trade agreements.

III. Technical Barriers to Trade

Distilled Spirits Standard: On November 3, 2017, Mexico notified its final comprehensive mandatory beverage alcohol technical regulation (*NOM-199-SCFI-2017)* to the WTO TBT Committee (G/TBT/N/MEX/302/Add.3). The standard 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 labeling provisions go into effect on January 1, 2020, and the rest of the standard (excluding certifications, subject to a separate regulation) entered into force on January 1, 2018.

In a positive development, Mexico revised its definition of Bourbon to make clear that it can be produced anywhere in the U.S., consistent with U.S. regulations, and clarified that compliance with the conformity assessment procedures (*i.e.*, inspections) will <u>only</u> be conducted in Mexico. In addition, Mexico <u>removed</u> the certification requirement and issued a separate regulation concerning certificates.

The final mandatory product 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, and the use of analytical parameters to define product categories, among other things. The labeling changes for distilled spirits specialties and liqueurs/cordials 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 Standard: 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. It is unclear if the mandatory standard for Tequila will be up for review and possible modification starting in 2019. Typically, the standard is reviewed every five years.

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

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 mandatory spirits standards (NOM-199) in order to ensure that U.S. spirits export will not be unnecessarily blocked from the Mexican marketplace. 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.

IV. Trade Statistics

U.S. spirits exports were valued at $44.4 million in 2017, ranking Mexico as the 9th largest export market for U.S. distilled spirits.

SOUTH AFRICA

I. Technical Barriers

Labeling

In 2014, South Africa published amendments to its warning statement requirements proposing to: 1) increase the size of its warning statement from 1/8 of the label to 1/8 of the container; and 2) require that the seven approved warning statements be rotated every 12 months. The Council submitted comments in December 2014 and in March 2015 after it was notified to the WTO (G/TBT/N/ZAF/48/Rev.1). In December 2017, South Africa revised its proposal to require the seven approved warning statements to be rotated on each product line with a 36-month cycle. The amendment was not notified to the WTO TBT Committee for stakeholder comment. On September 4, 2018 South Africa issued a notification to the WTO to amend the Liquor Product Act (G/TBT/N/ZAF/48/Rev.2) which notes that "industry is in consultation with Government regarding the new requirements for health warnings on labels. From all accounts the Department of Health is willing to revisit these requirements, looking at pragmatic considerations and consequences." The regulation goes into effect on December 22, 2020.

Request: We seek the US government's continued assistance in raising the industry's outstanding questions and concerns.

II. Other Barriers

National Liquor Policy

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. According to industry reports, the bill has been amended but a revised draft has not been published.

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.

III. Trade Statistics

Direct U.S. spirits exports to South Africa were valued at $12 million in 2017. Through July 2018, U.S. spirits exports were valued at $7.6 million, up 39 percent over the same period in 2017.

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. The Ministry of Public Health confirmed that the regulation is unclear and unworkable, and convened a working group to draft guidelines to clarify them and bring them into compliance with WTO principles. The working group issued guidance documents in September 2015 and April 2017 which addressed some of the industry's questions, but many of the provisions remain unclear and/or open to interpretation. We understand that Thailand continues to consult on the guidance and may issue a third revised document. Reportedly, the labelling notification will not be enforced until the amendment process is complete. However, it is unclear if the regulation is, in fact, in force.

In August 2014, Thai authorities issued a revised labeling proposal reintroducing a graphic health warning for all beverage alcohol products, a concept which had been previously proposed by Thailand in 2010 (G/TBT/N/THA/332). Their 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 September 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 regulations 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.

Certification

In September 2017, Thailand issued a new regulation, *Ministerial Regulation regarding Permission for Importation of Alcohol Beverages*, to implement Article 154 of Thailand's Excise Tax Act B.E. 2560 which establishes that beverage alcohol importers must: 1) submit a label application; and 2) provide a certificate of analysis (COA) issued by an appropriate government agency or samples for testing to established analytical parameters prior to applying for a beverage alcohol import license. It appears that the regulation provides an alternative to providing product samples which is positive, but there is still some uncertainty about which entity may use the required certificate. The regulation, which was not notified to the WTO, goes into effect on March 14, 2019.

Request: The Distilled Spirits Council seeks the U.S. government's continued assistance in urging Thailand to accept either a: 1) COA issued by an Alcohol and Tobacco Tax and Trade Bureau (TTB) certified laboratory, 2) a Certificate of Free Sale issued by TTB or 3) a company-certified document that the product was produced in accordance with U.S. laws and regulations. We also continue to urge that the regulation be notified to the WTO.

Standards

Thailand is in the early stages of reviewing its voluntary spirits standard. The review is reportedly related to the new certification requirement. The standard includes problematic definitions inconsistent with U.S. standards of identify which may inadvertently keep internationally-traded spirits out of the Thai market. For example, the current standard utilizes analytical parameters to define distilled spirits, includes minimum aging requirements for whiskey and rum, upper ethyl alcohol content levels for certain categories of spirits, and a short list of approved additives. The Council recently submitted comprehensive preliminary comments based on the current standard directly to the Thai government.

Request: The Distilled Spirits Council seeks the U.S. government's assistance in urging Thailand to: 1) eliminate its use analytical parameters and, instead, define spirits solely in terms of their specific raw materials and production processes; 2) eliminate its minimum aging requirements for whiskey and rum; 3) adopt the minimum and maximum ethyl alcohol content requirement set-forth in the U.S. standards of identity; and 4) expand the list of approved additives in distilled spirits to include those listed in the Codex Alimentarius and the U.S. Food and Drug Administration lists of direct food substances and substances generally recognized as safe. The Council also seeks the U.S government's assistance in urging Thailand to notify any proposed revised standard to the WTO, so that interested stakeholders may have an opportunity to comment.

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 <u>all</u> distilled spirits products.

III. <u>Trade Statistics</u>

Direct U.S. spirits exports to Thailand were valued at $5.1 million in 2017. Through July 2018, direct U.S. spirits exports were approximately $5.4 million, a 71 percent increase compared with the same period in 2017.

TURKEY

I. Tariffs

Since June 21, 2018, Turkey has been imposing retaliatory tariffs on all U.S. distilled spirits in response to the steel and aluminum tariffs. Originally, Turkey applied a 70 percent tariff, but increased it to 140 percent tariff on August 15. In 2017, Turkey imported $21 million in spirits from the United States; of this $20.2 million was whiskey.

Request: The Distilled Spirits Council urges the United States and Turkey to engage in a dialogue to resolve the outstanding trade concerns so that the retaliatory tariffs on U.S. spirits can be lifted without any further delay.

II. 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 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.

III. Trade Statistics

In 2017, U.S. direct exports of distilled spirits to Turkey were valued at $13.8 million, up 30 percent from 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. To build upon this strong relationship and further expand U.S. spirits exports to the UK, we enthusiastically support efforts to negotiate a bilateral free trade agreement between the UK and U.S. and look forward to providing input as the process begins.

I. Tariffs

Since 1997, 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

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, and seek protection for "American Rye Whiskey" as a distinctive product of the U.S.

III. Trade Statistics

In 2017, U.S. spirits exports to the United Kingdom were valued at nearly $186 million, reflecting a nearly 52 percent decrease from 2016 export values.

VIETNAM

I. 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.

II. Other Barriers

Law on the Prevention and Control of the Harmful Use of Alcohol

In May 2018, Vietnam notified its proposed *Draft Law on the Prevention and Control of the Harmful Use of Alcohol* (G/TBT/N/VNM/126) to the WTO. The draft included a range of provisions, such as the introduction of a new earmarked tax to support public health initiatives, a voluntary warning labeling requirement, limits on retail outlet density and incorporated the existing ban on advertising beverage alcohol products over 15 percent a.b.v. and proposed a new ban on the "introduction" of such products. The Council submitted comprehensive comments on the draft in April and August 2018.

The bill was subsequently amended to eliminate the earmarked tax, limits on retail outlet density and the prohibition on the "introduction" of all forms of beverage alcohol. However, it retains the existing ban on advertising beverage alcohol products over 15 percent a.b.v., and "encourages" "organizations and individuals for alcohol trading" to provide consumers with information on the labels about "the risk levels of drinking liquor, beer and health warning as instructed by Minister of Health." The bill is expected to be deliberated in the National Assembly in November 2018, pass in May 2019, and go into effect in January 2020.

Request: The Distilled Spirits Council seeks U.S. government assistance in urging Vietnam to: 1) take into account the entire body of scientific literature and research in any beverage alcohol legislation and implementing regulations; 2) adopt standard serving sizes for beverage alcohol and guidelines concerning moderate consumption of alcohol consistent with the U.S. Dietary Guidelines; and 3) treat all classes of beverage alcohol the same regarding regulations related to advertising.

III. Trade Statistics

Direct U.S. spirits exports to Vietnam reached $29.2 million in 2017, a significant decrease from $46.7 million 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 $8.4 million in 2017, up 115 percent from 2016 levels. In the January through July 2018 period, U.S. exports were valued at $4.7 million, representing a 62 percent increase from the same period in 2017.

BRAZIL

I. 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 (%)
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 %)	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.

II. Trade Statistics

In 2017, U.S. spirits exports to Brazil were valued at $27.7 million, reflecting a nearly 170 percent increase from 2016 export values. In the January through July 2018 period, U.S. spirits were valued at $15.8 million, representing a 29 percent increase from the same period in 2017; whiskeys accounted for 63 percent of the total.

COLOMBIA

I. Import Policies

Certificate of Good Manufacturing Practices

In 2009, Colombia notified Decree 1686 to the WTO (G/TBT/N/COL/121) which requires 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 this certificate not be required for U.S. spirits exports because it would be duplicative of existing requirements.

Under Colombia's beverage alcohol reform law which entered into force in January 2017, *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 and currently undergoing a regulatory impact assessment. The regulation may be finalized in November 2018.

Request: The Distilled Spirits Council requests the U.S. government's continued assistance in: 1) seeking confirmation that U.S. spirits exporters will not be required to provide the new Certificate of GMP, which is duplicative of other certificates that are already provided; and 2) urging Colombia to notify the revised Decree 1686 to the WTO for comment.

II. Trade Statistics

In 2017, U.S. spirits exports to Colombia were valued at nearly $3.7 million, reflecting a nearly 38 percent increase from 2016 export values. In the January through July 2018 period, U.S. spirits were valued at $3.7 million, representing a 64 percent increase from the same period in 2017.

COSTA RICA

I. Other Barriers

Discriminatory Taxation

In January 2004, Costa Rica introduced a new specific excise tax for spirits with different rates based on alcohol-by-volume (a.b.v.) content (*see* Ley 7972). In July 2018, Resolution No. RES-DGH-049-2018 was published in the National Gazette (No. 137 on July 30, 2018) updating the specific tax as follows:

Costa Rican Specific Excise Tax Rates
(Rates as of August 1, 2018)

Alcohol Strength	Tax Rate per mL pure alcohol (in colones (¢))
Less than or equal to 15% a.b.v.	3.31
Greater than 15% to 30% a.b.v.	3.96
Greater than 30% a.b.v.	4.61

The local spirit, *guaro*, (which is produced in largest volume by the state-owned alcohol company) is bottled at 30 percent 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 its WTO obligations in two respects. First, by applying a lower rate of tax to *guaro* (¢3.96 per mL of pure alcohol) – the primary product category that is produced locally, than to mostly imported product categories such as whiskey, vodka, etc., (¢4.61 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.

II. Trade Statistics

In 2017, U.S. exports of spirits to Costa Rica were valued at $1.5 million representing an 18 percent decrease from 2016 export values. In the January through July 2018 period, U.S. spirits exports were valued at $1.2 million representing a 50 percent decrease from the same period in 2017.

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 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 go into effect in each country. In March 2018, **Tanzania** notified a proposed technical regulation for liqueurs to the WTO (G/TBT/N/TZA/139) which includes some potentially problematic provisions and may serve as unjustified barriers to trade. It is unclear whether Tanzania's proposed liqueur standard is, in fact, an EAC standard and part of its effort to harmonize its distilled spirits standards and labeling requirements and whether it is in effect. None of the other countries have notified a technical regulation for liqueurs to the WTO.

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 $1.3 million in 2018, representing a 45 percent increase from 2017 export values. There is no Global Trade Atlas data for the other EAC members.

ECUADOR

I. <u>Other Barriers</u>

<u>Discriminatory Taxation</u>

Since January 2013, Ecuador has applied an excise tax 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, <u>all</u> 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 requests the U.S. government urge Ecuador to remove the discriminatory 75 percent additional tax, which appears to apply only to imported products.

II. <u>Trade Statistics</u>

In 2017, U.S. distilled spirits exports were valued at $5.9 million, representing an increase of 50 percent from 2016 levels. Through the January-July 2018 period, U.S. exports reached $3.2 million, reflecting a 1 percent increase relative to the same period in 2017.

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 $3.4 billion beverage alcohol retail market. Distilled spirits accounted for 20 percent of total beverage alcohol retail sales, while wine accounted for 47 percent of the market in terms of retail sales in 2017. In contrast, Singapore, which has a similar population and beverage alcohol market in terms of retail sales ($3.3 billion), but a single excise tax rate for wine and distilled spirits, recorded retail sales of distilled spirits that are 25 percent larger than in Hong Kong (Euromonitor). To compare the two markets, in 2017 direct U.S. spirits exports to Hong Kong were valued at only $7.7 million, while U.S. spirits exports to Singapore reached $29.5 million.

INDONESIA

I. <u>Technical Barriers</u>

<u>Standards</u>

In June 2015, Indonesia notified a proposal to revise its definitions for all food products, including distilled spirits, to the WTO (*The Regulation of the Chairman NADFC RI No 1 Year 2015 concerning Food Safety*, G/TBT/N/IDN/101). 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. <u>Import Policies</u>

As of 2018, Indonesia no longer applies a quantitative limit on the importation of beverage alcohol products. However, in order to obtain an import permit from the Ministry of Trade, importers must demonstrate that they have paid the necessary excise taxes and import duties. Because the import tariff and excise taxes (described below) are so high, this new deposit requirement is quite burdensome.

Request: The Distilled Spirits Council requests the U.S. government's assistance in raising these concerns with the Indonesian government.

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% a.b.v.	13,000	13,000
Between 5% and 20% a.b.v.	33,000	44,000
Greater than 20% 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 2017, Indonesia's imports of U.S spirits were valued at $696,000 (Global Trade Atlas), representing a 20 percent increase from 2016 levels.

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

U.S. spirits exports to Korea were valued at $11.3 million in 2017, down 13.4 percent compared to 2016.

MALAYSIA

I. Technical Barriers

In December 2017, final amendments to the food labeling regulations, which introduced a mandatory warning statement for all beverage alcohol products, banned the sale of beverage alcohol products that do not fall into a standardized category, and established a new product category, "compounded hard liquor," entered into force. The amendments were originally notified to the WTO in December 2015 (G/TBT/N/MYS/59 and G/TBT/N/MYS/60).

Labeling

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 excessive 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 excessive consumption of alcohol may be harmful; and 2) adopt font size requirements that take into account differently-sized bottles.

Standards

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. Other Market Access Issues

Discriminatory Taxation

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 80% 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 + 15%
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 57%)	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. <u>Trade Statistics</u>

In 2017, Malaysia's imports of U.S. spirits were valued at $1.6 million (Global Trade Atlas), representing a 20 percent decrease from 2016. While imports of U.S. whiskeys and rums increased, there was a significant decline in imports of brandy, cordials and liqueurs.

NIGERIA

I. Technical Barriers

Standards: Nigeria is amending its technical regulation for distilled spirits which has been in effect since 2005. The proposal includes problematic definitions inconsistent with U.S. standards of identify, such as a limitation that rye whiskey may only be produced in Canada, a one-year ageing requirement for rum, and minimum alcohol requirements for liqueurs and cordials. In addition, it does not include distinctive product recognition for “Bourbon” and “Tennessee Whiskey” and includes a prohibition on the sale of spirits in PET containers. Nigeria did not notify the proposal to the WTO, but the Distilled Spirits Council submitted a comprehensive comment through Nigeria’s domestic process**.**

Request: The Distilled Spirits Council request’s the U.S. government assistance in urging Nigeria to: 1) notify the proposal to the WTO; 2) add definitions recognizing “Bourbon,” “Tennessee Whiskey” and “American Rye Whiskey” as a distinctive product of the U.S.; 3) eliminate the minimum aging requirement for rum; 4) eliminate minimum alcohol content levels for liqueurs, cordials and spirits drinks; and 5) allow distilled spirits to be packaged in PET containers.

Labeling: Nigeria is also amending its pre-packaged food labeling regulation which has been in effect since 2005. The regulation applies to pre-packaged foods and beverages, including beverage alcohol. Nigeria did not notify the proposal to the WTO, but the Distilled Spirits Council submitted a comment through its domestic process**.** The proposal introduces some potentially problematic provisions concerning ingredient labeling, date marking, and allergen labeling.

Request: The Distilled Spirits Council request’s the U.S. government assistance in urging Nigeria to: 1) notify the proposal to the WTO; 2) exclude distilled spirits from providing a list of ingredients; 3) exempt distillates made from cereals, whey (milk) and/or nuts from allergen labeling requirements; 4) confirm that stickers are permitted; and 5) provide a transition period of at least 18 months and confirm that products already in the marketplace may continue to be sold until they are depleted.

II. Trade Statistics

In 2017, U.S. distilled spirits exports were valued at $3.5 million, representing an increase of 1,800 percent from 2016 levels. Through July 2018, U.S. exports reached $214,000, reflecting a 90 percent decrease relative to the same period in 2017.

PERU

I. Other Market Access Issues

Discriminatory Taxation

Peru has imposed a discriminatory excise tax (*Impuesto Selectivo al Consumo*, or ISC) since at least 2004 when it introduced a 20 percent *ad valorem* tax rate on most distilled spirits and a specific rate of 1.50 Peruvian Nuevo Sol (PEN) per liter for domestically-produced pisco. This discrimination was increased 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.

Most recently, on May 19, 2018 Peru again increased its excise tax again under Decreto Supremo N° 093-2018-EF to further exacerbate the rate of discrimination. The decree increases the *ad valorem* rate for beverage alcohol products over 20 percent a.b.v. from 25 percent to 40 percent and the specific rate was kept at the same rate (which only applies when the *ad valorem* rate results in an amount less than the specific rate). The excise tax rate for pisco, which is bottled over 20 percent a.b.v., has remained unchanged since 2004. The current rates are indicated in the following table:

Product	Alcohol by Volume	Minimum Specific Rate	*Ad Valorem* Rate
Pisco	-	1.50 PEN/liter	(none)
Other beverage alcohol products	0% to 6%	1.25 PEN/liter	35%
	Over 6% to 12%	2.50 PEN/liter	25%
	Over 12% to 20%	2.70 PEN/liter	30%
	Over 20%	3.40 PEN/liter	40%

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.

V. Trade Statistics

In 2017, U.S. distilled spirits exports were valued at $2.6 million, representing an increase of 35 percent from 2016 levels. Through July 2018, U.S. exports reached $2.9 million, reflecting a 165 percent increase relative to the same period in 2017.

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 several 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 last met in April 2017 and, according to industry reports, there have been no developments since that time.

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 2017, Russia's imports of U.S. spirits were valued at $52.7 million (Global Trade Atlas), representing an 18 percent increase from 2016. American Whiskeys accounted for approximately 87 percent of the total. In the January through July 2018 period, U.S. spirits were valued at $32 million, representing a nearly 70 percent increase from the same period in 2017.

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 $5 million in 2017, representing a 36 percent decrease from 2016.