DISTILLED
SPIRITS
COUNCIL

December 20, 2018

Lisa Barton

Secretary to the Commission

United States International Trade Commission

500 E Street SW

Washington, DC 20436

Re: United States-Mexico-Canada Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors [Investigation No. TPA-105-0003]

Dear Ms. Barton:

On behalf of the Distilled Spirits Council of the United States, Inc. (Distilled Spirits Council) and its member companies, I am writing in response to your request for written submissions (83 Fed. Reg. 52232 (November 15, 2018)) regarding the United States-Mexico-Canada Agreement (USMCA) and its likely impact on the U.S. economy and on specific industry sectors. The Distilled Spirits Council is a national trade association representing U.S. producers, marketers, exporters and importers of distilled spirits products. The Distilled Spirits Council's member companies export spirits products to more than 130 countries worldwide, including Canada and Mexico.

The Distilled Spirits Council has strongly supported comprehensive multilateral, regional, and bilateral agreements, as these are vital to opening new markets, and keeping them open, for U.S. spirits exports. In particular, the Distilled Spirits Council strongly supported the negotiation and implementation of the North American Free Trade Agreement (NAFTA) and welcomed the announcement of the new and modernized United States-Mexico-Canada Agreement (USMCA). The USMCA retains some significant market access benefits from NAFTA and establishes some new rules such as labeling and certification which will help to streamline the exporting process throughout the USMCA countries (*see* Section II for more information). However, the continued application of retaliatory tariffs on U.S. whiskey exports to Canada (10% *ad valorem*) and Mexico (25% *ad valorem*) threatens to curtail the export success the U.S. spirits industry has enjoyed over the past two decades. Urgent resolution of these concerns is critical to permit U.S. whiskey exporters to return to duty-free access to the Canadian and Mexican markets. (*see* Section I for more information).

I. Impact of Canada and Mexico's Retaliatory Tariffs on American Whiskey Imports

Canada and Mexico ranked as the largest and ninth largest export markets for U.S. spirits in 2017. Since tariffs were eliminated under NAFTA in 1995, U.S. spirits exports to Canada grew by nearly 615 percent and to Mexico by 640 percent. In 2017, U.S. spirits exports to Canada were valued at over $200 million; of this, 24 percent is accounted for by American Whiskeys ($48.7 million). Exports to Mexico in 2017 were valued at $44.4 million; of this, 30 percent is accounted for by American Whiskeys ($13.4 million).

However, the continued application of retaliatory tariffs on all American whiskey imports is the biggest constraint affecting the continued growth of American Whiskey exports and may even jeopardize current market share. This may result in Canadian and Mexican spirits consumers choosing other spirits categories, such as Scotch Whisky, Irish Whisky, Canadian Whisky, Tequila, rum, brandy, etc. These retaliatory tariffs are being felt across the U.S.

In 2017, 25 states exported American Whiskey to Canada (in descending order of value of exports):[1]

- Kentucky
- Tennessee
- Illinois
- Indiana
- New Jersey
- California
- Minnesota
- Florida
- Maryland
- Oregon
- Arkansas
- Wisconsin
- New York
- Missouri
- Colorado
- South Carolina
- Wyoming
- Nebraska
- North Carolina
- Iowa
- Washington
- Utah
- Connecticut
- Texas
- Arizona

Similarly, 14 states exported American Whiskey to Mexico in 2017 (in descending order of value of exports):

[1] State export data is compiled from the U.S. Census Bureau, Economic Indicators Division

- Tennessee
- Kentucky
- Texas
- Florida
- Arizona
- Illinois
- California
- New York
- Nevada
- Virginia
- Minnesota
- Kansas
- Louisiana
- Maryland

This is reflective of the rapidly-expanding small distiller presence across the U.S., many of whom are looking to export markets for growth opportunities. For example, Dry Fly Distilling, which was established in 2007 in Spokane, Washington, has reported losing $200,000 in export sales to Canada. As a result, planned capital investments of $2 million and the hiring of 5 new employees have been put on hold indefinitely.

Accordingly, resolution of these concerns is necessary in order to permit U.S. whiskey exporters to return to duty-free access to the Canadian and Mexican markets, which have contributed significantly to the considerable expansion of U.S. spirits exports and which is needed for the continued growth of the sector.

II. U.S.-Mexico-Canada Agreement's Key Provisions Pertaining to Distilled Spirits

The USMCA retains some significant market access benefits and establishes important new rules concerning labeling, certification, and transshipment, which will help to streamline the exporting process throughout the three countries. The key provisions pertaining to distilled spirits are highlighted below.

A. Market Access

The USMCA reaffirms duty-free market access for U.S. spirits exports to Canada and Mexico.

B. Beverage Alcohol Annex

The USMCA includes a new Annex on Beverage Alcohol which retains key provisions from NAFTA while incorporating new provisions that clarify, expand, and/or establish new commitments to address the industry's current objectives.

i. Internal Sale and Distribution of Beverage Alcohol

The Annex consolidates and clarifies existing NAFTA commitments concerning the internal sale and distribution of beverage alcohol, which primarily concern practices in Canada. Specifically, the USMCA retains important rules related to the scope of the commitments and rules related to distribution and clarifies that rules related to pricing and markups apply to distributors or retailers which exercise "governmental authority."

ii. Distinctive Product Recognition

The Annex reaffirms distinctive product recognition for "Bourbon" and "Tennessee Whiskey" in Mexico and Canada. In addition, a side agreement was reached between the U.S. and Mexico under which Mexico agreed to initiate its domestic processes to consider granting distinctive product recognition for "American Rye Whiskey." If approved, it would be the first country to recognize American "Rye Whiskey," which is a rapidly growing category globally, as a distinctive product of the U.S.

iii. Distilled Spirits and Wine Labeling and Certification Provisions

The USMCA includes rules on wines and spirits which commits all parties to abide by a list of best practices regarding labeling and certification. Such commitments will help to streamline the exporting process and make complying with various labeling rules throughout the countries more predictable and transparent. For example:

- Label content including declarations of alcohol and net contents are streamlined, expiration dates and allergen labeling are not required for most products, and statements regarding quality and production, and drawings, figures, and illustrations are permitted;
- Most certificate requirements will be eliminated with regard to raw materials and production processes for distilled spirits;
- The parties are encouraged to base standards for distilled spirits solely on the minimum alcohol content, raw materials, added ingredients, and the production processes used;
- Suppliers may utilize lot codes and may determine where they are placed. It also provides that parties may impose penalties if such codes are defaced, erased, etc.; and

- Except for health/safety concerns, parties are to allow a reasonable period following the entry into force of a regulation before applying it to products already in the market.

C. Rules of Origin

The USMCA retains NAFTA's preferential rules of origin for distilled spirits which were changed in 2013 to reflect increased efficiencies within the supply chain. This will ensure that U.S. spirits exporters will not have to change production processes to continue to benefit from the duty-free treatment and new rules in the USMCA.

The agreement also includes important changes to the transshipment rules to reflect current supply chain management practices. Thus, minor processing in non-USMCA members, such as unloading, labeling, marking, reloading, etc., will be permitted without losing the good's originating and preferential status. This provides greater certainty and predictability for U.S. spirits exporters who may need to transship their goods through regional hubs.

Conclusion

International trade has become increasingly instrumental to the long-term viability of the U.S. distilled spirits sector. The USMCA reaffirms some significant market access benefits and includes new important rules establishing it as a 21st Century agreement and a model for future negotiations. However, the continued application of retaliatory tariffs is the biggest constraint affecting the growth of American Whiskey exports to Canada and Mexico. Removal of the retaliatory tariffs as soon as possible and a return to duty-free trade is critical for the U.S. spirits industry to continue the impressive success it has enjoyed over the past two decades.

We appreciate the opportunity to provide our views and would be pleased to amplify or clarify any of the points raised.

Sincerely,

Robert Maron

Director of International Affairs

International Issues and Trade