



January 15, 2019

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

Submitted electronically via <http://www.regulations.gov>

Re: Request for Comments on Negotiating Objectives for a U.S.-United Kingdom Trade Agreement (USTR-2018-0036)

Dear Mr. Gresser:

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. 57790 (November 16, 2018)) on negotiating objectives for a U.S.-United Kingdom trade agreement. The Distilled Spirits Council is the national trade association representing the leading producers and marketers of distilled spirits in the United States (Harmonized Tariff Schedule (HTS) headings 2208 and 2207.10.30).

Due to the United Kingdom's (UK) membership in the European Union (EU), the UK has been a very open market for market for U.S. spirits exports. In 2017, the UK ranked as the U.S. spirits sector's second largest market with exports valued at \$186 million, and the largest single export market for American Whiskey valued at \$149 million. This would not have been achieved without the US and EU's decision to open up each other's markets to distilled spirits imports and provide protections for certain uniquely American and European produced spirits.

The Distilled Spirits Council and its member companies enthusiastically welcome the announcement to launch these negotiations. We urge the U.S. and UK to agree to incorporate the important commitments pertaining to U.S. distilled spirits already in place due to the UK's membership in the EU and build upon them. Our specific objectives for negotiations of a comprehensive trade agreement with the UK are detailed below.

I. Duty Free Treatment for Spirits

By way of background, the U.S. and the EU mutually agreed to eliminate tariffs on practically all distilled spirits from all other World Trade Organization (WTO) members as part of the so called "zero-for-zero" agreement resulting from the WTO's Uruguay Round agreements. This duty-free access has significantly benefitted U.S. spirits exports to the UK, which increased by 390 percent over the past two decades, from \$38 million in 1997 to \$186

million in 2017. In that time, American whiskey exports to the UK increased 360 percent, from \$32 million to \$149 million.

The Distilled Spirits Council seeks the continuation of the current duty-free market access enjoyed by the U.S. distilled spirits sector to the UK market.

The EU's 25 percent tariff on all U.S. whiskey imports is negatively affecting the continued growth of American Whiskey exports and may even jeopardize current market share. This may result in UK spirits consumers choosing other spirits categories, such as Scotch Whisky, Canadian Whisky, Tequila, rum, brandy, etc. These retaliatory tariffs are being felt across the U.S.

Thus, the Council urges the U.S. government to seek a commitment from the UK if these tariffs are still in place not to continue the EU's retaliatory tariffs on U.S. Whiskey exports immediately upon the UK's exit from the EU's common market. Resolution of these concerns is necessary in order to permit U.S. whiskey exporters to return to the duty-free access to the UK market which has contributed significantly to the considerable expansion of U.S. exports over the past two decades and which is needed for the continued future growth of the industry.

II. Distinctive Product Recognition for “Bourbon,” “Tennessee Whiskey,” and “American Rye Whiskey”

In 1994, the U.S. and the EU signed the *“Agreement in the Form Of An Exchange of Letters Between the European Community and the United States of America on the Mutual Recognition of Certain Distilled Spirits/Spirit Drinks.”* Under the agreement, the EU agreed to recognize and protect “Bourbon,” “Bourbon Whiskey” and “Tennessee Whiskey” as distinctive products of the U.S. In return, the U.S. agreed to recognize and protect “Scotch Whisky” and “Irish Whiskey” (which may be produced in Northern Ireland) as distinctive products of the UK, among other products from other EU member countries.

In 2009, the EU reaffirmed the 1994 agreement via Commission Regulation No. 936/2009, applying the agreements between the EU and third countries on the mutual recognition of certain spirit drinks. Protections for “Scotch Whisky” and “Irish Whiskey” are included in the U.S. Standards of Identity for Distilled Spirits (see 27 CFR 5.22).

The Distilled Spirits Council seeks the continuation of protection in the UK for “Bourbon” and “Tennessee Whiskey” as distinctive products of the U.S. Such protection should be in force without any interruption following the UK's formal exit from the EU.

Over the past decade, “American Rye Whiskey” production in the U.S. has experienced phenomenal growth, with over 100 brands now on the market. This is up from a handful a decade ago. In terms of the U.S. domestic market, from 2009 – 2017, “American Rye Whiskey” sales volumes have grown by an astonishing 934 percent to reach over 912,200 cases. In terms of value, that translates into a 900 percent jump from slightly over \$15 million in supplier revenues in 2009 to over \$175 million in 2017. This represents approximately \$500 million in retail sales in the United States alone. Several companies, both large and small, export “American Rye Whiskey” to a wide-range of markets, including the UK. In the recently

completed U.S. – Mexico Canada Agreement (USMCA), Mexico agreed to initiate its domestic process to recognize, for the first time in a U.S. trade agreement, “American Rye Whiskey” as a distinctive product of the U.S.

Accordingly, the Distilled Spirits Council urges the U.S. government to seek protection for “American Rye Whiskey” as a distinctive product of the U.S.

III. Regulatory Best Practices for the Labeling and Certification of Distilled Spirits Products

The U.S.-UK trade agreement negotiations are an excellent forum for advancing reasonable, science-based regulation of beverage alcohol in UK and around the world. To that end, we propose the inclusion of a section detailing regulatory best practices for distilled spirits with regard to labeling and certification requirements similar to the Annex on Alcohol in the recently-concluded USMCA.

Securing these commitments on labeling and certification will ensure a U.S.-UK agreement is a model 21st-century trade agreement for the distilled spirits industry, by ensuring that two of the major spirits producing and consuming nations in the world will adhere to an agreed set of regulatory principles. Doing so will reduce potential barriers to trade by providing greater certainty, transparency and efficiencies for distilled spirits producers, importers and exporters in both countries.

IV. Rules of Origin

To ensure an agreement with the UK facilitates trade in goods manufactured in each country, the Distilled Spirits Council urges the U.S. to secure the rules of origin that were included in the recently concluded USMCA. In specific, Annex 4-B of the USMCA retained the product specific preferential rules of origin for distilled spirits included in the North American Free Trade Agreement (NAFTA). Adopting rules of origin consistent with other U.S. trade agreements will help reduce costs and provide certainty that products currently exported from the U.S. under existing U.S. trade agreements will, in fact, be able to benefit from an agreement with the UK.

In addition, the USMCA included in Article 4.18 important new rules concerning transshipment which provides for minor processing in third countries. Specifically, it provides for unloading, labeling, marking, reloading etc. This would further facilitate trade by allowing U.S. spirits exporters to ship their products to an intermediate location where the shipment may undergo minor processing and retain its preferential treatment under the agreement.

Conclusion

International trade has become increasingly instrumental to the long-term viability of the U.S. distilled spirits sector. Given the size and importance of the UK market for U.S. spirits exports, it is vital that the UK remain open. We believe that a comprehensive trade agreement

provides a vehicle to enhance the important gains that have already been attained. As detailed above, the U.S. spirits industry's goals for a trade agreement with the UK are to secure:

- continued duty free-treatment for U.S. spirits and ensure that the retaliatory tariffs are eliminated as soon as the UK leaves the EU's common market;
- continued distinctive product recognition for "Bourbon," and "Tennessee Whiskey," and distinctive product recognition for "American Rye Whiskey;"
- commitments on regulatory best practices for the labeling and certification of distilled spirits, similar to the recently concluded USMCA; and
- rules of origin and transshipment rules provided for in the recently concluded USMCA.

Thank you for this opportunity to provide input and we look forward to working with you. Please do not hesitate to contact us should you require any additional information.

Sincerely,



Christine LoCascio
Senior Vice President
International Issues and Trade