DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

October 31, 2019

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

RE: USTR-2019-0012: Comments Regarding Foreign Trade Barriers to U.S. Exports – Submission by the Distilled Spirits Council of the United States, Inc. (84 *Fed. Reg.* 46079 (September 3, 2019))

Dear Mr. Gresser:

On behalf of the Distilled Spirits Council of the United States (DISCUS), I am pleased to submit a compilation of the major trade barriers confronting the U.S. distilled spirits sector. DISCUS 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. spirits exports in 2018 valued at over $1.8 billion (FAS value).

Our submission responds to United States Trade Representative'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,

Robert Maron
Vice President
International Issues and Trade

Attachment

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

FOREIGN TRADE BARRIERS

TO

U.S. DISTILLED SPIRITS EXPORTS

Distilled Spirits Council of the United States
October 2019

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

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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 World Trade Organization (WTO) Agreement on Agriculture, and the agriculture chapters of the free trade agreements the United States has negotiated with various trading partners. DISCUS and its member companies have a strong and long-standing interest in agricultural trade from both a commercial and policy perspective.

International trade is 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 the 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 45 states (up from 42 states in 2017) and support the direct and indirect employment of an estimated 1.6 million people across America.

In 2018, U.S. distilled spirit exports set a record totaling $1.8 billion. Comprising over 66 percent of total U.S. spirits exports in value, American Whiskeys (Bourbon, Tennessee Whiskey, American Rye Whiskey, American Single Malt) continue to be the key growth driver of U.S. shipments. In 2018, the value of U.S. exports of whiskey totaled $1.18 billion, representing a 5.1 percent increase from 2017 levels; although positive, it is a significant deceleration from the 16 percent growth rate recorded the year before the imposition of retaliatory tariffs (2016-2017). International demand for Bourbon, Tennessee Whiskey, and American Rye Whiskey has grown 50 percent since 2008 as consumers have traded up to premium distilled spirits products.

In 2018, the top five export markets for U.S. distilled spirits by value were: 1) Canada ($234 million); 2) United Kingdom ($191 million); 3) Australia ($122 million); 4) Germany ($120 million); and 5) Spain ($120 million). The top five markets for American Whiskeys were: 1) United Kingdom ($150 million); 2) Spain ($108 million); 3) France ($108 million); 4) Australia ($101 million); and 5) Germany ($100 million).

Despite this progress, U.S. spirits continue to face an array of new and existing tariff and non-tariff barriers in priority export markets. In particular, retaliatory tariffs on U.S. spirits exports imposed by key trading partners, discussed in more detail below, are seriously impeding the export progress that has benefitted our sector and created jobs across the country.

Retaliatory Tariffs: As noted above, trade agreements and the rules-based trading system have ushered in more opportunities for U.S. spirits exporters to access new markets. Unfortunately, since retaliatory tariffs on U.S. spirits were implemented in the second half of 2018, exports to the European Union (EU), Canada, Mexico, Turkey, and China worth an estimated $732 million have faced retaliatory tariffs, accounting for over 40 percent of U.S. spirits exported during that time.

Specifically, the EU is imposing a retaliatory tariff of 25 percent on all American Whiskey imports in response to the steel and aluminum tariffs. The EU's tariff will increase to 50 percent in March 2021 if the U.S. steel and aluminum tariffs are still in effect. Turkey is imposing a 70 percent tariff on all U.S. distilled spirits imports in response to the steel and aluminum tariffs. China is imposing retaliatory tariffs ranging between 30 percent and 40 percent on U.S. spirits imports in response to the Section 301 actions.

These retaliatory tariffs are having an impact across the United States and are affecting the entire supply chain, from farmers to suppliers. In fact, total American Whiskey exports have declined 14 percent since retaliatory tariffs were imposed last year. U.S. Whiskey exports to the EU, which accounted for nearly 40 percent of total U.S. spirits exports, declined 21 percent. Total spirits exports to Turkey declined 65 percent. Total U.S. spirits exports to China, which increased 45 percent between 2017-2018 and 110 percent since 2008, have remained flat since retaliatory tariffs were imposed.

In addition, in connection with a 14-year dispute at the WTO concerning civil aviation subsidies, the U.S. imposed tariffs on certain EU origin products on October 18, 2019. The spirits industry now faces a 25 percent tariff on "single malt Scotch Whisky; "single malt Irish Whiskey" from Northern Ireland and Liqueurs/Cordials from Germany, Ireland, Italy, Spain and UK. If this dispute is not resolved soon, the EU may impose tariffs on additional U.S. spirits in mid-2020 in its parallel case against the U.S., which will further reduce U.S. exports and lead to more job losses.

Our top priority is to continue to urge Congress, the Administration and our trading partners to engage in further dialogue that will lead to the immediate removal of these tariffs

Trade Agreements: DISCUS 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 2018, accounting for 82 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 2018, U.S. distilled spirits exports to bilateral and regional free trade agreement (FTA) partners totaled $515 million, accounting for nearly 1/3 of global U.S. spirits exports. In fact, between 2000 and 2018 exports to these trading partners have grown at a faster rate (380 percent increase) than U.S. distilled spirits exports to non-FTA partners (280 percent increase).

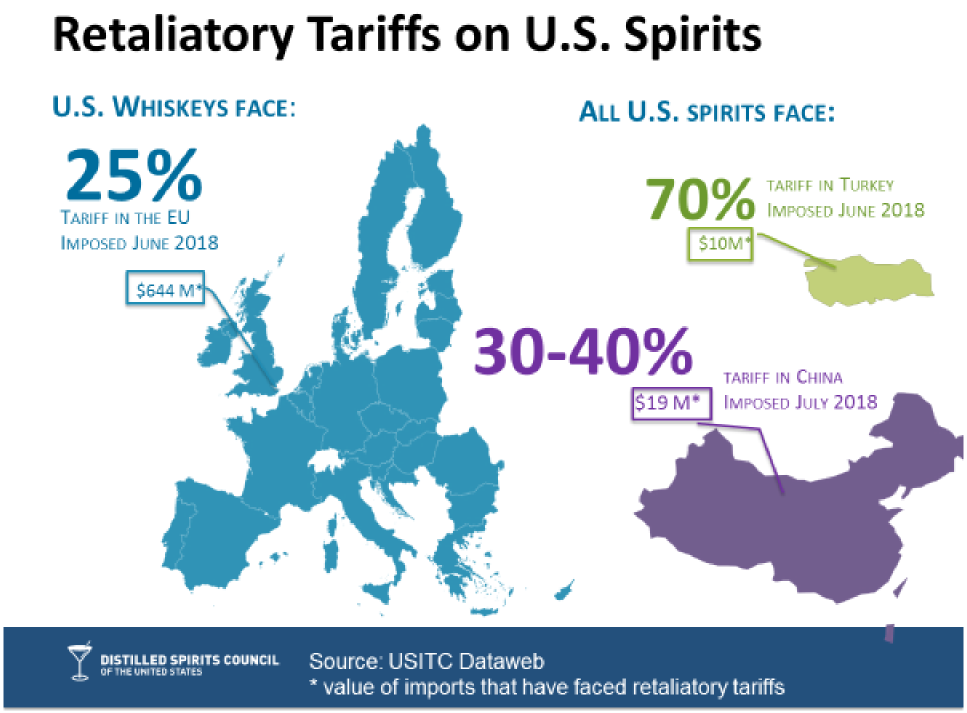
DISCUS reiterates its enthusiastic support for new comprehensive bilateral market opening agreements, which we believe will contribute significantly to the continued growth of our sector. DISCUS supported the Administration's effort to modernize the North American Free Trade Agreement and is working to urge Congress to quickly pass the U.S.-Mexico-Canada Agreement (USMCA) implementing bill. DISCUS also supported the Administration's proposal to negotiate trade agreements with the EU, the UK, and Japan and urges the Administration to continue its negotiations with Japan to secure a <u>comprehensive</u> agreement.

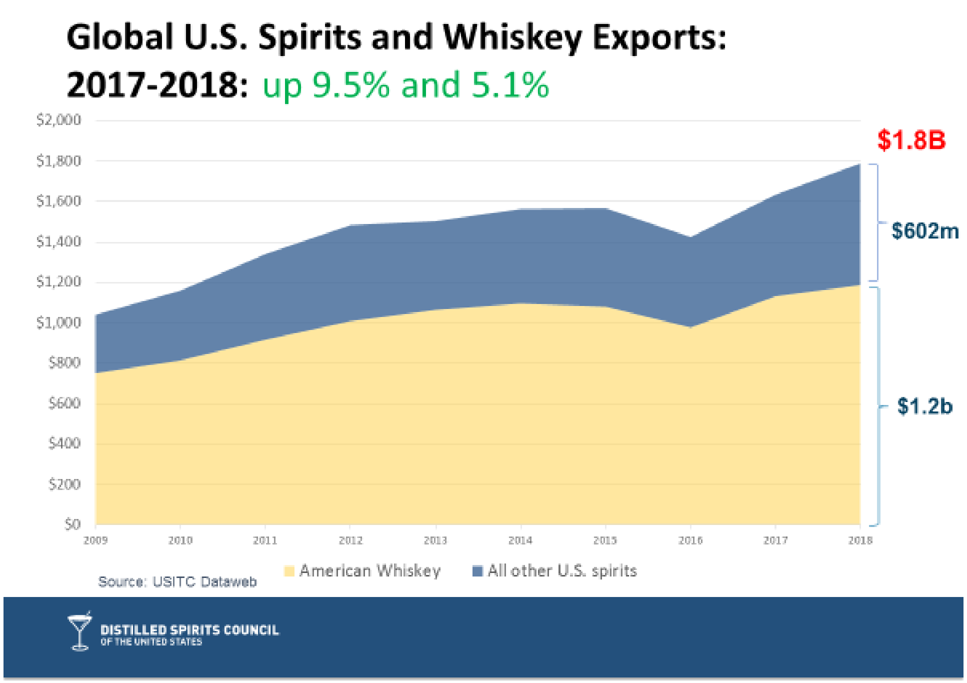
In addition, DISCUS is a strong supporter of the WTO and its ongoing efforts to further liberalize global trade and strengthen the rules-based multilateral trading system. Unquestionably, the package of agreements concluded in the Uruguay Round, which led to the establishment of the WTO in 1994, has 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 through 2018, global U.S. distilled spirits exports have increased almost 330 percent.

<u>Other Barriers to Trade:</u> 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.

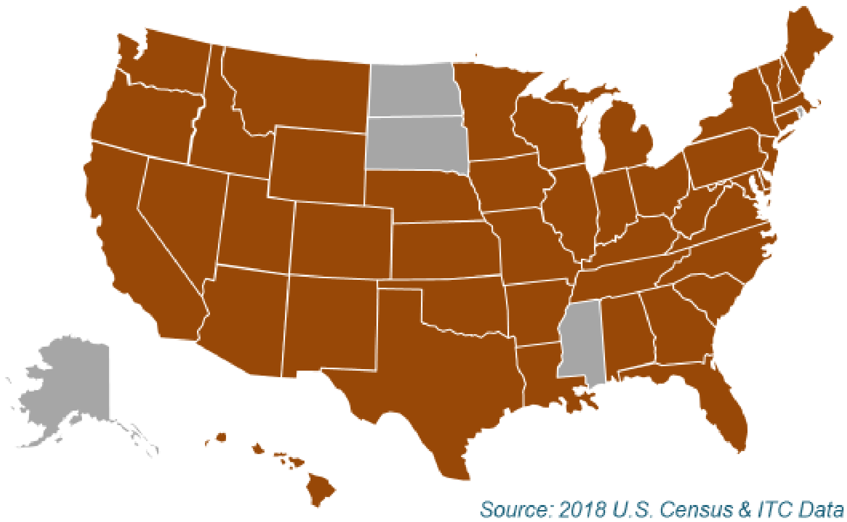
<u>Summary:</u> The U.S. distilled spirits sector has benefitted significantly from the comprehensive multilateral, regional, and bilateral trade agreements the U.S. has concluded. However, retaliatory tariffs imposed on U.S. spirits exports by key trading partners are harming an industry which has been a great American export success story. DISCUS strongly encourages all parties to resolve the trade disputes and eliminate the retaliatory tariffs on U.S. spirits exports as soon as possible and avoid the imposition of additional tariffs on spirits. In addition, DISCUS strongly supports efforts by the U.S. to negotiate more market-opening and comprehensive trade agreements and to continue rigorously enforcing 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


Retaliatory Tariffs on U.S. Spirits
U.S. Whiskeys face:
25%
Tariff in the EU
Imposed June 2018
$644 M*
All U.S. spirits face:
70%
Tariff in Turkey
Imposed June 2018
$10M*
30-40%
Tariff in China
Imposed July 2018
$19 M*
DISTILLED SPIRITS COUNCIL OF THE UNITED STATES
Source: USITC Dataweb
* value of imports that have faced retaliatory tariffs


Global U.S. Spirits and Whiskey Exports:
2017-2018: up 9.5% and 5.1%
$2,000
$1,800
$1,600
$1,400
$1,200
$1,000
$800
$600
$400
$200
$0
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
$1.8B
$602m
$1.2b
Source: USITC Dataweb
American Whiskey
All other U.S. spirits
DISTILLED SPIRITS COUNCIL OF THE UNITED STATES

45 States Export American Spirits



Source: 2018 U.S. Census & ITC Data

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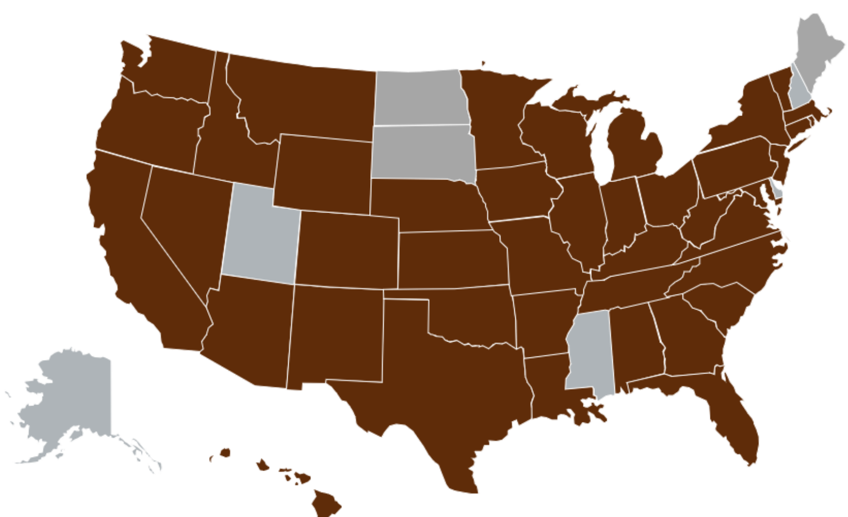
OF THE UNITED STATES

42 States Export American Whiskeys



Source: 2018 U.S. Census & ITC Data

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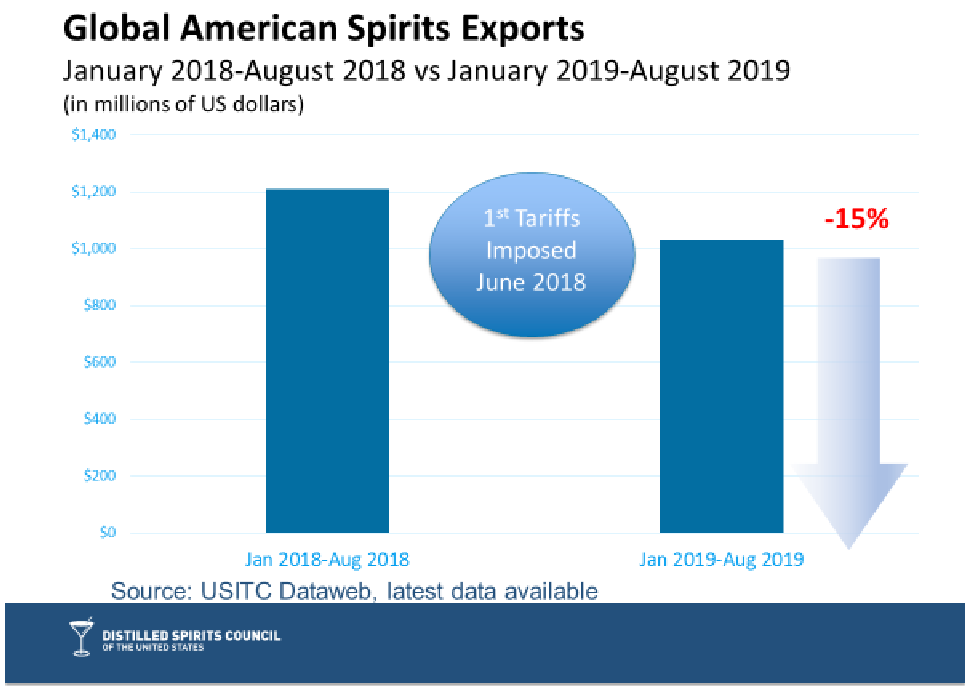
Global American Spirits Exports
January 2018-August 2018 vs January 2019-August 2019
(in millions of US dollars)
$1,400
$1,200
$1,000
$800
$600
$400
$200
$0
1st Tariffs Imposed June 2018
-15%
Jan 2018-Aug 2018
Jan 2019-Aug 2019
Source: USITC Dataweb, latest data available
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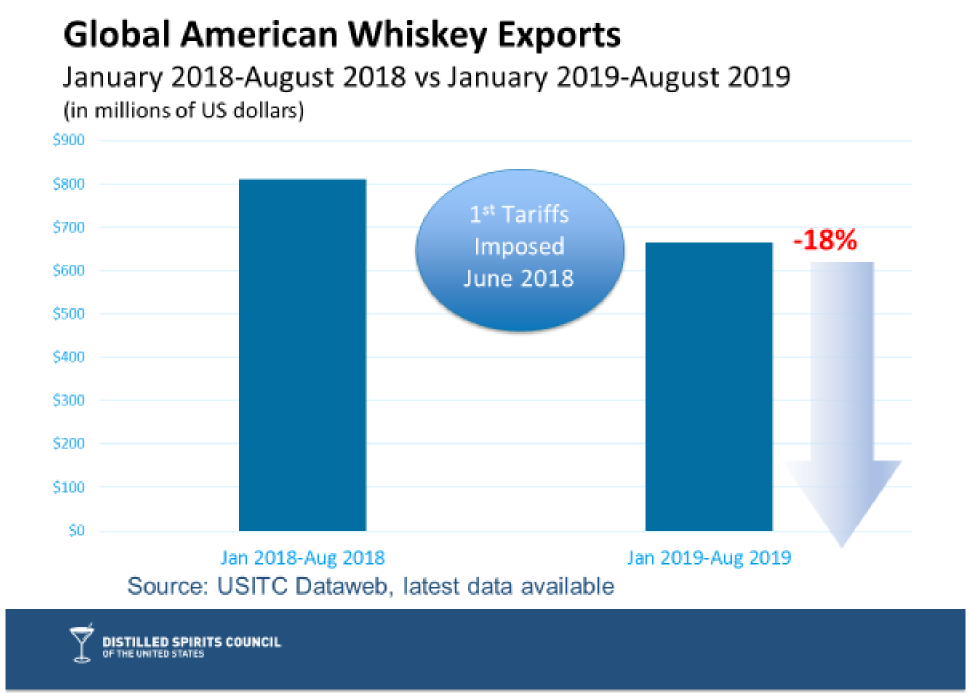
Global American Whiskey Exports
January 2018-August 2018 vs January 2019-August 2019
(in millions of US dollars)
$900
$800
$700
$600
$500
$400
$300
$200
$100
$0
1st Tariffs Imposed June 2018
-18%
Jan 2018-Aug 2018
Jan 2019-Aug 2019
Source: USITC Dataweb, latest data available
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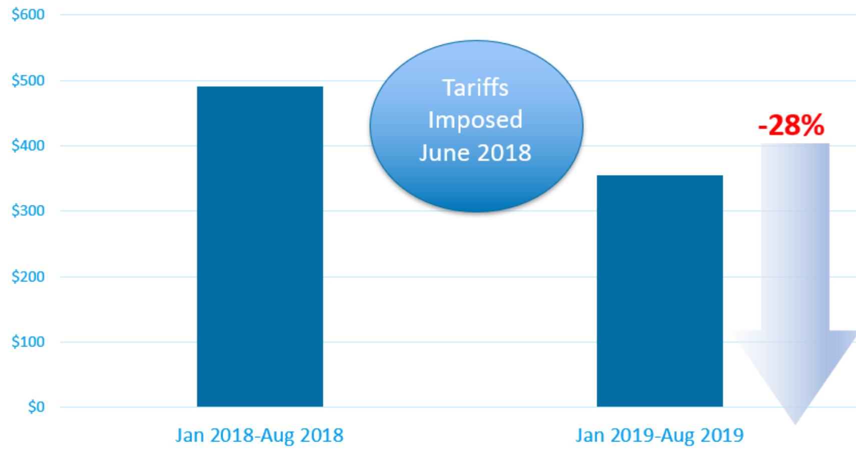
OF THE UNITED STATES

American Whiskey Exports to the EU

January 2018-August 2018 vs January 2019-August 2019

(in millions of US dollars)



Source: USITC Dataweb, latest data available

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Importance of EU Whiskey Market in 2018

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III. PRIORITY MARKETS

CANADA

I. U.S.-Mexico-Canada Agreement

DISCUS welcomed conclusion of the U.S.-Mexico-Canada Agreement (USMCA), which reaffirms commitments concerning tariff-free trade in spirits in North America and the internal sale and distribution of distilled 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.

We welcomed the May 2019 agreement between the U.S., Canada, and Mexico in the context of the USMCA negotiations to remove Canada’s retaliatory tariff on American Whiskey, which had been in effect since July 2018.

DISCUS is working to urge Congress to quickly pass the USMCA implementing bill once it is introduced.

II. Technical Barriers

Standards

On January 16, 2019, Canada notified its proposal to revise its vodka standard to the WTO’s TBT Committee (G/TBT/N/TBT/575). The purpose of the revision is to bring it into greater alignment with the U.S. and EU standards of identity for vodka. In response, DISCUS submitted a comment on March 15, 2019, to ensure the definition is consistent with the U.S. standard of identity for vodka. On June 27, 2019, Canada notified the final version of its standard to the WTO (G/TBT/N/TBT/575/Add.1). The regulation went into effect on June 17, 2019, with a transitional period until December 13, 2022.

In a positive development, Canada did not adopt a provision allowing vodka made from agricultural material other than potatoes and grains to maintain some distinctive characteristics of the raw material in the final product. However, Canada did not take any of DISCUS’ other comments into account. In particular, the final draft did not adopt DISCUS’ request to establish a minimum alcohol content of 40 percent a.b.v. Under the U.S. standards of identity, the minimum a.b.v. for vodka is 40 percent. In addition, it did not adopt DISCUS’ request to permit the addition of sugar in an amount not to exceed 2 grams per liter and 1,000 ppm of citric acid which is allowed under the U.S. standard of identity for vodka. Finally, it did not adopt DISCUS' request to adopt a definition of flavored vodka consistent with the U.S. standards of identity.

Request: DISCUS seeks the U.S. government's assistance in urging Canada to: (1) establish a minimum alcohol content of 40 percent a.b.v for vodka; (2) permit the addition of sugar in an amount not to exceed 2 grams per liter and 1,000 ppm of citric acid in vodka; and (3) adopt a definition of flavored vodka consistent with the U.S. standards of identity.

III. 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: DISCUS requests that the U.S. government urge Canada to eliminate all of the discriminatory aspects of its excise tax pertaining to beverage alcohol products.

IV. Trade Statistics

In 2018, U.S. spirits exports to Canada were valued at $234 million, up 17 percent from 2017, ranking Canada as the largest export market for U.S. spirits exports. However, through August 2019, U.S. spirits exports to Canada were valued at $111.6 million, down nearly 18 percent over the same period in 2018. This may be attributed to Canada's retaliatory tariff on imports of American Whiskey which was in effect between July 2018 and May 2019.

CHINA

I. Tariffs

Since July 2018, China has been imposing retaliatory tariffs on American spirits in response to the Section 301 actions. Specifically, since July 2018, China has been imposing retaliatory tariffs on American Whiskey and since September 2018 on U.S. rum, gin, vodka, liqueurs and cordials, and brandy. China increased the tariff rates in September 2018, June 2019, and September 2019, and will increase rates again in December 2019 on certain categories of spirits.

The current tariff rate (MFN + retaliatory tariff) on rum and vodka is 40 percent; on gin, liqueurs and cordials is 35 percent; and on whiskey and brandy is 30 percent. In December 2019, the tariff will increase to 35 percent for whiskey; 45 percent for gin, liqueurs and cordials; and 40 percent for brandy.

China's retaliatory tariffs on American spirits have stalled growth in U.S. spirits exports to the world's largest distilled spirits market. The year before China imposed its tariffs on imported American spirits, U.S. spirits exports grew nearly 19 percent (2016-2017). In fact, American spirits imports into China were valued at $18 million in 2018, up 110 percent from 2008. Through August 2019, U.S. spirits exports to China are down nearly 11 percent as compared to the same period in 2018.

Request: DISCUS urges the United States and China 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, DISCUS submitted a comment on August 18, 2017, urging AQSIQ to confirm the understanding that U.S. distilled spirits will <u>not</u> 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).

In November 2018, China agreed to suspend implementation pending work in Codex to define low-risk food products that should be exempted from certain certification requirements and may be subject to lighter import control procedures.

Request: DISCUS 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 and ensure that distilled spirits are exempted as part of the work in Codex.

III. <u>Trade Statistics</u>

In 2018, U.S. spirits exports to China were valued at $18 million, representing a 45 percent increase from 2017 levels. Through August 2019, U.S. spirits exports to China are down nearly 11 percent as compared to the same period in 2018 as a result of China's retaliatory tariffs on American spirits.

EUROPEAN UNION

I. Tariffs

Since 1997, the U.S. and EU 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. U.S. and EU spirits companies are interconnected: many own and import/export both U.S. and EU brands.

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. Between July 2018 and July 2019, U.S. Whiskey exports to the EU, which accounted for nearly 40 percent of total U.S. spirits exports, declined 21 percent. The EU's retaliatory tariff on American Whiskey will increase to 50 percent in March 2021 if the disputes are not resolved.

Such tariffs are seriously impeding the export progress that has benefitted the U.S. spirits sector since 1997. Since that time, American Whiskey exports to the EU increased nearly 375 percent, from $148 million to $704 million in 2018. In fact, in 2018 U.S. spirits exports to the EU were valued at $824 million, accounting for 46 percent of total U.S. spirits exports and ranking the EU as the single largest destination for U.S. spirits exports.

Separately and in connection with the 14-year dispute at the WTO between the U.S. and EU concerning civil aviation subsidies, the U.S. imposed tariffs on certain EU imports on October 18, 2019. Imports of "single malt Scotch Whisky; "single malt Irish Whiskey" from Northern Ireland; and Liqueurs/Cordials from Germany, Ireland, Italy, Spain, and UK now face a 25 percent tariff. As a result, DISCUS estimates that these new U.S. tariffs on EU spirits and wines could result in the loss of 8,000 U.S. jobs across the beverage alcohol sector from importers, distributors, wholesalers, to the hospitality sector. If this dispute is not resolved soon, the EU may impose tariffs on more U.S. spirits in mid-2020 in its parallel case against the U.S., which will further reduce U.S. spirits exports.

DISCUS eagerly welcomed the July 25, 2018 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." Similarly, both the U.S. and EU governments have publicly stated their mutual desire to agree to a settlement in the civil aircraft subsidy dispute at the WTO.

Request: We call on the U.S. and the EU to honor their shared commitment to resolve the retaliatory tariffs and reach a negotiated settlement to the current disputes by immediately and simultaneously removing: (1) the EU's retaliatory tariff on U.S. Whiskey and (2) the U.S. tariffs on imported EU beverage alcohol products.

II. U.S.-EU Trade Agreement

While DISCUS supported the Administration's proposal to negotiate a trade agreement with the EU and submitted detailed objectives for such an agreement on December 18, 2018, resolution of disputes resulting in the imposition of tariffs is a top priority and should occur before comprehensive trade negotiations are launched.

Request: We urge the U.S. to secure a comprehensive free trade agreement with the EU. Our primary goals for a comprehensive agreement with the EU are to secure:

- distinctive product recognition for "American Rye Whiskey" and "American Single Malt Whiskey."
- commitments on regulatory best practices for the labeling and certification of distilled spirits products;
- elimination of the EU's discriminatory excise taxes;
- elimination of remaining bound tariffs on certain spirits in the U.S. and EU; and
- rules of origin and transshipment provided for in the USMCA.

III. 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 retains the derogations for certain spirits producers. The legislation was 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 €879.72 per hectoliter of pure alcohol (hlpa), while the tax on all other spirits, including rum from other countries, is €1.758.45 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 2016-2020. From August to October 2019, the Commission conducted a public consultation about whether or not to follow France's request for a further extension of the derogation. If the evaluation finds that it is still justified for France to continue the application of reduced excise duty rates for FOD rum imported into the French mainland after 2020, the Commission would propose a legal system replacing Council Decision 189/2014/EU for a period post-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" detailing 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). In July 2019 the Court found Greece's tax preferences for the two domestic spirits in breach of EU law. The Court confirmed that there is no exemption or derogation in place that would permit Greece to treat tsikoudia and tsipouro more favorably than other products. The court noted it infringes the EU principle of equal treatment of local and imported spirits and illegally protects domestic production. In addition, although small distilleries may benefit under certain conditions from a reduced excise rate, this cannot be less than 50 percent of the standard national rate.

Romania: Romania provides a reduced excise tax on small distillers producing for households. Romania charges excise and health taxes on most spirits of RON 3,411.15 per hlpa. In contrast, small distilleries pay a reduced excise rate of RON 1,1705.57 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 1,1705.57 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).

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. The reduced rate came into force on January 1, 2019. However, the EU did not agree to a derogation for home distillation in Slovakia.

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. DISCUS 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.

IV. Technical Barriers

European Union - Standards

On December 12, 2018, the EU notified the final version of its revised spirits drink regulation to the WTO (G/TBT/N/EU/432/Rev.1). In December 2016, the EU issued a proposal (G/TBT/N/EU/432) to revise its spirits drinks regulation ((Regulation (EC) No. 110/2008)). The initial proposal included new procedures for registering GIs, an exemption for distilled spirits to declare country of origin of raw materials, rules on the use of compound terms/allusions, and minor modifications to the definitions of grain spirit, anis, and sambuca. DISCUS reviewed the December 2016 proposal and determined that it would have no impact on U.S. spirits exports to the EU and did not submit a comment.

However, the final version includes new vague and confusing rules related to the use of compound terms and allusions. Reportedly, the EU is preparing a "question and answer" guidance to address the uncertainty. However, it is unclear if and when the guidance will be issued.

Request: DISCUS seeks the U.S. government's assistance in urging the EU to issue a guidance document regarding compound terms and allusions clarifying how the rules apply in practice.

Ireland – Public Health (Alcohol) Bill

Ireland's Public Health (Alcohol) Bill was signed into law on October 17, 2018, completing a process that began in 2015. DISCUS provided comments in June 2016 in response to the WTO notification (G/TBT/N/IRL/2) and in April 2018 in response to the notification made through the EU's internal review system.

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. Under the bill, the Minister of Health may issue regulations "taking into account any expert research" implementing the provisions of the bill, including warning requirements.

***Request*:** DISCUS requests the U.S. government's continued 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.

V. Trade Statistics

In 2018, the EU was the single largest destination for U.S. spirits exports. At $824 million, the EU market alone accounts for 46 percent of total U.S. spirits exports. Between July 2018 and July 2019, U.S. Whiskey exports to the EU, which reached $704 million in 2018, declined 21 percent.

Between January-August 2019, total American spirits exports to the EU reached $413 million, down nearly 28 percent compared to the same period in 2018. Similarly, American Whiskey exports to the EU reached $355 million, also down 20 percent through August 2019 as compared to the same period in 2018.

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 India ranks as *the largest whiskey market in the world*, both in terms of volume (1.68 billion liters in 2018) and value ($25 billion in retail sales in 2018) (Euromonitor).

Nonetheless, U.S. spirits producers have begun to make some solid gains, with exports increasing from $390,000 in 2001 to $7 million in 2018. Whiskey accounts for the majority of these exports with an 89 percent share by value.

Request: DISCUS seeks the U.S. government's continued assistance in urging India to reduce its prohibitive import tariff on U.S. spirits exports.

II. Technical Barriers

Labeling

On July 20, 2019, the Food Safety and standards Authority of India (FSSAI) notified proposed revisions to its *Food Safety Standards (Packing and Labeling) Regulation* to the WTO (G/TBT/N/IND/102). The regulation describes the general labeling requirements for prepackaged foods and beverages and applies in addition to India's mandatory beverage alcohol regulation.

The revised general food labeling regulation includes several changes to the proposed draft India notified to the WTO in July 2018 (G/TBT/N/IND/77). India made several changes from the July 2018 proposal in response to concerns raised by DISCUS. Specifically, India removed the proposed GMO labeling requirement and revised its warning statement font-size requirement to take into account differently-sized bottles. However, the proposal retains problematic provisions related to ingredient labeling, date of packaging/date of manufacture, and warning statement requirements.

Request: DISCUS 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: (1) adopt standard international practices by expressly excluding distilled spirits products from any requirement to provide a "list of ingredients;" (2) exempt spirits from the requirement to provide a "Date of Manufacture" or "Date of Packaging;" (3) revise its mandatory statement to reflect the overwhelming scientific evidence that excessive consumption of alcohol may be harmful; and (4) confirm that distilled spirits producers and bottlers may continue the current practice of providing the name and address of the manufacturer/importer.

Standards

On April 5, 2018, FSSAI published the final version of its mandatory beverage alcohol standards and labeling requirements (*The Food Safety Standards (Alcoholic Beverages) Regulations, 2018)*, which went into effect on April 1, 2019. DISCUS submitted comprehensive comments in January 2016 and October 2016, and DISCUS staff raised concerns directly with FSSAI regulators in April 2017 and January 2018.

Unfortunately, the final standard does not include protection for “Bourbon” and “Tennessee Whiskey” as “distinctive products” of the U.S. The final standard protects registered Geographical Indications (GIs) only and, as such, is insufficient as these categories are not registered as GIs in India. “Distinctive product” recognition ensures that such products sold in the Indian market are produced in the U.S. in accordance with U.S. laws and regulations.

In addition, the final standard establishes maximum limits on a range of naturally-occurring constituents in distilled spirits. These components are not regulated either in minimum or maximum levels in other large spirits producing and consuming markets. Moreover, the category definitions for brandy, gin, rum, vodka, and whiskey continue to provide that the ethyl alcohol content for each may range from 36-50 percent a.b.v. The U.S. has established a minimum of 40 percent a.b.v. for all spirits (excluding flavored spirits, liqueurs, cordials, and specialties), with no upper limit.

Request: DISCUS seeks the U.S. government’s assistance in continuing to raise the industry’s concerns with the final standard. Specifically, we urge the U.S. government to secure India’s agreement to: (1) recognize “Bourbon,” “Tennessee Whiskey,” “American Rye Whiskey” and “American Single Malt Whiskey” as distinctive products of the U.S.: (2) the elimination of the use of analytical parameters; and (3) the elimination of maximum alcohol content levels.

III. Trade Statistics

U.S. spirits exports to India were valued at $7 million in 2018. Through August 2019, U.S. spirits exports were valued at $5.6 million, up nearly 40 percent over the same period in 2018.

JAPAN

I. U.S.-Japan Trade Agreement

DISCUS supported the Administration's proposal to negotiate a trade agreement with Japan and submitted detailed objectives for such an agreement on November 26, 2018. The partial U.S.-Japan Trade Agreement did not address any of DISCUS' priority objectives with regards to tariffs, distinctive product recognition, rules of origin, and regulatory best practices.

Request: We urge the U.S. to continue its negotiations and secure a comprehensive free trade agreement with Japan. Our primary goals for a comprehensive agreement are:

- an agreement by Japan to follow through with its commitment to formally "bind" its tariffs on all spirits to zero at the WTO;
- to recognize "American Rye Whiskey" and "American Single Malt Whiskey as distinctive products of the U.S. in addition to "Bourbon" and "Tennessee Whiskey" which was already provided for in the side letters signed on February 4, 2016;
- to adopt the rules of origin for distilled spirits and new transshipment rules provided for in the USMCA; and
- to agree to regulatory best practices for the labeling and certification of distilled spirits products as established in USMCA and an agreement by Japan to expressly prohibit the sale of distilled spirits products with erased/tampered/altered lot codes.

II. Trade Statistics

In 2018, Japan ranked as the U.S. spirits sector's sixth largest export market, with exports valued at $118 million, up nearly 6 percent from 2017. Through August 2019, American spirits exports to Japan are up nearly 26 percent compared to the same period in 2018.

MEXICO

I. U.S.-Mexico-Canada Agreement

DISCUS welcomed conclusion of the USMCA, which reaffirms commitments to tariff-free trade in spirits in North America and the internal sale and distribution of distilled 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. In addition, Mexico agreed to begin the process to grant distinctive product recognition for "American Rye Whiskey." 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.

We welcomed the May 2019 agreement between the U.S., Mexico, and Canada in the context of the USMCA negotiations which resulted in Mexico's removal of its retaliatory tariff on American Whiskey which had been in effect since June 2018.

DISCUS is urging Congress to quickly pass the USMCA implementing bill once it is introduced.

II. 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 (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.

The final mandatory product standards 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 are inconsistent with U.S. regulations for these products. DISCUS is concerned that the above provisions will serve to unnecessarily prohibit certain internationally-traded U.S. spirits from entering the Mexican market.

Tequila Standard: Mexico's revised mandatory standard for Tequila (NOM-006-SCFI-2012) entered into force in February 2013. DISCUS 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 DISCUS' 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.

DISCUS 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 DISCUS and its members remain seriously concerned about its contents.

Request: DISCUS requests the U.S. government's assistance in continuing to raise the industry's outstanding concerns with regard to the mandatory spirits standards (NOM-199) in order to ensure that U.S. spirits exports will not be unnecessarily blocked from the Mexican marketplace. In addition, DISCUS 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.

Conformity Assessment: (G/TBT/N/MEX/432): In August 2018, Mexico published a conformity assessment and certification requirement for alcoholic beverages to be followed in order to comply with *NOM-199-SCFI-2017: Alcoholic beverages — designations, physiochemical specifications, commercial information and test methods*. On September 20, 2019 Mexico notified an addendum to the regulation the WTO which includes several new provisions (G/TBT/N/MEX/432/Add.1).

REQUEST: DISCUS urges the U.S. government remind to Mexico of the commitments it made concerning certifications in the USMCA's Wine and Distilled Spirits (Labeling and Certification Provisions) Annex as it implements the conformity assessment and certification requirements.

III. Trade Statistics

U.S. spirits exports were valued at $61 million in 2018, up 37 percent from 2017, ranking Mexico as the 9th largest export market for U.S. distilled spirits.

SOUTH AFRICA

I. Import Policies

Tariffs

South Africa's applied tariffs on imported spirits range from 1.54 Rand/liter for bottled spirits to 1.36 Rand/liter for spirits imported in bulk. Although its applied rates are relatively low on an *ad valorem*-equivalent basis (about 5 percent), its WTO-bound rates, which were fully phased-in as of January 1, 2000, are exorbitant. South Africa's bound tariff rate on imports of bottled grape brandy, whisky, rum, and gin is 67 percent *ad valorem*. Imports of these spirits in bulk containers are subject to a bound tariff rate of 121 percent *ad valorem*. South Africa's bound rate on imports of all other distilled spirits, *e.g.*, vodka and liqueurs, is 597 percent *ad valorem*, whether in bottles or in bulk containers.

The European Union-South African Trade, Development, and Cooperation Agreement places U.S.-origin spirits at a disadvantage relative to European spirits. As of 2012, *all EU-origin spirits currently enter South Africa duty-free*. South Africa represents a very lucrative market for U.S. distilled spirits companies, but this tariff differential limits the ability of U.S. spirits exporters to maintain and grow market share.

Request: DISCUS urges the U.S. government to secure an immediate agreement from South Africa to apply to U.S. spirits products the same tariff treatment that currently applies to EU-origin spirits.

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. DISCUS submitted comments in December 2014 and in March 2015 in response to WTO notification (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." According to industry reports, informal consultations between the government and industry are ongoing, and any changes would require South Africa to publish new regulations and notify it to the WTO. The regulation goes into effect on December 22, 2020.

Request: We seek the U.S. government's continued assistance in raising the industry's outstanding concerns, and in requesting an opportunity for the industry to provide its views on the new amendment.

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 National Liquor Amendment Bill has been published and is currently under review by the National Economic Development and Labor Council (NEDLAC). The status of the bill and whether it will be adopted is unclear.

Request: DISCUS seeks the U.S. government's continued 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 $19.7 million in 2018, up nearly 23 percent from 2017. Through August 2019, U.S. spirits exports were valued at $15.4 million, up nearly 5 percent over the same period in 2018.

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. The regulation entered into force in April 2015 with a transition period until October 2015. In response to the notifications, DISCUS 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. Thailand subsequently agreed to issue a third revised guidance but have yet to do so. Companies have recently reported problematic and inconsistent enforcement of the regulation, which remains vague and confusing.

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). The 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: DISCUS 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 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 new COA requirements were originally scheduled to enter into force on September 14, 2018, but were delayed to March 14, 2019. On March 12, 2019, Thailand issued a notification to again delay implementation of its new COA requirements by 6 months to September 14, 2019. However, without notice on June 18, 2019, Thailand notified the WTO that the proposal went into effect on June 5, 2019 (G/TBT/N/THA/549).

Request: DISCUS seeks the U.S. government's continued assistance in urging Thailand to confirm that it will accept either: (1) a 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) company-certified document that the product was produced in accordance with U.S. laws and regulations.

Standards

In October 2018, it was reported that Thailand was in the early stages of a review of its standards of identity which was related to the new certification requirement. The current standards include problematic definitions inconsistent with U.S. standards of identity which may be inadvertently keeping internationally-traded U.S. 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. In October 2018 DISCUS submitted comprehensive preliminary comments based on the current standard directly to the Thai government. To date, no response has been received and the status of the review is unclear.

Request: DISCUS seeks the U.S. government's assistance in securing an update on the status of the review and urging Thailand to: (1) eliminate its use of 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. DISCUS also seeks the U.S government's assistance in urging Thailand to notify any proposed revised standard to the WTO, so that all interested stakeholders may comment.

II. Other Barriers

Discriminatory Taxation

Thailand has maintained a discriminatory excise tax system for distilled spirits for many years by 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: DISCUS urges the U.S. government to seek Thailand's commitment to apply a single, nondiscriminatory tax for all distilled spirits products.

III. Trade Statistics

Direct U.S. spirits exports to Thailand were valued at $7.4 million in 2018, up 45 percent from 2017. Through August 2019, direct U.S. spirits exports reached $2.7 million, a 53 percent decrease compared with the same period in 2018.

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, 2018, and on May 21, 2019, Turkey reduced its tariff down to 70 percent. Since Turkey first imposed its tariff on American spirits, exports have decreased nearly 55 percent.

Request: DISCUS urges the U.S. 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." DISCUS 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: DISCUS 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 2018, U.S. direct exports of distilled spirits to Turkey were valued at $17.2 million, up nearly 24 percent from 2017. However, since Turkey imposed retaliatory tariffs on American spirits, exports have decreased nearly 55 percent. Through August 2019, American spirits exports to Turkey are down nearly 66 percent compared to the same period in 2018.

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

UNITED KINGDOM

I. Tariffs

The United Kingdom (UK) is a very open market for U.S. spirits products by virtue of its membership in the EU. Since 1997, the U.S. and UK spirits industries have enjoyed duty-free access to each other's markets under the "zero-for-zero" agreement negotiated in connection with the Uruguay Round by the U.S. and the EU.

However, since June 22, 2018, American Whiskey exports to the UK have been facing a retaliatory tariff of 25 percent in response to the U.S. imposition of steel and aluminum tariffs. Since then, American Whiskey exports to the EU have decreased 21 percent, and American Whiskey exports to the UK have dropped nearly 30 percent. In fact, in 2018, the UK was the second largest destination for U.S. whiskey exports and accounted for nearly 21 percent of total American Whiskey exports to the EU.

On October 18, 2019, the U.S. began imposing a 25 percent tariff on Single Malt Scotch Whisky, Single Malt Irish Whiskey from Northern Ireland, and liqueurs and cordials from the UK in connection with the WTO dispute concerning civil aircraft subsidies. The EU in its corresponding case at the WTO has proposed to place tariffs on additional U.S. spirits and wine.

U.S. and UK spirits companies are interconnected: many own and import/export both U.S. and UK brands. Duty-free access to the UK market has contributed significantly to the considerable expansion of U.S. spirits exports over the past two decades. Both the U.S. and EU have indicated a desire to reach a settlement in the WTO civil aviation subsidy dispute and to resolve the steel and aluminum and retaliatory tariffs.

Request: DISCUS urges the U.S. government to resolve the disputes with the UK so as to ensure spirits trade between the U.S. and the UK will return to duty-free.

II. U.S.-UK Trade Agreement

DISCUS supported the Administration's proposal to negotiate a trade agreement with the UK and submitted detailed objectives for such an agreement on January 15, 2019. 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 ensure retaliatory tariffs on American Whiskey are eliminated as soon as the UK leaves the EU Common Market and before negotiations for a comprehensive are launched.

Request: Our primary goals for a comprehensive 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" and "American Single Malt Whiskey;"
- commitments on regulatory best practices for the labeling and certification of distilled spirits, similar to the USMCA; and
- rules of origin and transshipment rules provided for in the USMCA.

III. Trade Statistics

In 2018, U.S. spirits exports to the UK were valued at nearly $190 million, reflecting a nearly 2 percent increase from 2017 export values. However, through August 2019, American Whiskey exports are down nearly 30 percent, and total American spirits exports are down nearly 40 percent as compared to the same period in 2018.

VIETNAM

I. Import Policies

Tariffs

As part of its WTO accession commitments, Vietnam agreed to bind its tariffs on distilled spirits at 65 percent *ad valorem* as of the date of accession (January 11, 2007) and to reduce its tariff to 45 percent by 2013. Although the U.S. spirits industry was generally pleased with the overall terms of Vietnam's WTO accession package, its fully-phased in spirits tariffs are very high by international standards.

As part of the Trans-Pacific Partnership agreement negotiations, which the U.S. withdrew from in January 2017, Vietnam agreed to eliminate its 45 percent *ad valorem* tariff on U.S. spirits over eleven or twelve years, depending on the product.

Request: DISCUS urges the U.S. government to seek the elimination of Vietnam's spirits tariffs through multilateral or bilateral trade discussions.

II. Technical Barriers

Labeling

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

Request: DISCUS seeks U.S. government assistance in raising the industry's concerns with the Vietnamese government.

III. Other Barriers

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

The *Law on the Prevention and Control of the Harmful Use of Alcohol* passed Vietnam's National Assembly on June 14, 2019, and will go into effect on January 1, 2020. Vietnam notified the proposed law to the WTO in May 2018, and DISCUS submitted comprehensive comments on the draft in April and August (G/TBT/N/VNM/126). The draft included a range of provisions, such as the introduction of a new voluntary warning labeling requirement, limits on retail outlet density, incorporation of 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 final bill was amended to eliminate the new tax, the limits on retail outlet density, the prohibition on the "introduction" of all forms of beverage alcohol, and the voluntary warning labeling provision. However, it retains the existing ban on advertising beverage alcohol products over 15 percent a.b.v.

Request: DISCUS seeks U.S. government assistance in urging Vietnam to treat all classes of beverage alcohol the same regarding regulations related to advertising.

IV. Trade Statistics

Direct U.S. spirits exports to Vietnam reached $62.3 million in 2018, a 127 percent increase from 2017. Through August 2019, U.S. spirits exports to Vietnam are up 32 percent as compared to the same period in 2018.

IV. OTHER MARKETS

ARGENTINA

I. Other Barriers

Discriminatory Taxation

Local spirits are assessed a VAT tax of 21 percent, whereas imported spirits are assessed at 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: DISCUS 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 $7.3 million in 2018, down 12 percent from 2017 levels. In the January-August 2019 period, U.S. exports were valued at $3.3 million, representing a 37 percent decrease from the same period in 2018.

BRAZIL

I. Import Policies

Tariffs

Brazil's currently-applied tariff on imported distilled spirits reflects the MERCOSUR common external tariff (CET) of 20 percent *ad valorem* on all imported distilled spirits, except bulk whiskey, which is assessed a tariff of 12 percent *ad valorem*. Brazil's WTO bound rate is 35 percent *ad valorem*.

U.S. spirits exports remain relatively small. Brazil's high tariffs on imports have made it very difficult for U.S. exporters to make significant inroads into Brazil's large and growing spirits market.

Request: DISCUS urges the U.S. government to seek the elimination of Brazil's spirits tariffs through multilateral or bilateral trade discussions.

II. Other Barriers

Discriminatory Taxation

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

TIPI CODE	RATE (%)
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, 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: DISCUS seeks the U.S. government's continued assistance in urging Brazil to abide by its WTO commitments and eliminate its discriminatory excise tax.

III. Trade Statistics

In 2018, U.S. spirits exports to Brazil were valued at $26 million, reflecting a nearly 5 percent decrease from 2017 export values. In the January-August 2019 period, U.S. spirits were valued at $12.5 million, representing a 29 percent decrease from the same period in 2018.

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. DISCUS 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. The implementation was subsequently delayed again, and the status of the requirement is unclear.

Request: DISCUS requests the U.S. government's continued assistance in: (1) seeking an update on the status of the requirement; (2) 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 (3) urging Colombia to notify any revision to the WTO for comment.

II. Trade Statistics

In 2018, U.S. spirits exports to Colombia were valued at nearly $7.3 million, reflecting a nearly 93 percent increase from 2017 export values. In the January-August 2019 period, U.S. spirits were valued at $2.7 million, representing a 32 percent decrease from the same period in 2018.

COSTA RICA

I. Other Barriers

Discriminatory Taxation

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

Costa Rican Specific Excise Tax Rates
(Rates as of August 1, 2019)

Alcohol Strength	Tax Rate per mL pure alcohol (in colones (¢))
Less than or equal to 15% a.b.v.	3.38
Greater than 15% to 30% a.b.v.	4.06
Greater than 30% a.b.v.	4.73

The local spirit, *guaro*, (which is produced in the 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 fifteen 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, DISCUS is concerned that there may be

a potential GATT violation.
Request: DISCUS requests that the U.S. government urge Costa Rica to remove the discriminatory excise tax for spirits.

II. Trade Statistics

In 2018, U.S. exports of spirits to Costa Rica were valued at $2.3 million representing a 50 percent increase from 2017 export values. In the January-August 2019 period, U.S. spirits exports were valued at $1.7 million, representing a 31 percent increase from the same period in 2017.

DOMINICAN REPUBLIC

I. Import Policies

Excise Stamps

In April 2019, the Dominican Republic's Internal Revenue Agency proposed to establish an excise tax stamp system for beverage alcohol products with the intent of addressing illicit trade and tax evasion. Implementing regulations have not been issued, but it is expected to go into effect by the end of 2019. The proposal was not notified to the WTO TBT Committee for stakeholder comment.

We understand under the proposal that importers are required to apply physical adhesive stamps while domestically produced products can apply individual digital markings during the bottling process. However, it is unclear whether with regard to imported products whether the stamp may be applied in a bonded warehouse in the Dominican Republic, whether there will be a transition period to sell product that is already on the market, and how unused stamps will be reimbursed. We are concerned that the requirement may result in preventing the importation of internationally-traded U.S. distilled spirits.

Request: DISCUS seeks the U.S. government's support in urging the Dominican Republic to delay implementation of the requirement and notify any implementing regulations to the WTO's TBT Committee, consistent with its international obligations.

II. Trade Statistics

In 2018, U.S. distilled spirits exports were valued at $10 million, representing an increase of 39 percent from 2017 levels. Through the January-August 2019 period, U.S. exports reached $13.9 million, reflecting a 21 percent increase relative to the same period in 2018.

ECUADOR

I. Other Barriers

Discriminatory Taxation

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

Request: DISCUS requests the U.S. government urge Ecuador to remove the discriminatory 75 percent additional tax, which appears to apply only to imported products.

II. Trade Statistics

In 2018, U.S. distilled spirits exports were valued at $5.6 million, representing a decrease of 5 percent from 2017 levels. Through the January-August 2019 period, U.S. exports reached $2.9 million, reflecting a 21 percent increase relative to the same period in 2018.

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 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 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: DISCUS seeks the U.S. government's 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 $4.3 billion beverage alcohol retail market. Distilled spirits accounted for 15 percent of total beverage alcohol retail sales, while wine accounted for 43 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 33 percent larger than in Hong Kong in 2018 (Euromonitor). To compare the two markets, in 2018 direct U.S. spirits exports to Hong Kong were valued at only $8.1 million, while U.S. spirits exports to Singapore reached $29.5 million.

INDONESIA

I. Import Policies

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, importers must demonstrate that they have paid the necessary excise taxes and import duties. Because the tariff and excise taxes are so high, this deposit requirement is burdensome.

Request: DISCUS requests the U.S. government's assistance in raising these concerns with the Indonesian government.

II. 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, whiskey, brandy, tequila, etc., are, at a minimum, directly competitive and substitutable products and should be taxed similarly, as required under Article III: 2 of GATT 1994.

Request: DISCUS seeks the U.S. government's assistance in urging Indonesia to remove the discriminatory aspects of its taxation regime for spirits as soon as possible.

III. Trade Statistics

In 2018, Indonesia's imports of U.S spirits were valued at $1.3 million, representing an 88 percent increase from 2017 levels (Global Trade Atlas).

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).

In December 2018, legislation was introduced into Korea's National Assembly to amend the "Public Health Promotion Act" and revise the mandatory health warnings for beverage alcohol to require both a drunk driving warning statement and graphic warning. DISCUS provided comments in response to Korea's notification of the proposed legislation (G/TBT/N/KOR/817) to the WTO. If the legislation passes, implementing regulations will need to be issued to provide specific details about the proposal.

Request: DISCUS seeks the U.S. government's support in urging Korea to: (1) take into account the entire body of scientific literature and research regarding beverage alcohol consumption in determining the appropriateness of any warning statements; and (2) notify any implementing regulations to the WTO's TBT Committee, consistent with its international obligations.

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: DISCUS 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 million in 2018, down 2 percent compared to 2017. U.S. spirits exports to Korea were valued at $8.9 million through August 2019, up nearly 31 percent from the same period in 2018.

MALAYSIA

I. 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

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: DISCUS urges the United States to secure the elimination of the discriminatory aspects of Malaysia's excise tax regime.

II. Trade Statistics

In 2018, Malaysia's imports of U.S. spirits were valued at $2.6 million (Global Trade Atlas), representing a 60 percent increase from 2017. While imports of U.S. whiskeys and gin increased, there was a significant decline in imports of rum, brandy, cordials and liqueurs.

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 *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: DISCUS requests that the U.S. government continue to engage with Peru to urge elimination of the discriminatory practices as soon as possible.

II. Trade Statistics

In 2018, U.S. distilled spirits exports were valued at $5 million, representing an increase of nearly 90 percent from 2017 levels. Through August 2019, U.S. exports reached $3.4 million, reflecting a 3 percent decrease relative to the same period in 2018.

RUSSIA

I. Import Policies

Tariffs

Consistent with its WTO Accession Agreement, on September 1, 2015 Russia reduced the tariff on bottled whiskey to 1.4 Euros per liter and to 1.5 Euros per liter on other spirits categories.

Request: DISCUS urges the U.S. government to seek the elimination of Russia's spirits tariffs through multilateral or bilateral trade discussions.

II. Technical Barriers

Standards and Labeling

In December 2018, the Eurasian Economic Union (EEU), which consists of Russia, Armenia, Belarus, Kazakhstan, and Kyrgyzstan, adopted its final beverage alcohol Technical Regulation (TR) which sets unified mandatory 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 final TR, which goes into effect on January 9, 2021.

The final TR partially addressed the DISCUS' concerns related to ingredient labeling to exempt beverage alcohol products "made from one type of raw material" and reduced the size of the warning statement from 20 percent of the label to 10 percent. However, the final TR did not, for example, address DISCUS's concerns related to the definitions of whiskey and vodka and the use of analytical parameters for certain product categories. The final TR includes new and unclear provisions related to product certifications and conformity assessments which must be met before products may be placed on the market. We understand that product on the market and compliant with the current requirements will be able to be sold until stocks are exhausted.

Request**:** DISCUS requests the U.S. government's assistance in raising the outstanding concerns with the final TR in order to ensure that U.S. spirits exports will not be unnecessarily blocked from the Russian marketplace. In particular, we seek the U.S. government's assistance in urging Russia to: (1) clarify the distinction between the different categories of spirits; (2) allow vodka to be made from <u>any</u> agricultural material; (3) eliminate the minimum aging requirement for whiskey; (4) eliminate its use of analytical parameters and, instead, define spirits solely in terms of their specific raw materials and production processes; and (5) eliminate the requirement that products containing 10 percent of alcohol by volume from stating that they have no expiration date.

III. Trade Statistics

In 2018, U.S. distilled spirits exports to Russia were valued at $61 million, up nearly 16 percent from 2017. Through August 2019, U.S. spirits exports to Russia reached $40 million, up 8 percent over the same period in 2018. (Global Trade Atlas)

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

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: DISCUS 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 $6.4 million in 2018, representing a 36 percent increase from 2017. Through August 2019, American spirits exports to Taiwan are down nearly 20 percent as compared to the same period in 2018.