



November 26, 2018

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

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

Re: Request for Comments on Negotiating Objectives for a U.S.-Japan Trade Agreement (USTR-2018-0034)

Dear Mr. Gresser:

On behalf of the Distilled Spirits Council of the United States, Inc. (Distilled Spirits Council) and its member companies, I am writing in response to your request for written submissions (83 Fed. Reg. 54164 (October 26, 2018)) on negotiating objectives for a U.S.-Japan trade agreement. The Distilled Spirits Council is the national trade association representing the leading producers and marketers of distilled spirits in the United States (Harmonized Tariff Schedule (HTS) headings 2208 and 2207.10.30).

The Distilled Spirits Council's member companies export spirits products to more than 130 countries worldwide. Over the past two decades, the U.S. spirits sector has become increasingly reliant on exports to fuel growth. Since 1989, the value of global U.S. distilled spirits exports has increased nearly seven-fold, from \$242 million to over \$1.64 billion in 2017. International trade agreements are vital to opening new markets, and keeping them open, for U.S. spirits exports. In 2017, Japan ranked as the U.S. spirits sector's sixth largest export market, with exports valued at \$111.8 million. In 2018, U.S. spirits exports to Japan through August were up 12.4% compared with the previous year.

The Council and its member companies strongly support the negotiation of a comprehensive U.S.-Japan bilateral trade agreement. Our specific objectives for possible negotiations with Japan are detailed below.

A. Spirits Tariffs

In 1997 as part of its settlement agreement with the United States, the European Commission and Canada in resolution of the World Trade Organization dispute settlement case (Japan – Taxes on Alcoholic Beverages: WT/DS8, WT/DS10 and WT/DS11), Japan agreed to eliminate its tariffs on imports of brandy, Bourbon, rye and other whiskies, rum, gin, vodka and liqueurs. Specifically, as indicated in Annex B to its “Mutually Acceptable Solution on

Modalities for Implementation,” which was circulated to WTO members on January 12, 1998, Japan agreed to apply a tariff of zero on imports of these spirits categories from April 1, 2002 forward. Furthermore, Japan stated in this communication that it “will not raise tariffs rates above those specified in Annex B” and that the “GOJ will apply the rates listed in Annex B in full recognition that Japan’s WTO bound rates are higher and intends to bind these tariff reductions in the WTO at the next possible opportunity to modify the Schedule of Japan following a multilateral, multi-sectoral negotiation.”

Japan has bound at the WTO the zero-duty rate on brandy and whiskeys only. Thus, the Distilled Spirits Council requests that the U.S. government seek Japan’s renewed commitment to bind its tariff commitments with regard to rum, gin, vodka and liqueurs in the WTO as soon as possible, consistent with the terms of the 1997 settlement as described above.

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

In November 2015, as part of the Trans-Pacific Partnership (TPP) negotiations, Japan agreed via a side letter to initiate its domestic legal process to recognize “***Bourbon***” and “***Tennessee Whiskey***” as distinctive products of the U.S. This commitment is not contingent upon implementation of the TPP.

Over the past decade, “***American Rye Whiskey***” production in the United States has experienced phenomenal growth, with over 100 brands now on the market. This is up from a handful a decade ago. In terms of the United States domestic market, from 2009 – 2017, American Rye Whiskey sales volumes have grown by an astonishing 934 percent to reach over 912,200 cases. In terms of value, that translates into a 900 percent jump from slightly over \$15 million in supplier revenues in 2009 to over \$175 million in 2017. This represents approximately \$500 million in retail sales in the United States alone. Several companies, both large and small, export American Rye Whiskey to a wide-range of markets, including Japan. In the recently completed U.S. – Mexico Canada Agreement (USMCA), Mexico agreed to initiate its domestic process to recognize, for the first time in a U.S. trade agreement, “***American Rye Whiskey***” as a distinctive product of the United States.

Securing such recognition is critical for U.S. whiskey exporters to Japan. Of the \$111.8 million in U.S. spirits exports to Japan in 2018, the vast majority (*i.e.*, 87%) was accounted for by American Whiskey (“***Bourbon***,” “***Tennessee Whiskey***,” and “***American Rye Whiskey***”). In fact, Japan ranks as the sixth largest export market in the world for American Whiskey.

Accordingly, the Distilled Spirits Council urges the United States to request that Japan begin its domestic process, consistent with existing commitments, to recognize “***Bourbon***” and “***Tennessee Whiskey***” as distinctive products of the U.S. and, as part of that process, also recognize “***American Rye Whiskey***” as a distinctive product of the U.S.

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

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

Of particular importance to the U.S. distilled spirits industry is to ensure provisions concerning lot codes are secured in the agreement with Japan. Such codes are utilized, when necessary, to facilitate product recalls. In Japan, the use of lot codes on beverage alcohol containers is not required under the Food Sanitation Law, yet is recommended by the Ministry of Health, Welfare and Labor under guidelines issued in 2003. As a result, most imported spirits products voluntarily include producer lot codes on the bottles.

Similarly, while lot codes are not required to be included on beverage alcohol containers in the United States, the vast majority of producers do so voluntarily. Further, U.S. regulations prohibit the alteration, removal and/or destruction of any mark, brand, or label on beverage alcohol containers that are within the stream of commerce, regardless of whether that information is mandatory or voluntary. Thus, the removal or alteration of any lot code from beverage alcohol containers is prohibited under U.S. regulations. We understand that a similar provision is not provided for under Japanese regulations.

Thus, we seek the U.S. government's assistance in requesting Japan's agreement to expressly prohibit the sale of distilled spirits products with erased/tampered/altered lot codes. In addition, the Japanese regulators should have the authority to assess appropriate penalties to serve as an effective deterrent to future violations.

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

D. Rules of Origin

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

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

Conclusion

As detailed above, international trade has become increasingly instrumental to the long-term viability of the U.S. distilled spirits sector. The Distilled Spirits Council and its member companies strongly support negotiation of a U.S.-Japan trade agreement. The U.S. spirits sector's primary goals for the negotiations are to secure:

- follow through with its commitment to formally “bind” the zero tariffs at the WTO on gin, rum, vodka and liqueur that have been in place on an applied basis since 2002 in resolution of the dispute settlement case;
- initiate immediately its domestic process to provide distinctive product recognition of “Bourbon,” “Tennessee Whiskey,” and to extend this to include “American Rye Whiskey”;
- adopt the rules of origin and new transshipment rules provided for in the recently concluded USMCA; and
- agree to regulatory best practices for the labeling and certification of distilled spirits products, including with regard to lot codes.

Thank you for this opportunity to provide input on the upcoming U.S.-Japan negotiations. We look forward to working with you as the negotiations begin. Please do not hesitate to contact us should you require any additional information.

Sincerely,



Christine LoCascio
Senior Vice President
International Issues and Trade