DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

October 29, 2020

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-2020-0034: Comments Regarding Foreign Trade Barriers to U.S. Exports – Submission by the Distilled Spirits Council of the United States, Inc. (85 *Fed. Reg.* 55925 (September 10, 2020))

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 2019 valued at over $1.5 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 retaliatory tariffs, 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 2020

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

TABLE OF CONTENTS

I. INTRODUCTION

<u>Overview</u>: 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. The U.S. spirits sector supports the direct and indirect employment of an estimated 1.64 million people across America.

U.S. spirits continue to face an array of new and existing tariff and non-tariff barriers in export markets. The U.S. spirit sector's top trade priority continues to be securing the removal of retaliatory tariffs on U.S. spirits exports imposed by key trading partners (discussed in more detail below). These tariffs are seriously impeding the export progress that has benefitted our sector and created jobs across the country.

Due to the continued application of retaliatory tariffs, in 2019, U.S. distilled spirit exports reached $1.5 billion, down by nearly 14% from 2018 levels. Comprising over 65% of total U.S. spirits exports in value, American Whiskeys (Bourbon, Tennessee Whiskey, American Rye Whiskey, and American Single Malt Whiskey) continue to be the key growth driver of U.S. shipments. In 2019, the value of U.S. exports of whiskey totaled $996 million, representing a 15.8% decrease from 2018 levels, a significant deceleration from the 16% growth rate recorded the year before the imposition of retaliatory tariffs by key trading partners (2016-2017). Between January-August 2020, total U.S. spirits exports are down 14% and American Whiskey exports are down 16% compared to January-August 2019. The further decrease in 2020 is due in part to the restrictions related to preventing the spread of COVID-19.

In 2019, the top five markets for American spirits exports by value were: 1) Canada ($202 million, down 13.6%); 2) Japan ($138 million, up 17.7%); 3) United Kingdom ($111 million, down 41.5%); 4) Australia ($102 million, down 15.9%); and 5) France ($93 million, down 18.9%). The top five markets for American Whiskeys were: 1) Japan ($122 million, up 24.6%); 2) United Kingdom ($101 million, down 32.7%); 3) France ($84 million, down 20%); 4) Australia ($84 million, down 16.6%); and 5) Germany ($82 million, down 18.2%).

The impact of restrictions related to preventing the spread of COVID-19 and the necessary closure of bars and restaurants around the world is having a compounding negative effect on exports of American distilled spirits already suffering due to retaliatory tariffs. According to a recent DISCUS survey of craft distillers, 41% of their sales have evaporated, and 31% of their employees have been furloughed since the start of the pandemic.

Retaliatory Tariffs: Due to the application of retaliatory tariffs by the EU, China and Turkey, U.S. distillers of all sizes have had export contracts canceled and distribution negotiations postponed. In addition, many U.S. distillers have put expansion and investment plans on hold indefinitely. The impact is felt across the U.S. throughout the entire supply chain, from farmers to suppliers. In 2020, there were over 2,000 distilleries in the U.S.; American spirits were exported from 45 states and American Whiskeys exported from 39 states. These tariffs are making American Whiskeys less competitive and may result in international spirits consumers choosing other spirits categories that already provide stiff competition in some third markets. These markets may be lost as foreign adult consumers shift to distilled spirits produced domestically or by our global competitors.

Our top trade 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. Below is a summary of the retaliatory tariffs on U.S. spirits imposed by the EU, China, and Turkey.

EU: Since June 22, 2018, the EU has imposed a retaliatory tariff of 25% on all American Whiskey imports in response to U.S. actions on steel and aluminum. The EU's retaliatory tariff on American Whiskey will increase to 50% in June 2021 if the disputes are not resolved. From 1997 to 2017[1], American Whiskey exports to the EU grew by nearly 350%, from $148 million to over $667 million. Since the EU's 25% retaliatory tariff on American Whiskey was imposed two years ago, annual[2] American Whiskey exports to the EU declined 41%, from $757 million (July 2017 to June 2018) to $449 million (August 2019 to July 2020). The retaliatory tariffs have upended decades of growth for the U.S. spirits sector in the EU market, which accounted for nearly 52% of total American Whiskey exports in 2019. According to an analysis by DISCUS, had the tariffs not been implemented, American Whiskey exports today would be an estimated $300 million higher.

In the WTO Boeing dispute, the EU may soon impose additional tariffs on U.S. beverage alcohol products. In April 2019, the EU indicated that it would consider imposing retaliatory tariffs on U.S. rum, vodka, and brandy. On October 26, 2020, the WTO's Dispute Settlement Body (DSB) authorized the EU to impose tariffs on $4 billion of U.S. imports. The final list of products and the date tariffs will be imposed has not been announced.

[1] The last full year before the imposition of the EU's 25% retaliatory tariff on American Whiskey
[2] Between June 2018 and July 2020

China: Since July 2018, China has imposed a retaliatory tariff on American spirits in response to the U.S. Section 301 actions. China is imposing a retaliatory tariff of 25% on American Whiskeys, brandy (on top of a 5% tariff for whiskey and brandy, thus totaling 30%) gin, vodka, rum, liqueurs, and cordials (on top of a 10% tariff for gin, rum, vodka, liqueurs, and cordials, thus totaling 35%). In 2019, U.S. spirits exports to China reached $17.8 million, down 1% from 2018. However, over the past five years, American spirits exports to China increased by nearly 25% and approximately 127% over the past decade. Between January-August 2020, total American spirits exports to China are down by nearly 27% as compared to the same period in 2019.

Turkey: Since June 2018, Turkey has imposed retaliatory tariffs on all U.S. distilled spirits in response to the steel and aluminum tariffs. Currently, Turkey applies a 70% retaliatory tariff. In 2019, U.S. spirits exports to Turkey reached $10.4 million, down 40% as compared to 2018.

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, who have agreed either through multilateral, regional, or bilateral trade agreements, to eliminate tariffs on U.S. spirits, reached $1.23 billion in 2019, accounting for 80% 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 2019, U.S. distilled spirits exports to bilateral and regional free trade agreement partners reached roughly $511 million, accounting for nearly 1/3 of global exports. Between 2000 and 2019, exports to bilateral and regional trade agreement partners have grown at a faster rate (370% increase) than total U.S. distilled spirits exports (247% increase).

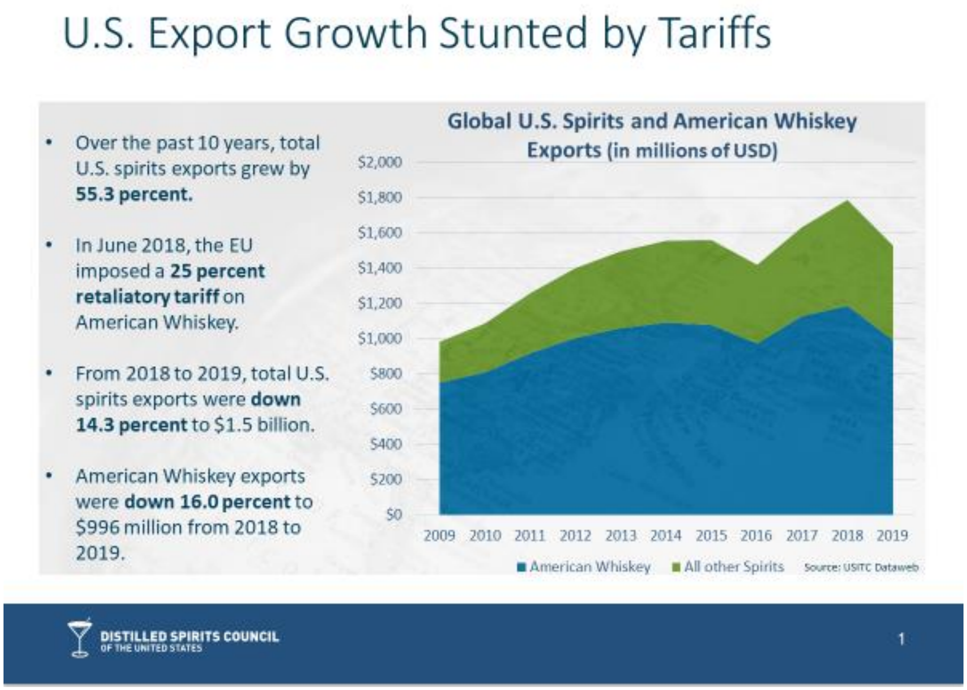
DISCUS supports new comprehensive bilateral/regional market-opening agreements, which we believe will contribute significantly to the continued growth of our sector. DISCUS supported the Administration's effort to modernize the North American Free Trade Agreement and secure quick Congressional passage of 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.

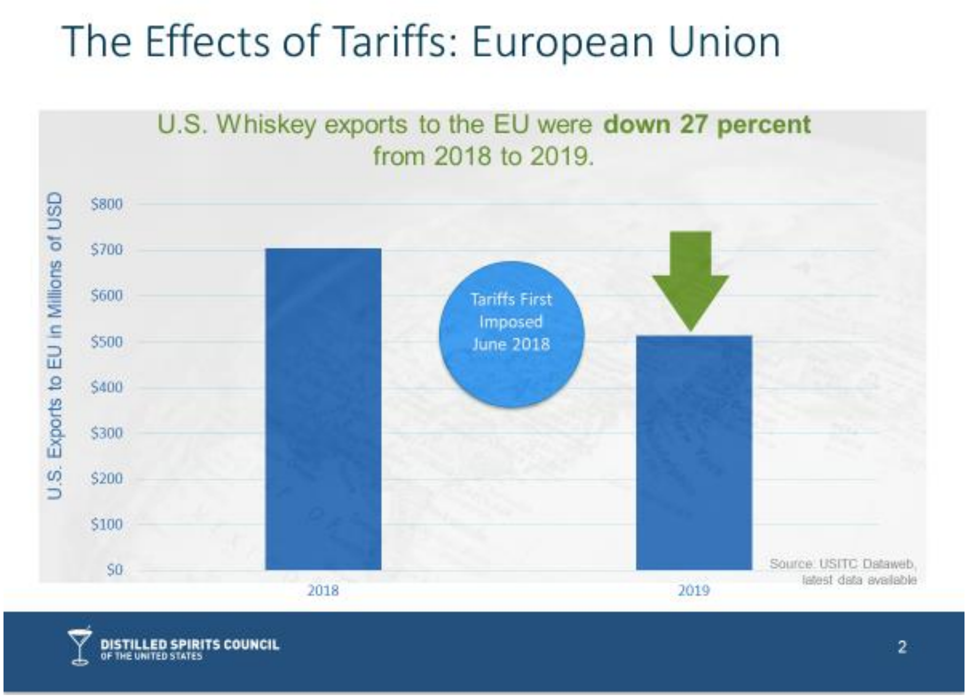
In addition, DISCUS is a strong supporter of the WTO and its ongoing efforts to further liberalize global trade and strengthen the rules-based multilateral trading system. Unquestionably, the package of agreements concluded in the Uruguay Round, which led to the establishment of the WTO in 1994, has 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 1997 through 2019, global U.S. distilled spirits exports have increased by almost 180%.

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

Summary: The U.S. distilled spirits sector has benefitted significantly from the comprehensive multilateral, regional, and bilateral trade agreements the U.S. has concluded. However, the U.S. spirits industry is facing significant challenges due to the ongoing application of retaliatory tariffs by key trading partners and the impact of restrictions related to preventing the spread of COVID-19, threatening to upend the decades of export growth. 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 vigorously 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


U.S. Export Growth Stunted by Tariffs
Over the past 10 years, total U.S. spirits exports grew by 55.3 percent.
In June 2018, the EU imposed a 25 percent retaliatory tariff on American Whiskey.
From 2018 to 2019, total U.S. spirits exports were down 14.3 percent to $1.5 billion.
American Whiskey exports were down 16.0 percent to $996 million from 2018 to 2019.
Global U.S. Spirits and American Whiskey Exports (in millions of USD)
$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 2019
American Whiskey
All other Spirits
Source: USITC Dataweb
DISTILLED SPIRITS COUNCIL OF THE UNITED STATES
1


The Effects of Tariffs: European Union
U.S. Whiskey exports to the EU were down 27 percent from 2018 to 2019.
U.S. Exports to EU in Millions of USD
$800
$700
$600
$500
$400
$300
$200
$100
$0
Tariffs First Imposed June 2018
2018
2019
Source: USITC Dataweb, latest data available
DISTILLED SPIRITS COUNCIL OF THE UNITED STATES
2

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American Whiskey Drives U.S. Spirits Exports

DISTILLED SPIRITS COUNCIL OF THE UNITED STATES 4

The Effects of Tariffs:
Top 10 Export Markets for U.S. Spirits

	2018 Total U.S. Spirits Exports (In millions of USD)	2019 Total U.S. Spirits Exports (In millions of USD)	2018-2019 Percent Change
Canada	$234	$202	- 13.6
Japan	$118	$138	+ 17.7
UK*	**$190**	**$111**	**- 41.5**
Australia	$121	$102	- 15.9
France*	**$115**	**$93**	**- 18.9**
Germany*	**$120**	**$83**	**- 30.4**
Mexico	$61	$72	+ 18
Spain*	**$119**	**$70**	**- 41.3**
Vietnam	$62	$63	+ 0.8
Latvia*	**$44**	**$52**	**+ 19.5**

*** EU Member Countries**

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The Effects of Tariffs:
Top 10 Export Markets for American Whiskey

	2018 American Whiskey Exports (In millions of USD)	2019 American Whiskey Exports (In millions of USD)	2018-2019 Percent Change
Japan	$98	$122	+ 24.6
UK*	**$150**	**$101**	**- 32.7**
France *	**$108**	**$86**	**- 19.9**
Australia	$101	$84	- 16.6
Germany*	**$100**	**$82**	**- 18.2**
Spain*	**$108**	**$61**	**- 43.8**
Canada	$50	$52	+ 5.1
Latvia*	**$42**	**$50**	**+ 18.9**
Netherlands*	**$45**	**$29**	**- 37.1**
Poland*	**$33**	**$27**	**- 18.5**

*** EU Member Countries**

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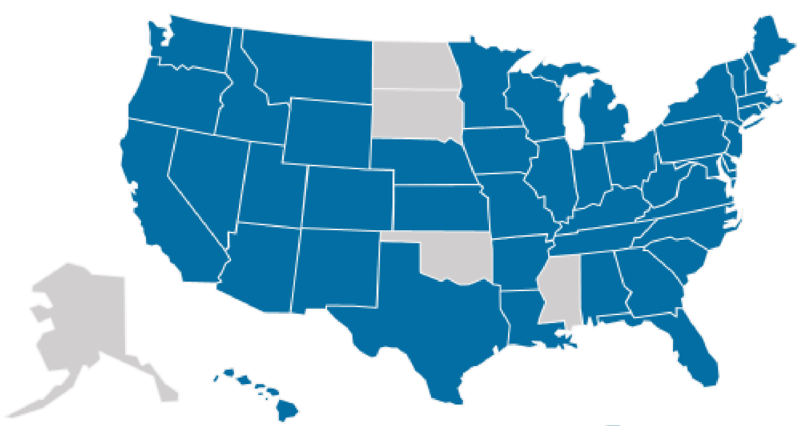
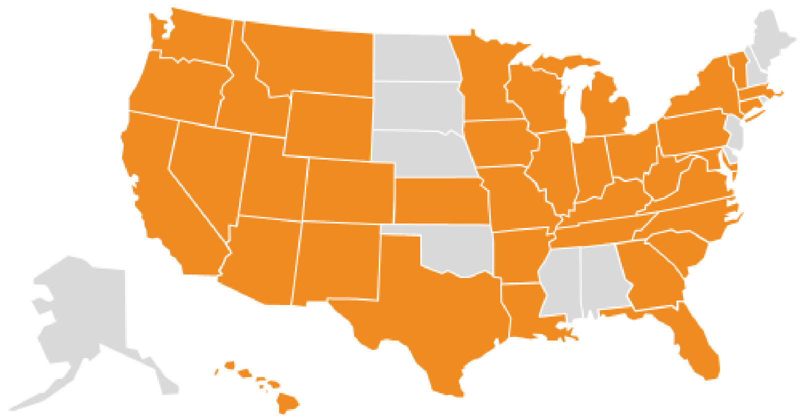
45 States Exported U.S. Spirits in 2019



Source: 2019 U.S. Census & ITC Data

DISTILLED SPIRITS COUNCIL OF THE UNITED STATES 7

39 States Exported American Whiskey in 2019



Source: 2019 U.S. Census & ITC Data

III. PRIORITY MARKETS

AUSTRALIA

I. Technical Barriers

Standards

Australia agreed in the U.S.-Australia Free Trade Agreement to recognize Bourbon and Tennessee Whiskey as distinctive products of the U.S, which requires that products sold in Australia as Bourbon and Tennessee Whiskey be produced in the U.S. per U.S. laws and regulations. We understand that there are several fraudulent and adulterated Bourbons and Tennessee Whiskeys sold on the Australian market. The U.S. standards of identity prohibit the addition of any colorings, additives, flavorings, or neutral spirits to Bourbon and Tennessee Whiskey. If such are added to lawfully imported Bourbon and Tennessee Whiskey, the adulterated product may no longer be labeled as a Bourbon or Tennessee Whiskey in Australia as they are no longer produced in accordance with applicable U.S. laws and regulations for the consumption, sale, or export of these products.

Australia is currently reviewing its two-year maturation requirement for imported whiskeys. Under the U.S. standards for Bourbon and Tennessee Whiskey, to be labeled as such, it must be stored, for an undefined period, in new charred oak barrels. However, Bourbon and Tennessee Whiskey aged for a period of 2 years or more may optionally be designated as "straight." Thus, Bourbon and Tennessee Whiskey may be aged for less than two years.

Accordingly, Bourbon and Tennessee Whiskey do not need to meet Australia's two-year maturation requirement for whiskey, because that requirement does not apply to Bourbon and Tennessee Whiskey – since the distinctive product recognition refers to the U.S. standards of identity.

Request: DISCUS respectfully seeks the U.S. government's support in reminding Australia of its commitments under the FTA to ensure products labeled as Bourbon and Tennessee Whiskey are produced per U.S. laws and regulations, that its two-year maturation requirement for whiskey does not apply to Bourbon and Tennessee Whiskey, and requesting distinctive product recognition for American Rye Whiskey and American Single Malt Whiskey.

II. Trade Statistics

In 2019, U.S. spirits exports to Australia reached $102 million, down 16% from 2018. In 2019, Australia was the fourth largest export market for total American spirits and American Whiskey. Through August 2020, U.S. spirits exports to Australia are up by nearly 4% as compared to the same period in 2019.

BRAZIL

I. Import Policies

Tariffs

Brazil's currently-applied tariff on imported distilled spirits reflects the MERCOSUR common external tariff (CET) of 20% *ad valorem* on all imported distilled spirits, except bulk whiskey, which is assessed a tariff of 12% *ad valorem*. Brazil's WTO bound rate is 35% *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% *ad valorem* excise tax rate for most spirits, including "Bourbon," "Tennessee Whiskey," and rum, whereas "Cachaça," a distinctive product of Brazil, faces a 25% *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 with 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

2019 saw a 9% increase with U.S. spirits exports totaling $28 million. In the January-August 2020 period, U.S. spirits were valued at $14 million, representing a 17% decrease from the export values of the same period in 2019.

CANADA

I. 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.

However, the final draft did not adopt DISCUS' request to establish a minimum alcohol content of 40% a.b.v. Under the U.S. standards of identity, the minimum a.b.v. for vodka is 40%. 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 continued assistance in urging Canada to: (1) establish a minimum alcohol content of 40% 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.

II. Other Barriers

Discriminatory Taxation

On March 22, 2017, Canada's federal government introduced a 2% increase in the federal excise tax on beverage alcohol and a yearly automatic increase tied to the Consumer Price Index (CPI). Since 2006, wines made from 100% Canadian grown grapes or other fruits (including ciders made from Canadian apples) have been exempt from any federal excise tax. In July 2020, Canada and Australia announced the partial resolution of a WTO dispute brought by Australia concerning certain wine restrictions and to repeal the federal excise exemption for wines and ciders produced from 100% locally grown grapes or other fruits by June 30, 2022. The U.S. was active in the dispute as a third party in support of Australia.

Increasing beverage alcohol excise duties by 2% immediately and by the CPI annually thereafter, while continuing to maintain the exemption from the federal excise tax on wines made from 100% Canadian grown grapes or other fruits, exacerbates the uneven playing field that exists in the Canadian market for beverage alcohol products.

Request: DISCUS requests that the U.S. government ensure that Canada eliminates the discriminatory excise exemption for wines and ciders produced from 100% locally grown grapes or other fruits as soon as possible, and by June 30, 2022 at the latest.

Discriminatory Mark-up – Nova Scotia

The Nova Scotia Liquor Corporation (NSLC) applies preferential product mark-ups on certain local spirits, which were not addressed in the WTO dispute and negotiated settlement with Australia. Part of the settlement related to eliminating the NSLC's preferential product mark-up for certain domestically produced wines.

The current NSLC spirits product mark-ups are as follows:

Product description	**% mark-up**
Spirits distilled in Nova Scotia from Nova Scotia grown agriculture inputs	50%
Spirits distilled in Nova Scotia from agricultural product not grown in Nova Scotia	60%
Spirits distilled in Nova Scotia from Nova Scotia inputs and blended with non-originating distillate	70%
Spirits distilled outside of Nova Scotia but blended & bottled in Nova Scotia	80%
All imported and non-Nova Scotia Spirits	160%

These mark-ups are inconsistent with Canada's national treatment commitments under the WTO's General Agreement on Tariffs and Trade (GATT) and the recently implemented U.S.-Mexico-Canada Agreement as it provides protection to local products and discriminates against imported spirits. These mark-ups discriminate against imported products and provides protection to domestic producers of distilled spirits in violation of the national treatment provisions of GATT Article III:4 which mandates that imported products receive treatment "no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their sale, offering for sale, purchase, transportation, distribution or use." Under Article 10 of the Distilled Spirits, Wine, Beer and Other Alcohol Beverages Annex of the USMCA, if a provincial liquor control board charges a price mark-up, it must be consistent with the agreement's national treatment commitments and is required to accord treatment to imported distilled spirits "no less favorable than the treatment accorded to a like" domestic product.

Request: We respectfully seek the U.S. government's support in urging Canada and the Province of Nova Scotia to eliminate the NSLC's discriminatory distilled spirits mark-up as it phases-out its discriminatory wine mark-up policy in line with its international trade commitments under the WTO and USMCA.

Discriminatory and Non-Transparent Mark-ups – British Colombia and Saskatchewan

The liquor boards of British Columbia (LDB) and Saskatchewan (SLGA) have in recent years split their comprehensive product mark-up into two separate components, a wholesale mark-up and a retail mark-up. The wholesale mark-ups are generally transparent and non-discriminatory. However, the LDB and SLGA retail mark-ups are completely arbitrary and non-transparent, *i.e.* they are not published and can vary by individual sku or product. This practice is inconsistent with Article 8(d) of the Distilled Spirits, Wine, Beer and Other Alcohol Beverages Annex of the USMCA which requires all measures related to listings to be transparent

In addition, distillers licensed within the Provinces may ship directly to private retailers and avoid any wholesale mark-up on their product. This is not available to U.S. distilled spirits producers. This is inconsistent with the national treatment provision in Article 10 of the Distilled Spirits, Wine, Beer and Other Alcohol Beverages Annex of the USMCA and GATT Article III:4.

Request: We respectfully seek the U.S. government's support in urging Canada and the Provinces of British Colombia and Saskatchewan to eliminate their discriminatory practices and operate in a transparent manner consistent with their international commitments.

Price Change Windows – Quebec

The Province of Quebec's Liquor Board (SAQ) limits the ability of suppliers to increase or decrease prices to twice per year. The SAQ is the only route-to-market within the Province. Other Canadian Liquor Control Boards (LCBO), such as the Ontario LCBO, allow price changes 13 times per year (*e.g*. once every 4 weeks).

The SAQ's overly restrictive pricing policy is inconsistent with modern dynamic retail environments which are evolving quickly. Monthly (or even more frequent) product price changes are standard practice in most modern retail environments. Such restrictive policies often have the unintended consequence of also restricting brand and category investment, investments that are essential to both retailers' and suppliers' long-term success in a market.

Request: We respectfully seek the U.S. government's support in urging Quebec to liberalize its restrictive pricing policies and allow supplier price increases or decreases monthly or 13 times (i.e. once per SAQ fiscal period).

III. Trade Statistics

In 2019, American spirits exports to Canada reached $202 million, down by nearly 13% from 2018. Through August 2020, U.S. spirits exports to Canada were valued at $154 million, a 21.9% increase from the same period in 2019.

CHINA

I. Tariffs

Retaliatory Tariffs

Since July 2018, China has imposed a retaliatory tariff on American spirits in response to the U.S. Section 301 actions. China is imposing a retaliatory tariff of 25% on American Whiskeys, brandy (on top of a 5% tariff for whiskey and brandy, thus totaling 30%) gin, vodka, rum, liqueurs and cordials (on top of a 10% tariff for gin, rum, vodka, liqueurs, and cordials, thus totaling 35%).

China's retaliatory tariffs on American spirits have stalled growth in U.S. spirits exports to the world's largest distilled spirits market (Euromonitor). In 2019, U.S. spirits exports to China reached $17.8 million, down 1% from 2018. However, over the past five years, American spirits exports to China increased by nearly 25% and approximately 127% over the past decade.

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 stating 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, TTB 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 not be required to provide any additional certifications. On September 25, 2017, China notified the WTO that it would delay the 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 from a food safety perspective that should be exempted from certain certification requirements and may be subject to lighter import control procedures. The status of the work within Codex is unclear.

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 classified as a low-risk food from a food safety perspective as part of any work in Codex.

Food Safety Inspections/Registration

On November 26, 2019, China issued a draft regulation that would require all foreign food manufacturers, including beverage alcohol producers, to obtain a registration from China's General Administration of Customs (GAC). The draft regulation would also subject foreign facilities to "on-site audits and verifications" and require the name and address of the manufacturer, as well as the registration number, to be included on product labels. The proposal was *not* notified to the WTO and it is unclear when it will be implemented. On December 20, 2019, DISCUS submitted a comprehensive comment to China.

***Request*:** DISCUS requests the U.S. government's continued assistance in urging China to: (1) classify spirits as a low-risk food from a food safety perspective; (2) exempt U.S. distilled spirits products from on-site audits/verifications; and (3) notify the proposal to the WTO TBT Committee for comment before it is finalized**.**

III. Technical Barriers

Labeling

On May 11, 2020, China's National Health Commission notified proposed revisions to its General Standard for the Labelling of Prepackaged Foods to the WTO's SPS and TBT Committees (G/SPS/N/CHN/1153) (G/TBT/N/CHN/1420). The regulation describes the general labeling requirements for prepackaged foods and beverages and applies in addition to China's National Food Safety Standards Liquor and Compound Alcohol. China has not announced a proposed date of entry into force of the Standard. The proposal would replace the current General Standard for the Labeling of Prepackaged Foods (GB7718-2011) which was issued in April 2011 and went into effect on April 20, 2012. China has not announced a proposed date of entry into force for the Standard.

Under the proposal, the current voluntary allergen provision is made mandatory and provides limited exemptions for specified "heavily processed ingredients," which does not include distilled spirits. In addition, the proposal includes a new chapter related to labeling requirements for imported foods, font size requirements, and the definition of country of origin.

Request**:** DISCUS requests the U.S. government's assistance in urging China to: (1) exclude spirits from providing a list of ingredients or raw materials; (2) exempt spirits from its allergen labeling requirement and only require a list of allergens if added post-distillation; (3) exempt distilled spirits products over 10% a.b.v. from the requirement to list the "date of manufacture;" (4) confirm that importers will continue to be allowed to apply the Chinese label via sticker; (5) confirm that products with pictures on the label would not be prevented from being sold in the marketplace; and (6) provide an eighteen-month transition period and clarify that products already in the marketplace may continue to be sold until they are depleted.

IV. Trade Statistics

In 2019, U.S. spirits exports to China reached $17.8 million, down 1% from 2018. Through July 2019, U.S. spirits exports to China are down nearly 40% as compared to the same period in 2018.

EUROPEAN UNION

I. Tariffs

Retaliatory 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.

Since June 22, 2018, the EU has imposed a retaliatory tariff of 25% on all U.S. Whiskey imports in response to U.S. tariffs on steel and aluminum. The EU's retaliatory tariff on American Whiskey will increase to 50% in March 2021 if the disputes are not resolved. These tariffs are seriously impeding the export progress that has benefitted the U.S. spirits sector since 1997. From 1997 to 2017, American Whiskey exports to the EU grew by nearly 350%, from $148 million to over $667 million. Since the EU's 25% retaliatory tariff on American Whiskey was imposed two-years ago, annual American Whiskey exports to the EU declined 41%, from $757 million to $462 million. The retaliatory tariffs have upended decades of growth for the U.S. spirits sector in the EU market, which accounted for nearly 52% of total American Whiskey exports in 2019. In 2019 U.S. spirits exports to the EU accounted for nearly 40% of total U.S. spirits exports and ranking the EU as the single largest destination for U.S. spirits exports.

Separately and connected with the 15-year dispute at the WTO between the U.S. and EU concerning civil aviation subsidies, the U.S. imposed tariffs on certain EU spirits and wine imports on October 18, 2019. Specifically, 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% tariff. DISCUS estimates that these 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.

In USTR's first two "carousel" reviews of the tariffs, there were no changes to the tariff rates or the list of beverage alcohol products subject to tariffs. Absent a resolution to this dispute, the next "carousel" review of the tariffs in this matter must be completed by Monday, February 8, 2021.

The EU may soon impose tariffs on U.S. rum, brandy and vodka in its parallel case against the U.S., which will further reduce U.S. spirits exports. On October 26, 2020, the WTO's DSB authorized the EU to impose tariffs on $4 billion of U.S. imports. The EU's final list of U.S.

products and date of implementation have not been announced.

DISCUS 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. An immediate restoration of duty-free access for all distilled spirits is essential to returning our industries to supporting jobs on both sides of the Atlantic.

Request: We strongly urge the U.S. and EU to agree to the immediate and simultaneous removal of tariffs on U.S. and EU distilled spirits and a commitment not to impose any new or additional tariffs on other distilled spirits.

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 the top priority for the U.S. spirits sector.

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, which retains the derogations, was adopted in July 2020 and goes into effect on January 1, 2022.

France: France imposes a reduced excise tax on rum from French Overseas Departments (FODs). The total excise tax on rum from FODs is €893.80 per hectoliter of pure alcohol (hlpa), while the tax on all other spirits, including rum from other countries, is €1.787 per hlpa, a 1.6% increase imposed on January 2020 from the previous rate- €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. The derogation expires on December 31, 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. On July 24, 2020, the EU authorized France to continue the derogation through 2027 with an annual increased quota of 153,000 hlpa.

Greece: Greece imposes a 50% reduced tax on Ouzo (which is protected GI and may only be produced in Greece) of €1,225 per hlpa, compared with a rate of €2,450 per hlpa for all other spirits. 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 ECJ found Greece's tax preferences for the two domestic spirits in breach of EU law. The ECJ confirmed that there is no exemption or derogation in place that would permit Greece to treat tsikoudia and tsipouro more favorably than other products.

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 distorts the Romanian spirits market as home-produced spirits are, in fact, 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 their still. The excise duty on spirits was increased from HR K5,300 to HRK 6,000 on 1 April 2020. Small spirits producers who make less than 20 lpa per year pay a fixed tax according to the capacity of their still: Between 40 and 100 litres = HRK 100; over 100 litres = HRK 200.

Slovakia: In September 2018, the Slovak Parliament adopted legislation to legalize home distillation and to apply a reduced excise tax rate of 50% on home-distilled products for personal consumption. Directive 92/83 allows Slovakia to apply a reduced rate, of not less than 50% to certain fruit growers' distilleries producing ethyl alcohol from fruit supplied to them by fruit growers' households. The reduced rate covers up to 50 liters of finished product and came into force on January 1, 2019.

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 EU 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

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 2019, the EU was the single largest destination for U.S. spirits exports at $602 million, down by nearly 27%. At $602 million, the EU market alone accounts for 40% of total U.S. spirits exports. American Whiskey exports to the EU reached $514 million, accounting for 52% of total American Whiskey exports.

Between January-August 2020, total American spirits exports to the EU reached $353 million, down nearly 15% compared to the same period in 2018. American Whiskey exports to the EU reached $288 million tough August 2020, down 19% as compared to the same period in 2019.

INDIA

I. Tariffs

India's 150% *ad valorem* tariff severely restricts access to the Indian market for U.S. spirits exporters. Currently, total imports of bottled spirits represents only 1% of India's spirits market. This is particularly concerning since in 2019 India ranked as the world's largest whiskey market in terms of volume and second-largest in value (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 2019. Whiskey accounts for the majority of these exports with a 90% 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, in response to concerns raised by DISCUS, to the proposed draft that India notified to the WTO in July 2018 (G/TBT/N/IND/77). 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. The final standard has not been implemented.

Request: DISCUS seeks the U.S. government's continued assistance in raising 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 March 31, 2020. 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 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 at 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% a.b.v. The U.S. has established a minimum of 40% 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. Other Barriers

Ban on sales of imported spirits in Military Canteen Stores

According to local industry contacts, on October 19, 2020, India's Ministry of Defense issued an official notification prohibiting the sales of imported distilled spirits in Military Canteen Stores Departments (CSD). We are concerned that the ban is inconsistent with India's WTO national treatment commitments under GATT Article III:4 and GATT Article III:8.
Request: We seek the U.S. government's continued assistance in conveying our concerns to

the Indian government that the ban on the sale of imported spirits in Military CSD's is inconsistent with GATT Article III:4 and III:8.

IV. Trade Statistics

U.S. spirits exports to India were valued at $7 million in 2019, down 1% from 2018. Through August 2020, U.S. spirits exports were valued at $1.8 million, down nearly 69% over the same period in 2019.

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

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. However, 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. Technical Barriers

The use of lot codes on beverage alcohol containers is not required under Japan's 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, most producers do so voluntarily. Such codes are utilized, when necessary, to facilitate product recalls. Further, U.S. regulations prohibit the alteration, removal and/or destruction of any mark, brand, or label on beverage alcohol containers 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. A similar provision is not provided for under Japanese regulations.

In September 2014, the National Tax Agency (NTA) published a notice stating concerns about the distribution of beverage alcohol whose lot codes have been erased and indicating the important role that the use of such codes plays in terms of consumer information and food safety. However, it is not binding and does not stop the lot codes from being removed/defaced at the wholesale and retail level.

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

III. Trade Statistics

In 2019, Japan ranked as the U.S. spirits sector's second-largest export market, with exports valued at $138 million, up nearly 18% from 2018. Through August 2020, American spirits exports to Japan are down nearly 5% compared to the same period in 2019.

KENYA

I. U.S.-Kenya Trade Agreement

DISCUS supported the Administration's proposal to negotiate a trade agreement with Kenya and submitted detailed objectives for such an agreement on April 28, 2020. An agreement with Kenya can serve as a model for additional agreements across Africa and lead to a network of agreements providing new markets for U.S. spirits.

Request: Our primary goals for a comprehensive agreement with Kenya are to:

- secure the immediate elimination of all tariffs on U.S. distilled spirits;
- secure distinctive product recognition for "Bourbon," "Tennessee Whiskey," "American Rye Whiskey," and "American Single Malt Whiskey."
- ensure Kenya's technical regulations for spirits do not unnecessarily block U.S. spirits;
- secure commitments on regulatory best practices for the labeling and certification of distilled spirits, similar to the USMCA;
- consider including the East Africa Community (EAC) in this negotiation or also launch parallel negotiations with the EAC as soon as possible.

II. Technical Barriers

The Kenyan Bureau of Standards (KEBS) requires health warning labels to be applied to products prior to the arrival of the goods in Kenya. Previously, companies were able to apply labels in a bonded warehouse in Kenya prior to their formal entry into the market. If products arrive in the port without the label attached, KEBS imposes a penalty of 3% which also delays the release of the container.

REQUEST**:** DISCUS seeks the U.S. government's assistance in urging Kenya to allow health warning labels and all country-specific or EAC specific requirements to be applied via a sticker applied in a bonded warehouse in Kenya prior to the good's entry into the market.

III. Trade Statistics

In 2019, Kenyan imports of U.S. distilled spirits as reported by the Kenya National Bureau of Statistics totaled $2.7 million. Through August 2020, sprits exports from the U.S. reached $1.9 million, a 29% increase from the same period in 2019.

MEXICO

I. U.S.-Mexico-Canada Agreement

DISCUS strongly supported the negotiation and Congressional approval of the USMCA, which reaffirms commitments to tariff-free trade in spirits in North America and the internal sale and distribution of distilled spirits. The agreement also 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."

Request: We seek the U.S. government's support in ensuring Mexico implements its commitments under the USMCA, including beginning the process to grant distinctive product recognition for "American Rye Whiskey."

II. Technical Barriers to Trade

Tequila, Conformity Assessment Procedure

On July 24, 2020, Mexico notified its *Draft conformity assessment procedure for Mexican Official Standard NOM-006-SCFI-2012: Alcoholic beverages –Tequila* to the WTO's TBT Committee (G/TBT/N/MEX/472). The proposal's purpose is to establish conformity assessment procedures with Mexico's Official Standard for Tequila which went into effect in February 2013. The proposal includes sampling, testing, calibration, certification and verification procedures.

In January 2006, the U.S. and Mexico signed the Tequila MOU, which governs trade in Tequila between the countries. The MOU explicitly recognizes the jurisdiction of TTB to regulate the labeling, formulation, and marketing of Tequila and Tequila-containing products in the United States in accordance with relevant U.S. laws and regulations.

Request: We seek the U.S. government's support in confirming: (1) the proposal will be implemented in a manner consistent with the MOU; (2) co-responsibility agreements may not be used to establish any new requirement or restrictions; (3) U.S. bottlers are exempt from any inspection requirements; (4) *NMX-V-049-NORMEX-2004 Alcoholic Beverages that contain Tequila* does not apply to Tequila-containing products made, bottled/packaged, and/or marketed in the U.S.; (5) U.S. bottlers of Tequila will be able to continue the current practice mingling Tequila lots from the same distiller; and (6) bottlers be allowed to source Tequila from more than one supplier, as necessary.

Tequila Standard

Mexico's revised mandatory standard for Tequila (NOM-006-SCFI-2012) entered into force in February 2013. Typically, the standard is reviewed every five years.

Request: 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.

III. Trade Statistics

U.S. spirits exports were valued at $72 million in 2019, up 18% from 2018, ranking Mexico as the 9th largest export market for U.S. distilled spirits. Through August 2020, American spirits exports to Mexico are down nearly 21% compared to the same period in 2019.

SOUTH AFRICA

I. 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%), 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% *ad valorem*. Imports of these spirits in bulk containers are subject to a bound tariff rate of 121% *ad valorem*. South Africa's bound rate on imports of all other distilled spirits, *e.g.*, vodka and liqueurs, is 597% *ad valorem*, whether in bottles or 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.

II. Trade Statistics

In 2019, spirits imports from the U.S. increased 4% from the previous year and were valued at $20.5 million. From January 2020-August 2020, imports of U.S. distilled spirits totaled $8.2 million, a 47% decrease from the same period in 2019.

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

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 notification, DISCUS submitted comments seeking clarification on several provisions that 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.

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% of the largest label on the container, and at least 25% 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. The status of the proposal remains unclear.

Request: DISCUS seeks the U.S. government's continued efforts in raising 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 the implementation of its new COA requirements by six 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).

In February 2020, Thailand indicated that it would not require additional certificates for U.S.-origin distilled spirits and would accept U.S. export certificates with two additional attestations in accordance with U.S test methods. Specially, when shipping to Thailand, U.S. distillers will need to add additional attestations to the current U.S. certificates concerning: (1) sorbic acid which can be higher in the U.S. than in Thailand; and (2) serrocyanide. However, Thailand has not provided anything in writing.

Request: DISCUS seeks the U.S. government's continued assistance in urging Thailand to confirm in writing that it will accept: (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; and (3) new attestations in accordance with U.S. test methods.

II. <u>Other Barriers</u>

<u>Discriminatory Taxation</u>

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% *ad valorem* plus 1,000 Thai Baht per liter of pure alcohol for <u>all</u> 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:

Current Rate

Product	*Ad Valorem*	(baht/liter of pure alcohol)
Local white liquor	2%	155
All other distilled spirits	20%	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

In 2019, direct U.S. spirits exports totaled $6.5 million, a 23% decrease compared with 2018. From January 2020 to August 2020, spirits exports from the U.S. reached $3.5 million, a 13% decrease compared with the same period in 2019.

TURKEY

I. Tariffs

Retaliatory 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% tariff, but increased it to 140% on August 15, 2018. On May 21, 2019, Turkey reduced its tariff down to 70%.

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. Other Barriers

Tax Stamps and Payment

Earlier this year, Turkey's Tobacco and Alcohol Market Regulatory Authority (TADB), which is a section under the Ministry of Agriculture, issued a circular requiring imported distilled spirits to pay its excise tax in advance to receive the necessary tax strip stamps, which are applied to the bottles by hand. Under the circular, importers are required to predict sales three months out and pay the excise tax. This exacerbates the discriminatory practice which was previously in place. Previously, importers were obliged to pay the excise tax upon importation. Domestic producers are required to pay the excise tax within thirty days of the sale.

Accordingly, importers must carry the financial burden of paying the tax for nearly three months of sales before they receive the strip stamps. 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 Turkey to remove the discriminatory aspect of its excise tax for spirits.

IV. Trade Statistics

In 2019, U.S. spirits exports to Turkey reached $10.4 million, down 40% as compared to 2018.

UNITED KINGDOM

I. Tariffs

Retaliatory Tariffs

The 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. Since tariffs were eliminated in 1997, American Whiskey exports to the UK increased by 211% and total American spirits increased by 194%.

However, since June 22, 2018, American Whiskey exports to the UK have been facing a retaliatory tariff of 25% in response to the U.S. imposition of steel and aluminum tariffs. Since 2017 the year before tariffs were implemented, American Whiskey exports to the UK decreased by nearly 32%. Through July 2020, American Whiskey exports to the UK are down 34% as compared to the same period in 2019.

On October 18, 2019, the U.S. began imposing a 25% 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 Airbus dispute. The EU in its corresponding case at the WTO proposed in April 2019 to place tariffs on additional U.S. rum, vodka, brandy and wine. On October 26, 2020, the WTO's DSB authorized the EU to impose tariffs on $4 billion in U.S. imports. The UK, as it is part of the EU's Customs Union, may soon impose tariffs on additional U.S. distilled spirits.

On January 31st, 2020, the UK formally left the EU and it will leave the EU's Customs Union on December 31st, 2020. Once the UK departs the EU's Customs Union, the UK will recapture the authority to eliminate its tariff on American spirits.

Request: We strongly urge the U.S. and UK to agree to the simultaneous removal of tariffs on U.S. and UK distilled spirits as soon as the UK departs the EU's Customs Union and a commitment not to impose any new or additional tariffs on other distilled spirits.

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.

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 2019, the UK was the third-largest export market for total American spirits exports and the second largest American Whiskey market. U.S. spirits exports to the UK were valued at nearly $101 million, reflecting a nearly 33% decrease from 2018. American Whiskey exports are down nearly 34% through July 2020, and total American spirits exports are down nearly 32% as compared to the same period in 2019.

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

VIETNAM

I. Import Policies

Tariffs

As part of its WTO accession commitments, Vietnam agreed to bind its tariffs on distilled spirits at 65% *ad valorem* as of the date of accession and to reduce its tariff to 45% 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% *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

Stickering

Earlier this year, Vietnam's Ministry of Science and Technology issued a draft decree amending its food labeling regulation (Decree 43/2017 / ND-CP). The proposal requires goods to provide the importer's name in a foreign language on the original label upon importation. Decree 43/2017 was originally notified to the WTO as a draft Decree amending and supplementing a number of articles of Decree 89/2006 on the labeling of goods (G/TBT/N/VNM/83, June 13, 2016). It is standard international practice to have a common front label for internationally-traded spirits and permit stickers to be applied to containers in a bonded warehouse to provide information that is required only in the country where the product is marketed. The proposal is scheduled to go into effect on June 1, 2021.

Request: DISCUS seeks the U.S. Government's assistance in urging Vietnam to notify the proposal to the WTO, provide at least a 60-day comment period and allow for the use of stickers to be applied to containers in bonded warehouses in Vietnam prior to the goods entry into the market.

III. Trade Statistics

In 2019, direct spirits exports from the U.S. fell 2% to $63 million. Through August 2020, U.S. spirits exports to Vietnam have decreased by 76% as compared to the same period in 2019.

IV. OTHER MARKETS

ARGENTINA

I. Technical Barriers

Standards

On October 2, 2020, Argentina notified proposed revisions to its whiskey standard to the WTO's TBT Committee (G/TBT/N/ARG/405). The primary purpose of the proposal is to add a definition of Argentinian Whiskey to its standards. However, the proposal retains several problematic provisions and includes several new, potentially problematic requirements.

Specifically, it has new requirements that the number of years aged to be listed on the label, a prohibition on having different grains in a whiskey if it is described as a whiskey of a specific grain (such as "Rye Whiskey"), and prohibits the blending of whiskeys from different distilleries. In the U.S., there is no requirement to list the age of the whiskey on the label and the mash bill of "Rye Whiskey" only needs to be 51% rye (the other 49% may be any other grain) and the mash bill of "Corn Whiskey" only needs to be 80% corn (the other 20% may be any other grain). In addition,there is no prohibition under the U.S. standard of identity for whiskey on blending whiskeys from different distilleries.

The proposal retains the problematic two-year minimum aging requirement for whiskey and the use of analytical parameters for the product definition. In the U.S., there is no minimum aging requirement for whiskey, although whiskeys aged for at least two years may be labeled as "straight." We question the appropriateness of establishing maximum concentration levels for various naturally occurring constituents to define the category. In the U.S. and other major spirits markets, distilled spirits are defined as spirits solely in terms of their specific raw materials and production processes. The proposal retains distinctive product recognition for Bourbon.

Request: DISCUS seeks the U.S. government's assistance in urging Argentina to: (1) eliminate the two-year minimum aging requirement for whiskey; (2) eliminate its use of analytical parameters and define the category solely based on raw materials and production processes; (3) eliminate the requirement to list on the label the number of years a whiskey is aged; (4) allow for whiskeys from different distillers to be blended; (5) allow for whiskeys to included multiple types of grains even if a single type of grain is identified on the label; and (6) extend distinctive product recognition to Tennessee Whiskey, American Single Malt Whiskey, and American Rye Whiskey.

II. Trade Statistics

In 2019 direct U.S. spirits exports decreased to $4.9 million, a 33% decrease from 2018. In the January-August 2020 period, U.S. exports were valued at $1.5 million, representing a 54% decrease from the same period in 2019.

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, 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 the implementation of Decree 1686 to February 14, 2019. The implementation was subsequently delayed again.

On July 13, 2020, Colombia's Ministry of Health and Social Welfare issued Draft Decree of the Ministry of Health and Social Welfare partially amending Decree No. 1686 of 2012 to the WTO (G/TBT/N/COL/242) to require imported beverage alcohol products to be accompanied by a certificate of GMP or a certificate "equivalent to that used in the producer's country." DISCUS submitted a comment on Friday, October 9, 2020, reiterating concerns previously raised.

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

II. Trade Statistics

In 2019, U.S. spirits exports to Colombia were valued at nearly $4.1 million, reflecting a 43% decrease from 2018 export values. In the January-August 2020 period, U.S. spirits were valued at $2.7 million, representing a 1% 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 on a.b.v. content (*see* Ley 7972). In October 2019, a Resolution was published in the National Gazette updating the specific tax as follows:

Costa Rican Specific Excise Tax Rates

Alcohol Strength	Tax Rate per mL pure alcohol (in colones (¢))
Less than or equal to 15% a.b.v.	3.40
Greater than 15% to 30% a.b.v.	4.08
Greater than 30% a.b.v.	4.76

The local spirit, *guaro*, (which is produced in the largest volume by the state-owned alcohol company) is bottled at 30% a.b.v. The vast majority of internationally-traded spirits are bottled at 40% a.b.v., and consequently cannot 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 the 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* (¢4.08 per mL of pure alcohol) – the primary product category that is produced locally, than to mostly imported product categories such as whiskey, vodka, etc., (¢4.76 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 consistent with its international commitments.

II. Trade Statistics

In 2019, U.S. exports of spirits to Costa Rica were valued at $2.5 million, representing a 10% increase from 2018 export values. In the January-August 2020 period, U.S. spirits exports were valued at $621,000, representing a 62% decrease from the same period in 2019.

ECUADOR

I. <u>Other Barriers</u>

Discriminatory Taxation

Since January 2011 (amended in 2013 and 2016), imported spirits are taxed in a discriminatory manner compared to local spirits. Since 2016, the excise tax for distilled spirits is two tiered. First, all distilled spirits face an excise tax rate $7.22 per liter of pure alcohol (lpa). Second, if the ex-customs value (for imported spirits) or ex-factory value (for local spirits) exceeds $4.32per liter, an additional 75% *ad valorem* tax is assessed.

As applied, Ecuador's tax discriminates 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 $7.22 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% 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 to urge Ecuador to remove the discriminatory 75% additional tax, which appears to apply only to imported products.

II. Trade Statistics

In 2019, U.S. distilled spirits exports were valued at $5.4 million, representing a decrease of 3% from 2018 levels. Through August 2020, U.S. exports totaled $1.7 million, reflecting a 38% decrease relative to the same period in 2019.

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% 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% *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% *ad valorem* excise tax on beverage alcohol products over 30% 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 $3.3 billion beverage alcohol retail market (Euromonitor). Distilled spirits accounted for 14% of total beverage alcohol retail sales, while wine accounted for 43% of the market in terms of retail sales in 2019 (Euromonitor). In contrast, Singapore, which has a similar population and beverage alcohol market in terms of retail sales ($3.4 billion), but a single excise tax rate for wine and distilled spirits, recorded retail sales of distilled spirits that are 102% larger than in Hong Kong in 2019 (Euromonitor). To compare the two markets, in 2019 direct U.S. spirits exports to Hong Kong were valued at only $6.7 million, a decrease from $8.1 million in 2018, while U.S. spirits exports to Singapore reached $27.7 million, down from $29.5 million in 2018. Through August 2020, total U.S. spirits exports to Hong Kong were valued at $2.1 million, a 48% decrease from the prior year.

INDONESIA

I. Import Policies

As of 2018, Indonesia no longer applies a quantitative limit on the importation of beverage alcohol products (in 2017, category C products (which includes all spirits) were not allocated any quotas, amounting to a temporary block on imports). Under the new system, importers are required to apply for tax stamps and an import permit based on their needs and the demonstrated ability to pay the necessary excise taxes and import duties. Because the tariff and excise taxes are so high, this requirement is overly 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 (Rp. Per liter)		
Alcohol Content	**Local**	**Imported**
Up to 5% a.b.v.	15,000	15,000
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

Total spirits exports from the U.S. to Indonesia in 2019 were valued at $316,000, a 327% increase from 2018. In the January-August 2020 period, Indonesia's imports of U.S spirits totaled $754,341, representing an 482% increase from the same period in 2019.

MALAYSIA

I. Other Barriers

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**
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 (not exceeding 40%)	60.00
2208.90	300	Bitters	60.00
		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 U.S. government to secure the elimination of the discriminatory aspects of Malaysia's excise tax regime.

II. Trade Statistics

In 2019, Malaysia's imports of U.S. spirits were valued at $2.3 million, representing an 11% decrease from 2018.

MONGOLIA

I. Other Barriers

On September 22, 2020, legislation was introduced into Mongolia's Parliament to address the harmful consumption of alcohol. DISCUS fully supports the public health objective of encouraging moderate consumption by individuals of legal drinking age who choose to drink and combating alcohol abuse in all forms. Some individuals of legal drinking age should not consume alcohol at all but abstain, and we support that decision.

The proposal includes a range of troubling provisions that discriminate against imported products and would not address the harmful consumption of alcohol. For example, the proposal establishes a quota that imported alcohol by each category of distilled spirits cannot be more than 30% of the total volume of the category, import licenses will be granted for 3 years while domestic production licenses are granted for 5 years, and it would prohibit the sale of alcohol that has more than 35% a.b.v. The vast majority of internationally-traded spirits are bottled at 40% a.b.v., and consequently will be banned from the market.

While direct U.S. spirits exports to Mongolia are minimal, Euromonitor International shows that imported whiskeys and other categories are available in the Mongolian market.

***Request*:** DISCUS requests the U.S. government's assistance in urging Mongolia to notify the proposal to the WTO's TBT Committee to ensure all interested stakeholders have an opportunity to provide input and that it is implemented in a non-discriminatory manner.

PERU

I. Other Barriers

Discriminatory Taxation

Peru has imposed a discriminatory excise tax (*Impuesto Selectivo al Consumo*, or ISC) since at least 2004 when it introduced a 20% *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%.

Most recently, on January 24, 2020, Peru again increased its excise tax to further exacerbate the rate of discrimination. The decree increases the rate for beverage alcohol products over 20% a.b.v. from 3.40 PEN/Liter to 3.47 PEN/liter and the ad valorem was kept at the same rate (the specific rate 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% a.b.v., was also increased for the first time since 2004, from 1.50 PEN/liter to 2.17 PEN/liter. The current rates are indicated in the following table:

<table>
<tr><th>Product</th><th>Alcohol by Volume</th><th>Minimum Specific Rate</th><th>Ad Valorem Rate</th></tr>
<tr><td>Pisco</td><td>-</td><td>2.17 PEN/liter</td><td>(none)</td></tr>
<tr><td rowspan="4">Other beverage alcohol products</td><td>0% to 6%</td><td>1.25 PEN/liter</td><td>35%</td></tr>
<tr><td>Over 6% to 12%</td><td>2.25 PEN/liter</td><td>25%</td></tr>
<tr><td>Over 12% to 20%</td><td>2.70 PEN/liter</td><td>30%</td></tr>
<tr><td>Over 20%</td><td>3.47 PEN/liter</td><td>40%</td></tr>
</table>

As noted above, the specific tax rate on pisco is much lower than the minimum rate of 3.47 PEN per liter for comparable spirits products (i.e., those containing over 20% 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 the elimination of its discriminatory practices as soon as possible.

II. Trade Statistics

In 2019, U.S. distilled spirits exports were valued at $5.2 million, representing an increase of 4% from 2017 levels. Through August 2020, U.S. exports reached $1.5 million, reflecting a 55% decrease relative to the same period in 2019.

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 (EEAU), 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 is scheduled to go into effect on January 5, 2021. However, according to recent industry reports, there is a proposal from Russia to delay implementation until 2022.

The final TR partially addressed 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% of the label to 10%. 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 already in-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 continued assistance in raising the outstanding concerns with the final TR 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 any 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; (5) eliminate the requirement that products containing 10% of alcohol by volume from stating that they have no expiration date; and (6) confirm the TRs implementation date.

RFID Tag

According to industry reports, Russia is again considering extending its electronic RFID track-and-trace to all consumer goods, including beverage alcohol products. In 2019, there were reports that Russia was considering extending its RFID tagging to several consumer goods such as fur, children's clothing or shoes to include other products, including beverage alcohol products.

In mid-2018, the latest phase of the EGAIS/UFAIS alcohol monitoring system was introduced and provides full traceability for distilled spirits products from production/import to on- and off-premise establishments. The system has been credited with a significant reduction in the grey/black market activity. Requiring distilled spirits to include an RFID tag in addition to the EGAIS/UFAIS or in lieu of it is costly and unnecessary.

Request: DISCUS requests the U.S. government's assistance in ensuring that distilled spirits will not be required to provide the new RFID tag as the current EGAIS/UFAIS system is effective.

III. Trade Statistics

In 2019, U.S. distilled spirits exports to Russia were valued at $76 million, up nearly 25% from 2018. Through August 2020, U.S. spirits exports to Russia totaled $33.9 million, down 15% over the same period in 2019.

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" 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 violates Taiwan's WTO accession commitments.

II. Trade Statistics

U.S. spirits exports to Taiwan were valued at almost $5.1 million in 2019, representing a 4.8% increase from 2018. Through August 2020, American spirits exports to Taiwan totaled $3.4 million, a 9% decrease as compared to the same period in 2019.