November 6, 2020

The Secretary
United States International Trade Commission
500 E Street SW
Washington, DC 20436

Re: Economic Impact of Trade Agreements Implemented Under Trade Authorities Procedures, 2021 Update

To whom it may concern:

On behalf of the Distilled Spirits Council of the United States, Inc. ("DISCUS"), I am writing in response to your request for written submissions (85 *Fed. Reg.* 36615-36616 (June 17, 2020)) regarding the economic impact on the United States of trade agreements to which Congress has enacted an implementing bill under trade authorities procedures since January 1, 1984. DISCUS is a national trade association representing U.S. producers, marketers and exporters of distilled spirits products. The Distilled Spirits Council's member companies export spirits products to more than 130 countries worldwide.

I. Introduction

DISCUS submitted written comments in response to the request for input from stakeholders to assist in preparing the first report for Congress on the economic impact on the U.S. of trade agreements implemented by Congress (80 *Fed. Reg.* 47516-47517 (August 7, 2015)). DISCUS also testified during the Commission's October 6-7, 2020 hearing in connection to this investigation. This submission builds upon the testimony and previous submission.

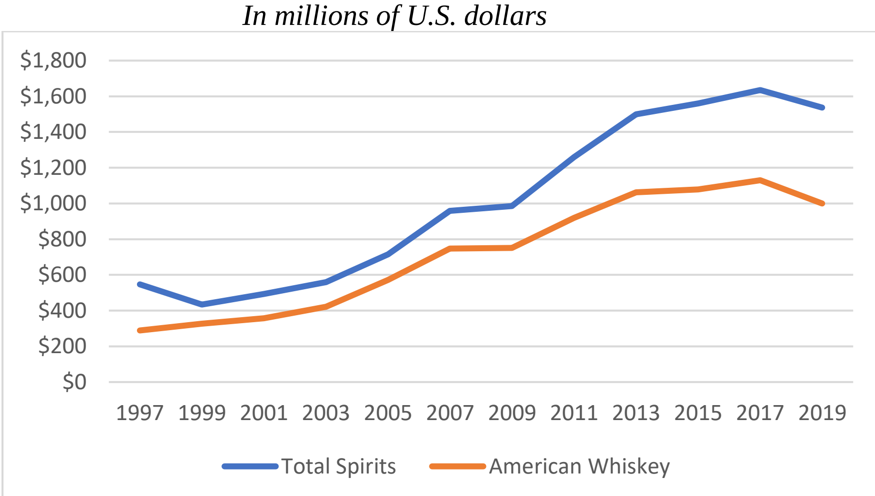
As noted in our previous submission and testimony, DISCUS and its members have strongly supported efforts to liberalize trade through various fora and mechanisms. Our small, medium and large companies, their employees and their suppliers have benefitted from the successful efforts to open markets for U.S. beverage alcohol exports. As of 2019, the distilled spirits industry, directly and indirectly, supported nearly 1.64 million U.S. jobs. However, since 2018 the U.S. spirits industry has been 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, both of which threaten to upend the decades of export growth.

International trade has become increasingly important to the U.S. distilled spirits industry and is instrumental to its long term viability. Past efforts by the United States to open foreign markets have contributed to the impressive gains the U.S. industry has made and continues to make, in expanding U.S. spirits exports. Since 1989, the value of global U.S. distilled spirits exports increased by nearly 534%, from $242 million to over $1.54 billion in 2019. This increase was driven, in large part, by the U.S. and EU mutual decision to eliminate import tariffs on the vast majority of distilled spirits products in 1997. U.S. spirits exports to our trading partners which have agreed, either through multilateral, regional, or bilateral trade agreements, to eliminate tariffs on U.S. spirits have reached $1.23 billion in 2019, accounting for 80% of global U.S. spirits exports. However, due to retaliatory tariffs, in 2019 total U.S. spirits exports declined by 14.3% to $1.5 billion and American Whiskey exports declined by 16% to $996 million, as compared to 2018. This decrease escalated through the first half of 2020 due in part to COVID-19.

II. Uruguay Round Agreements

DISCUS has had a long and active involvement with the World Trade Organization (WTO). DISCUS remains a strong supporter of the organization and ongoing efforts to liberalize global trade further and strengthen the rules-based multilateral trading system. Unquestionably, the package of agreements concluded in the Uruguay Round, which led to the WTO's establishment in 1994, has significantly benefitted the U.S. distilled spirits sector. In particular, since Uruguay Round agreements tariff reductions entered into force in 1997, global U.S. distilled spirits exports have increased by nearly 181% through 2019.

U.S. Global Distilled Spirits Exports 1997-2019
In millions of U.S. dollars



a. Tariffs – "Zero-for-Zero"

The tariff elimination commitments regarding distilled spirits products secured during the Uruguay Round and subsequent negotiations under the U.S. government's "zero-for-zero" initiative have paved the way for a significant increase in U.S distilled spirits exports. At the outset, participation in the spirits "zero-for-zero" was limited to the United States and the European Union. However, other countries, including Japan, Canada, Macedonia, Taiwan and Ukraine have since been included. For example, since Taiwan eliminated its tariffs in 2002, U.S. distilled spirits exports to Taiwan increased by nearly 260% -- from $1.1 million to $4.3 million in 2019. In the case of Japan, U.S. distilled exports grew from $71.8 million in 2002, when the tariff was eliminated, to $138 million in 2019, representing a growth rate of 92%.

The "zero-for-zero" agreement continues to produce benefits for U.S. spirits exports. Specifically, as countries have joined the European Union they are required to adopt the European Union's common external tariff, which, in the case of distilled spirits is zero for practically all spirits. Since 2004, the following countries have joined the European Union: Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovak Republic, and Slovenia. For example, exports to Latvia, which is currently the 10th largest destination for U.S. distilled spirits, increased by almost 2,788%, from $1.8 million in 2004 when it joined the European Union, to $52 million in 2019. Similarly, exports to Poland, which is the 14th largest market, increased by nearly 2,155%, from $1.1 million in 2004 when it joined the European Union to $53.6 million in 2019. Prior to Poland joining the European Union, U.S. spirits faced tariffs ranging from 75% to 105% *ad valorem*.

In addition, before Bulgaria and Romania's entry into the European Union, those countries applied preferential tariff rates to EU-origin spirits, which significantly disadvantaged U.S. spirits exports to those markets. Immediately upon their accession to the European Union, Bulgaria and Romania were required to adopt the European Union's common external tariffs on spirits (i.e., zero for practically all spirits categories), thus creating a level playing field for U.S. spirits exports to those markets.

Since the "zero-for-zero" agreement came into effect in 1997, the value of U.S. spirits exports to the EU increased by 186%, from $209 million to nearly $600 million in 2019. However, 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, which has resulted in a 41% decline in American Whiskey exports to the EU (discussed in more detail in Section IV).

U.S. Distilled Spirits Exports to the European Union 1997-2019
In millions of U.S. dollars

b. Trade Enforcement Mechanism

The industry has also benefitted from the WTO's dispute settlement mechanism established under the WTO's Dispute Settlement Understanding. Specifically, it has provided an important forum to ensure that countries meet their international trade obligations. The mechanism has been used successfully to challenge discriminatory spirits excise tax regimes in four dispute settlement cases; Japan – Alcoholic Beverages (DS8, 10 and 11); Korea – Alcoholic Beverages (DS 75 and 84); Chile – Alcoholic Beverages (DS 87 and 110), and most recently the Philippines -- Taxes on Distilled Spirits (DS396 and DS403). As a result of the cases, these trading partners eliminated the discriminatory taxation measures, placing U.S. distilled spirits products on equal footing regarding domestic taxes with domestically-produced products in accordance with Article III of the WTO's General Agreement on Tariffs and Trade.

c. Regulatory Reporting Mechanisms

In addition, the reporting mechanisms established by the Agreements on Technical Barriers to Trade (TBT Agreement) and Sanitary and Phytosanitary Standards (SPS Agreement) have given the industry advance notice, in some cases, of significant regulatory changes that could have serious – and sometimes adverse – effects on the industry. Most importantly, the reporting mechanisms provide the industry with an opportunity to provide valuable and pertinent input on proposed regulations' potential impact. This helps to ensure that regulations are, for example, based on science, reflect international standards and best practices, and do not discriminate against imported products or create unnecessary obstacles to trade.

d. Protection for Bourbon and Tennessee Whiskey

Similarly, the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS), includes important protections for geographical indications (GIs) for spirits, such as "Bourbon" and "Tennessee Whiskey." The inclusion in the agreement of provisions specifically mandating the establishment by all WTO member countries of a legal means of protecting GIs associated with distinctive distilled spirits was, in our view, a major achievement of the Uruguay Round.

III. Bilateral and Regional Free Trade Agreements

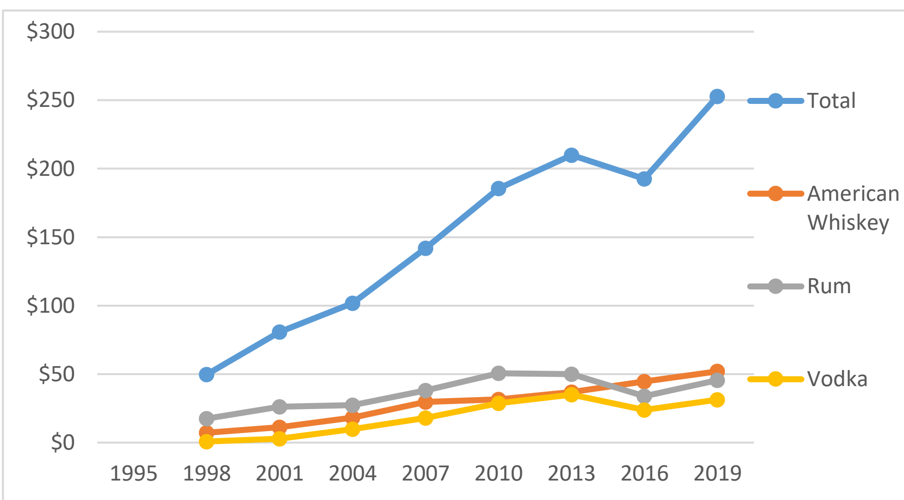
DISCUS equally supports the U.S. government's efforts to secure the most rapid trade liberalization and enhanced rules through comprehensive bilateral and regional free trade agreements. Such comprehensive agreements have played a critical role in opening foreign markets and increasing U.S. distilled 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).

a. Tariff Elimination

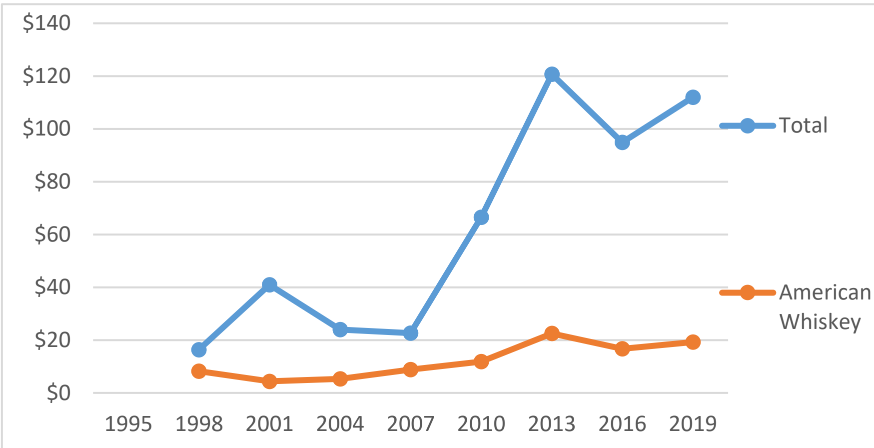
As with the reduction of tariffs under the Uruguay Round, eliminating tariffs on U.S.-origin spirits through regional and bilateral trade agreements has led to a significant increase in exports to these trading partners. As a result of U.S. bilateral and regional free trade agreements, the vast majority of U.S. distilled spirits to Israel, Mexico, Canada, Singapore, Australia, Chile, Peru, Panama, Morocco, Bahrain, Korea, Dominican Republic, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua are currently duty-free. As noted below, some products are still subject to tariff phaseouts.

The export data clearly indicates that bilateral and regional trade agreements have significantly impacted U.S. distilled spirits exports. For example, since implementation of the ***U.S.-Mexico-Canada Agreement's*** (***USMCA***) predecessor, the ***North American Free Trade Agreement*** (***NAFTA*** – Canada and Mexico), U.S. spirits exports to Canada and Mexico increased nearly 695%, from $34.5 million to $274 million. Specifically, U.S. spirits exports to Canada grew by nearly 621%, from roughly $28 million in 1995 to $202 million in 2019. Canada ranks as the largest export market for U.S. distilled spirits exports. Similarly, in the case of Mexico, U.S. distilled spirits exports grew nearly 1,000%, from $6.5 million in 1995 to $72 million in 2019. Mexico is currently the 6th largest market for U.S. distilled spirits exports. As noted below, the United States exports a wide variety of spirits products to our USMCA partners, including rum, vodka, liqueurs, etc.

U.S. Distilled Spirits Exports to Canada 1995-2019
In millions of U.S. dollars



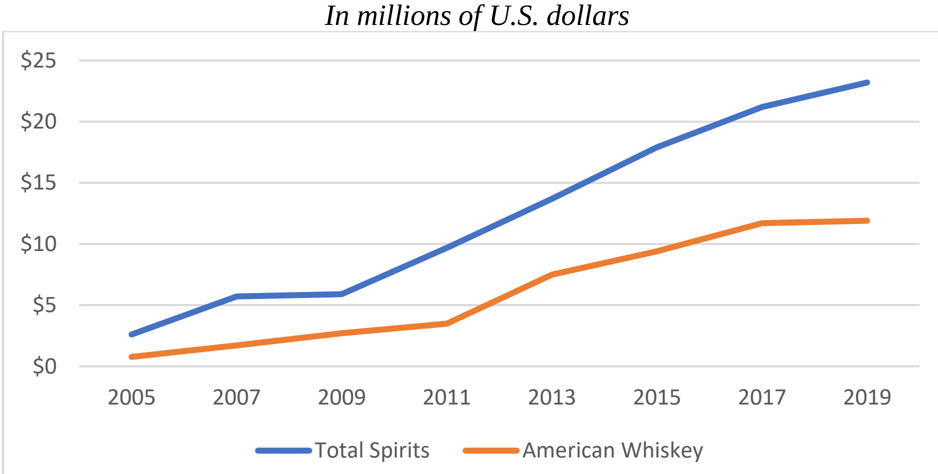
U.S. Distilled Spirits Exports to Mexico 1995-2019
In millions of U.S. dollars



Since tariffs were eliminated under the ***U.S. - Australia FTA*** in 2005, U.S. spirits exports have grown by nearly 34%, from $77 million to $103 million in 2019. Australia now ranks as the industry's third-largest export destination worldwide.

Under the ***U.S. - Chile FTA***, tariffs on all U.S. spirits (except gin) were eliminated in 2006, immediately upon entry into force of the agreement. The tariff on U.S. gin was eliminated on January 1, 2016. As noted below, since the implementation of the agreement U.S. spirits exports have increased 352%, from $5.1 million to $23.2 million in 2019.

U.S. Distilled Spirits Exports to Chile 2005-2019
In millions of U.S. dollars



The ***U.S. – Panama FTA***, which was implemented in 2012, included the immediate elimination of tariffs on all U.S. spirits exports. Exports to Panama have increased by 413%, from $4.6 million in 2012 to $23.6 million in 2019.

Likewise, the ***U.S. - Peru FTA*** eliminated tariffs on all U.S. spirits products in 2009. Since that date, U.S. spirits exports increased 495%, from $878,000 to $5.2 million in 2019.

In the case of the ***U.S. - Colombia Trade Promotion Agreement*** (CTPA), tariffs on U.S. distilled spirits products are currently being phased-out. Under the CTPA, ***Colombia*** eliminated its tariffs on U.S.-origin brandy, gin and liqueurs as of May 15, 2012. The tariffs on other U.S.-origin spirits were phased out in 2016 (for one category of "other spirits") and for whiskey, rum, and vodka by 2021. Since the implementation of the agreement in 2012, U.S. spirits exports increased 124%, from $1.8 million to approximately $4.1 million last year.

b. Distinctive Product Recognition for Bourbon, Tennessee Whiskey, and American Rye Whiskey

Many of the international trade agreements in which the United States is a party includes important protections for "Bourbon" and "Tennessee Whiskey," the single largest category of U.S. spirits exports. Such recognition ensures that products sold as Bourbon and Tennessee Whiskey are produced in the U.S. in accordance with U.S. laws and regulations. Distinctive product recognition for "Bourbon" and "Tennessee Whiskey" has been secured in free trade agreement negotiations with Canada, Mexico, Colombia, Peru, Chile, Australia, Panama, Korea, Dominican Republic, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. In addition, distinctive product recognition for "Bourbon" and "Tennessee Whiskey" has been secured in Brazil, the European Union, and Bolivia through bilateral agreements. With regard to the EU, any country that joins must automatically afford this protection to "Bourbon" and "Tennessee Whiskey."

The recently implemented ***USMCA*** includes provisions to preserve recognition for "Bourbon" and "Tennessee Whiskey" in Canada and Mexico and secures Mexico's agreement to take steps to provide distinctive product recognition for "American Rye Whiskey," a fast-growing category of American Whiskey.

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

For the first time in a U.S. FTA, the ***USMCA*** establishes new best practices regarding the labeling and certification of beverage alcohol products. These important protections will facilitate trade in distilled spirits and reduce potential barriers to trade by providing greater certainty, transparency and efficiency for distilled spirits producers, importers and exporters among the three countries. These commitments ensure that the USMCA is a model 21st-century trade agreement for the distilled spirits industry.

IV. American Spirits Exports Tumble Due to Retaliatory Tariffs

As noted above, trade agreements and the elimination of tariffs on U.S. spirits exports have directly resulted in an increase in U.S. spirits exports. However, in mid-2018, retaliatory tariffs on U.S. spirits were implemented by the EU, Canada, Mexico, Turkey, and China. As part of the ***USMCA*** negotiations, in May 2019, the United States, Canada, and Mexico reached an agreement that resulted in the repeal of retaliatory tariffs on American Whiskey exports to Canada and Mexico.

As a result of retaliatory tariffs, in 2019 total U.S. spirits exports declined by 14.3% to $1.5 billion and American Whiskey exports declined by 16% to $996 million, as compared to 2018. American Whiskey drives U.S spirits exports and accounted for 65% of total American spirits exports in 2019. Between January-July 2020, total U.S. spirits exports are down 16% and American Whiskey exports are down 20% compared to January-July 2019.

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 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 to $449 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. According to an analysis by DISCUS, had the tariffs not been implemented, American Whiskey exports today would be an estimated $300 million higher.

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 2019, there were over 2,000 distillers 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.

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

V. Conclusion

In light of the significant headwinds the U.S. spirits sector faces, DISCUS reiterates its support for new market-opening agreements and urges the Administration to secure an agreement with the EU to simultaneously remove tariffs on U.S. and EU distilled spirits products. We believe new agreements are vital to help return the U.S. spirits sector to the strong growth it has experienced over the past 30 years. DISCUS supported the Administration's effort to modernize ***NAFTA*** and to secure Congressional approval of the ***USMCA*** implementing bill. DISCUS also supports the Administration's efforts to negotiate trade agreements with the EU, the UK, and urges the Administration to continue its negotiations with Japan to secure a comprehensive agreement.

Thank you again for the opportunity to provide the U.S. spirits industry's views. Please do not hesitate to contact us if we can provide any additional information.

Sincerely,

Robert Maron
Vice President
International Issues and Trade