DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

October 26, 2021

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-2021-0016: Comments Regarding Foreign Trade Barriers to U.S. Exports – Submission by the Distilled Spirits Council of the United States, Inc. (86 *Fed. Reg.* 51436 (September 15, 2021))

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 2020 valued at nearly $1.4 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 2021

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

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I. INTRODUCTION

Overview: Distilled spirits are processed agricultural products that fall within the scope of Chapter 22 of the Harmonized Tariff Schedule of the United States, the World Trade Organization (WTO) Agreement on Agriculture, and the agriculture chapters of the free trade agreements the United States has negotiated with various trading partners. DISCUS and its member companies have a strong and long-standing interest in agricultural trade from both a commercial and policy perspective.

International trade is important to the U.S. distilled spirits sector and is instrumental to its long-term viability. In large part due to the comprehensive market-opening trade agreements that the U.S. has achieved, U.S. spirits exports have expanded significantly over the past two decades. U.S. spirits are now exported from small, medium, and large distillers located in 41 states. The U.S. spirits sector supports the direct and indirect employment of an estimated 1.7 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 seriously impede the export progress that has benefited our sector and created jobs across the country.

Due to the continued application of retaliatory tariffs, from 2018 to 2020, total U.S. spirits exports were down 23% to $1.4 billion and American Whiskey exports were down 29% to $846 million. American Whiskey drives U.S spirits exports and accounts for 61% of total American spirits exports. In 2020, the top five markets for American spirits exports by value were: 1) Canada ($249 million, up 23.2%); 2) Japan ($125 million, down 9.4%); 3) Australia ($114 million, up 11.2%); 4) United Kingdom ($83 million, down 25.4%); and 5) France ($81 million, down 13%). The top five markets for American Whiskey exports by value were: 1) Japan ($103 million, down 15.7%); 2) Australia ($98 million, up 15.8%); 3) Germany ($76 million, down 7.2%); 4) United Kingdom ($71 million, down 29.6%); and 5) France ($60 million, down 18.5%).

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.

Retaliatory Tariffs: Due to the application of retaliatory tariffs by the EU, the UK, 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 41 states in 2020, down from 45 in 2019. These tariffs make American spirits 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 the administration and our trading partners to engage in further dialogue that will lead to the immediate and permanent removal of these tariffs. Below is a summary of the retaliatory tariffs on U.S. spirits imposed by the EU, the UK, China, and Turkey.

EU/UK: Since June 22, 2018, the EU has imposed a 25% retaliatory tariff on American Whiskeys in response to U.S. Section 232 tariffs on steel and aluminum. Since the imposition of the tariff, American Whiskey exports to the EU, our largest export market, have plunged 37%, from $702 million to $440 million (2018-2020). American Whiskey exports to the UK, our fourth-largest market, have declined by 53%, from $150 million to $71 million since the imposition of tariffs (2018-2020).

On November 10, 2020, the EU imposed a 25% tariff on U.S. rum, brandy, and vodka in connection to the Boeing-Airbus dispute.

In December 2020, the UK announced it would not maintain the tariff on U.S. rum, brandy, and vodka when it departed the EU Customs Union on January 1, 2021, but it would maintain the tariff on American Whiskey as it evaluates its response to U.S. steel and aluminum tariffs.

In March 2021, the U.S., EU and UK agreed to suspend tariffs for four months in the WTO Boeing-Airbus dispute on certain wines and spirits, including the 25% tariffs on exports of U.S. rum, brandy and vodka to the EU. In June 2021, the U.S. reached important agreements with the EU and UK to suspend tariffs for five years as part of the WTO Boeing-Airbus trade dispute. Under the agreement, the EU suspended for five years the 25% tariffs on U.S. rum, brandy and vodka imposed in November 2020.

On May 17, 2021, the U.S. and EU reached an agreement concerning steel and aluminum tariffs that the EU will not increase its tariff on American Whiskeys to 50% on June 1, 2021. Following the June 15 U.S.-EU Summit, the U.S. and EU issued a joint statement in which they agreed to address steel and aluminum issues by the end of the year. The EU subsequently published a regulation suspending the doubling of its tariff on American Whiskeys and other U.S. goods until December 1, 2021. Since that time, the EU has indicated that it needs to reach an agreement by November 1, 2021, to consult with the member states and prepare implementing language to avoid the December 1, 2021, doubling of the tariff on American Whiskeys.

The UK did not carry over the provision in the EU's regulations imposing tariffs on American Whiskeys to double the tariff on American Whiskeys. On May 24, 2021, the UK's Department of

International Trade (DIT) launched its public consultation on its tariffs in response to U.S. steel and aluminum tariffs. The UK's list includes products already subject to tariffs, including American Whiskeys and products that are not currently subject to tariffs. Only a subset of the products listed in the consultation will ultimately be subjected to tariffs. In its announcement, the DIT made clear its hopes to secure a negotiated settlement resulting in all tariffs in the steel and aluminum dispute. DISCUS submitted a comment in the DIT's investigation. The DIT has not yet made its announcement.

The announcements in the WTO Boeing-Airbus dispute are important building blocks to reset the relationships with the EU and UK and we urge the administration to build on this positive momentum. We are committed to working with the Biden administration to help secure the removal of the EU and UK's tariffs on American Whiskeys. It is critical to secure a return to the zero-for-zero tariff agreement on distilled spirits, which has been instrumental to our export success and job creation.

China: Since July 6, 2018, China has imposed a retaliatory tariff on American Whiskeys and has imposed a retaliatory tariff on rum, gin, vodka, liqueurs, brandy, and some "others" since September 24, 2018, in response to the U.S. Section 301 actions. China is currently 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%). Since the imposition of the tariffs, American spirits exports to China have declined by nearly 7% (2018-2020).

Turkey: 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%.

<u>Trade Agreements:</u> 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 $1.17 billion in 2020, accounting for 85% of global U.S. spirits exports, up from 80% in 2019.

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 2020, U.S. distilled spirits exports to bilateral and regional free trade agreement partners reached roughly $546 million, accounting for more than 1/3 of global exports. Between 2000 and 2020, exports to bilateral and regional trade agreement partners have grown at a faster rate (240% increase) than total U.S. distilled spirits exports (212% 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 Congressional passage of the U.S.-Mexico-Canada Agreement (USMCA) implementing bill and urges the administration to restart trade negotiations with the UK and Kenya.

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, global U.S. distilled spirits exports have increased by almost 152% through 2020.

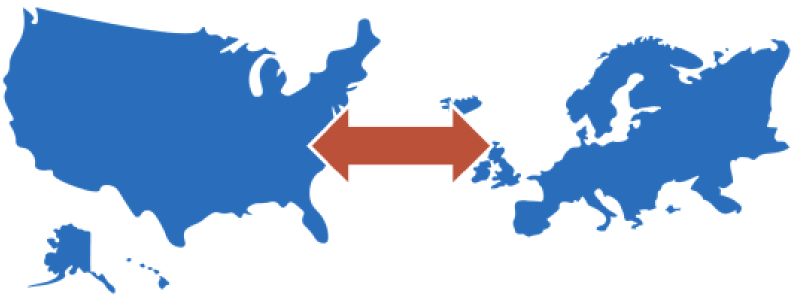
Other Barriers to Trade: In addition to retaliatory tariffs, several priority target markets maintain high tariffs and/or an array of non-tariff barriers to U.S. spirits, which inhibit the sector's long-term growth prospects. These barriers, which include discriminatory taxes and regulations, are detailed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

Summary: The U.S. distilled spirits sector has benefited 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 threatening to upend the decades of export growth. DISCUS strongly encourages all parties to resolve the trade disputes and eliminate the retaliatory tariffs on American Whiskeys and the permanent return to zero-for-zero tariffs on spirits with the EU and UK. DISCUS looks forward to working with the administration to craft a trade policy that works for all Americans and opens new markets for U.S. distilled spirits exporters and their workers.

II. U.S. SPIRITS EXPORT DATA AND RETALIATORY TARIFFS

Tariffs on Distilled Spirits

From 1997 through June 2018, there were *no tariffs* on distilled spirits between the U.S. and EU.



Decade in Review: U.S. Export Growth

- Over the past 10 years, total U.S. spirits exports grew by **27 percent.**
- In June 2018, the EU imposed a **25 percent retaliatory tariff** on American Whiskey.
- From 2018 to 2020, total U.S. spirits exports were **down 23 percent** to $1.4 billion.
- American Whiskey exports were **down 29 percent** to $846 million from 2018 to 2020.

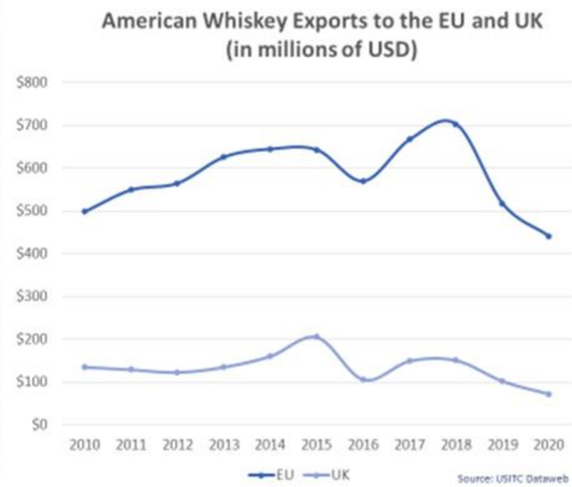
American Whiskey Exports to the EU 28 and the UK

2020:

- The EU accounted for **52 percent** of total American Whiskey exports.
- The UK accounted for **16 percent** of American Whiskey exports to the EU.

2018-2020:

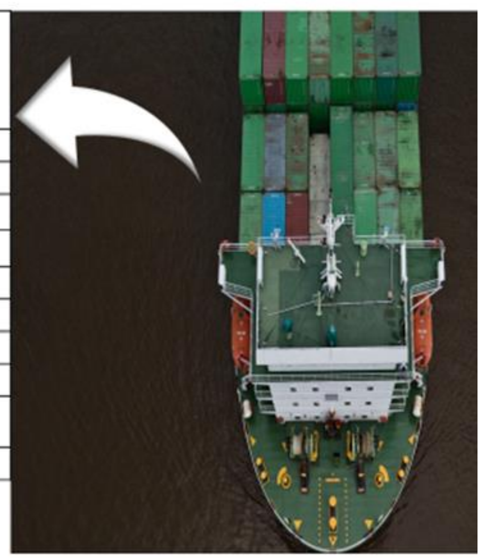
- Since the imposition of retaliatory tariffs, American Whiskey exports to the UK have decreased **53 percent** and **37 percent** to the EU.



Top 10 Export Markets for American Spirits

	2019 Total U.S. Spirits Exports (In millions of USD)	2020 Total U.S. Spirits Exports (In millions of USD	2019-2020 Percent Change
Canada	$202	$249	23.2
Japan	$138	$125	-9.4
Australia	$102	$114	11.2
UK*	**$112**	**$83**	**-25.4**
France*	**$93**	**$81**	**-13.0**
Germany*	**$83**	**$77**	**-7.7**
Spain*	**$72**	**$76**	**4.9**
Mexico	$72	$66	-8.1
Netherlands*	**$51**	**$57**	**11.4**
Latvia*	**$52**	**$42**	**-19.5**

***EU Member State**

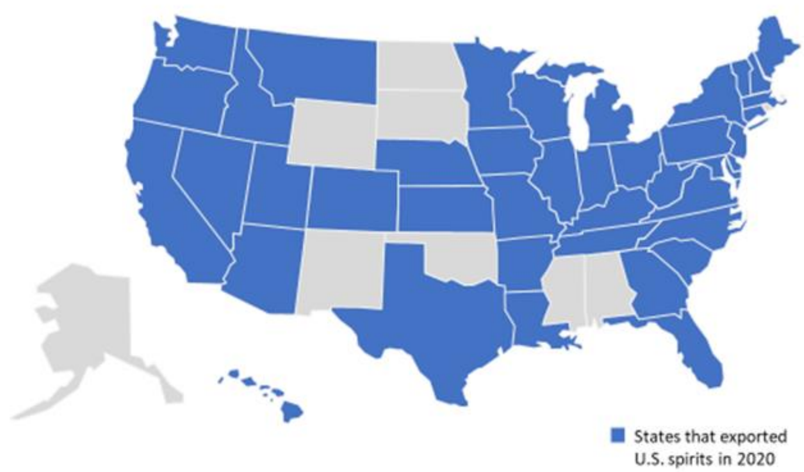


Top 10 Export Markets for American Whiskey

	2019 Total U.S. Spirits Exports (In millions of USD)	2020 Total U.S. Spirits Exports (In millions of USD	2019-2020 Percent Change
Japan	$122	$103	-15.7
Australia	$84	$98	15.8
Germany*	**$82**	**$76**	**-7.2**
UK*	**$101**	**$71**	**-29.6**
France*	**$86**	**$70**	**-18.5**
Spain*	**$63**	**$57**	**-8.5**
Canada	$52	$56	7.0
Latvia*	**$50**	**$40**	**-19.4**
Poland*	**$27**	**$31**	**17.4**
Netherlands*	**$29**	**$30**	**4.9**

***EU Member State**

41 States Exported U.S. Spirits in 2020



Source: 2020 U.S. Census & ITC Data


37 States Exported
American Whiskey in 2020
DISTILLED SPIRITS COUNCIL
States that exported
American Whiskey in 2020
Source: 2020 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.

In October 2020, Australia initiated a review of 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 for their production. The status of Australia's review is unclear.

Request: DISCUS respectfully seeks the U.S. government's support in: (1) reminding Australia of the important protections distinctive product recognition already affords to "Bourbon/Bourbon Whiskey" and "Tennessee Whiskey" and reaffirming that the two-year maturation requirement which applies to the production process continues to not apply to these categories; (2) requesting that distinctive product recognition for "American Rye Whiskey" and "American Single Malt," and that they are exempt from the two-year maturation requirement; (3) securing an update on the status of the review; and (4) requesting that the proposal is notified to the WTO allowing for a comment period before it is finalized.

II. Trade Statistics

In 2020, U.S. spirits exports to Australia reached $114 million, up 11% from 2019. In 2020, Australia was the third-largest export market for total American spirits and American Whiskey. Through July 2021, U.S. spirits exports to Australia are up by nearly 7% as compared to the same period in 2020.

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*.

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

II. Technical Barriers

On March 8, 2021, Brazil notified the WTO that it is conducting an open consultation of its beverage alcohol technical regulation. The technical regulation, which has been in effect since 2009, includes standards of identity, labeling provisions, and certification requirements. DISCUS submitted a comment raising concerns with minimum and maximum alcohol levels, aging requirements for rum, the use of analytical parameters, and the definition of whiskey. Industry contacts report this is the first stage of collecting feedback from industry stakeholders as it prepares to draft a revised regulation. It is unclear when Brazil will issue the revised draft for stakeholder comment.

Request: DISCUS seeks the U.S. government's support in understanding when the revised draft will be published and urging Brazil to; (1) eliminate the aging requirement for rum; (2) eliminate the use of analytical parameters; (3) modify the minimum and maximum alcohol content requirements; (4) eliminate the malting requirement for whiskeys; (5) include a definition for flavored spirits; (6) confirm no change in certification requirements; (7) include an allergen label exemption for distilled spirits; (8) notify the proposed draft to the WTO for stakeholder comment.

III. Other Barriers

Discriminatory Taxation

Brazil applies a 30% *ad valorem* excise tax rate for most spirits, including "Bourbon," "Tennessee Whiskey," and rum. However "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.

IV. <u>Trade Statistics</u>

2020 saw a 20% increase in U.S. spirits exports to Brazil, reaching $25 million. In the January-July 2021 period, U.S. spirits were valued at $15.9 million, representing a 33% increase from the same period in 2020.

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

CANADA

I. Technical Barriers

Standards

On January 16, 2019, Canada notified its proposal to revise its vodka standard to the WTO (G/TBT/N/TBT/575). The purpose of the revision is to better align 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). However, the final draft 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. Additionally, it did not adopt DISCUS' request to adopt a definition of flavored vodka consistent with the U.S. standards of identity. The regulation went into effect on June 17, 2019, with a transitional period until December 13, 2022.

Request: DISCUS seeks the U.S. government's continued assistance in urging Canada consistent with the U.S. standards of identity to: (1) 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 (2) adopt a definition of flavored vodka.

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% and by the CPI annually, 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 U.S.-Mexico-Canada Agreement (USMCA) 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 Columbia 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 Columbia and Saskatchewan to eliminate their discriminatory practices and operate in a transparent manner consistent with their international commitments.

Discriminatory Mark-ups and Fees – Alberta

In 2017, Alberta adopted a preferential mark-up for small distillers within the province from $13.76/litre to $2.46/litre. In addition, small distillers in Alberta may directly sell to on-premise and off-premise licensees, avoiding fees associated with products sold through the Alberta Liquor, Gaming and Cannabis Commission (AGLC). Imported products are required to go through the AGLC as the sole distribution entity and route to market. This is inconsistent with the national treatment provisions 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 Province of Alberta to eliminate its discriminatory mark-up and the ability for small producers to sell directly to on- and off-license premises and outside of the AGLC in line with its international trade commitments under the WTO and USMCA.

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 2020, American spirits exports to Canada reached $249 million, up by nearly 23% from 2019. Through July 2021, U.S. spirits exports to Canada were valued at $138 million, a 4% increase from the same period in 2020.

CHINA

I. Tariffs

Retaliatory Tariffs

Since July 6, 2018, China has imposed a retaliatory tariff on American Whiskeys and a retaliatory tariff on rum, gin, vodka, liqueurs, brandy, and some "others" since September 24, 2018, in response to the U.S. Section 301 actions. China is currently 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). Since the imposition of the tariffs, American spirits exports to China have declined by nearly 7% between 2018-2020. In the decade prior to the imposition of retaliatory tariffs, American spirits exports to China increased by nearly 137%.

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.

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 ensuring that U.S.-origin distilled spirits products are exempt from any 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 (Decrees 248 and 249)

Decree 249: On November 12, 2020, China notified *Draft Administrative Measures on Imports and Export Food Safety* to the WTO (G/SPS/N/CHN/1191). The proposal is the primary regulation for the inspection and oversight of food imports and exports, including facility registration and inspection procedures for imported food. Under the proposal, China's General Administration of Customs (GAC) must conduct a "conformity assessment" of imported foods, which requires, among other things, the evaluation of foreign food safety management systems, registration, and may require on-site inspections.

The proposal is intended to replace Decree 144, which was issued in September 2011 and entered into force on March 1, 2012. DISCUS submitted a comprehensive comment on January 11, 2021. We understand that GAC is preparing implementation guidelines, but the timeline for publication is unclear. The proposal will enter into force on January 1, 2022.

Decree 248: On November 26, 2019, China issued its draft *Regulations on the Registration and Administration of Overseas Manufactures of Imported Food* (Decree 248), providing additional detail that would require all foreign food manufacturers, including beverage alcohol producers, to register with GAC. It also subjects foreign facilities to "on-site audits and verifications" and requires the registration number to be included on product labels. The proposal was *not* notified to the WTO. On December 20, 2019, DISCUS submitted a comprehensive comment to China.

China subsequently notified a revised draft to the WTO in November 2020 as *Regulations of the People's Republic of China on the Registration and Administration of Overseas Manufactures of Imported Food (Draft for Comments)* (G/TBT/N/CHN/1522). Under the revised draft, all foreign food manufacturers, including beverage alcohol producers, are required to obtain a registration from China's GAC and are subject to an evaluation consisting of a document review, video inspection, and/or an on-site inspection. In addition, the registration number is required to be included on product labels, as well as on the outer packs. The proposal would replace Decree 145 which was issued in 2012. DISCUS submitted a comment in response to the revised draft on January 15, 2021.

GAC issued a revised version of the proposal in April 2021 which included a few changes, including with regards to spirits as a low-risk food from a food safety perspective. On September 29, 2021, GAC sent a letter to the U.S. Embassy regarding Decree 248 which included information about the online "Single Window of International Trade" to register online and concerning the validity of existing registrations. The online "Single Window of International Trade" does not go live until November 1, 2021.

The proposal will enter into force on January 1, 2022, with no transition period. We understand that GAC is preparing implementation guidelines, but the timeline for publication is unclear.

***Request*:** DISCUS requests the U.S. government's continued assistance in urging China to: (1) exempt U.S. distilled spirits distilleries and related storage facilities from inspections; (2) not to prioritize U.S. distilled spirits for sampling inspections; (3) confirm that importers will be able to continue the current practice of applying Chinese labels, including the new registration number, via sticker in a bonded warehouse prior to the good's formal entry into China; (4) provide 18-month transition periods; and (5) provide an update when it will issue its implementing guidelines.

II. 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. 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 in a bonded warehouse; (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.

III. Trade Statistics

In 2020, U.S. spirits exports to China reached $16.4 million, down 8% from 2019.

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 25% retaliatory tariff on American Whiskey in response to U.S. Section 232 tariffs on steel and aluminum. Since the imposition of the tariff, American Whiskey exports to the EU, our largest export market, have plunged 37%, from \$702 million to \$440 million (2018-2020). On November 10, 2020, the EU imposed a 25% tariff on U.S. rum, brandy, and vodka in connection to the Boeing-Airbus dispute.

In March 2021, the U.S. and EU agreed to suspend tariffs for four months in the WTO Boeing-Airbus dispute, including the 25% tariffs on exports of U.S. rum, brandy, and vodka to the EU. In June 2021, the U.S. reached an important agreement with the EU to suspend tariffs for five years as part of the WTO Boeing-Airbus trade dispute agreement. Under the agreement, the EU suspended for five years the 25% tariffs on U.S. rum, brandy, and vodka imposed in November 2020.

On May 17, 2021, the U.S. and EU reached an agreement concerning steel and aluminum tariffs and, most importantly for our industry, the two parties announced that the EU will not increase its tariff on American Whiskeys to 50%. The EU's retaliatory tariff on American Whiskey was set to increase to 50% on June 1, 2021. Following the June 15 U.S.-EU Summit, the U.S. and EU issued a joint statement in which they agreed to address steel and aluminum issues by the end of the year. The EU subsequently published a regulation suspending the doubling of its tariff on American Whiskeys and other U.S. goods until December 1, 2021. Since that time, the EU has indicated that it needs to reach an agreement by November 1, 2021, in order to consult with the member states and prepare implementing language to avoid the December 1, 2021, doubling of the tariff on American Whiskeys.

The agreement in the WTO Boeing-Airbus dispute is an important building block to reset the relationships with the EU and we urge the administration to build on this positive momentum. We are committed to working with the Biden administration to help secure the removal of the EU's retaliatory tariff on American Whiskeys. It is critical to secure a return to the zero-for-zero tariff agreement on distilled spirits, which has been instrumental to our export success and job creation.

Request: We urge the administration to secure the immediate removal of the EU's retaliatory tariff on American Whiskeys and the permanent return to zero-for-zero tariffs on distilled spirits between the U.S. and EU.

II. Other Barriers

Discriminatory Taxation

The EU'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 901.84 per hectoliter of pure alcohol (hlpa), while the tax on all other spirits, including rum from other countries, is 1,802.67 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. 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 July 2019 the European Court of Justice (ECJ) found Greece's tax preferences for tsipouro and tsikoudia 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 3,647.93 per hlpa. In contrast, small distilleries pay a reduced excise rate of RON 1,823.96 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 1,823.96 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 distillers 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 still. On April 1, 2020, the excise duty on spirits was increased from HR K5,300 to HRK 6,000. 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.

Spain: Spain provides a reduced excise tax rate for certain domestic small distillers. The excise tax of €958.94 per hlpa applies in mainland Spain and the Balearic Islands. In the Canary Islands, a reduced rate of €750.36 per hlpa applies. For small domestic distillers, with an annual output not exceeding 10 hlpa, the excise tax in Spain and the Balearic Islands is €839.15 per hlpa and in the Canary Islands €653.34 per hlpa.

Portugal: Portugal provides reduced excise tax rates for certain categories of spirits produced in the Madeira region and the Azores. The tax rate is €1,386.93 per hlpa in mainland Portugal and the Azores. The standard rate in Madeira is €1,241.29 per hlpa. A reduced excise tax, of 25%, applies to rum and liqueurs produced and consumed in Madeira. A reduced excise rate of 50% applies to rum and liqueurs produced in Madeira and consumed in mainland Portugal. A reduced rate of 25% of the standard rate in mainland Portugal and the Azores applies to liqueurs and eaux de vie produced and consumed in the Azores.

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.

III. Technical Barriers

Labeling

On February 3, 2021, the EU published its Beating Cancer Plan under which the EU will propose a mandatory requirement to include a list of ingredients and a nutrition declaration on labels before the end of 2022. In addition, by the end of 2023, the EU will propose mandatory health warnings on labels. It is unclear when the new requirements would go into effect.

***Request*:** DISCUS requests the U.S. government's assistance in urging the EU to notify any draft implementing technical regulations to the WTO to ensure all interested stakeholders have an opportunity to provide input.

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.

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.

IV. Trade Statistics

In 2020, the EU was the single largest destination for U.S. spirits exports at $545 million, down by nearly 9%. At $545 million, the EU market alone accounts for 40% of total U.S. spirits exports. American Whiskey exports to the EU reached $439 million, accounting for 52% of total American Whiskey exports.

Since the imposition of the tariff, American Whiskey exports to the EU have plunged 37%, from $702 million to $440 million (2018-2020).

INDIA

I. Tariffs

India's 150% *ad valorem* tariff severely restricts access to the Indian market for U.S. spirits exporters. India's high tariffs on imports have made it very difficult for U.S. exporters to make significant inroads into India's large and growing spirits market.

Currently, total imports of bottled spirits represent only 1% of India's spirits market. This is particularly concerning since in 2020 India ranked as the world's largest whiskey market in terms of volume and second-largest in value (Euromonitor). American Whiskey accounts for nearly 86% of total American spirits exports to India.

India is currently engaged in trade agreement negotiations with the EU and the UK which are major spirits and whiskey exporters. Trade agreements with the EU and UK eliminating or lowering India's 150% *ad valorem* tariff will place American Whiskey at a competitive disadvantage vis-à-vis Scotch Whisky and Irish Whiskey, for example, in the Indian market.

***Request*:** DISCUS seeks the U.S. government's continued assistance in urging India to reduce its prohibitive import tariff on U.S. spirits exports, particularly with regard to American Whiskey.

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 final standard is scheduled to enter into effect in November 2021. However, DISCUS understands that FFSAI may grant extensions to the implementation to companies on a case-by-case basis to align these changes with the excise tax label registration cycle.

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.

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" consistent with CODEX; (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.

<u>Standards</u>

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. The regulation went into effect on July 1, 2021.

Unfortunately, the final standard does <u>not</u> 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 <u>not</u> registered as GIs in India. "Distinctive product" recognition ensures that such products sold in the Indian market are produced in the U.S. in accordance with U.S. laws and regulations.

In addition, the final standard establishes maximum limits on a range of naturally-occurring constituents in distilled spirits. These components are not regulated either in minimum or maximum levels in other large spirits producing and consuming markets. Moreover, the category definitions for brandy, gin, rum, vodka, and whiskey continue to provide that the ethyl alcohol content for each may range from 36-50% 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. Sanitary and Phytosanitary Barriers

Inspection

On November 25, 2020, India notified its *Draft Food Safety and Standards (Import) Amendment Regulation, 2020* to the WTO's TBT Committee (G/TBT/N/IND/180). The proposal provides the authority to FSSAI to designate categories of imported foods based on risk subject to registration and foreign facility inspections or audits. The proposal does not include a list of products subject to pre-import registration, inspection, or audit, nor does it include criteria for how they will be determined, and which categories will be subject to an inspection versus an audit. India has pledged that there would be a transition period, but did not commit to a specific time. The status of the proposal is unclear.

Request: DISCUS seeks the U.S. government's support in urging India to: (1) classify distilled spirits as a low-risk food from a food safety perspective; (2) exempt U.S. distilled spirits products from the requirement to register and from on-site inspections and audits; (3) confirm that the registration applies per facility and automatically applies to all beverage alcohol products that are produced at that facility; (4) provide an 18 month transition period; and (5) notify any additional implementing regulations to the WTO's TBT Committee for stakeholder input.

IV. Other Barriers

Ban on sales of imported spirits in Military Canteen Stores

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.

V. Trade Statistics

U.S. spirits exports to India were valued at $2.6 million in 2021, down 62% from 2020. Whiskey accounts for the majority of these exports with an 86% share by value. Through July 2021, U.S. spirits exports were valued at $3.2 million, up nearly 113% over the same period in 2020. American Whiskey exports were up 96% through July 2021 as compared to the same period in 2020.

ISRAEL

I. Technical Barriers

Standards

In June 2021, Israel notified revisions to its mandatory standards for distilled spirits to the WTO (G/TBT/N/ISR/1209). The proposal includes a new definition for flavored spirits and recognizes that there is no minimum aging requirement for "American Whiskeys." DISCUS submitted a comprehensive comment raising concerns with the requirement that "American Whiskey" must be bottled in the U.S., the incomplete definition of "Bourbon" as a distinctive product of the U.S., and that it does not include distinctive product recognition for "Tennessee Whiskey." DISCUS also raised concerns with potentially problematic definitions of whiskey, vodka, and brandy. It is unclear when the proposal will go into effect, but it includes a two-year transition period.

DISCUS submitted comments in 2004 and 2010 in response to Israel's WTO notifications to revise earlier versions of its standard. DISCUS received a response from the Standards Institute of Israel that Israel would modify its definition of "Bourbon" and add a definition of "Tennessee Whiskey" consistent with the "definitions of other whiskies of given geographic origin" that reference that they are produced in accordance with its national laws and regulations.

Request: DISCUS seeks the U.S. government's assistance in urging Israel to: (1) eliminate the requirement that "American Whiskeys" must be bottled in the U.S.; (2) recognize "Bourbon Whiskey" and "Tennessee Whiskey" as whiskeys made in accordance with the laws and regulations of the U.S.; (3) extend distinctive product recognition to "American Rye Whiskey" and "American Single Malt Whiskey" in a similar manner; (4) clarify that any U.S. state may be included on the label of American Whiskeys; (5) eliminate the requirement that whiskey must be aged in certain sized barrels/containers; (6) modify the definition of vodka; and (7) establish no minimum alcohol content level for liqueurs and cordials and "spirits drinks;"

II. Trade Statistics

In 2020, direct U.S. spirits exports increased to $5 million, a 19% increase from 2019. In the January-July 2021 period, U.S. exports were valued at $3.4 million, representing a 3% increase from the same period in 2020.

JAPAN

I. Technical Barriers

Lot Codes

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 for important legitimate business purposes, such as facilitating product recalls when necessary.

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. Furthermore, reselling a beverage alcohol container with the lot code removed could also constitute trademark infringement under U.S. trademark law. Thus, the removal or alteration of any lot code from beverage alcohol containers is prohibited under U.S. law and regulations. There is no similar provision in 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 such codes play in terms of consumer information and food safety. However, that notice is not binding and does not stop lot codes from being removed/defaced at the wholesale and retail levels.

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 effectively deter future violations.

II. Other Barriers

Distinctive Product Recognition

In July 2021, Japan launched public consultations to recognize "Bourbon" and "Tennessee Whiskey" as distinctive products of the U.S., which would ensure that products labeled as

"Bourbon" and "Tennessee Whisky" in Japan may only be sourced from the U.S. The public consultation closed on October 7, 2021. DISCUS submitted a comment in support of providing distinctive product recognition for "Bourbon" and "Tennessee Whiskey" and requesting that similar protection be extended to the fast-growing "American Single Malt" and "American Rye Whiskey" categories.

In 2015 Japan agreed *via* a side letter to the TPP to "initiate" a process to extend recognition for "Bourbon" and "Tennessee Whiskey" as distinctive products of the U.S., in exchange for the U.S. agreement to begin a similar process for several products as distinctive products of Japan. Although the U.S. did not join the TPP, the side letters were not contingent upon entry into force of the TPP.

In November 2018, DISCUS submitted detailed objectives for a U.S.-Japan FTA which urged the U.S. to request that Japan begin its process to recognize "Bourbon" and "Tennessee Whiskey" as distinctive products of the U.S. consistent with its commitments in the TPP side letters and, as part of that process, also recognize "American Rye Whiskey."

Request: DISCUS seeks the U.S. government support in securing distinctive product protection in Japan for "Bourbon," "Tennessee Whiskey" and extending such protection to the fast-growing "American Rye Whiskey" and "American Single Malt Whiskey" categories.

III. Trade Statistics

In 2020, Japan ranked as the U.S. spirits sector's second-largest export market, with exports valued at $125 million, down nearly 9% from 2019. Through July 2021, American spirits exports to Japan are down nearly 5% compared to the same period in 2020.

KOREA

I. Other Barriers

In February 2021, Korea issued its *Proposed Partial Amendments to the Enforcement Decree of the National Health Promotion Act* to restrict beverage alcohol marketing/advertising. The proposal bans event sponsorships (beyond nominal sponsorship only), broadens broadcast advertisement limits to cover internet multimedia broadcasting, and prohibits all out-of-home advertisements. In addition, the current ban on advertising on all beverage alcohol products 17% alcohol by volume (a.b.v) or higher on television and radio remains in effect.

We fully support the public health objective of encouraging moderate alcohol consumption by individuals of the legal drinking age who choose to drink and to combat underage and/or excessive drinking. Some individuals of the legal drinking age should not consume alcohol at all, and we support that decision. DISCUS and its members are fully committed to responsible advertising.

The majority of imported distilled spirits, including “Bourbon Whiskey” and “Tennessee Whiskey,” which are recognized as distinctive products of the U.S. under the Korea-United States Trade Agreement, are bottled at 40% abv or higher. As a result, they cannot be advertised on television or radio. However, Soju, which is a spirit that is largely produced domestically, is generally bottled below 17% abv and can be advertised on television and radio.

Request: DISCUS seeks the U.S. government’s support in urging that Korea: (1) treat all classes of beverage alcohol the same with regard to advertising regulations; (2) allow event sponsorship by drinks companies for events not involving minors; and (3) permit responsible advertising on internet multimedia channels.

II. Trade Statistics

In 2020, U.S. distilled spirits exports were valued at $12.8 million, representing a decrease of 6% from 2019 levels. Through July 2021, U.S. exports reached $14.4 million, reflecting a 144% increase relative to the same period in 2020.

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. Other Barriers

Discriminatory Tax- State of Michoacán

On December 31, 2020, the Mexican State of Michoacán published in its Official Gazette a new sales tax on beverage alcohol products that discriminates against imported products. Under the law, spirits produced in the state of Michoacán with an Appellation of Origin are eligible for a subsidy of 100% of the sales tax for one year. The discriminatory subsidy for certain locally produced spirits violates Mexico's national treatment commitments under GATT Article III and Article 2.3 of the USMCA which mandate non-discriminatory treatment of imports vis-à-vis domestic products with respect to internal taxes. These commitments made by the Government of Mexico equally apply to subnational entities, such as the State of Michoacán.

Request: We respectfully request that the U.S. government engage with Mexico to urge the elimination of the discriminatory practices related to the State of Michoacán's excise tax regime as soon as possible.

III. 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 (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. The status of the proposal is unclear.

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 U.S.-Mexico Tequila 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; (6) bottlers are allowed to source Tequila from more than one supplier, as necessary; and (7) when the regulation will go into effect.

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.

IV. Trade Statistics

U.S. spirits exports were valued at $66 million in 2020, down nearly 8% from 2019, ranking Mexico as the 9th largest export market for U.S. distilled spirits. Through July 2021, American spirits exports to Mexico are up 1% compared to the same period in 2020.

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 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, several concerns remain with the final TR. Throughout 2021, Russia has proposed several amendments to the revision, none of which were supported by the other EEAU members. We understand that Russia intends to notify an updated revised draft to the WTO. The TR is scheduled to go into effect in January 2022, but recent industry reports indicate that Russia may seek to delay its implementation.

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 to define 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 <u>any</u> agricultural material; (3) eliminate its use of analytical parameters and, instead, define spirits solely in terms of their specific raw materials and production processes; (4) eliminate the requirement that products containing 10% of alcohol by volume from stating that they have no expiration date; (5) confirm the TRs implementation date; and (6) notify any revised draft to the WTO's TBT Committee for stakeholder input.

<u>RFID Tag</u>

Russia is again considering extending its electronic RFID track-and-trace to all consumer goods, including beverage alcohol products. In 2020, Russia extended its RFID tagging to several consumer goods such as fur. We understand a unified national traceability system may be in place by 2024.

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. <u>Trade Statistics</u>

In 2020, spirits imports from the U.S. decreased 20.7% from the previous year and were valued at $60.3 million. From January 2021-August 2021, imports of U.S. distilled spirits totaled $36.8 million, an 8.4% increase from the same period in 2020.

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 2020, spirits imports from the U.S. decreased 38% from the previous year and were valued at $9.8 million. From January 2021-August 2021, imports of U.S. distilled spirits totaled $11.4 million, a 68% increase from the same period in 2020.

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 has 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.

II. Other Barriers

Discriminatory Taxation

Thailand has maintained a discriminatory excise tax system for distilled spirits for many years by imposing lower "applied" specific excise tax rates on domestically-produced "white liquor" and "blended liquor" than on imported spirits.

In December 2016, Thailand's Cabinet approved a regulation overhauling the excise tax system establishing new "ceiling" rates, which are 30% *ad valorem* plus 1,000 Thai Baht per liter of pure alcohol for all distilled spirits. The new "applied" rates were subsequently published by the Thai Excise Department and entered into force on September 16, 2017. As noted below, the discrimination in favor of domestic white liquor remains:

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 consistent with GATT Art III para. 2.

III. Trade Statistics

In 2020, direct U.S. spirits exports totaled $2.6 million, a 36% decrease compared with 2019. From January 2021 to July 2021, spirits exports from the U.S. reached $495,200, a 78% decrease compared with the same period in 2020.

DISTILLED SPIRITS COUNCIL OF THE UNITED STATES

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% in August 2018. In May 2019, Turkey reduced its tariff 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

In 2020, 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. 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 Art. III 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 2020, U.S. spirits exports to Turkey reached $17.6 million.

UNITED KINGDOM

I. Tariffs

Retaliatory Tariffs

The UK has been a very open market for U.S. spirits products by virtue of its membership in the EU until Brexit. 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. The UK carried over the EU's tariff rates on distilled spirits following its departure from the EU's Customs Union.

Since June 22, 2018, the UK, by way of its membership in the EU at the time, has imposed a 25% retaliatory tariff on American Whiskeys in response to U.S. Section 232 tariffs on steel and aluminum. Since the imposition of the tariff, American Whiskey exports to the UK, our fourth-largest market, have declined by 53%, from $150 million to $71 million since the imposition of tariffs (2018-2020).

On November 10, 2020, the EU imposed a 25% tariff on U.S. rum, brandy, and vodka in connection to the Boeing-Airbus dispute. In December 2020, the UK announced it would not maintain the tariff on U.S. rum, brandy, and vodka when it departed the EU Customs Union on January 1, 2021, but would maintain the tariff on American Whiskey as it evaluates its response to U.S. steel and aluminum tariffs.

In March 2021, the U.S. and UK agreed to suspend tariffs for four months in the WTO Boeing-Airbus dispute. In June 2021, the U.S. reached an agreement with the UK to suspend tariffs for five years in connection to the dispute.

On May 24, 2021, the UK's Department of International Trade (DIT) launched its public consultation on its tariffs in response to U.S. steel and aluminum tariffs. The UK's list includes products already subject to tariffs, including American Whiskeys and products that are not currently subject to tariffs. Only a subset of the products listed in the consultation will ultimately be subjected to tariffs. In its announcement, the DIT made clear its hopes to secure a negotiated settlement resulting in removing all tariffs in the steel and aluminum dispute. DISCUS submitted a comment in the DIT's investigation. The DIT has not yet made its announcement.

The announcement in the WTO Boeing-Airbus dispute is an important building block to reset the relationship with the UK and we urge the administration to build on this positive momentum. We are committed to working with the Biden administration to help secure the removal of the UK's tariffs on American Whiskeys. It is critical to secure a return to the zero-for-zero tariff agreement on distilled spirits, which has been instrumental to our export success and job creation.

Request: We urge the administration to secure the immediate removal of the UK's retaliatory tariff on American Whiskey and the permanent return to zero-for-zero tariffs on distilled spirits between the U.S. and the UK.

II. U.S.-UK Trade Agreement

DISCUS supports the negotiations of a comprehensive trade agreement with the UK. DISCUS submitted detailed objectives for such an agreement on January 15, 2019.

Request: DISCUS urges the administration to relaunch negotiations on a comprehensive FTA with the UK and 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, similar to the USMCA; and
- rules of origin and transshipment rules provided for in the USMCA.

III. Trade Statistics

In 2020, the UK ranked as the fourth-largest export market for American spirits, down from the third-largest in 2019. From 2018-2020, total U.S. distilled spirits exports have declined 56% to $83 million due largely to retaliatory tariffs. Similarly, American Whiskey exports have declined by 53%, from $150 million to $71 million. American Whiskey is the single largest export category to the UK, accounting for nearly 85% of the 2020 U.S. export total by value.

Through July 2021, American spirits exports to the UK reached $58 million, up nearly 28% compared to the same period in 2020. The 28% growth in 2021 YTD is driven by a 215% increase in rum exports and a 580% increase in vodka exports which no longer face retaliatory tariffs in connection to the WTO Boeing-Airbus dispute.

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 (TPP) 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. In January 2018, the 11 remaining members of the TPP created the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) as the successor to the TPP. The CPTPP entered into force in December 2018. The CTPP includes Japan, Canada, Australia, Vietnam, New Zealand, Singapore, Mexico, Peru, Brunei, Chile, and Malaysia. Both Japan and Canada are major producers of whiskey, which now have a competitive advantage vis-à-vis American Whiskey in the market.

In addition, EU- and UK-origin spirits are currently at a competitive advantage relative to U.S.-origin spirits in Vietnam as a result of bilateral trade agreements. The EU agreement entered into force in August 2020 and eliminates the 45% tariff on spirits progressively over a 7-year period. The UK and Vietnam reached an agreement to rollover its FTA with the EU following Brexit. The UK-Vietnam FTA went into effect on May 1, 2021. Accordingly, Scotch Whisky is also at a competitive advantage in the market compared to American Whiskey.

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

II. Trade Statistics

In 2020, direct spirits exports from the U.S. fell 81% to $11.6 million. Through July 2021, U.S. spirits exports to Vietnam reached $2.2 million, an 80% decrease compared to the same period in 2020.

IV. OTHER MARKETS

ARGENTINA

I. Technical Barriers

Standards

In October 2020, Argentina notified proposed revisions to its whiskey standard to the WTO (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 in its whiskey standard and includes several new, potentially problematic requirements. The status of the proposal is unclear.

Specifically, it has a new 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 mash bill of "Rye Whiskey," which 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 use of analytical parameters for the product definition. 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 its use of analytical parameters and define the category solely based on raw materials and production processes; (2) allow for whiskeys from different distillers to be blended; (3) allow for whiskeys to included multiple types of grains even if a single type of grain is identified on the label; (4) extend distinctive product recognition to "Tennessee Whiskey," "American Single Malt Whiskey," and "American Rye Whiskey;" and (5) provide an update on the status of the proposal.

II. Trade Statistics

In 2020, direct U.S. spirits exports reached $2.4 million, a 51% decrease from 2019. In the January-July 2021 period, U.S. exports were valued at $3.1 million, representing a 105% decrease from the same period in 2020.

BOLIVIA

I. Other Barriers

Distinctive Product Recognition

On January 6, 2020, the U.S. and Bolivia agreed in an exchanged letters for Bolivia to recognize “Bourbon” and “Tennessee Whiskey” as distinctive products of the U.S. and in return for the U.S. recognizing “Singani” as a distinctive product of Bolivia. The exchange of letters notes that Bolivia will recognize “Bourbon” and “Tennessee Whiskey” as distinctive products of the U.S. within 30 days of the U.S. issuing a final rule recognizing “Singani” as a distinctive product of Bolivia. In August, the Alcohol and Tobacco Tax and Trade Bureau (TTB) released a Notice of Proposed Rulemaking to amend the standards of identity regulations for distilled spirits to recognize “Singani” as a type of brandy that is a distinctive product of Bolivia.

Request: DISCUS seeks the U.S. government support in securing distinctive product protection in Bolivia for “Bourbon,” “Tennessee Whiskey” and secure similar protection for the fast-growing “American Rye Whiskey” and “American Single Malt Whiskey” categories.

II. Trade Statistics

In 2020, spirits imports from the U.S. decreased 7.6% from the previous year and were valued at $98,750. From January 2021-August 2021, imports of U.S. distilled spirits totaled $106,948, an 8.3% increase from the same period in 2020.

DISTILLED SPIRITS COUNCIL
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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 January 2021, a Resolution (No. DGH-001-2021) was published in the National Gazette updating the specific tax as follows:

Costa Rican Specific Excise Tax Rates
As of February 1, 2021

Alcohol Strength	Tax Rate per mL pure alcohol (in colones (¢))
Less than or equal to 15% a.b.v.	3.43
Greater than 15% to 30% a.b.v.	4.11
Greater than 30% a.b.v.	4.80

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 violates 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. <u>Trade Statistics</u>

In 2020, U.S. exports of spirits to Costa Rica were valued at $730,000, representing a 70% decrease from 2019 export values. In the January-July 2021 period, U.S. spirits exports were valued at $405,000, representing a 24% decrease from the same period in 2019.

DOMINICAN REPUBLIC

I. Import Policies

On May 31, 2021, the Dominican Republic notified its proposed *General standard on measurements of control and security applicable to manufacturers, producers and importers of products of alcohol and tobacco* to the WTO (G/TBT/N/DOM/232). Under the proposal, beverage alcohol products are required to apply an excise stamp. The program was introduced in response to an ongoing national public health crisis due to the consumption of illicit alcohol. The requirement has been under consideration since last year.

We strongly support efforts to combat the consumption of illicit alcohol which often leads to acute and chronic health consequences, including death. However, tax stamps are an ineffective tool to combat the sale and consumption of illicit alcohol. For example, tax stamps do not prevent on-premise retailers from refilling stamped bottles with cheaper spirits for by-the-drink sales; this problem is exacerbated because the stamp would offer a deceptive air of authenticity to the sale. There are more effective, less costly, and less trade-restrictive tools to combat the sale and consumption of illicit alcohol.

According to local industry contacts, the government provided a subsidy to domestic producers to cover the cost of compliance with the tax stamp requirement while imported spirits will have to bear the full cost. Thus, the program appears to be inconsistent with the Dominican Republic's national treatment commitments under DR-CAFTA and GATT Article III.

***Request*:** That the USG urges the Dominican Republic to reconsider the measure and implement a less trade-restrictive measure in a manner consistent with its international trade commitments that effectively curb the sale and consumption of illicit alcohol.

II. Trade Statistics

In 2020, U.S. distilled spirits exports were valued at $16 million, representing a decrease of 23% from 2019 levels. Through July 2021, U.S. exports totaled $17.9 million, reflecting a 103% increase relative to the same period in 2020.

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 $1.9 billion beverage alcohol retail market (Euromonitor). Distilled spirits accounted for 17% of total beverage alcohol retail sales, while wine accounted for 47% of the market in terms of retail sales in 2019 (Euromonitor). In contrast, Singapore, which has a similar population, but a single excise tax rate for wine and distilled spirits, recorded retail sales of distilled spirits that are 150% larger than in Hong Kong in 2020 (Euromonitor), accounting for 30% of the beverage alcohol market in Singapore in terms of retail sales.

To compare the two markets, in 2021 direct U.S. spirits exports to Hong Kong were valued at only $2.9 million, a decrease from $6.7 million in 2019, while U.S. spirits exports to Singapore reached $9.7 million in 2020. Through July 2021, total U.S. spirits exports to Hong Kong were valued at $1.7 million, an increase of 6% from the prior year.

INDONESIA

I. Import Policies

Since 2018, 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. On December 12, 2018, the Ministry of Finance (MOF) issued regulation No. 158/2018 to replace MOF regulation No. 207/2013. The regulation imposed a new excise tax on ethyl alcohol, beverages, and concentrates containing ethyl alcohol. The regulation went into effect on January 1, 2019.

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 violates 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.

DISTILLED SPIRITS COUNCIL
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III. Trade Statistics

Total spirits exports from the U.S. to Indonesia in 2020 were valued at $766,000, a 143% increase from 2019. In the January-July 2021 period, U.S spirits to Indonesia totaled $148,00, representing an 80% decrease from the same period in 2020.

KENYA

I. U.S.-Kenya Trade Agreement

DISCUS supports negotiations of a comprehensive 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: DISCUS urges the administration to restart negotiations with Kenya on a comprehensive FTA. 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 in this negotiation or also launch parallel negotiations 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 2020, Kenyan imports of U.S. distilled spirits totaled $3 million, an 11.3% increase from the year prior. From January 2021- August 2021, spirits exports from the U.S. totaled $1.7 million, an 11.4% decrease from the same period in 2020.

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 including what is defined as 'Compound Hard Liquor') 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	150.00
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 2020, Malaysia's imports of U.S. spirits were valued at $129,000, representing a 12% decrease from 2019. Through July 2021, U.S. exports reached $513,000, reflecting a 2,035% increase relative to the same period in 2020.

MONGOLIA

I. <u>Other Barriers</u>

On August 12, 2021, Mongolia notified its revised *Draft Law on controlling the circulation of alcohol beverages, and fight against alcoholism* to the WTO (G/TBT/N/MNG/14). However, Mongolia only provided 15 days for stakeholders to provide comments. The TBT Committee has adopted procedures which recommend allowing a comment period of at least 60 days. DISCUS submitted preliminary comments due to the short timeframe. The legislation was initially introduced into Mongolia's Parliament in September 2020.

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 <u>all</u> forms. Some individuals of the legal drinking age should not consume alcohol at all but abstain, and we support that decision.

The proposal that was notified to the WTO eliminated the problematic quota that imported alcohol by each category of distilled spirits cannot be more than 30% of the total volume of the category that was included in the original draft. But it retained the <u>prohibition</u> on the sale of full bottled alcohol in the on-premise channel 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 sale in the on-premise channel.

The proposal would also require beverage alcohol products to include "Date of manufacture and storage period" and a list of ingredients. Article 4.7.1 of the Codex General Standard for the Labelling of Prepackaged Foods (CODEX STAN 1-1985 (Rev. 1-1991), exempts all beverage alcohol products that contain 10% a.b.v. or more from any such date marking requirement.

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: (1) eliminate the ban on the sale of full bottled beverage alcohol over 35% a.b.v. in the on-premise chanel; (2) not to require distilled spirits to list the ingredients or raw materials used in their production on the product's label consistent with standard international practice; and (3) bring its labeling standards for spirits into compliance with the Codex standard by exempting distilled spirits products over 10% a.b.v. from the requirement to list the date of manufacture and storage period.

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

PERU

I. <u>Other Barriers</u>

<u>Discriminatory Taxation</u>

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.

On January 26, 2021, Peru again increased its excise tax. The decree increases the rate for beverage alcohol products over 20% a.b.v. from 3.47 PEN/Liter to 3.55 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 domestically produced pisco, which is bottled over 20% a.b.v., was also increased from 2.17 PEN/liter to 2.22 PEN/liter. The current rates are indicated in the following table:

Product	Alcohol by Volume	Minimum Specific Rate	*Ad Valorem* Rate
Pisco	-	2.22 PEN/liter	(none)
Other beverage alcohol products	0% to 6%	1.25 PEN/liter	35%
	Over 6% to 12%	2.25 PEN/liter	25%
	Over 12% to 20%	2.70 PEN/liter	30%
	Over 20%	3.55 PEN/liter	40%

As noted above, the specific tax rate on pisco is much lower than the minimum rate of 3.55 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 engage with Peru to urge the elimination of its discriminatory practices as soon as possible.

II. Trade Statistics

In 2020, U.S. distilled spirits exports were valued at $2 million, representing a decrease of 61% from 2019 levels. Through July 2021, U.S. exports reached $942,000, reflecting a 33% decrease relative to the same period in 2020.

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, are taxed at NTD $2.5 per liter while liqueurs <20% abv are taxed at NTD $7 per liter and those >20% abv are taxed NTD $185 per liter, 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, and adopt a single tax rate on distilled spirits.

Lot Codes

Since January 2015, imported spirits have been required to include a lot-code on the product label in order to enhance traceability in the event of a product recall.

However, Article 32 of Taiwan's Tobacco and Alcohol Administration Act does not specify that the batch number should be that of the *original manufacturer*. According to industry reports, importers and distributors in Taiwan are removing the original manufacturers' lot codes and applying their own 'batch codes'. We are concerned that this defeats the purpose of traceability and would make any product recall difficult.

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 for important legitimate business purposes, such as facilitating product recalls when necessary.

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. Furthermore, reselling a beverage alcohol container with the lot code removed could also constitute trademark infringement under U.S. trademark law. Thus, the removal or alteration of any lot code from beverage alcohol containers is prohibited under U.S. law and regulations. There is no similar provision in Taiwan's regulations.

Request: DISCUS seeks the U.S. government's in urging Taiwan to expressly prohibit the sale of distilled spirits products with erased/tampered/altered manufacturer lot codes.

II. Trade Statistics

U.S. spirits exports to Taiwan were valued at almost \$3.3 million in 2020, representing a 23% decrease from 2019. Through July 2021, American spirits exports to Taiwan totaled \$3.8 million, a 100% increase as compared to the same period in 2020.