



October 28, 2022

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

**RE: USTR-2022-0013: Comments Regarding Foreign Trade Barriers to U.S. Exports –
Submission by the Distilled Spirits Council of the United States, Inc. (87 Fed.
Reg. 56741 (September 15, 2022))**

Dear Mr. Shpiece:

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 2021 valued at nearly \$1.6 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 appreciate the opportunity to provide these comments and will be pleased to supplement them in the future as the issues evolve.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert Maron".

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 2022*



TABLE OF CONTENTS

I. INTRODUCTION

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

III. PRIORITY MARKETS

Australia
Brazil
Canada
China
European Union
India
Japan
Malaysia
Mexico
Singapore
South Africa
Taiwan
Thailand
Turkey
United Kingdom
Vietnam

IV. OTHER MARKETS

Argentina
Angola
Bolivia
Costa Rica
Hong Kong
Indonesia
Kenya
Nepal
Peru



DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

I. INTRODUCTION

Overview: International trade is essential 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. In 2021, U.S. spirits were exported from small, medium, and large distillers located in 45 states, up from 41 in 2020. The U.S. spirits sector supports the direct and indirect employment of an estimated 1.7 million people across America. In 2020, 2.2 billion pounds of grains were used in the production of U.S. whiskey, brandy, rum, gin, and vodka.

However, 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 permanent removal of retaliatory tariffs on U.S. spirits exports imposed by key trading partners. If these retaliatory tariffs were to return, they would reverse the rebound in U.S. spirits exports that has been seen through August 2022.

Between 2001 and 2021, global U.S. spirits exports, driven in large part by American Whiskeys, have expanded 220%, from \$493 million to \$1.6 billion. Due to the application of retaliatory tariffs from 2018 to 2021, total U.S. spirits exports were down 12% to \$1.6 billion and American Whiskey exports were down 18% to \$975 million. American Whiskey drives U.S. spirits exports and accounts for 62% of total American spirits exports.

Following a decrease in exports between 2018 and 2021 due largely to retaliatory tariffs, this long-term positive trend restarted in 2022. From January-August 2022, total U.S. spirits exports and American Whiskeys in particular increased by 22% and 20%, respectively, over the same period the previous year. However, the chilling effects of the tariffs, supply chain issues, increased shipping costs, and inflation has made it difficult for many craft distillers to regain their footing in the market.

In 2021, the top five markets for American spirits exports by value were: 1) Canada (\$242 million, down 3%); 2) Netherlands (\$121 million, up 112%); 3) Japan (\$120 million, down 5%); 4) UK (\$107 million, up 28%); and 5) Australia (\$102 million, down 11%). The top five markets for American Whiskey exports by value were: 1) Japan (\$96 million, down 1%); 2) UK (\$88 million, up 23%); 3) Australia (\$85 million, down 14%); 4) Germany (\$81 million, up 7%); and 5) France (\$78 million, down 11%).

Retaliatory Tariffs: Currently, retaliatory tariffs on U.S. distilled spirits products as part of trade disputes with the EU and UK over steel-aluminum and aircraft subsidies are suspended. The only retaliatory tariffs that remain on U.S. distilled spirits are those applied by China in the Section 301 dispute and by Turkey over steel and aluminum.

Due to the application of retaliatory tariffs, 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. 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.

Our top trade priority is to secure the 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: Between June 2018-January 2022, the EU imposed a 25% retaliatory tariff on American Whiskeys in response to U.S. Section 232 tariffs on steel and aluminum. Due to the imposition of the tariff, American Whiskey exports to the EU, our largest American Whiskey export market, plunged 20%, from \$552 million to \$440 million (2018-2021).

The U.S. and EU reached an agreement in May 2021 that the EU would not increase its tariff on American Whiskeys to 50% on June 1, 2021. Following the June 2021 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. On October 1, 2022, the U.S. and EU reached an agreement to suspend the EU's 25% retaliatory tariff on American Whiskeys for two years, effective January 1, 2022. Since the EU suspended its 25% retaliatory tariff on American Whiskeys in January 2022, U.S. whiskey exports saw an increase of 14% (through August) compared to the same period the year prior. Total American Whiskey exports to the EU currently stand at \$300.8 million through August 2022.

Between June 2018-June 2022, the UK imposed 25% retaliatory tariffs on American Whiskeys in response to U.S. Section 232 tariffs on steel and aluminum. The UK was a member of the EU when the tariff on American Whiskeys was imposed. Due to the tariff, American Whiskey exports to the UK, our third-largest American Whiskey market, have declined by 53%, from \$150 million to \$88 million (2018-2021).

The UK did not carry over the provision in the EU's regulations to double the tariff on American Whiskeys. In May 2021, the UK's Department of International Trade (DIT) launched a public consultation on its tariffs in response to U.S. steel and aluminum 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 U.S. and UK reached an agreement in March 2022 to remove the UK's 25% retaliatory tariff on American Whiskeys on June 1, 2022.

Between November 2020 and June 2021, the EU imposed a 25% tariff on U.S. rum, brandy, and vodka in connection to the WTO Boeing-Airbus dispute. In June 2021, the U.S. reached an agreement with the EU 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.

In December 2020, the UK announced it would not maintain the tariff on U.S. rum, brandy, and vodka in the WTO Boeing-Airbus dispute when it departed the EU Customs Union on January 1, 2021, but it would maintain the tariff on American Whiskey.

In June 2021, the U.S. reached an agreement with the EU 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.

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

China: In response to the U.S. Section 301 actions, China has imposed a retaliatory tariff on American Whiskeys since July 2018 and retaliatory tariffs on rum, gin, vodka, liqueurs, brandy and some "others" since September 2018. 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 tariff, American spirits exports to China, the world's largest spirits market, have remained relatively flat (2018-2021).

Turkey: Since June 2018, Turkey has imposed 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. However, on May 21, 2019, Turkey reduced its tariff back to 70%. Since the imposition of the tariff, American spirits exports to Turkey declined by nearly 47%, from nearly \$17 million to approximately \$9 million (2018-2021).

Trade Agreements: DISCUS and its members have strongly supported multilateral, regional, and bilateral agreements, as these are vital to opening new markets and keeping them open for U.S. spirits exports. 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. U.S. spirits exports to our trading partners which have agreed, either through multilateral, regional, or bilateral trade agreements, to eliminate tariffs on U.S. spirits reached \$1.36 billion in 2021, accounting for 86% of global U.S. spirits exports. Between 2011 and 2021, exports to countries that have free trade agreements with the U.S. have grown at a faster rate (52% increase) than total U.S. distilled spirits exports (25% 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.

DISCUS is also 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 188% through 2021.

U.S.-Kenya Strategic Trade and Investment Partnership (STIP), Indo-Pacific Economic Framework (IPEF), and the U.S.-Taiwan Initiative on 21st-Century Trade Agreement: DISCUS strongly supports efforts to deepen and enhance trade with Taiwan, Kenya, and the thirteen countries participating in the IPEF negotiations (Australia, Brunei, Fiji, India, Indonesia, Japan, Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand, and Vietnam).

Our top priority in these negotiations is to secure tariff reductions and increased market access. In the IPEF negotiations, India, Indonesia, Malaysia, New Zealand, Philippines, Thailand, and Vietnam apply tariffs on U.S.-origin spirits. Kenya imposes a 35% ad valorem tariff and Taiwan has zero tariffs on most imported spirits, except non-standardized spirits which face a 40% ad valorem tariff. As noted above, tariff reductions are critical to the long-term growth of U.S. spirits exports.

These negotiations provide excellent forums to advance reasonable, science-based regulations. U.S. spirits exports to the countries face a myriad of non-tariff barriers. Securing good regulatory practices for the labeling and certification of distilled spirits products, building upon what was included in the USMCA, is also a priority in these negotiations. If new rules and best practices for the labeling of distilled spirits are included in the agreements, these disciplines will create more predictability, transparency and consistency for U.S. spirits exporters and will serve as an important benchmark for the development of future regulations impacting spirits.

Securing international protection of “Bourbon,” “Tennessee Whiskey,” “American Rye Whiskey” and “American Single Malt Whiskey” as distinctive products of the U.S. is a high priority for DISCUS and its member companies. Distinctive product recognition ensures that such products sold are produced in the U.S. per U.S. laws and regulations.

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 by key trading partners, threatening to upend decades of export growth. DISCUS strongly urges the administration to secure 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.



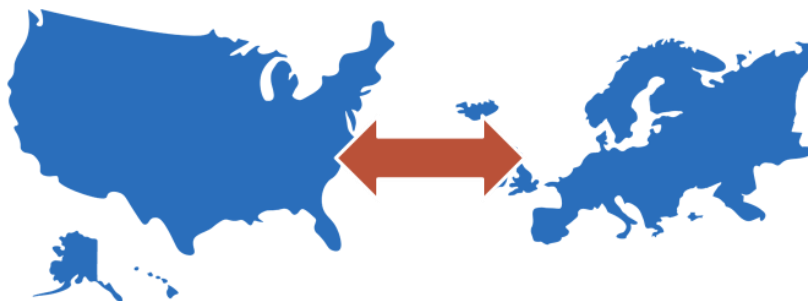
II. U.S. SPIRITS EXPORT DATA AND RETALIATORY TARIFFS



Distilled Spirits: History of Duty -Free Trade

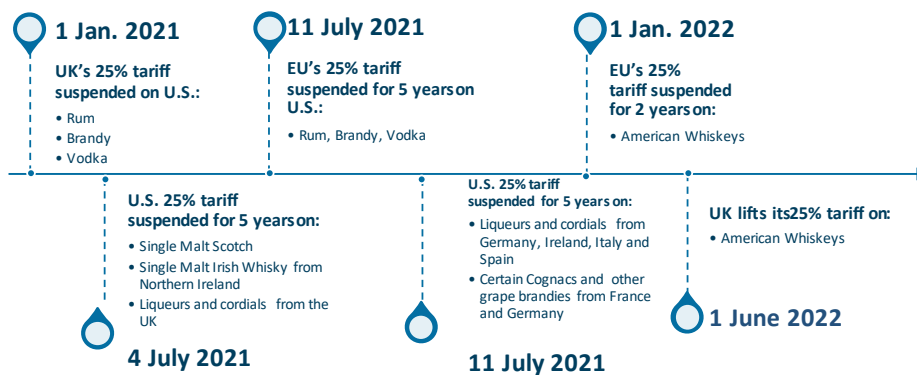


From 1997 through June 2018, there were no tariffs on distilled spirits between the U.S. and EU.



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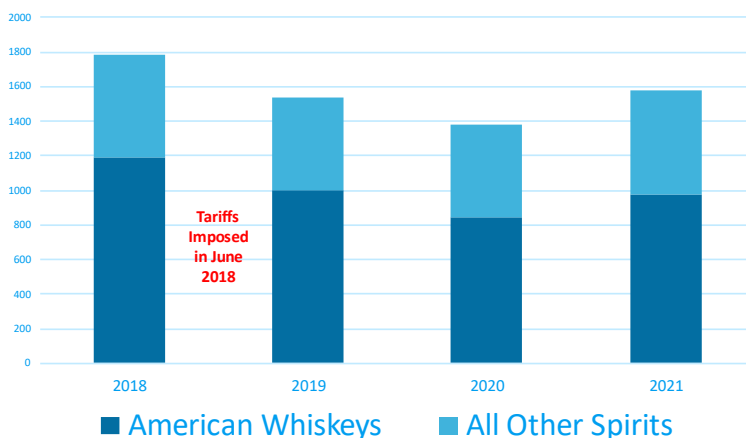
Tariffs: Return to Duty -Free Trade





Total U.S. Spirits Exports Up in 2021, but Still Below Pre-Tariff Period

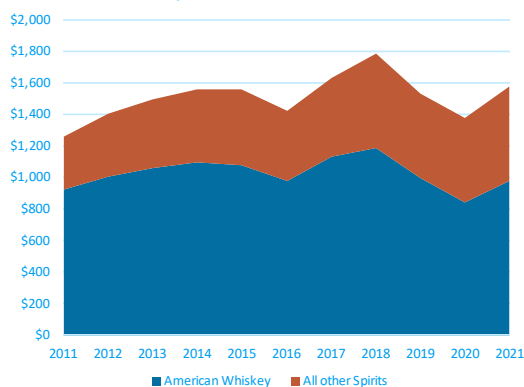
(in millions of USD)



Decade in Review: U.S. Export Growth



Global U.S. Spirits and American Whiskey
Exports (in millions of USD)



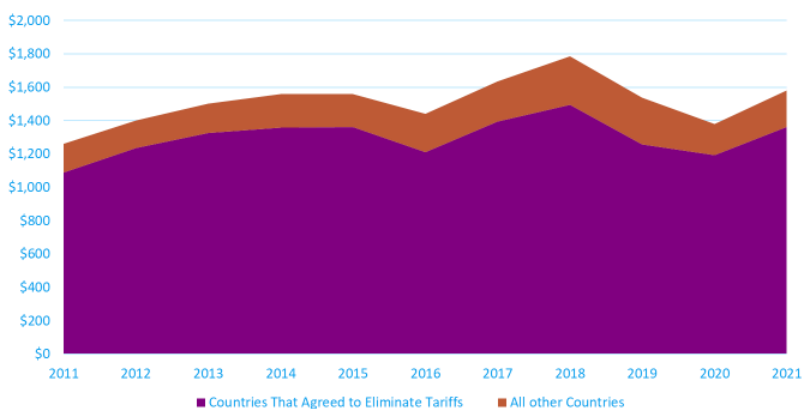
- Over the past 10 years, total U.S. spirits exports grew by **25 percent**.
- In June 2018, the EU/UK imposed a **25 percent retaliatory tariff** on American Whiskey.
- From 2018 to 2021, total U.S. spirits exports were **down 12 percent** to \$1.6 billion.
- American Whiskey exports were **down 18 percent** to \$975 million from 2018 to 2020.



Trade Agreements Have Fostered Growth in U.S. Spirits Exports



U.S. spirits exports to countries that eliminated tariffs through trade agreements **accounted for 86% total U.S. exports**



Source: USITC Dataweb

Top 10 Export Markets for All American Spirits

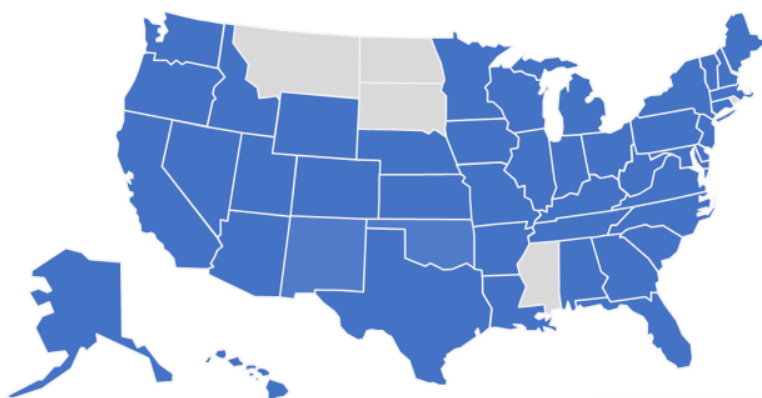


| | 2020 (In millions of USD) | 2021 (In millions of USD) | 2020-2021 Percent Change |
|---------------------|------------------------------|------------------------------|--------------------------------|
| Canada | \$249 | \$242 | -3.0 |
| Netherlands* | \$57 | \$121 | 111.7 |
| Japan | \$125 | \$120 | -4.5 |
| UK | \$83 | \$107 | 27.9 |
| Australia | \$114 | \$102 | -10.6 |
| Spain* | \$77 | \$93 | 21 |
| France* | \$81 | \$86 | 5.6 |
| Germany* | \$77 | \$83 | 7.8 |
| Mexico | \$66 | \$78 | 18.8 |
| Latvia* | \$42 | \$51 | 22.6 |





45 States Export American Spirits



■ States that exported
U.S. spirits in 2021

Top 10 Export Markets for American Whiskeys

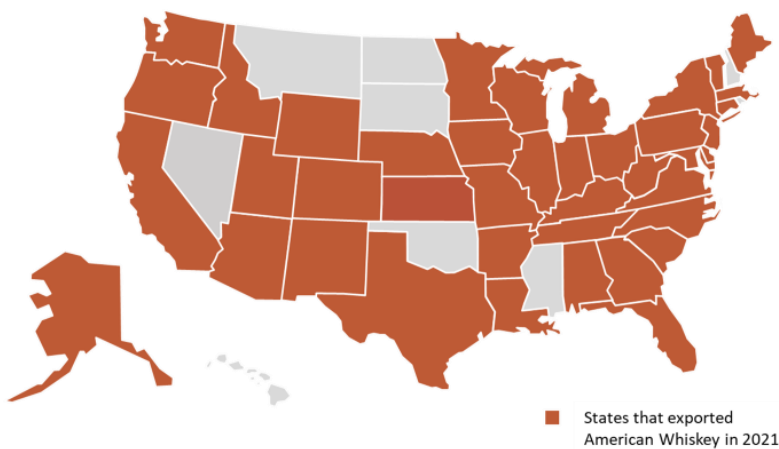


| | 2020 (In millions of USD) | 2021 (In millions of USD) | 2020-2021 Percent Change |
|---------------------|---------------------------------|------------------------------|--------------------------------|
| Japan | \$103 | \$96 | -0.07 |
| UK | \$71 | \$88 | 23.1 |
| Australia | \$97 | \$85 | -13.6 |
| Germany* | \$76 | \$81 | 6.6 |
| France* | \$70 | \$78 | -10.9 |
| Netherlands* | \$30 | \$77 | 157.4 |
| Canada | \$56 | \$68 | 20.5 |
| Spain* | \$57 | \$61 | 7.16 |
| Latvia* | \$40 | \$49 | 22.8 |
| Poland* | \$31 | \$30 | -1.8 |

*EU Member State



41 States Export American Whiskeys



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 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 2021, U.S. spirits exports to Australia reached \$101 million, down 11% from 2020. In 2021, Australia was the fifth-largest export market for total American spirits and third largest for American Whiskey. Through August 2022, U.S. spirits exports to Australia are up 11% as compared to the same period in 2021 (January-August), totaling \$78.8 million.

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 10.8% *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

Tariffs

On April 14, 2022, Brazil notified an amended draft of its beverage alcohol technical regulation to the WTO (G/TBT/N/BRA/1145/Add.1). The technical regulation, which has been in effect since 2009, includes standards of identity, labeling provisions, and certification requirements. As with our previous submission (April 22, 2021, G/TBT/BRA/1145), DISCUS submitted a comment on July 13, 2022, raising concerns with Brazil's proposals on minimum and maximum alcohol levels, aging requirements for rum, and the definition of whiskey, among others. According to industry contacts, Brazil has postponed this rulemaking until 2022. It is unclear when Brazil will issue the revised draft for stakeholder comment.

Request: DISCUS seeks the U.S. government's support in confirming that Brazil has postponed this rulemaking until 2023 and in urging Brazil to: 1) eliminate the aging requirement in the definition for rum; 2) modify the definition of whiskey and eliminate the requirement that the distillate be made of "malted cereal"; (3) extend distinctive product recognition to "American Rye Whiskey"; 4) include a flavored spirits category consistent with the U.S. standards of identity; 5) exempt distilled spirits products from any date-mark requirement consistent with the Codex standards; 6) extend the current allergen labeling exemption for certain grain-based spirits such as whiskey to all spirits; 7) modify the minimum and maximum alcohol content requirements consistent with the U.S. standards of identity; 8) confirm that the current certifications for U.S. spirits will continue with no additional requirements; and 9) provide an eighteen-month transition period and clarify that products already in the marketplace may continue to be sold until they are depleted.

III. Other Barriers

Discriminatory Taxation

Brazil applies a 19.5% *ad valorem* excise tax rate for most spirits, including “Bourbon,” “Tennessee Whiskey,” and rum. However, “Cachaça,” a distinctive product of Brazil, faces a 16.25% *ad valorem* rate. The current rates for spirits are listed below:

| TIPI CODE | RATE (%) |
|------------------------------------------------------------------------|----------|
| 2208.20.00 (brandy/pisco) | 19.5 |
| 2208.30 (whiskies) | 19.5 |
| 2208.40.00 (Cachaça) | 16.25 |
| 2208.40.00 (rum) | 19.5 |
| 2208.50.00 (gin) | 19.5 |
| 2208.60.00 (vodka) | 19.5 |
| 2208.70.00 (liqueurs and cordials) | 19.5 |
| 2208.90.00 (except Ex 01 and Ex 02) | 19.5 |
| 2208.90.00 Ex 02 (ready to drink products with an a.b.v less than 8 %) | 13 |

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. Trade Statistics

2021 saw a 20% increase in U.S. spirits exports to Brazil, reaching \$30.6 million. In the January-August 2022 period, U.S. spirits were valued at \$28.3 million, representing an almost 50% increase from the same period in 2021 (January-August).

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). In 2006, Canada exempted wines made from 100% Canadian-grown grapes or other fruits (including ciders made from Canadian apples) from the federal excise tax. On July 1, 2022, Canada eliminated the excise tax exemption for Canadian wine made from 100% Canadian fruit, consistent with the July 2020 partial resolution of a WTO dispute brought by Australia. However, the exemption from the excise tax for wine and ciders made 100% from Canadian apples and/or honey remains in effect. 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 and ciders made from 100% Canadian-grown apples and/or honey 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% Canadian apples and/or honey as soon as possible.

Discriminatory Mark-up – Nova Scotia, New Brunswick, Newfoundland, Prince Edwards Island, and Labrador

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% |

New Brunswick, Prince Edwards Island, Newfoundland, and Labrador provide similar preferential mark-ups on certain local spirits.

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. They constitute a 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, New Brunswick, Prince Edwards Island, Newfoundland, and Labrador 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

In recent years, the liquor boards of British Columbia (LDB) and Saskatchewan (SLGA) have 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, making it 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 in Alberta 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.

"Ship from Source" – Ontario

Ontario's provincial Liquor Control Board (LCBO) has a longstanding requirement that suppliers "ship from source" (i.e. distillery) directly to the LCBO. The process is not transparent and recently, the LCBO began strictly enforcing the requirement and limiting exceptions that were widely provided. The LCBO believes it would mitigate risk and help to secure supply chains.

As a result of the policy, companies may not utilize central distribution hubs in the U.S. or elsewhere to ship their brands to the LCBO. The product must be sent directly from the distillery to the LCBO. This requirement increases the burden on the environment, exacerbates the already difficult supply chain situation, and limits consumer choice in Ontario. According to industry reports, the LCBO is delisting brands that do not strictly adhere to the "ship from source" policy.

Request: We respectfully seek the U.S. government's support in urging Ontario to eliminate its requirement to "ship from source" and allow products to be sent from central distribution warehouses in the U.S. or elsewhere.

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 (LCB), such as the Ontario LCB, 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 frequently, product price changes are standard practice in most modern retail environments. Such restrictive policies often have the unintended consequence of restricting brand and category investments, which 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).

Packaging – Quebec

On June 26, 2022, the SAQ notified suppliers, without prior notice and the opportunity to provide input, that it will require them to change longstanding product branding to conform to restrictive new packaging rules effective to tenders made after January 1, 2023. The policy seeks to ban “overpackaging” and leaves companies with limited time to adapt their packaging. It is common industry practice for premium and super-premium spirits to be packed in secondary cartons/boxes/gift boxes.

The SAQ’s definition of “overpackaging” is overly broad and is creating significant uncertainty for exporters. Because it is vague, it provides discretionary power to the SAQ to request packaging modifications, potentially impacting the equity of globally recognized brands. It is also unclear whether the ban on “overpackaging” applies to local products that are sold outside of SAQ owned retail outlets.

Request: We respectfully seek the U.S. government’s support in seeking clarification from the SAQ concerning its definition of “overpackaging” and its rational and intended goals, as well as to extend its implementation date by at least 6 months.

III. Trade Statistics

In 2021, Canada ranked as the top export market for American spirits and exports reached \$242 million, down by nearly 3% from 2020. Through August 2022, U.S. spirits exports to Canada were valued at \$174.1 million, a 10.6% increase from the same period in 2021 (January-August).

CHINA

I. Import Policies

Retaliatory Tariffs

Since July 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 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. exports to the world's largest distilled spirits market (Euromonitor). Since the imposition of the tariffs, American spirits exports to China remained flat between 2018-2021. In the decade before 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.

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.

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. The status of the proposal is unclear, and China has yet to announce 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 securing an update on the status of the proposal and 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 2021, U.S. spirits exports to China reached \$22 million, up 36% from 2020. Through August 2022, U.S. spirits exports to China were valued at \$14.9 million, a 1.1% increase from the same period in 2021 (January-August).

EUROPEAN UNION

I. Import Policies

Retaliatory Tariffs

Since 1997, the U.S. and EU spirits industries have largely 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.

Between June 2018-January 2021, the EU imposed a 25% retaliatory tariff on American Whiskeys in response to U.S. Section 232 tariffs on steel and aluminum. Due to the imposition of the tariff, American Whiskey exports to the EU, our largest American Whiskey export market, plunged 20%, from \$552 million to \$440 million (2018-2021).

In the steel and aluminum dispute, the U.S. and EU agreed in May 2021 that the EU will not increase its tariff on American Whiskeys to 50% on June 1, 2021. Following the June 2021 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. The U.S. and EU agreed in October 2021 to suspend the EU's 25% retaliatory tariff on American Whiskeys for two years, effective January 1, 2022.

Since the EU suspended its 25% retaliatory tariff on American Whiskeys in January 2022, U.S. exports saw an increase of 14% (through August) compared to the same period the year prior. Total American Whiskey exports to the EU currently stand at \$300.8 million through August 2022.

Between November 2020 and June 2021, the EU imposed a 25% tariff on U.S. rum, brandy, and vodka in connection to the Boeing-Airbus dispute. In June 2021, the U.S. agreed with the EU to suspend tariffs for five years as part of the WTO Boeing-Airbus trade dispute. Under the agreement, the EU suspended the 25% tariffs on U.S. rum, brandy and vodka for five years.

The agreements in the WTO Boeing-Airbus and steel and aluminum disputes are important building blocks to reset the relationship with the EU, and we urge the administration to build on this positive momentum. It is critical to secure a permanent 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 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. In May 2018, the European Commission published a revised legislative proposal, which retains the derogations for certain spirits producers. The legislation was adopted in July 2020 and went into effect on January 1, 2022.

Some 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.

France: France imposes a reduced excise tax on rum from French Overseas Departments (FODs). The total excise tax on rum from FODs is 903.64 per hectoliter of pure alcohol (hlpa)(maximum quantity 153,000 hlpa per year), while the tax on all other spirits, including rum from other countries, is 1,802.67 per hlpa. With the social security contribution, the total tax on spirits is €2,386.24 per hlpa. For FOD rum, it is €1,480.64 per hlpa. A reduced rate of 50% applies to small non-commercial distilleries if producing less than 10 lpa per year.

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.

Romania: Romania provides a reduced excise tax on small distillers producing for households. Romania charges excise and health taxes on most spirits of RON 3,968.38 per hlpa. In contrast, small distilleries pay a reduced excise rate of RON 1,984.19 per hlpa (max quantity 10 hlpa per year). This rate was increased by 3.6%, from RON 1,823.96 per hlpa, effective January 2022. Article 353.2 of the Fiscal Code states that fruit spirits and brandy produced for household consumption and not sold commercially (max .50 hl per year) can benefit by applying a 50% share of the standard duty on ethyl alcohol. 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 requested that Croatia 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 €1,400.86 per hlpa in mainland Portugal and the Azores. The standard rate in Madeira is €1,253.70 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

In February 2021, the EU published its Beating Cancer Plan, under which the EU will propose a mandatory requirement to include a nutrition declaration and a list of ingredients on labels before the end of 2022 and mandatory health warnings on labels by the end of 2023. In December 2021, the EU launched a public consultation seeking general feedback on, among other things, requiring nutrition information on beverage alcohol products that may either appear ‘on label’ or ‘off label’ with a QR code ‘on label’. The proposed regulatory text is expected to be published at the end of 2022. It is unclear when the EU will issue a proposed warning statement regulation.

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)(Labeling) Bill

Ireland’s Public Health (Alcohol) Bill was signed into law in October 2018, completing a process that began in 2015. In June 2016, the draft bill was notified to the WTO (G/TBT/N/IRL/2), and Ireland notified a revised bill through the EU’s TRIS internal review system for comment in January 2018.

In July 2022, Ireland notified the EU through TRIS of its intent to adopt regulations under the Bill on beverage alcohol labeling. Specifically, the proposal would require information on calories and grams of alcohol per container, a pregnancy pictograph warning, and warning statements. Currently, there is no EU-wide beverage alcohol warning statement requirement, and beverage alcohol products over 1.2% a.b.v. are exempt from nutrition labeling requirements.

As noted above, the EU published its Beating Cancer Plan in February 2021 and in December 2021 launched a public consultation seeking general feedback on, among other things, requiring nutrition information on beverage alcohol. However, it is unclear when the EU will issue a proposed warning statement regulation.

The deadline to submit comments through the TRIS system was September 22, 2022. Several EU member states submitted detailed opinions raising concerns with the proposal. As a result, the “standstill” period was extended three months until December 22, 2022.

Request: We respectfully request the U.S. government’s support to urge: 1) the EU to delay

the adoption of Ireland's proposal as it continues its work at the EU level on warning statements and nutrition declarations; and 2) Ireland and the EU to notify the proposal to WTO's TBT Committee consistent with its international trade commitments.

France – Minimum Reuse

In March 2022, France notified a revised draft of its decree setting minimum quotas on the proportion of reused packaging placed in the French market annually between 2023-2027 (G/TBT/N/FRA/223). The reuse requirement applies to producers that (1) place at least 10,000 units of packaging on the market annually and (2) meet minimum sales thresholds, which is eliminated in 2026. The proposal also includes minimum sales thresholds for different sized producers based on annual sales in France. However, France has exempted products that are recognized as Geographical Indications (GIs) until 2025. It is unclear whether the exemption also applies to products such as "Bourbon" and "Tennessee Whiskey," which are recognized as distinctive products of the U.S. through a 1994 exchange of letters and Commission Regulation No. 936/2009, "applying the agreements between the European Union and third countries on the mutual recognition of certain spirit drinks." The decree goes into effect on January 1, 2023.

Request: DISCUS seeks the U.S. government's support in urging France to: 1) delay implementation to complete an impact assessment and examine alternative initiatives to promote waste reduction; and 2) treat U.S. spirits recognized as distinctive products of the U.S. in the EU similar to products recognized as GIs.

IV. Trade Statistics

In 2021, the EU was the largest destination for U.S. spirits exports at \$562 million, up by nearly 22% over 2020. The EU alone accounts for 36% of total U.S. spirits exports. American Whiskey exports to the EU reached \$439 million in 2021, accounting for 45% of total American Whiskey exports.

Due to the imposition of the retaliatory tariff on American Whiskeys between 2018-2021, American Whiskey exports plunged 20%, from \$552 million to \$440 million (2018-2021). Since the EU suspended its 25% retaliatory tariff on American Whiskeys in January 2022, American Whiskey exports reached \$300.8 million through August 2022, up 14% compared with the same period in 2021 (January-August).

INDIA

I. Import Policies

Tariffs

India's 150% ad valorem tariff severely restricts access to the Indian market for U.S. spirits exporters. India is currently engaged in trade agreement negotiations with the EU and the UK, which are major spirits and whiskey exporters. Improving access for European and/or UK origin spirits to India would place American Whiskeys at a competitive disadvantage vis-à-vis Scotch Whisky and Irish Whiskey.

Request: DISCUS respectfully requests the government's support in securing a reduction of India's prohibitive 150% import tariff on U.S. spirits exports, particularly on American Whiskeys.

Customs Valuation

India's Special Valuation Branch (SVB) often takes several years to issue a final determination on the value of imported products. This lengthy delay results in significant uncertainty disrupts business planning and may result in companies facing significantly higher tariff liabilities than expected on a retrospective basis. This uncertainty is compounded by changes in the marketplace, such as exchange rates.

Request: DISCUS requests the government's assistance in securing a commitment from India to complete its customs valuation process in a fair, reasonable, and expeditious manner consistent with the aims of the WTO Valuation Agreement (Article VII of GATT 1994).

II. Technical Barriers

Labeling

India's Food Safety Standards (Packing and Labeling) Regulation, which describes the general labeling requirements for prepackaged foods and beverages, including distilled spirits, went into effect in November 2021. The proposal includes 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 urging India to: 1) exclude distilled spirits products from any requirement to provide a "list of ingredients; and

2) exempt spirits from the requirement to provide a “Date of Manufacture” or “Date of Packaging,” consistent with CODEX.

Standards

India’s Food Safety Standards (Alcoholic Beverages) Regulations, which sets down the mandatory beverage alcohol standards and labeling requirements, went into effect on July 1, 2021. It does not include protection for “Bourbon,” “Tennessee Whiskey,” and “American Rye Whiskey,” as distinctive products of the U.S., which ensures that such products sold in India are produced in the U.S. in accordance with U.S. laws and regulations.

In addition, it includes maximum limits on a range of naturally-occurring constituents in distilled spirits. These are not regulated either in minimum or maximum levels in other large spirits producing and consuming markets such as the U.S. and EU. Moreover, the category definitions for brandy, gin, rum, vodka, and whiskey 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.

FSSAI officials regularly test samples of imported spirits to the analytical parameters in the standards in FSSAI-approved labs. Often, the same batch is tested in different labs, which may yield different results. This unreliable testing results in products being blocked from the market. India does not accept U.S. Certificates of Analysis (COA) from TTB-certified chemists and laboratories.

Request: DISCUS seeks the U.S. government’s assistance in urging India to: 1) recognize “Bourbon,” “Tennessee Whiskey,” and “American Rye Whiskey,” as distinctive products of the U.S.; 2) eliminate the use of analytical parameters and maximum alcohol content levels; and 3) accept COAs from TTB-certified chemists and laboratories.

Single Malt and Single Grain Standards

On July 4, 2022, India notified amendments to its *Food Safety and Standards (Alcoholic Beverages) Regulations, 2018* to the WTO (G/TBT/N/IND/230), which included its definition of “Single malt or Single grain whiskey”. While the proposal broadened the definition for “Single malt and Single grain” whiskeys to allow for the use of un-malted grains, it maintains language mandating that “Single malt or Single grain whisky” be “produced in a single distillery” and be made exclusively using pot stills.

We are concerned by India’s decision to maintain the requirement that all Single malt or Single grain whiskeys be distilled exclusively using pot stills. In the United States, Single malt whiskey is not required to be produced exclusively using pot stills. For this reason, requiring

Single malt or Single grain whiskeys be produced only using pot stills would serve as an unreasonable barrier for U.S. exports.

Request: DISCUS respectfully requests the U.S. government's assistance in urging India to eliminate the requirement that "Single malt or Single grain" whiskeys be distilled in a pot still. DISCUS also requests assistance in clarifying what it means for a "Single malt or Single grain whiskey" to be "produced in a single distillery".

III. Sanitary and Phytosanitary Barriers

Registration/Inspection

in November 2020, India notified its *Draft Food Safety and Standards (Import) Amendment Regulation, 2020* to the WTO (G/TBT/N/IND/180). The proposal provided the authority to FSSAI to designate categories of imported foods based on risk subject to registration and foreign facility inspections or audits. The proposal did not include a list of products subject to pre-import registration, foreign on-site inspection, or audit, nor did it include criteria for how they will be determined, and which categories will be subject to an inspection versus an audit. India issued a revised regulation on November 3, 2021, to delay implementation from November 18, 2021, to June 1, 2022.

On October 10, 2022, India issued a regulation to classify distilled spirits as "low risk" from a food safety perspective and exempt foreign distilled spirits facilities from the requirement to register with FSSAI prior to importation.

Request: DISCUS seeks the U.S. government's support to secure confirmation that food products classified as "low risk" are exempt from on-site inspections and audits.

IV. Other Barriers

Tax Burden Between BII and BIO

India's taxation of alcohol results in distilled spirits bottled in origin (BIO) facing higher overall tax burdens than spirits bottled in India (BII) in some states. This is primarily because of the extremely high (150% ad valorem) tariff on spirits. If considering the same brand at a similar retail price, the BCD is calculated on the final product in the case of BIO, but on the intermediary bulk spirit in the case of BII. As a result, once the impact of state-level excise is factored in, total taxes (BCD + state excise) for BIO can be almost 30% higher than on BII spirits in states like Haryana. Similarly, in Delhi, the total tax burden (BCD + state excise) on BIO is nearly double that on BII.

Request: DISCUS seeks the U.S. governments support to urge India to reduce its BCD and ensure that, at the state level, distilled spirits are taxed equally regardless of their origin and where they are bottled

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 respectfully request the U.S. government's support to urge India to eliminate its discriminatory ban on the sales of imported spirits.

V. Trade Statistics

U.S. spirits exports to India were valued at \$5.8 million in 2021, up 122% from 2020. Whiskey accounts for the majority of these exports with a 77% share by value. Through August 2022, U.S. spirits exports were valued at \$8.9 million, up nearly 159% over the same period in 2021. American Whiskey exports were up 184% through August 2022 as compared to the same period in 2021 (January-August).

JAPAN

I. Import Policies

Tariffs

In 1997 as part of its settlement agreement with the United States, the European Commission and Canada in resolution of the World Trade Organization dispute settlement case (Japan – Taxes on Alcoholic Beverages: WT/DS8, WT/DS10 and WT/DS11), Japan agreed to eliminate its tariffs on imports of brandy, Bourbon, rye and other whiskies, rum, gin, vodka and liqueurs. Specifically, as indicated in Annex B to its “Mutually Acceptable Solution on Modalities for Implementation,” which was circulated to WTO members on January 12, 1998, Japan agreed to apply a tariff of zero on imports of these spirits categories from April 1, 2002 forward. Furthermore, Japan stated in this communication that it “will not raise tariffs rates above those specified in Annex B” and that the “GOJ will apply the rates listed in Annex B in full recognition that Japan’s WTO bound rates are higher and intends to bind these tariff reductions in the WTO at the next possible opportunity to modify the Schedule of Japan following a multilateral, multi-sectoral negotiation.” Japan has bound at the WTO the zero-duty rate on brandy and whiskeys only.

Request: We urge the U.S. government to secure Japan’s commitment in the IPEF negotiations to eliminate its tariffs on rum, gin, vodka and liqueurs in the WTO as soon as possible, consistent with the terms of the 1997 settlement as described above. Japan in the context of the TPP agreed to eliminate its tariffs on a few sub-categories in the “other” category under 2208.90 between 6-11 years

II. Technical Barriers

Lot Codes

The use of lot codes on beverage alcohol containers is not required under Japan’s Food Sanitation Law. Yet, it 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.

DISCUS recently learned that the NTA has communicated to Japanese industry its interest in pursuing rules to prohibit the sale of beverage alcohol products where the lot code has been erased, including through the imposition of penalties. However, no rulemaking process has yet been initiated.

Request: DISCUS seeks the U.S. government's support to ensure that: 1) Japan expressly prohibits the sale of distilled spirits products with erased/tampered/altered lot codes; and 2) Japanese regulators have the authority to assess appropriate penalties to effectively deter future violations.

III. Trade Statistics

In 2021, Japan ranked as the U.S. spirits sector's third-largest export market, with exports valued at \$118 million, down nearly 6% from 2020. Through August 2022, American spirits exports to Japan are down nearly 9% compared to the same period in 2021 (January-August).

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. 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 | <i>Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol; spirits, liqueurs, and other spirituous beverages.</i> | | 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. Technical Barriers

Standards and Blocked Shipments

Malaysia is blocking shipments of certain distilled spirits products bottled at less than 17% a.b.v. due to the sudden enforcement of longstanding, but previously unenforced, alcohol content requirements. Liqueurs and cordials, and spirits-based RTDs are the two categories most impacted by the blockage. Malaysia prohibits the importation of spirits that do not meet a defined category. In Malaysia, there is no defined category for spirits-based RTDs and the minimum alcohol content requirement for liqueurs is 17% a.b.v.

Malaysia has indicated that allowing the sale of low-alcohol spirits products will increase the availability of beverage alcohol. However, under Malaysia's current standards, for example, the alcohol content requirement for wine is between 7% a.b.v – 15% a.b.v, and a maximum 20% a.b.v. for wine cocktails, vermouth and wine aperitifs, while the maximum a.b.v. content for cider is 8.5% a.b.v.

In a related matter, earlier this year Malaysia issued revisions to the spirits standards of identity under *Food Regulations, 1985* and conducted a domestic consultation, which it did not notify to the WTO for stakeholder feedback. DISCUS was unaware of the proposal and did not submit a comment. The proposal is not final and is still under review. On October 27, 2022, it appears that Malaysia notified proposed amendments to its spirits standards under the *Food Regulations, 1985* to the WTO (G/TBT/N/MYS/114). Malaysia did not include proposed regulatory text in the notification. However, it's DISCUS' understanding that it's the proposed revisions from earlier this year.

In October 2022, DISCUS sent a comprehensive letter to the Malaysian government raising concerns about the spirits blockage and its standards of identity.

Request: DISCUS respectfully requests the U.S. government's support in urging Malaysia to: 1) amend its standards to allow spirits bottled at less than 17% a.b.v.; 2) amend the "spirits drink" definition to be consistent with the U.S. standard; 3) modify the definition of vodka; 4) add a definition of flavored spirits consistent with U.S. standards; 5) provide distinctive product recognition for "Bourbon," "Tennessee Whiskey," and "American Rye Whiskey"; 6) modify its definition of liqueurs to establish no minimum alcohol content requirement; 7) remove the requirement that "compounded hard liquor" may only be sold in glass bottles holding at least 350 ml.; 8) provide a transition period of at least 18 months; 9) confirm that products already in the marketplace may continue to be sold; and 10) confirm that the proposed revisions it recently notified to the WTO (G/TBT/N/MYS/114) is the same proposal from earlier this year.

III. Trade Statistics

In 2021, Malaysia's imports of U.S. spirits were valued at \$1.4 million, representing a nearly 970% increase from 2020. Through August 2022, U.S. exports reached \$1.4 million, reflecting a 164% increase relative to the same period in 2021 (January-August).

MEXICO

I. U.S.-Mexico-Canada Agreement

DISCUS strongly supported the negotiation and Congressional approval of the USMCA, which reaffirms commitments to tariff-free trade in spirits in North America and the internal sale and distribution of distilled spirits. The agreement also reaffirms very important distinctive product recognition protections for “Bourbon” and “Tennessee Whiskey” in Mexico and for “Tequila” and “Mezcal” in the U.S. In addition, Mexico agreed to begin the process to grant distinctive product recognition for “American Rye Whiskey.”

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

II. Technical Barriers

Labeling & Standards (NOM 142 & NOM 199)

Mexico is drafting an update to its mandatory health standard, which includes standards of identity and labeling requirements of beverage alcohol products (NOM 142), which will be published sometime in the fall of 2022. DISCUS understands that Mexico will consolidate its *Official Standard PROY-NOM-199-SCFI-2017, “Alcoholic Beverages – Names, Physical-Chemical Specifications, Commercial Information, and Testing Methods* (NOM 199) into the amended NOM-142.

Mexico notified revised drafts of NOM 142 to the WTO’s TBT and SPS Committees in 2013 and 2014. DISCUS submitted comments in response to both notifications. In April 2015, Mexico notified the final version to the WTO. The labeling provisions went into effect on March 23, 2016, and the rest of the standard goes into effect on either July 21, 2015, or August 20, 2015, depending on the provision.

The final NOM 142 text partially addressed DISCUS concerns related to new date-marking, translation, and allergen provisions. However, it did not address concerns related to maximum alcohol content, analytical parameters, or lot codes. Many of the provisions, including the maximum alcohol content provision and the analytical parameters, have been in place at least since 1997.

Mexico notified a revised draft NOM 199 to the WTO in April 2016 (G/TBT/N/MEX/302), and DISCUS submitted extensive comments. In November 2017, Mexico notified the final

version of its revised NOM 199 to the WTO. The labeling provisions went into effect on January 1, 2020, and the rest of the standard went into effect on January 1, 2018.

The final NOM 199 text did not address DISCUS' concerns related to the definitions of whiskey and rum, labeling for liqueurs and cordials, cocktails and prepared alcoholic beverages, the use of analytical parameters in product definitions, and maximum and minimum alcohol content requirements.

Request: DISCUS seeks the U.S. government's assistance in ensuring that Mexico notifies the proposed revised NOM 142 to the WTO's TBT Committee for stakeholder feedback.

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. DISCUS submitted a comprehensive comment in response, largely seeking confirmation that it would be implemented consistent with the 2006 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.

On May 11, 2022, Mexico notified the final version of the regulation to the WTO (G/TBT/N/MEX/472/Add.1), which went into effect on October 15, 2022. It does not appear that Mexico made any revisions to the draft. However, Mexico did include a reference to the Tequila MOU the final regulation's Bibliography, and not in the "Normative Reference" section. DISCUS was advised that it's listing in the Bibliography, as opposed to the "Normative Reference" section, does not affect its status as a binding international agreement or its enforceability.

Request: We seek the U.S. government's support in to ensure: 1) the regulation is implemented in a manner consistent with the 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; and 6) bottlers are allowed to source Tequila from more than one supplier, as necessary.

III. Trade Statistics

U.S. spirits exports were valued at \$78 million in 2021, up nearly 19% from 2020. In 2021, Mexico ranked as the 8th largest export market for U.S. distilled spirits, up from the 9th largest in 2020. Through August 2022, American spirits exports to Mexico reached \$59 million, up 33% compared to the same period in 2021 (January-August).

SINGAPORE

I. Technical Barriers

Standards

In June 2021, Singapore issued a proposal to eliminate its standards of identity for food products, including distilled spirits (Food Regulations Standards 201 to 210). DISCUS was unaware of the initial proposal, which was not notified to the WTO, and did not submit a comment through Singapore's internal process.

Singapore intends to eliminate its standards of identities for a wide range of food categories in two-phases. Phase 1 is tentatively targeted for the fourth quarter of 2022, and Phase 2 is tentatively targeted for some time in 2023. Singapore notified the first phase of its proposal, which did not include distilled spirits, to the WTO's TBT Committee for comment (G/TBT/N/SGP/64, March 15, 2022).

Singapore has indicated that the removal of standards of identity would allow for product innovation, which would otherwise be stifled by fixed standards of identity. In addition, Singapore has indicated that the Codex Alimentarius Commission has adopted many food commodity standards, while on the local front, there are Singaporeans Standards for industry to refer to. However, in the case of the distilled spirits sector, there are no CODEX standards.

We are concerned that eliminating the standards of identity for distilled spirits may lead to consumer misinformation and confusion and risk category/brand reputation and unfair competition. Singapore does not recognize "Bourbon" and "Tennessee Whiskey" as distinctive products of the U.S.

Request: Urge Singapore to; 1) retain its existing standards of identity for distilled spirits; and 2) recognize "Bourbon," "Tennessee Whiskey," and "American Rye Whiskey" as distinctive products of the U.S.

II. Trade Statistics

In 2021 U.S. spirits exports to Singapore totaled \$13.5 million, a 39% increase from 2020. In the January-August 2022 period, U.S. spirits exports were valued at \$7.6 million, representing a 5% increase from the same period in 2021 (January-August).

SOUTH AFRICA

I. Import Policies

Tariffs

South Africa's applied tariffs on imported spirits range from 1.54 Rand/liter for bottled spirits to 1.36 Rand/liter for spirits imported in bulk. Although its applied rates are relatively low on an *ad valorem*-equivalent basis (about 5%), 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.

U.S. distilled spirits are at a competitive disadvantage in the South African market vis-à-vis EU- and UK-origin spirits, such as Blended Scotch Whiskey and Cognac, as a result of EU- and UK-origin spirits entering duty-free under the EU-South Africa Free Trade Agreement and UK-Southern Africa Customs Union and Mozambique (SACUM) Trade Agreement. As of 2012, all EU-origin spirits enter South Africa duty-free and UK spirits began to enter duty-free on January 1, 2021. 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 their 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- and UK-origin spirits.

II. Technical Barriers to Trade

Standards

In December 2021, South Africa notified several new, potentially problematic changes to its spirits standards and labeling regulations to the WTO (G/TBT/N/ZAF/48/Rev.2/Add.1). In February 2022, DISCUS submitted a comprehensive comment raising concerns with the proposal and the current standards of identity.

In July 2022, South Africa published the final standard. Unfortunately, South Africa did not take any of our comments into consideration. As such, there are some products in the market that do not fit into either the spirit aperitif or flavored spirit category.

Industry contacts recently reported that South Africa has agreed to revisit this issue and conceded that it was an oversight on their part and the regulations.

Request: DISCUS seeks the U.S. governments continued assistance to urge South Africa to: 1) establish a minimum alcohol content of 40% a.b.v for gin, vodka, neutral spirits, brandy, rum, and whiskey, with no upper limit; 2) adopt the U.S. standard of identity for flavored spirits or alternatively raise the maximum alcohol content of “spirits aperitifs” from 30% a.b.v to 37.5% a.b.v; and 3) provide protections for distinctive American Whiskeys.

III. Trade Statistics

In 2021, spirits imports from the U.S. increased 80% from the previous year and were valued at \$19.7 million. From January -August 2022, imports of U.S. distilled spirits totaled \$13.3 million, a 3% decrease from the same period in 2021 (January-August).

TAIWAN

I. U.S.-Taiwan Initiative on 21st-Century Trade Agreement

DISCUS and its members strongly support efforts to liberalize trade and deepen economic relations with Taiwan. On July 8, 2022, DISCUS submitted detailed objectives for the U.S.-Taiwan Initiative on 21st-Century Trade. Negotiations with Taiwan have the potential to further strengthen U.S. economic relations in the Indo-Pacific region and provide significant opportunities for U.S. distilled spirits exporters.

Request: DISCUS urges the administration to continue negotiations with Taiwan under the U.S.-Taiwan Initiative on 21st-Century Trade, in order to secure increased market access for U.S. distilled spirits products. The U.S. spirits sector's primary objectives for the negotiations are to secure:

- the reduction of the 40% ad valorem tariff on non-standardized spirits;
- adoption of a single tax rate on distilled spirits;
- recognition for “Bourbon,” “Tennessee Whiskey,” “American Rye Whiskey,” and “American Single Malt Whiskey” as distinctive products of the U.S.
- good regulatory practices for the labeling and certification of distilled spirits products;
- the prohibition of the sale of distilled spirits with erased/tampered/altered manufacturers lot codes; and
- the opening of the e-commerce retail channel to distilled spirits.

II. 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 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. U.S. regulations prohibit the alteration, removal, and/or destruction of any mark, brand, or label on beverage alcohol containers within the stream of commerce, regardless of whether that information is mandatory or voluntary. Thus, the removal or alteration of any lot code from beverage alcohol containers is prohibited under U.S. law and regulations. There is no similar provision in Taiwan’s regulations.

Request: DISCUS seeks the U.S. government’s support in urging Taiwan to expressly prohibit the sale of distilled spirits products with erased/tampered/altered manufacturer lot codes. In addition, Taiwanese authorities should have the authority to conduct systematic inspections and assess appropriate penalties to serve as an effective deterrent to future violations.

III. Trade Statistics

U.S. spirits exports to Taiwan were valued at almost \$6.6 million in 2021, representing a 98% increase from 2020. Through August 2022, American spirits exports to Taiwan totaled \$4.6 million, an 8% increase as compared to the same period in 2021 (January-August).

THAILAND

I. Import Policies

Tariffs

Thailand's tariff rates on imported spirits are exceptionally high by international standards and serve as significant barriers to trade. The country's applied rate, which are the same as its WTO bound rate, is 60% *ad valorem* for all spirits.

Request: DISCUS respectfully requests the U.S. government's support in securing Thailand's commitment to eliminate its tariffs on U.S. spirits imports.

II. 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.

III. 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 | <i>Ad Valorem</i> | (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.

IV. Trade Statistics

In 2021, direct U.S. spirits exports totaled \$892,307, a 66% decrease compared with 2020. From January to August 2022, spirits exports from the U.S. reached nearly \$1.9 million, a 202% increase compared with the same period in 2021 (January-August).

TURKEY

I. Import Policies

Retaliatory Tariffs

Since June 2018, Turkey has imposed 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. However, on May 21, 2019, Turkey reduced its tariff back to 70%. Since the imposition of the tariff, American spirits exports to Turkey declined by nearly 47%, from nearly \$17 million to approximately \$9 million (2018-2021).

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.

II. Technical Barriers

Warning Statement

In June 2014, Turkey 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, does not reflect the current body of scientific evidence, and does not provide any useful information to consumers.

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 must 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 2021, U.S. spirits exports to Turkey reached \$9 million, down 48% from 2020. From January to August 2022, spirits exports from the U.S. reached \$6.9 million, a 43% increase compared with the same period in 2021 (January-August).

UNITED KINGDOM

I. Import Policies

Retaliatory Tariffs

Between June 2018-June 2022, the UK imposed 25% retaliatory tariffs on American Whiskeys in response to U.S. Section 232 tariffs on steel and aluminum. The UK was a member of the EU when the tariff on American Whiskey was imposed. Due to the tariff, American Whiskey exports to the UK, our third-largest American Whiskey market, declined by 53%, from \$150 million to \$88 million (2018-2021).

In May 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. 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 U.S. and UK reached an agreement in March 2022 to remove the UK's 25% retaliatory tariff on American Whiskeys on June 1, 2022.

Between November 2020 and June 2021, 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. The U.S. and UK reached an agreement to suspend U.S. tariffs on UK spirits in the dispute in June 2021 for five years.

The agreements in the WTO Boeing-Airbus and steel and aluminum disputes are important building blocks to reset the relationships with and UK and we urge the administration to build on this positive momentum.

Request: We urge the administration to secure the permanent return to zero-for-zero tariffs on distilled spirits between the U.S. and UK.

II. Trade Statistics

In 2021, the UK ranked as the third-largest export market for American spirits, up from the fourth-largest in 2020. Total spirits exports reached \$106 million 2021, up 27% from 2020. From 2018-2020, total U.S. distilled spirits exports 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 82% of the 2021 U.S. export total by value.

Through August 2022, American spirits exports to the UK reached \$83.3 million, up nearly 29% compared to the same period in 2021 (January-August). Through August 2022, American Whiskey exports to the UK are up over 8% as compared to the same period in 2021 (January-August) to reach \$56 million.

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.

Request: As part of the IPEF negotiations, DISCUS respectfully requests the U.S. government's support to secure Vietnam's commitment to eliminate its tariff on American spirits. Vietnam agreed in the context of the TPP negotiations to an 11-year phase out for U.S. whiskeys (220830) and other spirits (220890), and 12 years for all other categories of U.S. spirits.

II. Technical Barriers

Nutrition Labeling

On April 19, 2022, Vietnam notified a proposal to revise its food labeling regulation, which applies to beverage alcohol products, to require the inclusion of nutrition information (energy, protein, carbohydrate, sugars, fat, and sodium) on the label. DISCUS submit a comment as part of the government's request for comment on June 17, 2022. The proposal went into effect on September 15, 2022, with a transition period through December 31, 2024.

As part of our June 2022 comment, DISCUS requested that Vietnam: 1) allow U.S.-origin spirits to utilize a TTB-approved Serving Fact Panel or Statement of Average Analysis to meet the nutrition labeling requirement; 2) allow for nutrition information to be provided on the company website through an on-label QR code or website reference; 3) confirm that the use of stickers is permitted; and 4) confirm that spirits placed on the shelf prior to the conclusion of the phase-in will continue to be able to be sold.

On September 26, 2022, Vietnam responded jointly to the individual comments from DISCUS, the Wine Institute, USDA, and the International Council of Beverages Associations. As part of this response, Vietnam did not take DISCUS' comments into account to allow U.S.-origin spirits to utilize TTB-approved formats to meet the nutrition labeling

requirements. However, Vietnam indicated that its Ministry of Health is still considering whether to exempt beverage alcohol products from the requirement.

Request: DISCUS respectfully requests the U.S. government's support in urging the Vietnamese Ministry of Health to exempt beverage alcohol products from the proposed nutrition labeling requirements.

III. Trade Statistics

In 2021, direct spirits exports from the U.S. fell 74% to \$3 million. Through August 2022, U.S. spirits exports to Vietnam reached \$1.7 million, an 23% decrease compared to the same period in 2021 (January-August).



III. 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 include multiple types of grains even if a single type of grain is identified on the label; 4) extend distinctive product recognition to “Tennessee Whiskey,” and “American Rye Whiskey;” and 5) provide an update on the status of the proposal.

II. Trade Statistics

In 2021, direct U.S. spirits exports reached \$5.7 million, a 134% increase from 2020. In the January-August 2022 period, U.S. exports were valued at \$8.7 million, representing a 152% increase from the same period in 2021 (January-August).

ANGOLA

I. Import Policies

Strip Stamps

In January 2021, Angola published a decree to establish an excise tax stamp system for beverage alcohol products, tobacco products, and carbonated and sweetened drinks. It was originally scheduled to go into effect on April 10, 2022. The proposal was not notified to the WTO. Under the proposal, the stamp must be affixed at origin for imported products, and there is no transition clause and goods on the market only have 6-months to comply. Angola then delayed implementation to January 1, 2023, and subsequently suspended its implementation. According to industry contacts, Angola may issue a new proposal following its general elections in August 2022.

Request: We seek the U.S. government's assistance in urging Angola to notify a proposed regulation to the WTO for stakeholder feedback.

II. Trade Statistics

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

BOLIVIA

I. Other Barriers

Distinctive Product Recognition

On January 6, 2020, the U.S. and Bolivia agreed in an exchange of 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 2021, 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.

DISCUS submitted a comment in October 2021 expressing support for the proposed reciprocal recognition of each country’s distinctive distilled spirits, urging TTB to: 1) confirm that Bolivia will recognize “Bourbon Whiskey” and “Tennessee Whiskey” as distinctive products within 30 days of U.S. publication of a Final Rule regarding “Singani”; and 2) urge Bolivia to extend similar recognition to “American Rye Whiskey” and “American Single Malt Whiskey.”

Request: DISCUS seeks the U.S. government’s support in ensuring that Bolivia follows through with its commitments under the exchange of letters and to secure similar protection for “American Rye Whiskey” and “American Single Malt Whiskey.”

II. Trade Statistics

In 2021, spirits imports from the U.S. increased 13% from the previous year and were valued at \$111,298. From January-August 2022, imports of U.S. distilled spirits totaled \$175,636, a 64% increase from the same period in 2021 (January-August).

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 July 2022, a Resolution (Nº RES-DGH-029-2022) was published in the National Gazette updating the specific tax as follows:

**Costa Rican Specific Excise Tax Rates
As of July 15, 2022**

| Alcohol Strength | Tax Rate per mL pure alcohol (in colones (¢)) |
|----------------------------------|-----------------------------------------------|
| Less than or equal to 15% a.b.v. | 3.7 |
| Greater than 15% to 30% a.b.v. | 4.49 |
| Greater than 30% a.b.v. | 5.23 |

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* (¢4.49 per mL of pure alcohol) – the primary product category that is produced locally, than to mostly imported product categories such as whiskey, vodka, etc., (¢5.23 per mL of pure alcohol), the tax system has the effect of applying a lower rate of tax on local products than on directly competitive and substitutable imported spirits in a manner that provides protection to the domestic industry in contravention of GATT Art. III:2. In four WTO dispute settlement cases concerning internal taxation of beverage alcohol (Japan – DS8, 10 and 11; Korea – DS 75 and 84; Chile –DS 87 and 110; and the Philippines – DS 396 and 403), the WTO has clearly upheld that all products under the HTS 2208 sub-chapter are, at a minimum, directly competitive and substitutable and therefore should be taxed similarly.

Second, in the administration of the tax, domestic producers pay the tax on a monthly basis, while importers must carry the financial burden of paying the tax before imports can be released from Customs. To the degree that the difference in administration places a greater burden on importers than on the domestic industry, DISCUS is concerned that there may be

a potential GATT violation.

Request: DISCUS requests that the U.S. government urge Costa Rica to remove the discriminatory excise tax for spirits consistent with its international commitments.

II. Trade Statistics

In 2021, U.S. exports of spirits to Costa Rica were valued at \$1.4 million, representing a 92% decrease from 2020 export values. In the January-August 2022 period, U.S. spirits exports were valued at almost \$1.1 million, representing a 163% increase from the same period in 2021 (January-August).

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, unsurprisingly, 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 \$2.1 billion beverage alcohol retail market (Euromonitor). Distilled spirits accounted for 18% of total beverage alcohol retail sales, while wine accounted for 47% of the market in terms of retail sales in 2021 (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 nearly four times larger than in Hong Kong in 2021 (Euromonitor), accounting for 35% 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 \$2.8 million, a 3% decrease from 2020, while U.S. spirits exports to Singapore reached \$13.5 million in 2021. Through August 2022, total U.S. spirits exports to Hong Kong were valued at \$2.2 million, an increase of 14% from the prior year (January-August 2021).

INDONESIA

I. Import Policies

Tariffs

In 2015, Indonesia changed its import tariff on distilled spirits to 150% ad valorem. Previously, Indonesia applied a specific tariff rate per liter.

Request: DISCUS respectfully requests the U.S. government's support to secure the elimination of Indonesia's tariff on American spirits.

Excise Stamps

Since 2018, importers must 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) Ministry of Finance No.158/2018 | | |
|-----------------------------------------------------------------------|--------|----------|
| 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.

III. Trade Statistics

Total spirits exports from the U.S. to Indonesia in 2021 were valued at \$530,064, a 31% decrease from 2020. In the January-August 2022 period, U.S spirits to Indonesia totaled \$119,505, representing a 19% decrease from the same period in 2021 (January-August).

KENYA

I. U.S-Kenya Strategic Trade and Investment Partnership

DISCUS supports efforts to deepen trade with Kenya, which can serve as a model for additional agreements across Africa and strengthen African integration. In April 2020, DISCUS submitted comments on the negotiation objectives of a comprehensive trade agreement with Kenya. DISCUS strongly supports the relaunch of the negotiations. In September 2022, DISCUS submitted comments on the negotiation objectives of the proposed U.S.-Kenya Strategic Trade and Investment Partnership (STIP).

Request: Our primary objectives for the STIP are to secure:

- the elimination of the 25% ad valorem tariff on all U.S. distilled spirits;
- recognition for “Bourbon,” “Tennessee Whiskey,” “American Rye Whiskey,” and “American Single Malt Whiskey” as distinctive products of the U.S.;
- commitments on regulatory best practices for the labeling and certification of distilled spirits, similar to the USMCA; and
- the inclusion of the EAC in this negotiation or also launch parallel negotiations as soon as possible.

II. Technical Barriers

Labeling

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 could 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. Other Barriers

IP Registration

In July 2021, Kenya’s Anti-Counterfeit Authority (ACA) issued a regulation to require brand owners to register their IP rights per brand with the ACA. However, locally manufactured

goods are exempt from the registration requirement. The requirement is based on the 2008 Anti-Counterfeit Act and applies to all sectors, not just distilled spirits.

In April 2022, the ACA issued a notification opening the registration process. Imported products that were not registered by July 1, 2022, may not be imported after that date. The ACA subsequently postponed the deadline to January 1, 2023. Penalties also include fines and potential imprisonment. However, the operational details remain unclear.

Request: DISCUS seeks the U.S. government's assistance in urging Kenya to: 1) further delay implementation; 2) provide clarification on its operation; and 3) ensure it's implemented in a manner consistent with its National Treatment commitments under the WTO agreements.

IV. Trade Statistics

In 2021, Kenyan imports of U.S. distilled spirits remained almost flat at \$3 million. From January-August 2022, spirits imports from the U.S. totaled \$2.2 million, a 27.9% increase from the same period in 2021 (January-August).

NEPAL

I. Import Policies

Import Ban

To conserve the country's foreign exchange reserves, on April 27, 2022, the government of Nepal imposed a ban on the imports of certain products, including alcoholic beverages. While this was intended to be a temporary measure to remain in effect until the end of the country's financial year, it has since been extended three separate times, most recently until December 15, 2022.

While Articles XII and XVIII:B of GATT 1994 and The Understanding on the Balance-of-payments Provisions of the GATT 1994 allows countries to take otherwise WTO-inconsistent measures to safeguard their external financial position and protect their balance-of-payments, certain factors must be met. In order to do so, the measure must: 1) not apply restrictions so as to prevent unreasonably the importation of any description of goods in minimum commercial quantities the exclusion of which would impair regular channels of trade; 2) not exceed what is necessary to address the balance-of-payments at hand; 3) avoid unnecessary damage to the commercial and economic interest of other WTO Members; and 4) be temporary in nature. Moreover, Members are required to notify any measures to the WTO's Balance of Payments (BoP) Committee and must enter into consultations within four months to determine whether the measure is compliant with the WTO's balance-of-payments provisions.

Nepal's failure to notify the measure to the BOP Committee represents a violation of its WTO commitments. Nepal's decision also violates its commitments to only impose measures to "control the general level of imports" and prioritize the imposition 'price-based' rather than quantitative restrictions. We are concerned that Nepal's actions are not intended to "control the general level of imports", and thus exceed what is "necessary" to address the intended issue. In instances where quantitative restrictions are imposed, Members are required to provide justification as to why price-based measures are inadequate, which Nepal failed to do.

Request: DISCUS respectfully requests the U.S. government's assistance in urging Nepal to: 1) notify its restrictions to the WTO BOP Committee; and 2) ensure that it's implemented in a manner consistent with its WTO obligations.

II. Trade Statistics

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

PERU

I. Other Barriers

Discriminatory Taxation

Peru has imposed a discriminatory excise tax (*Impuesto Selectivo al Consumo*, or ISC) since at least 2004 when it introduced a 20% *ad valorem* tax rate on most distilled spirits and a specific rate of 1.50 Peruvian Nuevo Sol (PEN) per liter for domestically-produced pisco. This discrimination was increased by an amendment in May 2013 that imposed a new excise tax structure requiring products other than pisco to face the higher of either a specific rate or *ad valorem* rate which was increased.

On January 29, 2022, Peru again increased its excise tax. The decree increases the rate for beverage alcohol products over 20% a.b.v. from 3.55 PEN/Liter to 3.63 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 2.22 PEN/liter to 2.27 PEN/liter. The current rates are indicated in the following table:

| Product | Alcohol by Volume | Minimum Specific Rate | Ad Valorem Rate |
|---------------------------------|-------------------|-----------------------|-----------------|
| Pisco | - | 2.27 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% | 3.63 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 2021, U.S. distilled spirits exports were valued at \$1.9 million, representing a decrease of 5.6% from 2020 levels. Through August 2022, U.S. exports reached \$2.2 million, reflecting a 121% increase relative to the same period in 2021 (January-August).