DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

October 23, 2023

Laura Buffo
Chair of the Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

RE: USTR-2023-0010: Comments Regarding Foreign Trade Barriers to U.S. Exports – Submission by the Distilled Spirits Council of the United States, Inc. (88 *Fed. Reg.* 62421 (September 11, 2023))

Dear Ms. Buffo:

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 2022 valued at nearly $2.06 billion (USITC Dataweb). Through July 2023, American Spirits exports are up 27% and American Whiskey exports are up 54% as compared to the same period in 2022 (January – July).

Our submission responds to the 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 standards-related measures.

We very much appreciate the opportunity to provide these comments and will be pleased to supplement them in the future as the issues evolve.

Sincerely,

Robert Maron
Vice President
International Issues and Trade

Attachment

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

FOREIGN TRADE BARRIERS

TO

U.S. DISTILLED SPIRITS EXPORTS

Distilled Spirits Council of the United States
October 2023

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

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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. Since 2002, total American spirits exports have increased by nearly 293% to $2.06 billion, and total American Whiskey exports increased by nearly 242% to $1.3 billion. American Whiskey drives U.S spirits exports, accounting for 62% of total American spirits exports. Through July 2023, American spirits exports are up 27% and American Whiskey exports are up 54% as compared to the same period in 2022 (January-July). (USITC Dataweb)

The elimination of import tariffs through various U.S. trade agreements has created a fair playing field for American spirits. In 2022, U.S. spirits exports to countries with free trade agreements or zero duties amounted to $1.7 billion, making up 82% of the total exports of U.S. spirits. On the other hand, exports to countries with high tariffs, such as India (150% tariff), Vietnam (45% tariff), and Brazil (20% tariff on all imported distilled spirits, except bulk whiskey, which is 12% tariff) amounted to only $67 million, accounting for just 3% of the total U.S. spirits exports in 2022. (USITC Dataweb)

In 2022, U.S. spirits were exported from small, medium, and large distillers located in 44 states, up from 41 in 2020 (U.S. Census Bureau). The U.S. spirits sector supports the direct and indirect employment of an estimated 1.7 million people across America. In 2022, 2.73 billion pounds of grains were used to produce U.S. whiskey, brandy, rum, gin, and vodka, up 133% over the last decade. (Alcohol Tobacco Tax and Trade Bureau)

In the past few years, trade conflicts unrelated to the spirits industry have led to retaliatory tariffs on select U.S. spirits products in crucial export markets. This has impeded the overall growth of U.S. spirits exports. From 2018 to 2021, there was a 12% decrease in total U.S. spirits exports and a decrease of 18% in total American Whiskey exports. (USITC Dataweb)

In 2022, U.S. spirits exports rebounded over pre-tariff levels in 2017 (the last full year before retaliatory tariffs) due in large part to the suspension of retaliatory tariffs on a range U.S. spirits exports by the EU and UK. The chilling effects of the tariffs, supply chain issues, increased shipping costs, and inflation have made it difficult for many craft distillers to regain their footing in the market. If these retaliatory tariffs were to return, they would reverse the rebound in U.S. spirits exports in 2022 and accelerated through 2023.

In 2022, the top five markets for U.S. distilled spirits exports by value were Canada ($262.5 million, up 8.4%), the Netherlands ($167.2 million, up 28.4%), the U.K. ($158.4 million, up 49.3%), Spain ($145.7 million, up 57.8%), and Australia ($141.2 million, up 39.1%). The top five markets for American Whiskey exports by value were the Netherlands ($151.2 million, up 95.7%), Australia ($117.1 million, up 39.1%), the U.K. ($112.1 million, up 28.3%), Germany ($103.5 million, up 27.8%), and Japan ($102.4 million, up 7.2%). (USTIC Dataweb).

In 2022, the top 10 states exporting U.S. spirits were: 1) Tennessee ($817.8 million); 2) Kentucky ($507.3 million); 3) Florida ($344.6 million); 4) Texas ($249.4 million); 5) Illinois ($114.2 million); 6) Indiana ($89.1 million); 7) Arkansas ($67.3 million); 8) New York ($65.4 million); 9) California ($52.7 million); and 10) New Jersey ($28.1 million). (U.S. Census Bureau).

Retaliatory Tariffs: Retaliatory tariffs on U.S. distilled spirits products are suspended as part of trade disputes with the EU and UK over steel-aluminum and aircraft subsidies. The only retaliatory tariffs that remain on U.S. distilled spirits are those applied by China and by Turkey. However, if an agreement in the steel and aluminum dispute is not reached with the EU by December 31, 2023, the EU will reimpose its retaliatory tariffs on American Whiskeys, but this time at a rate of 50%, effective January 1, 2024.

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, despite the temporary suspension of tariffs with the EU. The impact is felt across the U.S. throughout the 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 imposed by the EU, the UK, China, and Turkey on U.S. spirits.

> 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 retaliatory tariff, American Whiskey exports to the EU, our largest American Whiskey export market, plunged 20%, from $552 million to $440 million (2018-2021). (USITC Dataweb)
>
> In October 2022, the U.S. and EU agreed to suspend the EU's 25% retaliatory tariff on American Whiskeys for two years starting January 1, 2022. As a result, American Whiskey exports to the EU increased by 29% in 2022 compared to 2021, reaching $566 million in 2022. This accounted for 44% of all American Whiskey exports, surpassing the pre-tariff level of $518 million in 2017. Through July 2023, American Whiskeys exports to the EU are up nearly 99% as compared to the same period in 2022 (January-July). (USITC Dataweb)
>
> On October 21, 2023, Presidents Biden and von der Leyen released a joint statement following the U.S.-EU Presidential Summit acknowledging that they have not yet reached a final agreement in the steel and aluminum dispute and will continue the

negotiations over "the next two months." If an agreement in the steel and aluminum dispute is not found by December 31, 2023, the EU will reinstate the 50% retaliatory tariff on American Whiskey starting January 1, 2024. This could halt the growth and put American Whiskey exporters at a significant disadvantage in their largest export market.

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 between 2018-2021. 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. In 2022, American Whiskey exports to the UK increased by nearly 28% as compared to 2021, reaching $112 million. However, it is still down 25% from the pre-tariff 2017 level of $149 million.

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 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. In June 2021, the U.S. agreed with the EU to suspend tariffs for five years as part of the 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 essential building blocks to reset the important relationships with the EU and UK and we urge the administration to build on this positive momentum. We are committed to working with the Biden administration to help secure the 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.

<u>China</u>: 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 (2018-2022). In the decade before the imposition of retaliatory tariffs, American spirits exports to China increased by nearly 137%.

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 36%, from nearly $17 million to approximately $11 million (2018-2022).

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 $1.17 billion in 2022, accounting for 82% of global U.S. spirits exports.

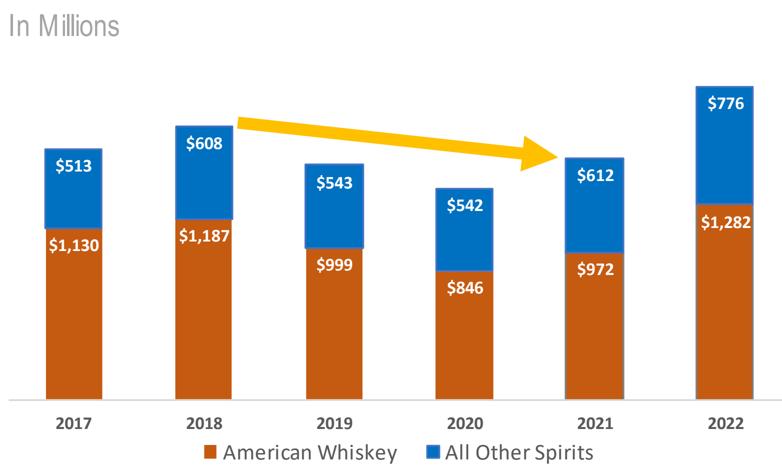
DISCUS supports new comprehensive bilateral/regional market-opening agreements, which we believe will contribute significantly to the continued growth of our sector. DISCUS supported the Congressional passage of the U.S.-Mexico-Canada Agreement (USMCA) implementing bill and continues to urge the administration to pursue new comprehensive trade negotiations to secure the reduction of tariffs for U.S. spirits exports.

DISCUS also strongly supports 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 275% through 2022.

Other Barriers to Trade: In addition to retaliatory tariffs, several priority target markets maintain high tariffs and 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.

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

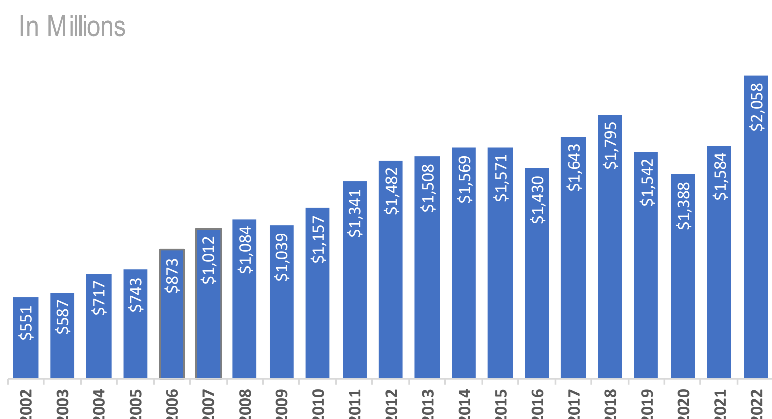
(2018 – 2021) U.S. Spirits Exports Declined Due to Retaliatory Tariffs



Source: USITC.

The U.S. Spirits Exports nearly quadrupled over the last two decades

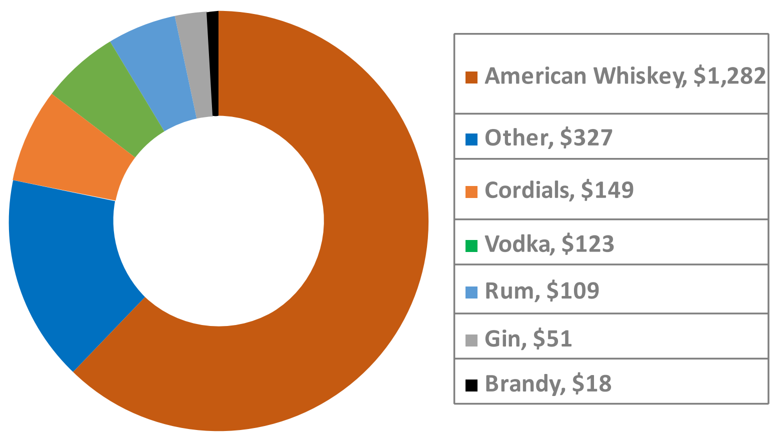
From $551 million in 2002 to $2.1 billion in 2022



Source: USITC.

American Whiskey accounted for 62% of total spirits exports in 2022

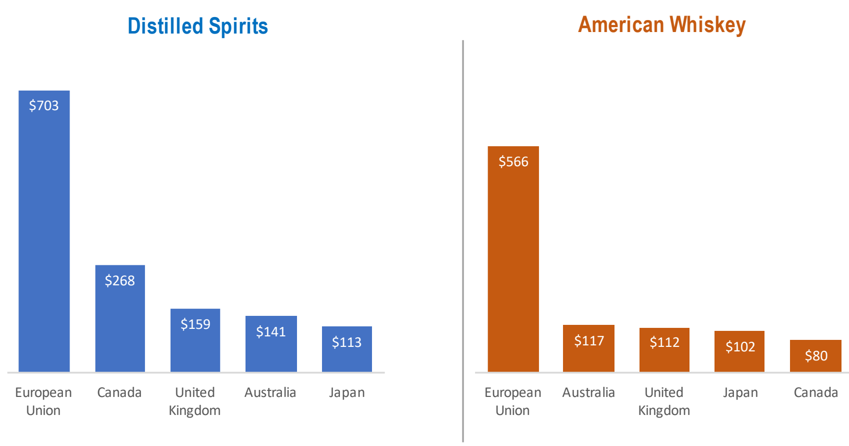
In Millions



Source: USITC.

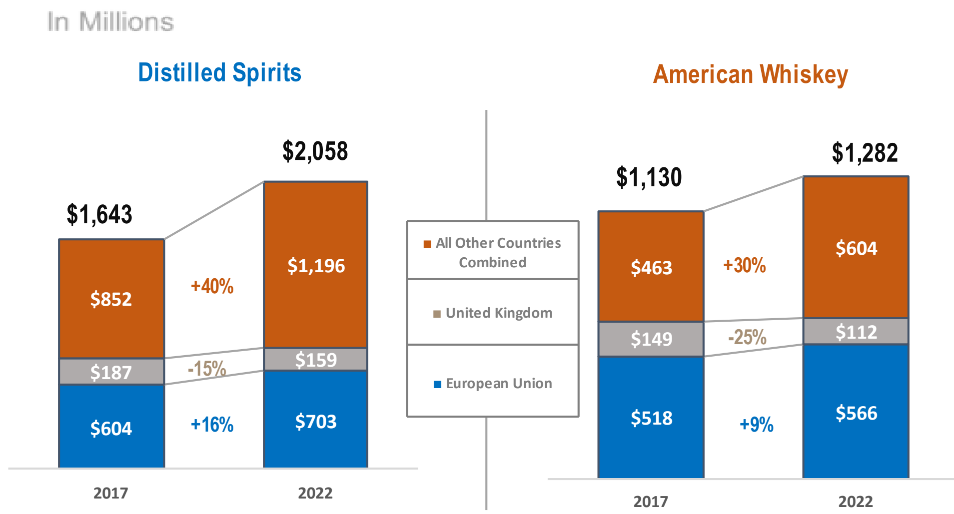
Top 5 Export Markets 2022

In Millions



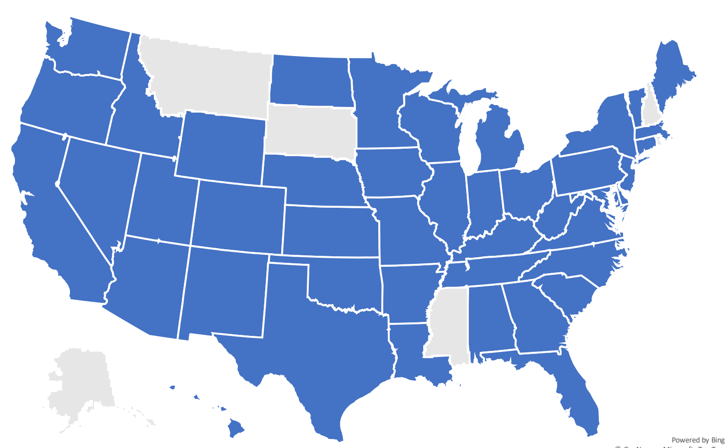
Source: USITC.

Spirits exports to EU and UK have underperformed other countries since 2017



Source: USITC.

Forty–four states exported distilled spirits in 2022



Source: Census.

III. MARKETS

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. Angola then delayed implementation to January 1, 2023, and subsequently suspended its implementation.

In May 2023, Angola published a new decree (N. 64/2023) on tax stamps. The new decree was not notified to the WTO and went into effect in July 2023. Under the revised proposal, the stamp may be applied in a bonded warehouse in Angola prior to its formal importation. However, it is very burdensome for importers to do so. As such, the manufacturer is *de facto* required to apply the tax stamp in the country of origin, prior to its export. Angola agreed to allow the tax stamps to be applied to products imported before July 11, 2023, in Angola.

Request: We seek the U.S. government's assistance in urging Angola to; 1) notify the regulation to the WTO for stakeholder feedback; 2) provide an additional transition period; 3) allow existing products to remain on the market until stocks are exhausted; 4) provide greater flexibility regarding the place where tax stamps can be affixed; and 5) issue guidelines explaining the conditions/processes for affixing tax stamps locally and abroad.

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.

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

ARGENTINA & URUGUAY

I. Technical Barriers

MERCOSUR Technical Regulation

In July and August 2023, Argentina and Uruguay notified proposed revisions to *Resolution No. 02/23- MERCOSUR Technical Regulation on Definitions related to alcoholic beverages (with the exception of fermented beverages), their raw materials and manufacturing processes (Repeal of GMC Resolution No. 77/94)* (G/TBT/N/URY/85 and G/TBT/N/ARG/444). The purpose of the proposal is to "update" and "harmonize" the definitions of spirits and it does not appear to make any substantive changes to the current standards.
In September 2023, DISCUS submitted similar comments to Argentina and Uruguay in response to their notifications to the WTO.

The current Technical Regulation includes analytical parameters, problematic maximum and minimum alcohol content levels, potentially problematic vodka and rum definitions, and does not provide for flavored spirits. In addition, the MERCOSUR Technical Regulation does not include a standard of identity for whiskey, and each MERCOSUR member state has its national whiskey standard. In fact, some of the national definitions of whiskey are inconsistent with each other, creating barriers to trade within the region.

Request: DISCUS seeks the U.S. government's support in urging Argentina, Uruguay, and the MERCOSUR member states to amend the Technical Regulation and: 1) implement it consistently across the region; 2) adopt a standard of identity and labeling requirement for whiskey consistent with U.S. regulations; 3) provide recognition for "Bourbon," "Tennessee Whiskey," and "American Rye Whiskey" as distinctive products of the U.S.; 4) eliminate the use of analytical parameters; 5) revise its proposed limits on methanol consistent with U.S. standards; 6) eliminate the maximum a.b.v limit for most spirits categories; 7) provide that vodka may possess the characteristics of the raw materials; 8) include a flavored spirits definition; and 9) eliminate any aging requirement for rum.

Labeling – Argentina

On October 4, 2023, Argentina notified a proposed regulation to the WTO's TBT Committee to amend its pregnancy pictograph warning requirement. The proposed changes include increasing the size of the pictogram, adding color requirements, and requiring two additional warning statements (G/TBT/N/ARG/450).

On May 18, 2021, Argentina published Joint Resolution No. 18/2021, which requires beverage alcohol product labels to display a black-and-white pregnancy pictogram by May

19, 2024. The minimum size of the pictogram is 6mm. In addition to the pictogram, beverage alcohol labels must include the following statements: 1) Drink in moderation; and 2) Sale prohibited to minors below 18.

The October 2023 proposal would repeal the current pictogram requirements and increase its minimum size to 10mm. Moreover, it would require warning statements related to pregnancy and drunk driving to be in black, red, and white. The following statement must accompany the pictogram and must be displayed "in characters of good prominence, size, and visibility": "Do not drink alcohol during pregnancy and breastfeeding." The following statement must be displayed "in bold capital letters in a clearly visible place with an appropriate color contrast": "IF YOU ARE GOING TO DRIVE, DO NOT DRINK ALCOHOL."

The proposal would go into effect two years after the regulation is implemented. However, it is unclear whether products placed on the shelf prior to the conclusion of the phase-in will continue to be able to be sold on the market until they are depleted.

Request: We seek the U.S. government's support to urge Argentina to: 1) revise the pictogram requirement to make the accompanying text voluntary, remove the color requirement, and recognize products that contain similar but not identical pictograph warnings without requiring a labeling change; 2) confirm that the required warning pictograph and statements may be placed on the front or the back label; 3) confirm that the warnings may be affixed via sticker either in the country-of-origin or in a bonded warehouse prior to the release of the goods into the market; and 4) confirm that products placed on the shelf prior to the conclusion of the phase-in will continue to be able to be sold on the market until they are depleted.

II. Trade Statistics

In 2022, direct U.S. spirits exports to Argentina reached $13 million, a 135% increase from 2021. In the January-July 2023 period, U.S. exports were valued at $369,622, representing a 95% decrease from the same period in 2022. (USITC Dataweb)

In 2022, direct U.S. spirits exports to Uruguay reached $11 million, a 148% increase from 2021. In the January-July 2023 period, U.S. exports were valued at $4.7 million, representing a 13% decrease from the same period in 2022. (USITC Dataweb)

AUSTRALIA & NEW ZEALAND

I. Technical Barriers

Labeling

In January 2023, Australia and New Zealand notified a proposal to the WTO to revise its food labeling standards to require energy information to be included on beverage alcohol labels (G/TBT/N/AUS/154 and G/TBT/N/NZL/118). Under the proposal, energy information must be provided (a) per serving and (b) per 100ml. In addition, the label must include the number of servings in a container. Under the proposal, producers can determine what constitutes a serving. Currently, a statement of the number of "standard drinks", as defined by the government, must be included on beverage alcohol labels. There is no requirement that the producer determined "serving" aligns with the "standard drink" labeling requirement.

Providing flexibility to beverage alcohol producers to determine serving sizes and requiring standard drinks also to be included may seriously mislead consumers as the two may not be consistent. As such, it may frustrate the objective of providing consumers with meaningful information that will help them make intelligent food choices, including about responsible alcohol consumption for consumers who choose to drink.

In addition, the proposal to require energy information per 100 ml for all beverage alcohol categories is misleading. The beverage alcohol sector is substantially different from other food categories, which are required to include energy content information per serving and 100ml. Such a requirement does not provide consumers with the basic information about the alcohol content in a serving of distilled spirit, wine, or beer in a manner to measure and moderate their drinking to help them make responsible consumption decisions.

The proposal has been delayed in order to coordinate with another consultation process for Food Standard Australia New Zealand's (FSANZ) work on P1049 - Carbohydrate and sugar claims on alcoholic beverages, which commenced public consultation in September 2023. Following response to stakeholder feedback FSANZ reported that it will undertake consumer testing of the energy labeling format to support its final decision. The FSANZ Board is due to consider the energy labeling proposal in December 2023, subject to the outcomes of the consumer testing. It also needs to be reviewed by the Australia and New Zealand Food Ministers.

Request: We seek the U.S. government's support in urging Australia and New Zealand to: 1) define a "serving size" as a "standard drink"; 2) only require energy information per standard drink; and 3) allow the energy information to be provided on the company website supported by an on-label QR code or website reference provided on the label.

II. Other Barriers

Discriminatory Taxation – Australia

As part of its 2021-2022 budget, Australia's Treasury Ministry announced in May 2021 that it would provide domestic small distillers with a full remission of any excise tax they pay, up to $350,000 AUD. The increased remission went into effect on July 1, 2021. The refund is only available to locally produced spirits and not to imported spirits.

Australia's excise tax remission for small local distillers violates GATT Article III, paragraph 2, as well as the national treatment provisions contained in Article 2.2 of the U.S.-Australia Free Trade Agreement, 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 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 assistance in urging Australia to abide by its WTO and FTA commitments and eliminate its discriminatory excise tax remission.

III. Trade Statistics

In 2022, U.S. spirits exports to Australia reached $141 million, up 39% from 2021. In 2022, Australia was the fourth-largest export market for total American spirits and second largest for American Whiskey. Through July 2023, U.S. spirits exports to Australia are up 41% as compared to the same period in 2022, totaling $94 million. (USITC Dataweb)

In 2022, U.S. spirits exports to New Zealand reached $18 million, up 23% from 2021. Through July 2023, U.S. spirits exports to New Zealand are down 5% as compared to the same period in 2022, totaling $10 million. (USITC Dataweb)

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 reduction of Brazil's spirits tariffs through multilateral or bilateral trade discussions.

II. Technical Barriers

Standards

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. DISCUS submitted a comment in April 2021 and July 2022 raising concerns with Brazil's proposals on minimum and maximum alcohol levels, aging requirements for rum, and the definition of whiskey, among others. DISCUS understands that Brazil has committed to making some changes to the proposal and that it will be consolidated with several other laws. The regulation is still under review, and it is unclear when Brazil will issue the revised draft.

In July and August 2023, Argentina and Uruguay notified to the WTO of proposed revisions to *Resolution No. 02/23- MERCOSUR Technical Regulation on Definitions related to alcoholic beverages (with the exception of fermented beverages), their raw materials and manufacturing processes (Repeal of GMC Resolution No. 77/94)* (G/TBT/N/URY/85 and G/TBT/N/ARG/444). The purpose of the proposal is to "update" and "harmonize" the definitions of spirits and it does not appear to make any substantive changes to the current standards.

The current MERCOSUR Technical Regulation includes analytical parameters, problematic maximum and minimum alcohol content levels, problematic vodka and rum definitions, and does not provide for flavored spirits. However, Brazil's Technical Regulation differs from the MERCOSUR Technical Regulation and only some members apply the MERCORSUR Technical Regulation. In addition, the MERCOSUR Technical Regulation does not include a whiskey standard of identity, and each MERCOSUR member state has its national standard of identity for whiskey. In fact, some of the national definitions of whiskey are inconsistent with each other, creating barriers to trade within the region. In September 2023, DISCUS submitted similar comments to Argentina and Uruguay in response to their notifications to the WTO.

Request: DISCUS seeks the U.S. government's support 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; 9) provide an eighteen-month transition period and clarify that products already in the marketplace may continue to be sold until they are depleted; 10) notify the revised regulation to the WTO for stakeholder feedback; and 11) coordinate with other MERCOSUR members to establish a harmonized set of standards.

III. <u>Other Barriers</u>

<u>Discriminatory Taxation</u>

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) 2208.40.00 (rum)	16.25 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 violates 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 upheld the proposition that all products under the HTS 2208 sub-chapter, including whiskey, rum, vodka, gin, etc., are, at a minimum, directly competitive and substitutable products and should therefore be taxed similarly in compliance with GATT Article III, paragraph 2.

Request: DISCUS seeks the U.S. government's continued assistance in urging Brazil to abide by its WTO commitments and eliminate its discriminatory excise tax.

IV. <u>Trade Statistics</u>

2022 saw a 65% increase in U.S. spirits exports to Brazil, reaching $50 million. In 2022, Brazil was the seventh largest export market for American spirits. In the January-July 2023 period, U.S. spirits were valued at $27 million, representing an almost 20% increase from the same period in 2022. (USITC Dataweb)

CANADA

I. Other Barriers

Discriminatory Taxation

On March 22, 2017, Canada's federal government introduced an increase in the federal excise tax on beverage alcohol and a yearly automatic increase tied to the Consumer Price Index (CPI). Recognizing the impact of higher inflation during 2022 and 2023, the Canadian Government chose to cap the April 1, 2023, excise increase at 2% rather than the CPI rate of 6.4%.

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 Canadian government is providing $166 million in aid over two years to the Canadian wine industry to assist with transitioning to paying an excise tax. The program ends in March 2024. 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 and Labrador, and Prince Edwards Island

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, and 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, Price Edwards Island, and Newfoundland and Labrador to eliminate the 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: wholesale and retail. 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. It also prohibits picking up product if it is bottled elsewhere. 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 Reductions – Ontario

The Province of Ontario is pressuring retailers to reduce retail prices in response to inflation. Ontario's LCBO has informed beverage alcohol suppliers of its intention to enforce a price warranty clause in its PO terms based upon LCBO FOB purchase price compared to Quebec. However, there are structural differences and other reasons for the differing FOBs between Ontario and Quebec. The LCBO plans to impose financial penalties on suppliers, both in the future and retroactively to April 1, 2023.

Request: We respectfully seek the U.S. government's support in urging Ontario not to enforce its price warranty clauses compared to prices in Quebec.

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 would 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.

II. Trade Statistics

In 2022, Canada ranked as the second largest export market for American spirits and exports reached $265 million, up by nearly 9% from 2021. Through July 2023, U.S. spirits exports to Canada were valued at $100 million, a 33% decrease from the same period in 2022. (USITC Dataweb)

CHILE

I. Technical Barriers

Labeling

In March 2023, Chile notified a proposal to the WTO to require warning statements and pictographs on labels and in advertisements, energy information on labels, and advertising restrictions (G/TBT/CHL/625). DISCUS subsequently submitted comments in response to the proposal. DISCUS fully supports the collective public health objectives of encouraging adults who choose to drink to do so in moderation and responsibly, recognizing that some individuals should not drink at all.

The proposal requires energy on alcoholic beverages per 100 ml. We are concerned that providing energy per 100 ml for all beverage alcohol categories is misleading. Such a requirement does not provide consumers with the basic information about the alcohol content in a serving of distilled spirit, wine, or beer in a manner to measure and moderate their drinking to help them make responsible consumption decisions.

In July 2023, Chile notified the final regulation (G/TBT/N/CHL/625/Add.2) and its responses to all the comments it received through the WTO (G/TBT/N/CHL/625/Add.3). Chile accepted DISCUS' comment to allow warnings to be in black and white instead of red and white. The Ministry of Health will publish a compliance manual within ninety days of the publication of the regulations (by October 4, 2023). Chile indicated it would not modify the proposal to require beverage alcohol products to provide energy information per "standard drink." As such, energy shall be listed in kilocalories per 100 milliliters. Chile did not consider DISCUS' request to provide an 18-month transition period and did not confirm that products already in the marketplace may continue to be sold until they are depleted.

On October 5th, the Ministry of Health published its compliance manual. Companies have until July 7, 2024 to comply with the regulation.

Request: DISCUS seeks the U.S. government's support to urge Chile to: 1) allow products already in the market to continue to be sold until stocks are depleted; and 2) require energy information to be provided per "standard drink".

II. Trade Statistics

In 2022, Chilean spirits imports from the U.S. increased 14% from the previous year and were valued at $43 million. From January-July 2023, imports of U.S. distilled spirits totaled $11 million, a 68% decrease from the same period in 2022. (USITC Dataweb)

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 relatively flat between 2018-2022. In the decade before the imposition of retaliatory tariffs, American spirits exports to China increased by nearly 137%. (USITC Dataweb)

Request: DISCUS urges the United States and China to resolve the outstanding trade concerns so that the retaliatory tariffs on U.S. spirits can be lifted without further delay.

II. Technical Barriers

Voluntary Whiskey Standard

The Standardization Administration of China (SAC) is currently revising its voluntary product standard for domestically produced whiskey. The draft is expected to be finalized soon and is planned to enter into force at the beginning of next year. We understand that the standard should only apply to domestically produced whiskey. However, DISCUS understands that the proposal includes some potentially problematic provisions if the voluntary standard for domestically produced whiskey is applied to imported American Whiskey. For example, DISCUS is concerned about the introduction of analytical and grading parameters that are being proposed.

Request: DISCUS seeks the U.S. government's support to monitor the development of China's voluntary standard for domestically produced whiskey, ensure it is not applied to American Whiskeys, and secure confirmation that the analytical parameters and grading system do not apply to imported whiskeys.

III. Trade Statistics

In 2022, U.S. spirits exports to China reached $23 million, up about 5% from 2021. Through July 2023, U.S. spirits exports to China were valued at $12 million, a 1% decrease from the same period in 2022. (USITC Dataweb)

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). Costa Rica's Treasury Department adjusts the excise tax rate on a quarterly basis based on the consumer price index measured by the National Institute of Statistics and Census (INEC)

Costa Rican Specific Excise Tax Rates
As of August 1, 2023

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.	4.44
Greater than 30% a.b.v.	5.17

The local spirit, *guaro*, (produced in the largest volume by the state-owned alcohol company) is bottled at 30% a.b.v. Most 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 releasing their product from Customs.

The Costa Rican tax system violates its WTO and DR-CAFTA 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 protects the domestic industry in contravention of GATT Art. III:2. In four WTO dispute settlement cases concerning internal taxation of beverage alcohol (Japan – DS8, 10 and 11; Korea – DS 75 and 84; Chile –DS 87 and 110; and the Philippines – DS 396 and 403), the WTO has clearly upheld that all products under the HTS 2208 sub-chapter are, at a minimum, directly competitive and substitutable and therefore should be taxed similarly.

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

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

II. <u>Trade Statistics</u>

In 2022, U.S. spirits exports to Costa Rica were valued at $19 million, representing a 34% increase from 2021 export values. Between January and July 2023, U.S. spirits exports were valued at almost $751,000, representing a 29% increase from the same period in 2022. (USITC Dataweb)

DOMINICAN REPUBLIC

I. Import Policies

Excise Stamps

Starting in mid-2019, the Dominican Republic has considered implementing an excise tax stamp system for beverage alcohol products. In May 2021, the Dominican Republic notified the WTO of its proposed excise tax system (G/TBT/N/DOM/232). In October 2021, the Dominican Republic indicated that the requirement went into effect on September 29, 2021, with a 15-month transition period to December 29, 2022. On December 29, 2022, the Dominican Republic extended the implementation date to June 22, 2023.

In June 2023, the Dominican Republic again extended the implementation date to December 23, 2023. However, the Dominican Republic did not provide an exemption for products placed on the shelf prior to the conclusion of the phase-in to continue to be sold without a tax stamp. The Dominican Republic has previously indicated that it's the obligation of "the taxpayers to undertake, director or through their intermediaries or authorized third parties" to ensure products on the market at the end of the transition period have the required tax stamp or face sanctions.

We believe the regulation is "more trade-restrictive than necessary" and "creates an unnecessary obstacle to international trade" in breach of Article 2.2 of the WTO's TBT Agreement. Tax stamps are ineffective tools to combat the sale and consumption of illicit alcohol and their costs are disproportionate to any likely benefits. There are more effective tools to address the legitimate public health objectives connected to reducing the sale and consumption of illicit alcohol. In addition, as USDA noted in a June 28, 2023, GAIN Report, implementing the excise tax stamp may violate the Dominican Republic's national treatment commitments under the WTO.

Request: DISCUS seeks the U.S. government's continued support in urging the Dominican Republic to reconsider the measure and implement a less trade-restrictive measure or, at a minimum, allow for products placed on the shelf prior to the conclusion of the phase-in to continue to be sold without a tax stamp until they are depleted.

II. Trade Statistics

In 2022, U.S. distilled spirits exports were valued at $47 million, representing a 56% increase from 2021 levels. Through July 2023, U.S. exports reached $4 million, reflecting an 85% decrease relative to the same period in 2022. (USITC Dataweb)

ECUADOR

I. Technical Barriers

Labeling

In September 2023, Ecuador launched a public consultation on a proposed beverage alcohol labeling regulation that includes pictogram warnings and nutrition and caffeine requirements. However, it appears that the pictogram warnings only apply to distilled spirits, and not beer and wine. The consultation was not notified to the WTO.

Treating categories of beverage alcohol products differently sends a dangerous message that some forms of alcohol are safer than others, even though alcohol is alcohol. One "standard drink" of alcohol contains the same amount of ethanol, whether in distilled spirits, wine, or beer, the effects of ethanol on the body are the same. There is no scientific, public safety, or public policy basis to differentiate between distilled spirits, wine, and beer – especially when some products, such as prepared cocktails, may have the same alcohol by volume. For example, a 12oz beer-based prepared cocktail with 5% a.b.v, a 12oz spirits-based prepared cocktail with 5% a.b.v., and a 12oz wine-based prepared cocktail with 5% a.b.v. each equates to one standard drink equivalent and has the same alcohol content.

According to industry reports, this is the first step in the review process and Ecuador is collecting feedback from industry stakeholders. DISCUS understands that Ecuador will then draft a regulation and notify it to the WTO for stakeholder input.

Request: We respectfully seek the U.S. government's support to ensure that Ecuador notifies the proposed regulation to the WTO's TBT Committee and applies the pictogram warnings to all categories of beverage alcohol.

II. Trade Statistics

In 2022, U.S. spirits exports to Ecuador reached $8.4 million, up about 31% from 2021. Through July 2023, U.S. spirits exports to Ecuador were valued at $197,000, a 95% decrease from the same period in 2022. (USITC Dataweb)

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.

However, from 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. This tariff caused a 20% decrease in American Whiskey exports to the EU, our largest American Whiskey export market, from $552 million to $440 million (2018-2021).

On October 1, 2022, the U.S. and EU agreed 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 29% compared to 2021. Total American Whiskey exports to the EU reached $566 million, accounting for 44% of total American Whiskey exports ($1.3 billion). This surpasses the 2017 pre-tariff level of $518 million.

On October 21, 2023, Presidents Biden and von der Leyen released a joint statement following the U.S.-EU Presidential Summit acknowledging that they have not yet reached a final agreement in the steel and aluminum dispute and will continue the negotiations over "the next two months." If an agreement in the steel and aluminum dispute is not found by December 31, 2023, the EU will reinstate the 50% retaliatory tariff on American Whiskey starting January 1, 2024. This could halt the growth and put American Whiskey exporters at a significant disadvantage in their largest export market.

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. 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 relationships with the EU and UK. 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.

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. EU legislation only sets harmonized *minimum rates*, meaning that EU Member States may apply excise tax rates above these rates. Under the Directives, some member states can 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. 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. EU Member States that provide preferential excise tax rates for certain domestically produced products include Austria, Croatia, Czechia, France, Greece, Portugal, Romania, Spain, and Slovakia.

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.

Request: 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

EU Proposed Revisions to the Packaging and Packaging Waste Decree (G/TBT/N/EU/953) and France, Minimum Reuse (G/TBT/N/FRA/223)

On February 27, 2023, the EU notified the WTO of proposed revisions to its Packaging and Packaging Waste Decree (PPWD). The revision was issued as a "Regulation" and not a "Directive." DISCUS is deeply invested in protecting the environment and natural resources and supports efforts to maximize resource utilization and eliminate waste.

Requests: DISCUS seeks the U.S. government's continued support in: 1) urging the EU to ensure the proposal remains a "Regulation"; 2) ensuring that member state initiatives are consistent with it to avoid further fragmentation of the EU's internal market; 3) retaining the exemption for distilled spirits from reuse targets; 4) ensuring that the EU treat U.S. spirits be recognized as distinctive products of the U.S. in the EU, similar to products recognized as GIs; and 5) retaining marketing and consumer acceptance as performance criteria justifying additional packaging weight and volume.

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 nutrition declaration and ingredient list regulatory text have not been published. 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.

DISCUS is committed to combatting the harmful use of alcohol in all forms and acknowledges that beverage alcohol products can be abused and result in harm. We fully support the public health objective of combating all forms of harmful drinking and, for individuals of legal drinking age who choose to drink, encouraging moderate alcohol consumption. Some individuals of the legal drinking age should not consume alcohol.

In July 2022, Ireland notified the EU through TRIS and FIC 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. In February 2023, Ireland notified the draft regulation to implement the beverage alcohol labeling requirements of the Bill to the WTO

(G/TBT/N/IRL/4). The draft is the same text notified through the EU's TRIS and FIC systems in June 2022.

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. 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, when the EU will issue a proposed warning statement regulation is unclear.

In response to the February 2023 WTO notification, DISCUS submitted a comment reiterating concerns previously raised. On May 22, 2023, the proposal was signed into law and will go into effect on May 22, 2026.

Request: We respectfully request the U.S. government's continued support to urge 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.

IV. Trade Statistics

In 2022, the EU was the largest destination for U.S. spirits exports at $711 million, up by nearly 26% over 2021, surpassing its 2017 pre-tariff level of $603 million. The EU alone accounts for 35% of total U.S. spirits exports. American Whiskey exports to the EU reached $565 million in 2022, accounting for 44% of total American Whiskey exports. (USITC Dataweb)

Due to the imposition of the tariff, American Whiskey exports to the EU plunged 20%, from $552 million to $440 million (2018-2021). Since the EU suspended its 25% retaliatory tariff on American Whiskeys in January 2022, U.S. whiskey exports increased by 29% compared to 2021. (USITC Dataweb)

American Whiskey exports through July 2023 reached $509 million, up nearly 99% compared with the same period in 2022. (USITC Dataweb)

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 $2.6 billion beverage alcohol retail market (Euromonitor). Distilled spirits accounted for 17% of total beverage alcohol retail sales, while wine accounted for 47% of the market in terms of retail sales in 2022 (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 three times larger than in Hong Kong in 2022 (Euromonitor), accounting for 35% of the beverage alcohol market in Singapore in terms of retail sales.

To compare the two markets, in 2022, direct U.S. spirits exports to Hong Kong were valued at only $2.6 million, an 8% decrease from 2020, while U.S. spirits exports to Singapore reached $15 million in 2022. Through July 2023, total U.S. spirits exports to Hong Kong were valued at $4 million, an increase of 57% from the prior year (January-July 2022). (USITC Dataweb)

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

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. India has also entered into an FTA with Australia.

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, and ensuring American spirits are not at a competitive disadvantage vis-à-vis EU and UK distilled spirits.

Customs Valuation

India's Special Valuation Branch (SVB) often takes several years to issue a final determination on the value of imported products. Moreover, there is no set timeline for investigations to conclude and they may be indefinite. 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.

<u>Standards</u>

India's Food Safety Standards (Alcoholic Beverages) Regulations, which set 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. The same batch is often 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.

<u>Single Malt and Single Grain Standards</u>

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.

On August 21, 2023, FSSAI published its final regulation and implementation date of its revised "Single malt or Single grain whiskey" definition and allowing for voluntary labeling for energy content. As noted above, India did not take into account any of DISCUS' comments. Under the final regulation, India did not eliminate the requirement that Single malt and Single grain" whiskeys be produced exclusively using pot stills, or clarify what it means for a "Single malt and Single grain whiskey" to be "produced in a single distillery." Additionally, India failed to clarify whether it would allow the energy information to be applied via sticker in a bonded warehouse before releasing the goods into the market.

We are concerned by India's decision to maintain the requirement that all Single malt or Single grain whiskies 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 to 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: 1) urging India to eliminate the requirement that "Single malt or Single grain" whiskeys be distilled in a pot still; and 2) clarifying what it means for a "Single malt or Single grain whiskey" to be "produced in a single distillery".

<u>RTDs</u>

In June 2023, the Food Safety and Standards Authority of India (FSSAI) notified its proposed *"Draft Food Safety and Standards (Alcoholic Beverages) Amendment Regulations, 2023* (G/TBT/N/IND/271) to the WTO's TBT Committee for public consultation. The proposal addresses definitions of Mead (Honey wine), Craft Beer, Indian liquors, Low Alcoholic Beverages/ RTD, Wine based Beverages, and Country Liquors.

According to industry contacts, RTDs face issues with importation and marketing in India because there is no RTD category. They are treated inconsistently by FSSAI, Customs, and state excise authorities. India's proposed "Ready-To-Drink/Low alcoholic beverages" definition includes problematic maximum alcohol content requirements, analytical parameters, and the prohibition on the use of wine and beer as the alcohol base for such beverages, which could bar the importation of certain U.S.-origin RTDs produced in accordance with U.S. laws and regulations. The status of the proposal is unclear.

Request: DISCUS respectfully requests the U.S. government's assistance in urging India to: 1) create a single RTD category for spirits, beer, and wine-based products and allow for them to be mixed; 2) eliminate the maximum alcohol content requirement or, at a minimum, increase it to 15% a.b.v.; and 3) eliminate the proposed use of analytical parameters.

III. Other Barriers

Ban on Sales of Imported Spirits in Military Canteen Stores

On October 19, 2020, India's Ministry of Defense issued an official notification prohibiting the sales of imported distilled spirits in Military Canteen Stores Departments (CSD). We are concerned that the ban is inconsistent with India's WTO national treatment commitments under GATT Article III:4 and GATT Article III:8.

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

IV. Trade Statistics

U.S. spirits exports to India were valued at $14 million in 2022, up 146% from 2021. Whiskey accounts for most of these exports with an 84% share by value. Through July 2023, U.S. spirits exports were valued at $11 million, up nearly 50% over the same period in 2022. American Whiskey exports were valued at $9 million, up 44% through July 2023 as compared to the same period in 2022 (January-July). (USITC Dataweb)

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 reduction of Indonesia's tariff on American spirits.

Import Approval System

As of 2018, Indonesia no longer applies a quantitative limit on the importation of beverage alcohol products. In 2017, category C products (which includes all spirits) were not allocated any quotas, amounting to a temporary block on imports. Under the new system, importers are required to apply for tax stamps and an import permit based on their needs and the demonstrated ability to pay the necessary excise taxes and import duties. Because the tariff and excise taxes are so high, this requirement is overly burdensome. According to industry contacts, only 15 import licenses are issued and subject to a quota, which limits the import volumes. In addition, it is highly prone to delays.

Request*:* DISCUS requests the U.S. government's assistance in raising these concerns with the Indonesian government.

II. Technical Barriers

Standards

In May 2023, Indonesia notified the final version of definitions for all food products, including distilled spirits, to the WTO's TBT Committee (G/TBT/N/IDN/101/Add.3). In June 2015, Indonesia notified its proposal to revise its definitions for all food products to the WTO (G/TBT/N/IDN/101). DISCUS provided comments raising concerns with potentially problematic definitions of whiskey, gin, brandy, vodka, proposed minimum alcohol content requirements, and limits on methanol. In response to DISCUS' comments, Indonesia partially amended the definition of gin and other items.

Request*:* DISCUS requests the U.S. government's assistance in urging Indonesia to: 1) adopt a standard of identity and labeling requirement for whiskey consistent with U.S. regulations and provide recognition for "Bourbon," "Tennessee Whiskey," and "American Rye Whiskey" as distinctive products of the U.S.; 2) clarify that gin does not need to be without color and may contain other aromatics and flavoring, in addition to juniper; 3) eliminate the minimum ethyl alcohol requirement for liqueurs; 4) adopt a definition of flavored spirits and establish a minimum alcohol content requirement of 30% a.b.v. consistent with U.S. standards; 5) provide that vodka may possess the characteristics of the raw materials and that it may contain up to one gram per liter of citric acid; and 6) permit the use of coloring and blending materials in distilled spirits products.

III. Other Barriers

Discriminatory Taxation

Since at least 2006, Indonesia has imposed a discriminatory tax regime favoring domestically-produced spirits. On December 12, 2018, the Ministry of Finance (MOF) issued regulation No. 158/2018 to replace MOF regulation No. 207/2013. The regulation imposed a new excise tax on ethyl alcohol, beverages, and concentrates containing ethyl alcohol. The regulation went into effect on January 1, 2019.

Current Excise Tax (Rp. Per liter)		
Alcohol Content	**Local**	**Imported**
Up to 5% a.b.v.	15,000	15,000
Between 5% and 20% a.b.v.	33,000	44,000
Greater than 20% a.b.v	80,000	139,000

This discriminatory taxation violates Indonesia's WTO obligations under Article III: 2 of GATT 1994. In four dispute settlement cases dealing with internal taxation of beverage alcohol (Japan, Korea, Chile, and the Philippines), the WTO has upheld the position that all products under the HTS 2208 sub-chapter, including rum, vodka, gin, whiskey, brandy, tequila, etc., are, at a minimum, directly competitive and substitutable products and should be taxed similarly, as required under Article III: 2 of GATT 1994.

Request: DISCUS seeks the U.S. government's assistance in urging Indonesia to remove the discriminatory aspects of its taxation regime for spirits as soon as possible.

IV. Trade Statistics

Total U.S. spirits exports to Indonesia in 2022 were valued at $119,505, a 77% decrease from 2021. In the January-July 2023 period, U.S spirits to Indonesia totaled $562,000, representing a 390% increase from the same period in 2022 (January-July). (USITC Dataweb)

JAPAN

I. Import Policies

Tariffs

In 1997, as part of its settlement agreement with the United States, the European Commission and Canada in the 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 the zero-duty rate on brandy and whiskeys at the WTO.

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. In the context of the TPP, Japan 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. 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. The notice is not binding and does not stop lot codes from being removed/defaced at the wholesale and retail levels. However, most imported spirits products voluntarily include producer lot codes on the bottles.

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, removing or altering of any lot code from beverage alcohol containers is prohibited under U.S. law and regulations. There is no similar provision in Japanese regulations.

DISCUS understands that the NTA is discussing with local industry, including importers, to update its regulations to address these concerns. However, the status of the consultations is unclear.

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 deter future violations effectively.

Additives

On June 20, 2022, Japan's Ministry of Health, Labour, and Welfare (MHLW) published a proposal to delete 78 substances from its positive list of approved substances based on MHLW's preliminary survey of 357 substances. The survey found that 78 substances are unlikely to be served for sale, etc. Therefore, Japan is proposing to delete them from the positive list of approved additives. The proposal is part of a larger effort by Japan to transition to a positive list of approved additives.

Unfortunately, DISCUS was not aware of the proposal as it was not notified to the WTO. DISCUS alerted the U.S. government to the proposal and secured its support to urge Japan to notify the proposal to the WTO. According to industry reports, there will be an additional consultation in 2024.

Request: DISCUS seeks the U.S. government's continued support to urge Japan to notify the next consultation to the WTO TBT's Committee for stakeholder feedback.

III. Trade Statistics

In 2022, Japan ranked as the U.S. spirits sector's fifth-largest export market, with exports valued at $112 million, down nearly 5% from 2021. Japan was the third-largest export market for American Whiskeys in 2022, with exports up 7% to reach $102 million, accounting for 87% of total spirits exports. Through July 2023, American spirits exports to Japan are up nearly 8% compared to the same period in 2022 (January-July). (USITC Dataweb)

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 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 before the arrival of the goods in Kenya. Previously, companies could apply labels in a bonded warehouse in Kenya before formally entering 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 in a bonded warehouse in Kenya before 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 not registered by July 1, 2022, may not be imported after that date. The ACA subsequently postponed the deadline to January 1, 2023. The ACA issued a Public Notice on December 23, 2022, to adopt a phased approach to implementation of the IP brand registration requirement starting January 1, 2023. Distilled spirits were not included in the first tranche. In April 2023, the ACA issued another Public Notice to expand the mandatory registration requirement to apply to beverage alcohol products effective May 1, 2023.

***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

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

KOREA

I. Technical Barriers

RFID Tax Stamps

In 2010, Korea introduced a regulation that made it mandatory for bottles of whiskey to have a radio frequency identification (RFID) tax stamp. The implementation was gradual, starting from 2010 and fully enforced by 2013. In 2016, the scheme was extended to lower-alcohol whisky-based products.

We believe the regulation is “more trade-restrictive than necessary” and “creates an unnecessary obstacle to international trade” in breach of Article 2.2 of the WTO’s TBT Agreement. Tax stamps are ineffective tools to combat the sale and consumption of illicit alcohol and their costs are disproportionate to any likely benefits.

Furthermore, it discriminates against imported whiskeys vis-à-vis domestically produced spirits in Korea. Although the requirement also applies to domestically produced whiskeys, domestically produced soju (which accounts for 98% of all spirits sales by volume), as well as beer and wine, are not subject to the RFID requirement. Since all imported whiskeys account for less than 1% by volume of total spirits sales in Korea, the practical effect is to impose a more burdensome, and therefore a discriminatory requirement on American Whiskey exporters to Korea as compared to domestic soju producers.

We are also concerned that applying this requirement only to whiskey does not effectively address the legitimate public health objective of reducing the sale and consumption of illicit alcohol.

Request: DISCUS seeks the U.S. government's support in urging Korea to remove discriminatory and inefficient RFID tax stamp requirement applicable only to whiskey products.

II. Other Barriers

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

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

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

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

III. Trade Statistics

In 2022, Korea's imports of U.S. spirits were valued at $50 million, representing a 113% increase from 2021. Through July 2023, U.S. exports reached $33 million, reflecting a 49% increase relative to the same period in 2022 (January-July). (USITC Dataweb)

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. In contrast, the tax assessed on whiskey (the vast majority of which is imported) is 150.00RM per liter. The current rates for spirits are listed below:

Tariff Code		Description	Excise Duty
22.08		***Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol; spirits, liqueurs, and other spirituous beverages.***	**Rate (RM) per LPA**
2208.20		- Spirits obtained by distilling grape wine or grape marc:	
	100	Brandy	150.00
	900	Other	150.00
2208.30	000	Whiskeys	150.00
2208.40	000	Rum and tafia	150.00
2208.50	000	Gin and Geneva	150.00
2208.60	000	Vodka	150.00
2208.70	100	Liqueurs and cordials (not exceeding 57%)	60.00
2208.90	300	Samsu (including medicated samsu)	60.00
2208.90	500	Arrack and pineapple spirits (not exceeding 40%)	60.00
2208.90	300	Bitters	60.00
		Compound Hard Liquor	60.00

In four dispute settlement cases dealing with internal taxation of beverage alcohol (Japan, Korea, Chile, and the Philippines), the WTO has upheld the position that all products under the HTS 2208 sub-chapter, including rum, vodka, gin, whisk(e)y, brandy, tequila, etc., are, at a minimum, directly competitive and substitutable products and, therefore, should be taxed similarly, as required by GATT Article III, paragraph 2.

Request: DISCUS urges the U.S. government to secure the elimination of the discriminatory aspects of Malaysia's excise tax regime.

II. Technical Barriers

Standards

In October 2022, Malaysia notified revisions to its beverage alcohol standards to the WTO (G/TBT/N/MYS/114). DISCUS submitted a comprehensive letter to the Malaysian Ministry of Health in October 2022 expressing concerns about spirits under 17% a.b.v. being blocked from the market. The letter urged Malaysia to amend its standards of identity to be consistent with the U.S. standards and provide distinctive product recognition for certain American Whiskeys.

In November 2022, DISCUS received a response from Malaysia. Malaysia stated that its minimum alcohol content requirement and the prohibition on the sale of spirits that do not comply with the standards are longstanding. This is problematic for RTDS, as there is no standard for them. Malaysia indicated it would not allow the importation of the blocked products, but they could be reexported instead. In December 2022, DISCUS responded with a letter that largely reiterated the requests made in the October 2022 letter. DISCUS understands that Malaysia is now open to amending its spirit definitions in response to input from WTO members.

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) to modify its definition of "wine cocktail" to include other products falling under the CODEX Aromatized alcoholic beverages definition, such as spirits based RTDs; 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"; and 6) modify its definition of liqueurs to establish no minimum alcohol content requirement.

III. Trade Statistics

In 2022, Malaysia's imports of U.S. spirits were valued at $1.9 million, representing a 39% increase from 2021. Through July 2023, U.S. exports reached $883,000, reflecting a 21% increase relative to the same period in 2022 (January-July). (USITC Dataweb)

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 of granting 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) and will consolidate it with its *Official Standard PROY-NOM-199-SCFI-2017, “Alcoholic Beverages – Names, Physical-Chemical Specifications, Commercial Information, and Testing Methods* (NOM 199). However, the status of the proposal is unclear.

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 WTO of the final version. The labeling provisions went into effect on March 23, 2016, and the rest of the standard went 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 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 and consolidation with NOM 199 to the WTO's TBT Committee for stakeholder feedback.

III. Trade Statistics

U.S. spirits exports were valued at $106 million in 2022, up nearly 36% from 2021. In 2022, Mexico ranked as the 7th largest export market for U.S. distilled spirits. Through July 2023, American spirits exports to Mexico reached $72 million, up 46% compared to the same period in 2022 (January-July). (USITC Dataweb)

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. 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.

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 2022, U.S. distilled spirits exports were valued at $2.7 million, representing an increase of 44% from 2021 levels. Through July 2023, U.S. exports reached $2 million, reflecting a 6% increase relative to the same period in 2022 (January-July). (USITC Dataweb)

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

SINGAPORE

I. Technical Barriers

Standards

In June 2021, Singapore proposed eliminating its standards of identity for food products, including distilled spirits in two-phases (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 notified the first phase of its proposal, which did not include distilled spirits, to the WTO's TBT Committee for comment in March 2022 (G/TBT/N/SGP/64, March 15, 2022). DISCUS understands that the second phase is tentatively targeted for 2023.

Singapore has indicated that removing standards of identity would allow for product innovation, which fixed standards of identity would otherwise stifle. In addition, Singapore has indicated that the Codex Alimentarius Commission has adopted many food commodity standards, while on the local front, there are Singaporean 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, confusion, risk category/brand reputation, and unfair competition. Singapore does not recognize "Bourbon" and "Tennessee Whiskey" as distinctive products of the U.S.

Request: DISCUS seeks U.S. government support to get an update on the status of the proposal and 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 2022 U.S. spirits exports to Singapore totaled $15 million, a 13% increase from 2021. In the January-July 2023 period, U.S. spirits exports were valued at $18 million, representing a 173% increase from the same period in 2022 (January-July). (USITC Dataweb)

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, effective December 2025. Unfortunately, South Africa did not take any of our comments into consideration. As such, some products in the market did not fit into either the spirit aperitif or flavored spirit category and would have been banned from the market.

In July 2023, South Africa amended the Liquor Products Act to repeal the revised regulations published in July 2022. As such, the proposed revisions will not go into effect in December 2025. According to industry contacts, South Africa indicated that it would draft new amendments to the Liquor Products Act and notify it to the WTO for stakeholder input.

Request: DISCUS seeks the U.S. government's assistance to ensure South Africa notifies its revised proposed regulations to the WTO and that it does not create unnecessary barriers to U.S. spirits exports to South Africa.

III. Trade Statistics

In 2022, spirits imports from the U.S. increased 41% from the previous year and were valued at $22 million. From January-July 2023, imports of U.S. distilled spirits totaled $10 million, a 25% decrease from the same period in 2022 (January-July). (USITC Dataweb)

TAIWAN

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

DISCUS and its members strongly support liberalizing trade and deepening 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, including by improving the regulatory practices and procedures under the Taiwan Tobacco and Alcohol Administration Act (TAAA).

Request: DISCUS urges the administration to continue negotiations to secure increased market access for U.S. distilled spirits products and improved regulatory practices under the TAA. 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 under the TAA, including the administration of imports and 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 cannot be consumed as beverages, unlike distilled rice wine.

Request: DISCUS urges the U.S. government to oppose Taiwan's 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 million in 2022, representing a slight decrease 2021. Through August 2022, American spirits exports to Taiwan totaled $1 million, a 66% decrease as compared to the same period in 2022 (January-July). (USITC Dataweb)

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

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 is 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 immediately eliminating its tariffs on U.S. spirits imports.

II. Other Barriers

Discriminatory Taxation

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

Current Rate

Product	*Ad Valorem*	(baht/liter of pure alcohol)
Local white liquor	2%	155
All other distilled spirits	20%	255

These taxes continue to discriminate against imported products and provide protection to domestic producers of local white spirits, in violation of the national treatment provisions of GATT Article III, paragraph 2. 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.

Request: DISCUS urges the U.S. government to seek Thailand's commitment to apply a single, nondiscriminatory tax for all distilled spirits products consistent with GATT Art III para. 2.

III. Trade Statistics

In 2022, direct U.S. spirits exports totaled $4 million, a 455% increase compared with 2021. From January to July 2023, spirits exports from the U.S. reached nearly $13 million, a 107% increase compared with the same period in 2022 (January-July). (USITC Dataweb)

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 36%, from nearly $17 million to approximately $11 million (2018-2022).

Request: DISCUS urges the U.S. and Turkey to engage in a dialogue to resolve the outstanding trade concerns so that the retaliatory tariffs on U.S. spirits can be lifted without further delay.

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 are required to pay the excise tax within thirty days of the sale.

Accordingly, importers must carry the financial burden of paying the tax for nearly three months of sales before they receive the strip stamps. To the degree that the difference in administration places a greater burden on importers than on the domestic industry, DISCUS is concerned that there may be a potential GATT Art. III violation.

Request: DISCUS requests that the U.S. government urge Turkey to remove the discriminatory aspect of its excise tax for spirits.

IV. Trade Statistics

In 2022, U.S. spirits exports to Turkey reached $11 million, up 20% from 2021. From January to July 2023, spirits exports from the U.S. reached $9 million, a 37% increase compared with the same period in 2022 (January-July). (USITC Dataweb)

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

UNITED KINGDOM

I. Import Policies

Retaliatory Tariffs

Between June 2018 and 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. 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. 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).

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.

Request: We urge the administration to ensure tariffs on distilled spirits between the U.S. and UK are not reimposed.

II. Trade Statistics

In 2022, the UK ranked as the third-largest export market for American spirits. Total spirits exports reached $159 million in 2021, up 50% from 2021. From 2018-2022, 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. In 2022, American Whiskey exports to the UK increased by nearly 28% as compared to 2021, reaching $112 million. However, it is still down 25% from the pre-tariff 2017 level of $149 million. (USITC Dataweb)

Through July 2023, American spirits exports to the UK reached $75 million, up nearly 7% compared to the same period in 2022 (January-July). Through July 2023, American Whiskey exports to the UK are up over 7% as compared to the same period in 2022 (January-July) to reach $55 million. (USITC Dataweb)

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.

U.S. distilled spirits are at a competitive disadvantage in the Vietnamese market vis-à-vis EU- and UK-origin spirits, such as Blended Scotch Whiskey, Irish Whiskey and Cognac. As a result, EU- and UK-origin spirits will soon enter duty-free under the EU–Vietnam Free Trade Agreement and the UK-Vietnam Trade Agreement. Vietnam and the UK are also both members of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

Request: As part of the IPEF negotiations, DISCUS respectfully requests that the U.S. government 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, ensuring that U.S. origin spirits are not at a competitive disadvantage vis-à-vis EU and UK-origin spirits.

II. Other Barriers

Taxation

Currently, Vietnam applies a 65% *ad valorem* Special Consumption Tax (SCT), which is an excise tax on certain luxury goods, on distilled spirits. In 2014, Vietnam increased the rate from 60% *ad valorem* to the current 65% *ad valorem* rate, effective January 1, 2018.

In February 2023, Vietnam's Ministry of Finance released a proposal for public comment to revise the SCT. In October 2023, DISCUS submitted a letter to urge Vietnam to apply a hybrid tax (specific tax + *ad valorem* tax) instead of an *ad valorem* tax. DISCUS understands that the Ministry of Finance opposes a specific or hybrid SCT as it could increase the cost of domestic products and not imported products, which are generally priced higher. As such, the Ministry of Finance believes a hybrid or specific tax would effectively make imported products more competitive vis-a-vis domestically produced products. Accordingly, the Ministry of Finance is proposing to retain its current proposal to increase the *ad valorem* SCT on beverage alcohol products.

Industry contacts reported that the legislation was originally on a “fast-track” to be included in the Legislative Agenda of the National Assembly in October 2023 and submitted to the National Assembly for discussion and approval in May 2024. The goal was to implement changes to the SCT by January 1, 2025.

In July 2023, Vietnam’s Office of the Government (OOG) issued a directive (Directive 115) ordering the Ministry of Finance to move the SCT review to the normal legislative timetable and directed them to consider a hybrid tax model. DISCUS understands that the SCT will not be considered during the October 2023 meeting of the National Assembly.

Request: DISCUS respectfully requests the U.S. government’s support in urging Vietnam to consider applying a hybrid SCT for beverage alcohol products, consistent with the directive from the OOG.

III. Trade Statistics

In 2022, direct spirits exports from the U.S. fell 3% to $2.7 million. Through July 2023, U.S. spirits exports to Vietnam reached $717,000, a 67% decrease compared to the same period in 2022 (January-July). (USITC Dataweb)