DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

October 17, 2024

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-2024-0015: Comments Regarding Significant Foreign Trade Barriers for the 2025 National Trade Estimate Report – Submission by the Distilled Spirits Council of the United States, Inc. (89 *Fed. Reg.* 71775 (September 3, 2024))

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 2023 valued at nearly $2.2 billion (FAS value). Through August 2024, total American Spirits exports are up 0.75%, while American Whiskey exports are down 21% compared to the same period in 2023 (January – August).

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 phytosanitary and standards-related measures.

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

Sincerely,

Robert Maron
Senior Vice President, International Trade Policy
and Market Access

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

FOREIGN TRADE BARRIERS

TO

U.S. DISTILLED SPIRITS EXPORTS

Distilled Spirits Council of the United States
October 2024

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

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I. INTRODUCTION

DISTILLED SPIRITS COUNCIL
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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 2003, global U.S. spirits exports rose nearly 280% (from $587 million to more than $2.2 billion between 2003-2023). American Whiskey drives U.S. spirits exports, accounting for 63% of total American spirits exports in 2023. American Whiskeys include Tennessee Whiskey, Bourbon, American Rye Whiskey, and American Single Malt. Compared to 2022, U.S. vodka exports increased by 31% to $160 million, cordials/liqueurs increased by 7% to $161 million, and brandy more than doubled to $37 million. (Source: USITC Dataweb)

Through August 2024, total American spirits exports are up 0.75%, while total American Whiskey exports are down 21% compared to the same period in 2023 (January-August). Through August 2024, exports of liqueurs and cordials (up nearly 136% to $258 million), vodka (up nearly 110% to $204 million), and gin (up nearly 34% to $38 million) continued their growth from 2023. In addition, premixed cocktails exports increased by nearly 85% to reach $6 million through August 2024.

The elimination of import tariffs through various U.S. trade agreements has created a fair playing field for American spirits. In 2023, U.S. spirits exports to countries with free trade agreements or zero duties amounted to $1.8 billion, making up 83% 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), Thailand (60% tariff), and Brazil (20% tariff on all imported distilled spirits, except bulk whiskey, which is 12% tariff) amounted to only $73.4 million, accounting for just 3% of the total U.S. spirits exports in 2023.

In 2023, U.S. spirits were exported from small, medium, and large distillers located in 45 states, up from 41 in 2020. The U.S. spirits sector supports the direct and indirect employment of an estimated 1.7 million people across America. In 2023, 2.8 billion pounds of grains were used to produce U.S. whiskey, brandy, rum, gin, and vodka, up 121% over the last decade.

In the past few years, trade disputes 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.

In 2022, U.S. spirits exports rebounded over pre-tariff levels in 2017 (the last full year before retaliatory tariffs) and continued to grow in 2023. Over the span of two years, the export of U.S. whiskey to the EU surged by over 60%, climbing from $439 million in 2021 to $705 million in 2023. If these retaliatory tariffs were to return, they would reverse the rebound in U.S. spirits exports.

In 2023, the top five markets for U.S. distilled spirits exports by value were EU ($883 million), Canada ($262 million), Mexico ($139 million), Australia ($138 million), and the UK ($129 million). The top five markets for American Whiskey exports by value were the EU ($705 million), Australia ($121 million), Japan ($106 million), UK ($86 million, and Canada ($76 million). (Source: USTIC Data).

In 2023, the top 10 states exporting U.S. spirits were: 1) Tennessee ($983 million); 2) Kentucky ($505 million); 3) Florida ($338 million); 4) Texas ($180 million); 5) Illinois ($118 million); 6) Indiana ($72 million); 7) California ($65 million); 8) Arkansas ($57 million); 9) New York ($50 million); and 10) Georgia ($27 million). (Source: U.S. Census Bureau).

Retaliatory Tariffs: Retaliatory tariffs on U.S. distilled spirits products are suspended as part of unrelated trade disputes with the EU and UK over steel-aluminum and large civil aircraft subsidies. The only retaliatory tariffs that remain on U.S. distilled spirits are those applied by China and Türkiye. However, if an agreement in the steel and aluminum dispute is not reached with the EU by March 31, 2025, the EU will reimpose its retaliatory tariffs on American Whiskeys, but this time at a rate of 50%, effective April 1, 2025.

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 Türkiye on U.S. spirits.

> EU/UK: Between June 2018 and 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).
>
> 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, the export of U.S. whiskey to the EU surged by over 60%, climbing from $439 million in 2021 to $705 million in 2023. This accounted for 50% of all American Whiskey exports, surpassing the pre-tariff level of $518 million in 2017. American Whiskey exports to the EU through August 2024 reached $437 million, down nearly 23% from the same period in 2023.

In December 2023, the EU announced that it would continue the suspension of tariffs on American Whiskeys in the steel and aluminum dispute for 15-months, until March 31, 2025. If no agreement is reached, the EU will reimpose its tariff on American Whiskeys at 50%, up from the previously imposed 25%.

Between June 2018 and June 2022, the UK imposed 25% retaliatory tariffs on American Whiskey 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 2023, American Whiskey exports to the UK reached nearly $86 million. However, it is still down 73% from the pre-tariff 2017 level of $149 million. Through August 2024, American Whiskey exports to the UK were down nearly 13% compared to January-August 2023, reaching $55 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 its retaliatory tariffs for five years as part of the WTO Boeing-Airbus trade dispute. Under the agreement, the EU suspended the 25% retaliatory 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.

China: In response to the U.S. Section 301 actions, China has imposed a retaliatory tariff on American Whiskeys since July 2018 and retaliatory tariffs on rum, gin, vodka, liqueurs, brandy and some "others" since September 2018. China is currently imposing a retaliatory tariff of 25% on American Whiskeys, brandy (on top of a 5% tariff for whiskey and brandy, thus totaling 30%), gin, vodka, rum, liqueurs, and cordials (on top of a 10% tariff for gin, rum, vodka, liqueurs, and cordials, thus totaling 35%). Since the imposition of the tariff, American spirits exports to China, the world's largest spirits market, have remained relatively flat (2018-2023). In the decade before the imposition of retaliatory tariffs, American spirits exports to China increased by nearly 137%. In 2023, China was only the 19th largest U.S. spirits export market and the 25th largest American Whiskey market by value.

Türkiye: Since June 2018, Türkiye has imposed retaliatory tariffs on all U.S. distilled spirits in response to the steel and aluminum tariffs. Originally, Türkiye applied a 70% tariff, but increased it to 140% on August 15, 2018. However, on May 21, 2019, Türkiye reduced its tariff back to 70%. Since the imposition of the tariff, American spirits exports to Türkiye declined by nearly 18%, from nearly $17 million to approximately $14 million (2018-2023).

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 $1.8 billion in 2023, accounting for 83% of global U.S. spirits exports. Between 2000 and 2023, exports to U.S. FTA partners have grown faster (539% increase) than U.S. distilled spirits exports to non-FTA partners (400% increase).

DISCUS supports new comprehensive bilateral/regional market-opening agreements, which we believe will contribute significantly to the continued growth of our sector. DISCUS supported the Congressional passage of the U.S.-Mexico-Canada Agreement (USMCA) implementing bill. We strongly support efforts to deepen economic collaboration and strengthen regional competitiveness, integration, and good governance through the Americas Partnership for Economic Prosperity (APEP), Indo-Pacific Economic Framework (IPEF), the U.S.-Taiwan Initiative on 21st-Century Trade Agreement, and the U.S.-Kenya Strategic Trade and Investment Partnership (STIP) negotiations. We urge the Administration to broaden the scope of these negotiations to secure tariff reductions and increased market access for U.S. spirits exports.

U.S. spirits exports will face a competitive disadvantage if other major spirits producers like the UK and the EU continue to secure trade agreements that eliminate tariffs on their exports while the U.S. fails to negotiate similar deals. Without reductions in tariffs, U.S. producers will likely see their products priced higher in international markets, making them less attractive compared to tariff-free alternatives from other countries. This tariff differential limits the ability of U.S. spirits exporters to maintain and grow their market share.

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, global U.S. distilled spirits exports have increased by almost 300% through 2023.

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, tariffs, unnecessarily trade restrictive or discriminatory standards/regulations, and advertising bans, are detailed in this submission.

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

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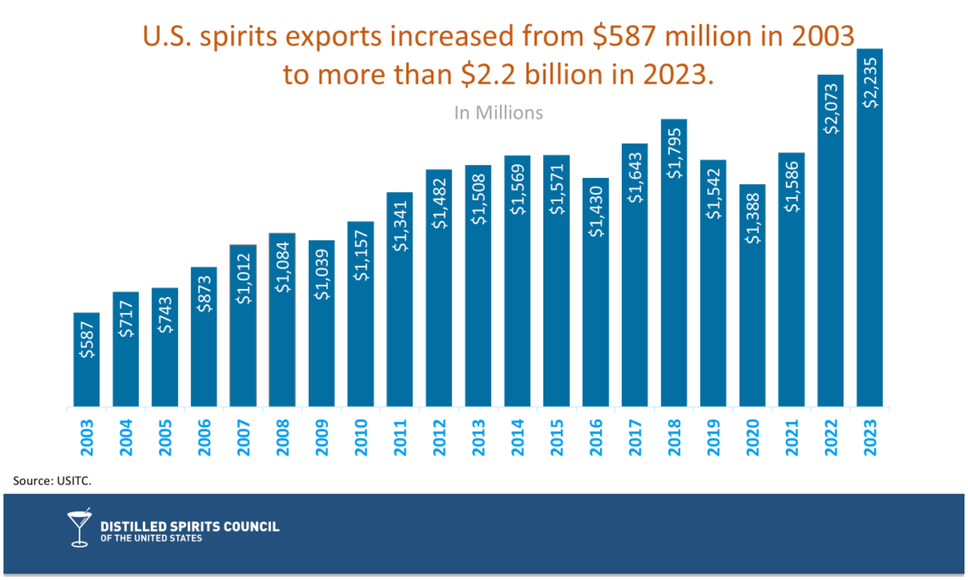
U.S. Spirits Exports Declined Due to Retaliatory Tariffs (2018 – 2021).

U.S. Spirits Exports Have Nearly Quadrupled In Two Decades.



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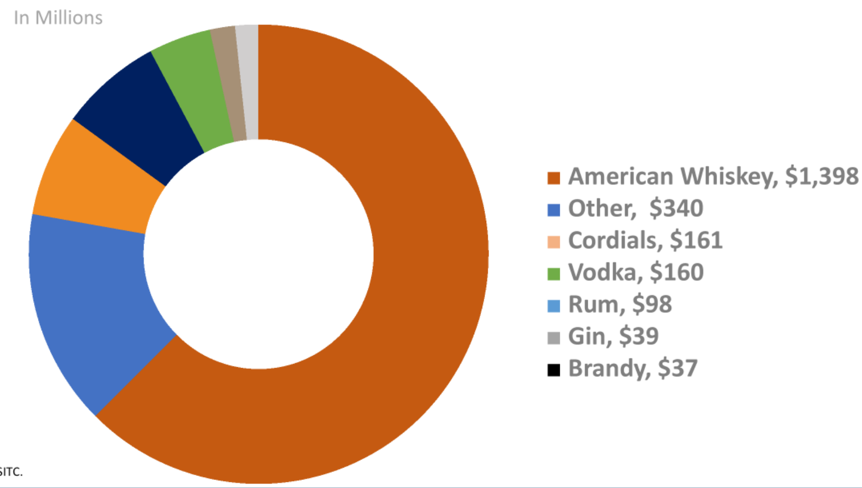
American Whiskey Accounted for 63% of Total Spirits Exports in 2023.



Source: USITC.

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The Top 5 Export Markets 2023 for U.S. Spirits are Countries that Have Zero Tariffs on Spirits.

Source: USITC.

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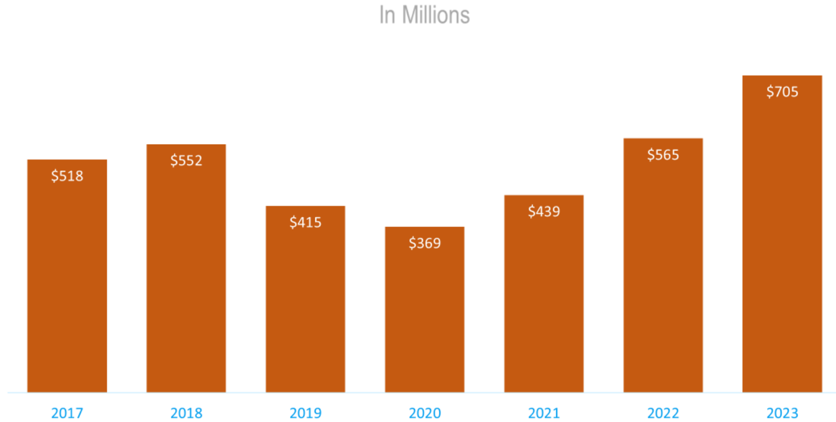
American Whiskey Exports to European Union Have Rebounded Since 2020.



Source: USITC.

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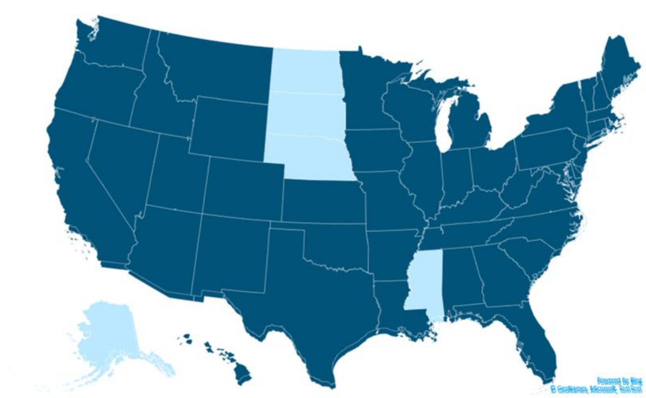
45 States Exported Distilled Spirits in 2023.



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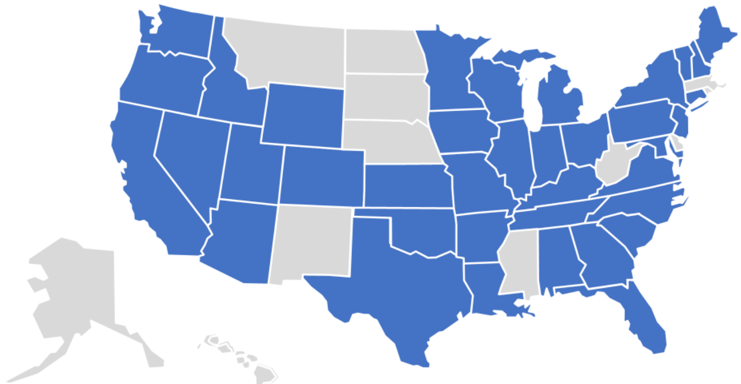
38 States Exported American Whiskey in 2023



III. MARKETS

ARGENTINA & URUGUAY

I. Import Policies

Tariffs – Argentina

In October 2023, Argentina increased its tariff on bottled whiskey from 20% to 35% *ad valorem*, which is its WTO-bound rate. Argentina is a member of the MERCOSUR trading bloc, along with Brazil, Paraguay, and Uruguay, and its common external tariff for whiskey is 20% *ad valorem*. Argentina currently applies a tariff of 20% *ad valorem* on all other imported distilled spirits.

Request: DISCUS seeks the U.S. government's support in urging Argentina to reduce its tariff on imported whiskey to 20% *ad valorem* consistent with the MERCOSUR common external tariff rate.

II. 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 proposal's status is unclear.

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 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.

On October 4, 2023, Argentina notified a proposed regulation to the WTO's TBT Committee to amend its pregnancy pictograph warning requirement(G/TBT/N/ARG/450). The prosal 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. The status of the proposal is unclear.

Request: DISCUS seeks U.S. government support to get an update on the status of the proposal and 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.

III. Trade Statistics

In 2023, direct U.S. spirits exports to Argentina reached $11 million, a 17% decrease from 2022. In the January-August 2024 period, U.S. exports were valued at $5 million, representing a 26% decrease from the same period in 2023.

In 2023, direct U.S. spirits exports to Uruguay reached $9 million, a 21% decrease from 2022. In the January-August 2024 period, U.S. exports were valued at $6.1 million, representing a 9% decrease from the same period in 2023 (January-August).

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 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 informed food choices, including 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 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 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, and to obtain the results of further consumer research.

In August 2024, FSANZ issued its report and is expected to continue working on the proposal. The report concluded that sugar claims, carbohydrate claims, and NIPs themselves cause consumers to make inaccurate assumptions about alcoholic beverages, i.e., perceive them as being healthier, less harmful to health, and lower in energy compared to the same alcoholic beverage with no claim or no NIP. Claims also reduce consumers' understanding that an alcohol-free alternative is better for managing weight (although NIPs have no such effect). These effects on consumer perceptions are small.

The report shows that sugar claims, carbohydrate claims, and NIPs themselves do not affect the amount of alcoholic beverages consumers intend to consume, nor on the likelihood of consumers modifying their food intake or physical activity to compensate for their alcohol consumption.

Request: We seek the U.S. government's support to get an update on the status of the proposal and in urging Australia and New Zealand to enable producers to continue voluntarily applying energy information to their products, or otherwise: 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. QR codes or referenced websites allow producers to provide a variety of regulatory and voluntary information to consumers. The technology also enables producers to easily update the information, which helps reduce costs and cut packaging waste in the long term.

II. Other Barriers

Taxation - Australia

Australia's tax rate on distilled spirits is significantly higher than its tax rate on wine, and it serves as a trade barrier to U.S. spirits exports. While spirits are taxed based on the alcohol content per liter and subjected to bi-annual indexation, meaning automatic increases in line with inflation every February and August, wine operates under a different tax regime. Between August 2024 and February 2025, the excise tax for brandy is AUD $97.02 per liter of alcohol, while for all other spirits, it is AUD $103.89. Meanwhile, wine is taxed at 29% of its wholesale value under the Wine Equalisation Tax (WET).

The structure of Australia's excise tax on spirits has created severe distortions in the beverage alcohol market and is a barrier to U.S. spirits exports. The excessive tax rate on spirits, compared to wine, has led to significant price disparities between the categories.

Request: DISCUS seeks the U.S. government's support in urging Australia to, at a minimum, close the gap between its tax rate on distilled spirits and wine.

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 refund went into effect on July 1, 2021. The refund is only available to locally produced spirits and not to imported ones.

Australia's excise tax remission for small local distillers sharply contrasts with the U.S. Craft Beverage Modernization Act (CBMA), which provides the same excise tax reduction for imported and domestically produced spirits. The U.S. approach under the CBMA ensures that foreign and domestic spirits producers benefit from the excise tax reduction, consistent with the U.S.'s international trade commitments.

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 urging Australia to abide by its WTO and FTA commitments and eliminate its discriminatory excise tax remission.

III. Trade Statistics

In 2023, U.S. spirits exports to Australia reached $138 million, down 2% from 2022. In 2023, Australia was the third-largest export market for total American spirits and second largest for American Whiskey. Through August 2024, U.S. spirits exports to Australia are down 17% as compared to the same period in 2023, totaling $88 million.

In 2023, U.S. spirits exports to New Zealand reached $15 million, down 19% from 2022. Through August 2024, U.S. spirits exports to New Zealand are down 14% as compared to the same period in 2023, totaling nearly $9 million.

BRAZIL

I. 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. As with our previous submission (April 22, 2021, G/TBT/BRA/1145), DISCUS submitted a comment on July 13, 2022, raising concerns with Brazil's proposals on minimum and maximum alcohol levels, aging requirements for rum, and the definition of whiskey, among others. 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 remains under review, and it is unclear when Brazil will issue the revised draft and if they will notify a revised version to the WTO.

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. The status of the proposal is unclear.

Request: DISCUS seeks the U.S. government's support to get an update on the status of the proposal and in urging Brazil to: 1) eliminate the aging requirement in the definition for rum; 2) modify the definition of whiskey and eliminate the requirement that the distillate be made of "malted cereal"; 3) extend distinctive product recognition to "American Rye Whiskey"; 4) include a flavored spirits category consistent with the U.S. standards of identity; 5) exempt distilled spirits products from any date-mark requirement consistent with the Codex standards; 6) extend the current allergen labeling exemption for certain grain-based spirits such as whiskey to all spirits; 7) modify the minimum and maximum alcohol content requirements consistent with the U.S. standards of identity; 8) confirm that the current certifications for U.S. spirits will continue with no additional requirements; 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.

II. <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.

Brazil's Congress is revising its tax system, including the excise tax on beverage alcohol products. In a positive development, the proposal approved by the Brazilian Lower House of Congress on July 10, 2024, would eliminate the discriminatory lower tax rate for domestically produced "Cachaça" than afforded to other spirits categories, including "Bourbon" and "Tennessee Whiskey."

The bill would implement a hybrid excise tax with a specific rate based on liters of per alcohol and an *ad valorem* rate that would differ depending on whether the product is a spirit, beer, or wine. The proposed bill notes that the *ad valorem* rate "may be differentiated by product category and progressive according to the alcohol content." The proposed beverage alcohol excise tax could create severe distortions in the beverage alcohol market and lead to significant price disparities between the categories.

Request: DISCUS seeks the U.S. government's support in 1) ensuring that Brazil eliminates its discriminatory excise tax and 2) urging Brazil to, at a minimum, close the gap between its proposed tax rate on distilled spirits and wine and beer.

III. Trade Statistics

In 2023, U.S. spirits exports to Brazil decreased by 4% to $48 million. Brazil was the eleventh-largest export market for American spirits in 2023. In the January-August 2024 period, U.S. spirits were valued at $41 million, representing an almost 15% increase from the same period in 2023 (January-August).

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%. On March 9, 2024, the federal government announced a two-year extension of the 2% cap on the annual alcohol excise duty inflation adjustment, effective until March 31, 2026.

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. The Canadian government provided $166 million in aid over two years to the Canadian wine industry to assist with transitioning to paying an excise tax. This program ended in March 2024, with no announcement of an extension or replacement program as of September 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 Edward 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 Edward 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 Provinces of Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland and Labrador to eliminate the NSLC's discriminatory distilled spirits mark-up as they phase out discriminatory wine mark-up policies in line with their international trade commitments under the WTO and USMCA.

<u>Discriminatory and Non-Transparent Mark-ups – British Columbia and Saskatchewan</u>

The liquor boards of British Columbia (LDB) and Saskatchewan (SLGA) continue to maintain a split between wholesale and retail mark-ups. While wholesale mark-ups remain generally transparent and non-discriminatory. The retail mark-ups continue to be arbitrary and non-transparent, *i.e.,* they are not published and can vary by individual sku or product. This practice remains 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, operate in a transparent manner, and ensure that any new mark-up or levy structures do not disadvantage imported products, consistent with their international commitments.

Discriminatory Mark-ups and Fees – Alberta

The preferential mark-up for small distillers within Alberta, introduced in 2017, remains in place. Small distillers in Alberta continue to benefit from the reduced mark-up of $2.46/litre compared to the standard $13.76/litre. Additionally, these small distillers maintain the ability to sell directly 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. The current practices in Alberta remain 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 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) continues to enforce its 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. This policy remains in place and has been more strictly enforced in recent years, with fewer exceptions being granted.

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. These costs, which are unique to Ontario, are not included in LCBO's calculations when they determine their 'lowest Free on Board (FOB) price' compared to other provinces. As the Importer of Record for Ontario, the LCBO remains the supplying source for all import products, and suppliers are unable to switch supplying sources.

This policy continues to increase the burden on the environment, exacerbate supply chain difficulties, and limit consumer choice in Ontario. Recent developments in the expansion of the beverage alcohol marketplace in Ontario have not addressed this issue. While changes have been made to allow convenience stores to sell certain alcohol products and to expand distribution networks, the "ship from source" requirement for imported products remains in place. The LCBO's actions, including this policy, have been criticized for potentially driving some of consumers' favorite brands out of the market. Industry representatives have expressed concern about the LCBO's practices, stating that they ignore the long history of collaboration and investment in the province and could have major impacts on Ontario and other Canadian consumers.

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 Liquor Control Board of Ontario (LCBO) has intensified its efforts to enforce price reductions, citing concerns about inflation and consumer affordability. However, these actions have raised significant concerns within the industry. These actions have raised significant concerns within the industry. The LCBO has informed beverage alcohol suppliers of its intention to enforce a price warranty clause in its PO terms, comparing LCBO FOB purchase prices to those in Quebec. However, there are structural differences and other reasons for the differing FOBs between Ontario and Quebec. This enforcement includes plans to impose financial penalties on suppliers, both prospectively and retroactively, to April 1, 2023. However, this approach fails to account for several critical factors, such as structural differences, hidden costs, minimum pricing policy, lack of consumer benefit, market disruption, and the potential for broader impact.

Request: We respectfully seek the U.S. government's support in urging Ontario to reconsider its approach to price reductions and enforcing price warranty clauses compared to prices in Quebec.

Chargeback – Ontario

In November 2023, the Liquor Control Board of Ontario (LCBO) requested that suppliers confirm their pricing to ensure it is not lower than that offered to other provincial government liquor boards. This request is part of the LCBO's efforts to maintain competitive pricing for Ontario consumers and is in line with Section 14 of its Purchase Order Terms and Conditions. The LCBO has communicated its intention to impose chargebacks on suppliers who do not comply with these terms, potentially affecting those not offering the lowest price in Canada.

The LCBO plans to impose multimillion-dollar penalties on suppliers, both in the future and retroactively to April 1, 2023, that are not offering the LCBO the lowest price in Canada. If these multimillion-dollar fines are imposed, we are concerned that some American Spirits companies may be forced to pull out of the important Ontario market.

Request: We respectfully seek the U.S. government's support to urge the LCBO to negotiate with affected parties to reach a mutually beneficial settlement.

Price Change Windows – Quebec

The Société des alcools du Québec (SAQ) has recently adjusted its price change policy. While previously limited to twice per year, the SAQ now allows suppliers more flexibility in submitting price adjustment requests. Suppliers can now submit an upward adjustment request in May, with the option to submit a second increase request during one of three following periods: August, November, or February of each fiscal year. The SAQ remains the primary route-to-market within Quebec, with exclusive distribution rights for most alcoholic beverages, except for items like light cider and beer bottled in Quebec. While this change offers more flexibility than the previous twice-yearly system, it still differs from other Canadian Liquor Control Boards, such as the LCBO, which allow more frequent price changes.

Though improved, the SAQ's pricing policy may still not fully align with modern, dynamic retail environments. More frequent product price changes are common in many retail sectors. The current policy may still limit brand and category investments, which are crucial for retailers' and suppliers' long-term success.

Request: We respectfully seek the U.S. government's support in urging Quebec to liberalize its restrictive pricing policies further. While the recent changes are a step in the right direction, allowing monthly price adjustments or 13 changes per year (i.e., once per SAQ fiscal period) would better align with industry standards and potentially benefit both suppliers and consumers.

Translation – Quebec

In June 2022, Quebec passed "Bill 96" to amend its Charter of the French Language to strengthen the use and status of French in Quebec. The law introduced new translation requirements for various business communications, including product packaging, advertisements, signage, and commercial materials.

On June 1, 2023, additional provisions of Bill 96 came into effect, impacting contracts, employment documents, and business operations. The Quebec government released draft regulations in January 2024 to further implement Bill 96, with the final regulation published on June 26, 2024. Under the final regulation, "recognized trademarks" are exempt from translation requirements, provided no French version of the trademark is registered. However, generic and descriptive terms within these trademarks must be translated into French. The regulation also exempts "Designations of Origin and Distinctive Names of Cultural Nature" from translation. It's important to note that "Bourbon" and "Tennessee Whiskey" are protected as distinctive products under the U.S.-Mexico-Canada Agreement, which may impact their treatment under these regulations.

The regulation is set to take effect on June 1, 2025, with a two-year transition period until June 1, 2027, for products manufactured before June 1, 2025.

Request: We respectfully seek the U.S. government's support to: 1) confirm that "Bourbon" and "Tennessee Whiskey" do not need to be translated; 2) clarify the definition of "manufactured" and whether it refers to the date of distillation or the date of bottling; and 3) confirm that products manufactured before June 1, 2025, and placed on the market before June 1, 2025, may continue to be sold until stocks are depleted, even beyond the June 1, 2027 transition deadline.

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.

In late 2023, the SAQ issued an Information Bulletin that disclosed the penalties and new implementation timeline, which was extended to December 31, 2024, with a phase-in period until March 31, 2025.

Request: DISCUS respectfully seeks the U.S. government’s support in seeking clarification from the SAQ concerning its definition of “overpackaging” and not to implement penalties until the definition is clarified.

II. Trade Statistics

In 2023, Canada ranked as the second largest export market for American spirits and exports reached $255 million, down by nearly 16% from 2022. Through August 2024, U.S. spirits exports to Canada were valued at nearly $150 million, a 15% decrease from the same period in 2023 (January-August).

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

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 5, 2023, the Ministry of Health published its compliance manual. In February 2024, Chile announced that products already in the market before the regulation goes into effect on July 7, 2024, will not need to comply with the new warning statement/pictograph and energy labeling requirement and can continue to be sold until stocks are depleted. In March 2024, Chile notified to the WTO a question-and-answer document concerning the implementation of its warning statement/pictograph and energy labeling proposal (G/TBT/N/CHL/625/Add.5) and confirmed that products already in the market before the regulation goes into effect on July 7, 2024, can continue to be sold until stocks are depleted and it would not permit products that contain similar but not identical pictograph warnings without requiring a labeling change.

Request: DISCUS seeks the U.S. government's support to urge Chile to require energy information to be provided per "standard drink".

II. Trade Statistics

In 2023, U.S. spirits exports to Chile decreased 36% from the previous year and were valued at $28 million. From January-August 2024, exports of U.S. distilled spirits totaled $21 million, a 31% increase from the same period in 2023.

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

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%).

U.S. companies may apply for an annual exemption from these retaliatory tariffs. However, they face uncertainty as to whether exemptions will be granted.

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 2018-2023. In the decade before the imposition of retaliatory tariffs, American spirits exports to China increased by nearly 137%.

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

II. Technical Barriers

Voluntary Whiskey Standard

The Standardization Administration of China (SAC) finalized its voluntary product standard for domestically produced whiskey. 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 1) ensure it is not applied to American Whiskey, and 2) secure confirmation that the analytical parameters and grading system do not apply to imported whiskeys.

Labeling

In February 2024, China notified proposed revisions to its General Standard for the Labelling of Prepackaged Foods (GB 7718-XXXX) to the WTO's Committee on Sanitary and Phytosanitary Measures (G/SPS/N/CHN/1295) and Technical Barriers to Trade Committee (G/TBT/N/CHN/1827). In July 2024, China's National Health Commission (NHC) notified revisions to the draft National Food Safety Standard of General Principles for the Labeling of Prepackaged (GB 7718) Foods to WTO's SPS Committee (G/SPS/N/CHN/1295/Add.1) and the State Administration for Market Regulation (SAMR) notified draft Measures for Supervision and Management of Food Labels to the WTO's TBT Committee (G/TBT/N/CHN/1401/Add.2). The principle is that the general food labeling standard (GB 7718) lays down general requirements, and SAMR's draft measure provides details on its implementation.

General Principles for the Labeling of Prepackaged Foods (GB 7718) (G/SPS/N/CHN/1295/Add.1): The proposal would replace the current General Standard for the Labeling of Prepackaged Foods, which was issued in April 2011 and went into effect on April 20, 2012.

In February 2024, China notified proposed revisions to its General Standard for the Labelling of Prepackaged Foods (GB 7718-XXXX) to the WTO's SPS (G/SPS/N/CHN/1295) and TBT Committees (G/TBT/N/CHN/1827). In April 2024, DISCUS submitted a comprehensive comment urging China to; 1) exclude spirits from providing a list of ingredients/raw materials; 2) exempt spirits from date marking requirements; 3) provide flexibility concerning the use of lot codes; 4) reintroduce the labeling exemption for outer packaging; 5) allow labels to include images of the flavor; 6) confirm that stickering is allowed; and 6) provide an 18th month transition and exhaustion clause.

The July 2024 proposal (see below) reintroduced the exemption from labeling requirements for outer packaging if the outer packaging can be easily opened but did not consider our other comments.

Request: DISCUS seeks the U.S. government's support to urge China to: 1) exclude distilled spirits products from any requirement to provide a list of ingredients or raw materials; 2) exempt distilled spirits products over 10% a.b.v. from the requirement to list the "date of manufacture"; 3) allow importers to utilize the batch code provided by the manufacturer if a batch code is required in lieu of the "date of manufacture" 4) prohibit the sale of distilled spirits products if the manufacturer's batch code is erased/tampered/altered; 5) recognize digital labels and the information they provide, including mandatory labeling information, as equivalent to physical on-pack labels; 6) confirm that products with illustrations of flavors on the label would not be prevented from being sold in the marketplace; 7) remove the requirement to list the country of packaging/filing; 8) confirm that an approximate translation would be accepted for non-mandatory labeling requirements; 9) confirm that importers will continue to be allowed to apply the Chinese label via sticker in a bonded warehouse in China before the good's formal entry into the market; 10) provide, at a minimum, a two-year transition period; 11) confirm that products already in the marketplace may continue to be sold until they are depleted; and 12) ensure that any transition period and stock exhaustion provision are aligned with the draft Measures for Supervision and Management of Good Labels prepared by the State Administration for Market Regulation.

Draft Food Labeling Supervision and Management Measures (G/TBT/N/CHN/1401/Add.2.): The proposal would implement the general food labeling standard and replace the former AQSIQ's No. 102 Announcement. Several provisions from previously notified versions of the general food labeling standard, such as outer-package labeling, were moved to the proposed measure to implement the general labeling standard.

Request: DISCUS seeks the U.S. government's support to urge China to; 1) retain the font size requirements in the National Food Safety Standard of General Principles for the Labeling of Prepackaged Foods (GB7718-2011); 2) exempt distilled spirits products over 10% a.b.v. from the requirement to list the date of manufacture; 3) allow importers to utilize the batch code provided by the manufacturer if a batch code is required in lieu of the “date of manufacture”; 4) prohibit the sale of distilled spirits products if the manufacturer's batch code is erased/tampered/altered; 5) amend the exemption from providing mandatory labeling information on the outer package to clarify that it applies to any requirement to provide a “date of manufacture” or a lot code; 6) confirm that products already in the marketplace may continue to be sold until they are depleted; and 7) ensure that the transition period and a stock exhaustion provision are aligned with the proposed revisions to the general food labeling standard (GB 7718) (G/SPS/N/CHN/1295/Add.1).

III. Trade Statistics

In 2023, U.S. spirits exports to China reached $22 million, down about 9% from 2022. Through August 2024, U.S. spirits exports to China were valued at $15 million, a 4% decrease from the same period in 2023.

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, 2024

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.	4.43
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 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 obligations in two respects. First, by applying a lower rate of tax to *guaro* (¢4.43 per mL of pure alcohol) – the primary product category that is produced locally, than to mostly imported product categories such as whiskey, vodka, etc., (¢5.17 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. Trade Statistics

In 2023, U.S. spirits exports to Costa Rica were valued at $1.8 million, representing a 30% increase from 2022 export values. Between January and August 2024, U.S. spirits exports were valued at almost $1.8 Million, representing a 78% increase from the same period in 2023 (January-August).

DOMINICAN REPUBLIC

I. Import Policies

Proposed Spirits Import Regime

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 extended the implementation date to December 23, 2023. However, the Dominican Republic did not provide an exemption for products placed on the shelf before the conclusion of the phase-in to continue to be sold without a tax stamp. On December 29th, 2023, the Dominican Republic issued General Rule N°09-2023, postponing the entry into force until July 1, 2024.

In June 2024, The Dominican Republic's *Dirección General de Impuestos Interno*s - DGII opened a public consultation on its proposal to amend General Norm No. 07-2021 to exclude imported alcoholic beverages from the tax stamp requirement. The proposal establishes a new import regime, which includes shipment notification and authorization, a bank guarantee requirement, and warehousing requirements and inspections. On July 31, 2024, the Dominican Republic notified the proposal to the WTO (G/TBT/N/DOM/232/Add.1/Rev.1). DISCUS submitted a comment urging the Dominican Republic to eliminate the guarantee and retain the current bond requirement, establish that the government is responsible for installing and costs related to the warehouse locks, limit the ability to require such locks to only the most high-risk cases, and establish a timeline for warehouse inspections.

Request: DISCUS seeks the U.S. government's support in urging the Dominican Republic to 1) eliminate the proposed guarantee and retain the current bond requirement, 2) establish that the government is responsible for installing and costs related to the warehouse locks, 3) limit the ability to require such locks to only the most high-risk cases, and 4) establish a timeline for warehouse inspections.

II. Trade Statistics

In 2023, U.S. distilled spirits exports were valued at $37 million, representing a 22% decrease from 2022 levels. Through August 2024, U.S. exports reached $22 million, reflecting an 18% decrease relative to the same period in 2023 (January-August).

ECUADOR

I. Import Policies

Tariffs

Ecuador's MFN tariff on imported spirits is 1% *ad valorem* over the CIF + USD 10,00 per LPA. U.S. distilled spirits are at a competitive disadvantage in the Ecuadorian 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 free trade agreements. 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 agreement with Ecuador to apply to U.S. spirits products the same tariff treatment that currently applies to EU- and UK-origin spirits.

II. 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.

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, Ecuador continues to engage with local stakeholders on the proposal. DISCUS understands that Ecuador will then draft a regulation to the WTO for stakeholder input. However, the status of the proposal is unclear.

Request: We respectfully seek the U.S. government's support to 1) get an update on the status of the proposal, 2) ensure that Ecuador notifies the proposed regulation to the

WTO's TBT Committee, and 3) applies the pictogram warnings to all categories of beverage alcohol.

III. Trade Statistics

In 2023, U.S. spirits exports to Ecuador reached $9.4 million, up about 13% from 2022. Through August 2024, U.S. spirits exports to Ecuador were valued at $6.8 million, a 34% increase from the same period in 2023 (January-August).

EUROPEAN UNION

I. Import Policies

Retaliatory Tariffs

Since 1997, the U.S. and EU spirits industries have largely enjoyed duty-free access to each other's markets. This duty-free access was provided for under the "zero-for-zero" agreement negotiated in connection with the Uruguay Round by the U.S. and the EU (and subsequently several other countries) to eliminate tariffs on virtually all distilled spirits products on a most-favored-nation (MFN) basis.

However, 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).

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, the export of U.S. whiskey to the EU surged by over 60%, climbing from $439 million in 2021 to $705 million in 2023. This accounted for 50% of all American Whiskey exports, surpassing the pre-tariff level of $518 million in 2017.

In December 2023, the EU announced that it would continue the suspension of tariffs on American Whiskeys for 15-months, until March 31, 2025. If no agreement is reached, the EU will reimpose its tariff on American Whiskeys at 50%, up from the previously imposed 25%. However, the U.S. announced that it would continue suspending EU steel and aluminum tariffs for two years, until December 31, 2025, to continue negotiations on measures to address overcapacity and low-carbon production.

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-Harris 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. <u>Other Barriers</u>

<u>Discriminatory Taxation</u>

The EU's excise tax rules and minimum rates for distilled spirits are set forth in two EU Directives: 2020/1151 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 <u>retains</u> 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 **Albania**, **Austria, Bulgaria, Croatia, Czechia, France, Greece, Portugal, Romania, Spain, and Slovakia.**

Request: As the four WTO dispute settlement proceedings (Japan, Korea, Chile, and the Philippines) have shown, all distilled spirits are, at a minimum, directly competitive and substitutable products and should be taxed similarly. DISCUS seeks the U.S. government's continued assistance in urging the EU to end its tolerance of discriminatory tax regimes and to abide by its WTO commitments to tax all distilled spirits similarly.

III. <u>Technical Barriers</u>

<u>EU Proposed Revisions to the Packaging and Packaging Waste Decree (G/TBT/N/EU/953)</u>

On February 27, 2023, the EU notified the WTO of proposed revisions to its Packaging and Packaging Waste Regulation (PPWR). 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 at every step of the production process.

On April 24, 2024, the European Parliament plenary voted to adopt the political agreement between the European Commission, the European Parliament, and the Council of the

European Union on the revised Packaging and Packaging Waste Regulation. As such, it is de facto final, but it must undergo several additional procedures before it is formally adopted in the Winter of 2024/2025.

Request: DISCUS seeks the U.S. government's continued support in ensuring that it is implemented consistently across the EU and that the EU treats U.S. spirits recognized as distinctive products of the U.S. in the EU ("Bourbon" and "Tennessee Whiskey"), similar to products recognized as GIs.

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.

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.

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 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 2023, the EU was the largest destination for U.S. spirits exports at $883 million, up by nearly 24% over 2022, surpassing its 2017 pre-tariff level of $603 million. The EU alone accounts for 40% of total U.S. spirits exports. American Whiskey exports to the EU reached $705 million in 2023, accounting for 50% of total American Whiskey exports.

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 61% compared to 2021.

American Whiskey exports through August 2024 reached $437 million, down nearly 23% from the same period in 2023. However, total American spirits through August 2024 reached $809 million, up nearly 20% from the same period in 2023. This growth through August 2024 is driven by liqueurs and cordials (up nearly 860% to $173 million), vodka (up nearly 618% to $131 million), and gin (up nearly 32% to $29 million).

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 removal of duties on non-spirits-based alcohol drinks saw strong growth in the wine trade the following year, with imports jumping 80% to HK$3.2 billion ($411 million).

On October 16, 2024, Hong Kong Chief Executive John Lee announced that effective immediately, Hong Kong will reduce its excise tax on distilled spirits from 100% *ad valorem* to 10% *ad valorem* on spirits in containers under one liter and priced above HKD 200 (USD $25).

The 100% *ad valorem* excise rate remains on the value of the spirit in a container under one liter and under the HKD 200 (USD $25) threshold if the value exceeds the value threshold. This means that spirits in a container less than one liter and over the HKD 200 threshold would have two excise tax rates applied to it. For example, a distilled spirit in a container under one liter and valued at HKD 300 would pay an excise tax of 100% *ad valorem* on the first HKD 200, and over the threshold would pay an excise tax of 10% ad valorem on the remaining HKD 100. Spirits priced at or below HKD 200 (USD $25) or in containers larger than one liter will remain subject to the existing 100% *ad valorem* rate.

Request: DISCUS seeks the U.S. government's support in urging Hong Kong, at a minimum, to eliminate the price threshold and reduce its excise tax on all distilled spirits to 10% *ad valorem*.

II. Trade Statistics

In 2023, direct U.S. spirits exports to Hong Kong were valued at only $4.6 million, a 76% increase from 2022. Through August 2024, total U.S. spirits exports to Hong Kong were valued at $3.7 million, a decrease of 2% from the prior year (January-August 2023).

INDIA

I. Import Policies

Tariffs

India's 150% *ad valorem* tariff severely restricts access to the Indian market for U.S. spirits exporters. India was engaged in trade agreement negotiations with the EU and the UK, which are major spirits and whiskey exporters. However, after national elections, the status of the negotiations are unclear. 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 ECT with Australia, which includes preferential market access for certain wines. We understand that discussions with Australia are ongoing to expand preferential market access opportunities to include distilled spirits.

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, the Alcoholic Beverages Regulation includes maximum limits on a range of naturally occurring constituents in distilled spirits, including "acetic acids" and "ethyl acetate". These substances are not regulated in minimum or maximum levels in other large spirits-producing and consuming markets such as the U.S., Japan and the EU. The rationale for such limits is also unclear as the thresholds are not consistent across categories. For instance, it is noteworthy that for the same parameter (e.g. acetic acid) FSSAI have set different permissible thresholds for blended whiskey (100g/100 lpa) vs malt whiskeys (150g/100 lpa) vs coconut fenny (a traditional spirit drink from south India) which has an acetic acid threshold of 200g/100 lpa. These arbitrary parameters under the guise of 'food safety' constitute a market barrier for U.S. products.

Moreover, the category definitions for brandy, gin, rum, vodka, and whiskey provide that the ethyl alcohol content 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. These arbitrary limits under the guise of 'food safety' constitute a market barrier for U.S. products, with barrel-proof spirits typically falling in the range of 52–66% a.b.v.

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.

DISCUS was advised that FSSAI agreed to increase the minimum a.b.v. to 15%, but the status of the proposal remains 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., 3) eliminate the proposed use of analytical parameters, and 4) clarify whether both "Ready-To-Drink" and "low alcoholic beverages" need to be stated on the label or whether either term is sufficient.

III. Other Barriers

Outstanding Payment – Telangana

Since October 2023, the Telangana State Beverage Corporation (TSBCL), the alcohol monopoly in the Indian State of Telangana, has been withholding and delaying payments to spirits producers. Under the terms of payment with the TSBCL, payments are required to be made within 45 days. While some payments have been made since October 2023, the industry estimates that the TSBCL owes spirits, beer, and wine producers (domestic and international) over $600 million.

DISCUS member companies have reported that this has created a substantial financial strain, affecting cash flow and overall operations and creating significant market uncertainty.

Request: We respectfully request the U.S. government's support to urge the TSBCL take immediate action to 1) expedite all outstanding payments to U.S. producers without further delay and 2) make all future payments within 45 days as agreed to in the original payment terms.

IV. Trade Statistics

U.S. spirits exports to India were valued at $19.9 million in 2023, up 41% from 2022. Whiskey accounts for most of these exports with an 82% share by value. Through August 2024, U.S. spirits exports were valued at $6 million, down 62% over the same period in 2023. American Whiskey exports were valued at $5.5 million, down 58% through August 2024 compared to the same period in 2023 (January-August).

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 in reducing Indonesia's tariff on American spirits.

Import Approval System

As of 2018, Indonesia no longer applies a quantitative limit on importing 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 must apply for tax stamps and an import permit based on their needs and the demonstrated ability to pay the necessary excise taxes and import duties. This requirement is overly burdensome because the tariff and excise taxes are so high. According to industry contacts, only 15 import licenses are issued and subject to a quota, which limits the import volumes and requires international companies to appoint local third-party importers. In addition, it is highly prone to delays.

***Request**:* DISCUS seeks 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 for products above 5% a.b.v., 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. On December 18, 2023, the Ministry of Finance issued Regulation No. 160 of 2023, increasing the excise tax rate and maintaining the discriminatory treatment between domestic and imported products.

Current Excise Tax (Rp. Per liter)		
Alcohol Content	**Local**	**Imported**
Up to 5% a.b.v.	16,500	16,500
Between 5% and 20% a.b.v.	42,500	53,000
Greater than 20% a.b.v	101,000	152,000

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 spirits exports from the U.S. to Indonesia in 2023 were valued at $562,000, a 370% decrease from 2022. In the January-July 2024 period, no U.S. spirits were exported directly to Indonesia. While direct U.S. spirits exports to Indonesia are minimal, Euromonitor International shows that imported whiskeys and other categories are available in the Indonesian market.

JAPAN

I. Import Policies

Tariffs

In 1997, as part of its settlement agreement with the U.S., 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 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 that it "will not raise tariffs rates above those specified in Annex " and that it "will apply the rates listed in Annex in full recognition that Japan's WTOT 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 2208.0 between -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.

III. Trade Statistics

In 2023, Japan ranked as the U.S. spirits sector's sixth-largest export market, with exports valued at $122 million, up nearly 9% from 2022. Japan was the third-largest export market for American Whiskeys in 2023, with exports up 4% to $106 million, accounting for 87% of total spirits exports. Through August 2024, American spirits exports to Japan are up nearly 4% to $83 million compared to the same period in 2023 (January-August).

KENYA

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

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

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

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

II. Trade Statistics

In 2023, there were no direct U.S. spirits exports to Kenya. Through July 2024, total direct U.S. spirits exports reached nearly $390,000. 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). 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," "creates an unnecessary obstacle to international trade" in breach of Article 2.2 of the WTO's TBT Agreement. Furthermore, it discriminates against imported whiskeys vis-à-vis domestically produced spirits in Korea. Tax stamps are ineffective tools to combat the sale and consumption of illicit alcohol and their costs are disproportionate to any likely benefits.

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

Marketing Restrictions

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.

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.

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.

Regulatory Best Practices

On its website, Korea's Ministry of Food and Drug Safety (MFDS) lists several Memoranda of Understanding (MOU) with foreign regulatory authorities and international organizations. These MOUs tend to cover a range of areas of cooperation, including food and other product categories. Countries such as the EU, Australia, and New Zealand have MOUs with MFDS covering food, while the United States does not.

Request: DISCUS requests the U.S. government work towards concluding an MOU with MFDS that covers food products. This would facilitate a range of discussions, including on food standards and labelling requirements, that are supportive of ensuring access to safe and high-quality food and beverage products while not restricting imports or international trade.

III. Trade Statistics

In 2023, Korea's imports of U.S. spirits were valued at $48 million, representing a 4% decrease from 2022. Through August 2024, U.S. exports reached $21 million, reflecting a 36% decrease relative to the same period in 2023 (January-August).

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

MALAYSIA

I. Import Barriers

Tariffs

Malaysia's fully phased-in bound tariffs on imported spirits are extremely high, ranging from 620 to 1,200 Malaysian Ringgits (RM) per decaliter of alcohol. Its applied tariffs on imported spirits also are exceptionally high.

Product	RM (current)
Brandy, Whiskey, Vodka	58 per liter
Gin and Rum	55 per liter
Liqueurs (not exceeding 57% a.b.v.)	93.5 per liter of pure alcohol
Other Liqueurs	64.5 per liter of pure alcohol
Samsu	26.5 per liter of pure alcohol
Arrack and Pineapple Spirit	20 per liter

U.S. distilled spirits will soon be at a competitive disadvantage in the Malaysian market vis-à-vis UK-origin spirits, such as Blended Scotch Whiskey. UK-origin spirits will soon enter duty-free under 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 Malaysia's commitment to eliminate its tariff on American spirits. Malaysia agreed in the context of the TPP negotiations to a 16-year phase-out for all 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

Discriminatory Taxation

In March 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.

III. <u>Technical Barriers</u>

<u>Standards</u>

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 spirits-based RTDs, as there is no standard for them, and they may not be imported. However, non-spirits based lower alcohol beverages are allowed in the market. 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.

In March 2024, DISCUS supported an application prepared by the World Spirits Alliance (WSA) requesting Malaysia establish a definition for spirits based RTDs. In response to a request from Malaysia, DISCUS, via the WSA, provided additional information concerning RTDs sold in the U.S. in June 2024.

DISCUS understands Malaysia is still reviewing feedback to the general standard, the WSA's RTD application, and is working on revised definitions.

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) adopt a definition of spirits based RTDs consistent with the WSA proposal, 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.

IV. <u>Trade Statistics</u>

In 2023, Malaysia's imports of U.S. spirits were valued at $883,000 million, representing a 54% decrease from 2022. Through August 2024, U.S. exports reached $2.2 million, reflecting a 150% increase relative to the same period in 2023 (January-August).

MEXICO

I. U.S.-Mexico-Canada Agreement

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

U.S. spirits exports were valued at nearly $140 million in 2023, up nearly 30% from 2022. In 2023, Mexico ranked as the third-largest export market for U.S. distilled spirits. Through August 2024, American spirits exports to Mexico reached $83 million, down almost 11% compared to the same period in 2023 (January-August).

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.

In 2024, Peru again increased its excise tax. The decree increases the rate for beverage alcohol products over 20% a.b.v. from 3.63 PEN/Liter to 3.97 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., remained 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%	1.33 PEN/liter	35%
	Over 6% to 12%	2.68 PEN/liter	25%
	Over 12% to 20%	2.89 PEN/liter	30%
	Over 20%	3.97 PEN/liter	40%

As noted above, the specific tax rate on pisco is much lower than the minimum rate of 3.97 PEN per liter for comparable spirits products (i.e., those containing over 20% alcohol by volume). This puts U.S. spirits at a considerable disadvantage compared to domestic pisco.

Peru's discriminatory taxation scheme is inconsistent with GATT Article III, paragraph 2, as well as the national treatment provisions contained in Article 2.2 of the U.S.-Peru Trade Promotion Agreement.

Request: DISCUS requests that the U.S. government engage with Peru to urge the elimination of its discriminatory practices as soon as possible.

II. Trade Statistics

In 2023, U.S. distilled spirits exports were valued at nearly $2 million, representing a decrease of 17% from 2022 levels. Through August 2024, U.S. exports reached $1.8 million, reflecting a 6% increase relative to the same period in 2023 (January-August).

SINGAPORE

I. Technical Barriers

Standards

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

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

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 2023, U.S. spirits exports to Singapore totaled $25 million, a 67% increase from 2022. In the January-July 2024 period, U.S. spirits exports were valued at $14.5 million, representing a 30% decrease from the same period in 2023 (January-August).

DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

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.

On May 10, 2024, South Africa's Department of Agriculture, Land Reform and Rural Development published its new draft amendments to the Liquor Products Act for a domestic consultation. The proposal was not notified to the WTO. South Africa confirmed that it would notify the WTO of the draft revisions for stakeholder input following the conclusion of the domestic process. In a positive development, the proposal appears to address concerns in the 2021 draft that certain products between 30% abv and 43% abv may be prohibited from the market. However, the proposal retains a problematic definition of vodka, gin, and a limited list of approved additives. DISCUS submitted a preliminary comment through the domestic consultation and plans to supplement them later with additional information when the proposal is notified to the WTO.

In June 2024, DISCUS received an email response from the South African government to our submission. They noted that the current consultation is "only intended for national comment" but will "note" our inputs and comments and invite us to submit comments again when "a more finalized version" is notified to the WTO in "due course." It remains unclear when South Africa will notify the revised draft to the WTO.

Request: DISCUS seeks the U.S. government's assistance to ensure South Africa notifies its revised proposed regulations to the WTO and urge South Africa to revise the May 2024 proposal to 1) modify the definition of vodka to remove the requirement that vodka "not have any distinctive characteristic, aroma, taste, or color" provide that it may contain sugar in an amount not to exceed two grams per liter and up to one gram per liter of citric acid, 2) reconsider the labeling proposal and allow all products classified under the gin category to be labeled as "gin", 3) expand the list of approved additives consistent with what is allowed under Codex Alimentarius for use in distilled spirits and the U.S. Food and Drug Administration lists of direct food substances and substances generally recognized as safe, 4) establish a single "Ready-to-Drink" category that does not distinguish between types of beverage alcohol, 5) recognize "Bourbon," "Tennessee Whiskey," and "American Rye Whiskey," as distinctive products of the U.S., 6) modify the alcohol content requirements to eliminate the maximum limit of 35% a.b.v. for spirit aperitifs, and 7) eliminate the maximum residual sugar levels for flavored spirits or, if this is not possible, increase the maximum residual sugar level to 100 grams per liter.

III. <u>Trade Statistics</u>

In 2023, spirits imports from the U.S. decreased 24% from the previous year and were valued at $17 million. From January-August 2024, imports of U.S. distilled spirits totaled $11 million, a 1% increase from the same period in 2023 (January-August).

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, except liqueurs.

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.

Good Regulatory Practices

Taiwan's Tobacco and Alcohol Administration Act (TAAA) and related orders do not allow corrections to simple administrative errors or omissions on import declarations. In addition, local agencies do not have the discretion to consider all facts before imposing fines or revoking licenses under the TAAA. This results in companies running the risk of having their import licenses revoked as a result of simple administrative errors or omissions in their documentation.

Request: DISCUS seeks U.S. government support to use the U.S.-Taiwan Initiative on 21st-Century Trade to align the TAAA with international best practices.

III. Trade Statistics

U.S. spirits exports to Taiwan were valued at almost $3.5 million in 2023, representing a 44% decrease from 2022. Through August 2024, American spirits exports to Taiwan totaled $1.3 million, a 41% decrease as compared to the same period in 2023 (January-August).

THAILAND

I. Import Policies

Tariffs

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

In January 2024, Thailand announced that it would eliminate tariffs and reduce excise taxes on wine to help stimulate its economy, including the tourism sector. The Royal Gazette published notifications on February 22, 2024, with an effective date of February 23, 2024. Specifically, Thailand eliminated tariffs on wine imports under HS codes 2204 and 2205. Previously, MFN rates for wine were 54% (if less than 23% a.b.v.) or 60% (if a.b.v. was above 23% a.b.v.). Specific tax and *ad valorem* rates were also changed as per the table below.

New Structure of Import Tariff and Excise Tax for Wine	**Grape Wine** (HS 2204)		**Fruit Wine** (HS 2205)	
Tariff Rate (ad valorem)				
	Old	New	Old New	New
- Below 15% ABV and 15-23% ABV	54%	0%	54%	0%
- Above 23% ABV	60%	0%	60%	0%
Excise Tax (ad valorem)				
1. Specific Tax (Baht/Liter/100% ABV)	1,500	1,000	900	900
Excise Tax (specific)				
2.1 Retail Prices below 1,000 baht/Liter	0%	5%	0%	0%

2.2 Retail Prices above 1,000 baht/Liter	10%	5%	10%	0%

Request: DISCUS respectfully requests the U.S. government's support in securing Thailand's commitment to immediately eliminate its tariffs on U.S. spirits imports, as they have done for imported wines.

II. Other Barriers

Discriminatory Taxation

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

Current Rate

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

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

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

III. Technical Barriers to Trade

Labeling

In February 2024, Thailand issued a proposed regulation that reintroduced the concept of graphic health warning labels (GHWL), reintroduced a vague and confusing list of prohibited images and messages from being displayed on a label, and introduced a cancer warning statement. It was not notified to the WTO. Thailand originally proposed the GHWL concept for beverage alcohol in 2009 and issued proposals in 2010 and 2014. The proposal requires the nine GHWL and statements to be rotated at one-thousand bottle intervals, introduces pregnancy and drunk driving pictograms, and reintroduces a vague and confusing labeling proposal that was initially proposed in 2014. In March 2024, DISCUS was advised by local industry contacts and the U.S. government that Thailand withdrew the proposal and reported that it would notify a revised proposal to the WTO.

On July 24, 2024, Thailand notified a proposed warning label regulation to the WTO (G/TBT/N/THA/747), which restates what is currently required and will not require companies to make changes to their labels. DISCUS understands that this proposal is not the final draft and is a "placeholder" to provide additional time to work on the proposal while respecting domestic procedural and legislative requirements. As such, we understand Thailand will issue a revised proposal. However, the timeline is unclear.

In September 2024, DISCUS submitted a comment that acknowledged the status of the proposal and urged Thailand, as it continues to develop its revised warning statement regulation, to consider a warning statement that: 1) reflects the current state of scientific research; 2) provides accurate and proportionate wordings and images; 3) addresses health risks generally and the harmful consumption of alcohol; 4) does not include a warning statement rotation requirement; 5) takes into account differently sized bottles; 6) provides for the use of stickers; and 7) provides an 18-month transition period and a stock depletion clause.

Request: We respectfully seek the U.S. government's support to ensure that Thailand notifies the proposed regulation to the WTO's TBT Committee.

IV. Trade Statistics

In 2023, direct U.S. spirits exports to Thailand totaled $4.2 million, a 17% decrease compared with 2022. From January to August 2024, spirits exports from the U.S. reached nearly $2 million, a 38% decrease compared with the same period in 2023 (January-August).

TÜRKIYE

I. Import Policies

Retaliatory Tariffs

Since June 2018, Türkiye has imposed retaliatory tariffs on all U.S. distilled spirits in response to the steel and aluminum tariffs. Originally, Türkiye applied a 70% tariff but increased it to 140% on August 15, 2018. However, on May 21, 2019, Türkiye reduced its tariff back to 70%. Since the imposition of the tariff, American spirits exports to Türkiye declined by nearly 18%, from nearly $17 million to approximately $14 million (2018-2022).

Request: DISCUS urges the U.S. and Türkiye 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, Türkiye 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, Türkiye'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 Türkiye to remove the discriminatory aspect of its excise tax for spirits.

IV. Trade Statistics

In 2023, U.S. spirits exports to Türkiye reached nearly $15 million, up 31% from 2022. From January to August 2024, spirits exports from the U.S. reached $7.2 million, a 33% decrease compared with the same period in 2023 (January-August).

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 2023, the UK ranked as the fifth-largest export market for American spirits. Total spirits exports reached $126 million in 2023, down 21% from 2022. 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 2023, American Whiskey exports to the UK decreased by nearly 52% from the pre-tariff 2017 level of $149 million.

Through August 2024, American spirits exports to the UK were down nearly 5%, reaching $90 million, compared to the same period in 2023 (January-August). Through August 2024, American Whiskey exports to the UK declined nearly 13% compared to the same period in 2025 (January-August), reaching $55 million.

VIETNAM

I. Import Policies

Tariffs

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

Vietnam currently applies a 65% *ad valorem* Special Consumption Tax (SCT) on distilled spirits. In February 2023, Vietnam's Ministry of Finance (MoF) proposed revising the SCT. In July 2023, Vietnam's Office of the Government (OOG) issued Directive 115, ordering the MoF to shift the SCT review to the normal legislative timetable and to consider a hybrid tax model. In January 2024, Vietnam's Deputy Prime Minister requested that the OOG circulate an updated report on the SCT and solicit input from other ministers on the implementation and specifics of a hybrid tax and the timeline for its approval.

On June 13, 2024, Vietnam's MoF published its draft amended SCT law for public consultation. Vietnam did not take into account the spirits sector's comments in support of a hybrid tax, and the revised proposal retains the *ad valorem* tax structure and proposes to increase the rates by 5% annually between 2026 and 2030. The deadline for comments was August 13, 2024.

The proposal includes two options for the SCT. **Under "Option 1", the SCT rate will reach 90% in 2030. Under "Option 2", the SCT rate will reach 100% by 2030.** Additional information is below:

Changes in the ad valorem SCT Rates for Alcoholic Beverages

Product	Current SCT rate (%)	Proposed SCT rate (%)	
		Option 1	Option 2
Wine & spirits 20% ABV or higher Beer	65	From 2026: 70 From 2027: 75 From 2028: 80 From 2029: 85 From 2030: 90	From 2026: 80 From 2027: 85 From 2028: 90 From 2029: 95 From 2030: 100
Wine & spirits lower than 20% ABV	35	From 2026: 40 From 2027: 45 From 2028: 50 From 2029: 55 From 2030: 60	From 2026: 50 From 2027: 55 From 2028: 60 From 2029: 65 From 2030: 70

DISCUS submitted a letter in July 2024 urging Vietnam to delay implementation of the SCT until 2027, consult with stakeholders before considering any additional stakeholders, and adopt a roadmap to adopt a hybrid excise tax (*ad valorem* + specific). DISCUS submitted a follow-up letter in September 2024 reiterating many of the same points.

On September 19, 2024, the Government submitted the draft to the National Assembly's Standing Committee for review. The first discussion at the National Assembly will occur during a Plenary Session between October 21, 2024, and December 3, 2024. It is unclear when a revised SCT will go into effect, but industry contacts advise that it will likely be in 2026.

Request: DISCUS respectfully seeks the U.S. government's support to urge Vietnam to delay implementation of the SCT until 2027, consult with stakeholders before considering any additional stakeholders, and adopt a roadmap to adopt a hybrid excise tax (*ad valorem* + specific)

III. Trade Statistics

In 2023, direct spirits exports from the U.S. fell 64% to $980,000 million. Through August 2024, U.S. spirits exports to Vietnam reached $1.1 million, a 62% increase compared to the same period in 2023 (January-August).