

**DISTILLED
SPIRITS
COUNCIL
OF THE
UNITED
STATES**

May 10, 2013

L. Daniel Mullaney
Assistant U.S. Trade Representative for Europe and the Middle East
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Re: Comments Regarding the Proposed Transatlantic Trade and Investment Agreement (78 Fed. Reg. 19566, (April 1, 2013))

Dear Mr. Mullaney:

On behalf of the Distilled Spirits Council of the United States, Inc. (Distilled Spirits Council), I am pleased to submit comments in response to the *Federal Register* notice requesting input on a potential trade agreement with the European Union (EU). The Distilled Spirits Council is a national trade association representing U.S. producers, marketers, and exporters of distilled spirits products (Harmonized Tariff Schedule headings 2208 and 2207.10.30). As detailed below and noted in our previous comments regarding the High Level Working Group on Jobs and Growth, we have a keen interest in the U.S.-EU trade relationship.

As a commercial matter, the U.S. spirits industry, which supports 672,000 direct employees, has become increasingly reliant on exports to fuel growth. The EU is the U.S. spirits industry's single most important export market, accounting for approximately 45% of global U.S. spirits exports in 2012. Continuing to expand U.S. spirits exports to the EU will help to support current and future employment in the industry and will, therefore, contribute to the industry's economic growth. In addition to exports, U.S. companies also have invested in distilleries in the EU and import a significant amount of EU-origin spirits including spirits that, by law, may only be produced in the EU.

The EU generally has a very open market for U.S. spirits products, which has been enhanced by multilateral and bilateral agreements. Under the "zero-for-zero" agreement negotiated in connection with the Uruguay Round, the U.S. and EU (as well as several other countries) agreed to eliminate tariffs on virtually all distilled spirits products on an MFN basis. Since that agreement was implemented, U.S. spirits exports to the EU have more than doubled, reaching over \$662 million in 2012. Additionally, the EU agreed in 1994 to recognize Bourbon and Tennessee Whiskey as distinctive products of the U.S. in a reciprocal agreement under which the U.S. provided similar recognition to Scotch Whisky, Irish Whiskey, Cognac, and other EU spirits. This agreement is of significant commercial importance to U.S. exporters of Bourbon and Tennessee Whiskey, two categories which accounted for over 81 percent of all U.S. spirits exports to the EU in 2012.

Furthermore, as the EU has expanded over the past decade, these agreements have continued to open new markets to U.S. spirits exports. For example, new EU members such as Poland, Hungary, Bulgaria and Romania have been required to adopt the EU's common external tariffs (*i.e.*, zero tariffs for practically all spirits). In addition, these countries must also now recognize Bourbon and Tennessee Whiskey as distinctive



products of the U.S. Because these agreements were already in place, this new market access was achieved without any additional actions by the U.S. government.

Despite the fact that the overall U.S.-EU spirits trade relationship has been highly successful and mutually beneficial, there are several areas in which the TTIP negotiations could further improve bilateral spirits trade. In particular, the U.S. spirits industry is seeking the removal of discriminatory excise taxes in some EU member states, elimination of remaining tariffs on certain spirits, adoption of a TTIP Spirits Annex setting out regulatory best practices for distilled spirits, and improved rules of origin that reflect current global supply chains. The remainder of this submission addresses each of these issues in turn.

Discriminatory Excise Taxes

The U.S. spirits industry has some concerns with regard to excise tax policies in certain EU member states that inhibit U.S. spirits exporters' ability to compete on a level playing field. Specifically, EU law allows some member states to provide preferential tax benefits to certain spirits producers under "derogations" from general excise tax rates. Some of these derogations are permanent, while others must be reviewed and re-approved periodically. Increasingly, tax derogations on locally-produced distilled spirits in various EU member states have been granted or are being proposed. Such measures put U.S.-origin spirits at a considerable disadvantage in the EU market while affording protection to certain domestically-produced products, in contravention of the EU's World Trade Organization (WTO) national treatment obligations. Though the preamble to Council Directive 92/83/EEC stipulates that derogations should not distort the market, in practice it is clear that these tax exemptions do have a distortionary effect.

In addition to the EU-sanctioned tax derogations, several countries have also implemented discriminatory tax policies that are not officially approved under EU law. Regardless of whether these derogations have been approved, these policies cause further distortions in the spirits market in favor of domestic producers. The following derogations are of particular concern:

- **France** imposes a reduced excise tax on rum from French Overseas Departments (FODs). Rum-producing FODs include Guadeloupe, French Guyana, Martinique, and Réunion. This derogation is permitted by the EU, and it currently must be reviewed for possible renewal by December 31, 2013. The total excise tax on rum from FODs is €1,286.32 per hectoliter of pure alcohol (hlpa) (€918.80 excise tax plus €367.52 Social Security Contribution), while the tax on all other spirits, including rum from other countries, is €2,231.38 per hlpa (€1689.05 excise tax plus €542.33 Social Security Contribution).

Furthermore, we understand that FODs apply a lower excise rate to locally-produced rum than to imported spirits. FODs also impose "dock dues" on imported spirits, while local spirits are charged lower rates or are exempted from these additional taxes. The dock dues are approved by the EU until July 2014. However, there is a significant lack of transparency with regard to the application of local excise tax and dock dues in FODs.

- **Greece** imposes a reduced special consumption tax on ouzo of €1,225 per hlpa, compared with a rate of €2,450 per hlpa for all other spirits, which is legal under EU regulations. A "Chemists Fund" and Stamp Duty are applied on top of this, which further exacerbates the differential in the actual tax paid on these products to €1,275.18 per hlpa for ouzo and €2,550.35 per hlpa for all others. Greece further extends this reduced tax rate to spirits called tsipouro and tsikoudia, in violation of EU law.

- Under EU law, **Hungary** may impose a reduced excise tax on Pálinka produced in “for hire” distilleries by farmers with their own fruit for personal consumption. However, in 2010 Hungary eliminated the excise tax on such products and extended the application of this policy to all private citizens. Significant quantities of Pálinka are believed to enter the commercial market tax free; in fact, industry estimates suggest that non-tax paid spirits account for approximately 20-30% of the total spirits market. Furthermore, in November 2011 Hungary introduced a dual tax rate system by increasing the excise rate on most spirits products (other than Pálinka) by 5% while raising the tax on spirits products that are not defined in EU regulations, such as flavored rum, by 50%. The current tax rates are 333,385 Forints per hlpa for most spirits and 476,270 Forints per hlpa for those that are not defined. Both the zero tax rate for Pálinka and the dual rates of taxation are illegal under EU regulations.
- **Romania** is permitted to provide a reduced excise tax on small distillers producing for households. We understand that Romania charges excise and health taxes on most spirits of €750 per hlpa, while health and excise taxes on spirits produced at “for hire” distilleries total €375 per hlpa. This facilitates black market production and tax evasion, which significantly distorts the Romanian spirits market. In 2010, industry sources estimated that 40-50% of the Romanian spirits market was comprised of black market goods. This derogation must be reviewed by 2015.

The Distilled Spirits Council believes that these tax policies are incompatible with WTO rules, including several dispute settlement findings related to spirits to which the EU was a complainant (*i.e.*, Japan (DS8, 10, and 11), Korea (DS75 and 84), Chile (DS87 and 110) and the Philippines (DS396 and 403)). In the context of the TTIP negotiations, we ask that the U.S. and EU work to eliminate all discrimination in EU member states’ excise tax policies pertaining to distilled spirits. This will allow bilateral spirits trade to continue the considerable expansion it has enjoyed over the past decade, and will reaffirm both sides’ commitment to the rules-based international trading system.

Elimination of Remaining Tariffs

As noted above, the “zero-for-zero” agreement has eliminated tariffs on the vast majority of spirits products traded between the U.S. and the EU. However, there are still tariffs on certain spirits, as shown in the table below. The Distilled Spirits Council requests that the U.S. seek to eliminate these remaining tariffs on a bilateral basis in negotiations with the EU.

Remaining EU Tariffs			Remaining U.S. Tariffs		
HS Code	Description	Tariff Rate	HS Code	Description	Tariff Rate
2208.40.11	Rum, in containers holding 2 liters or less, with a content of volatile substances other than ethyl and methyl alcohol equal to or exceeding 225 grams per hlpa	€0.6/hlpa + €3.2/hectoliter	2208.40.20	Rum, in containers each holding not over 4 liters, valued not over \$3 per proof liter	23.7¢/proof liter
2208.40.39	Rum, in containers holding 2 liters or less, of a value not exceeding €7.9 per lpa	€0.6/hlpa + €3.2/hectoliter			
2208.40.51	Rum, in containers holding more than 2 liters, with a content of volatile substances other than ethyl and methyl alcohol equal to or exceeding 225 grams per hlpa	€0.6/hlpa	2208.40.60	2208.40.60 - Rum, in containers each holding over 4 liters, valued not over 69¢ per proof liter	23.7¢/proof liter
2208.40.99	Rum, in containers holding more than 2 liters, of a value not exceeding €2 per lpa	€0.6/hlpa			
2208.90.91	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol, in containers holding 2 liters or less	€1.00/hlpa + €6.4/hectoliter	2208.90.80	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol., other	21.1¢/proof liter
2208.90.99	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol, in containers holding more than 2 liters	€1.00/hlpa			

Regulatory Best Practices

Beyond addressing these specific issues with the EU, we believe that the TTIP negotiations are an excellent forum for advancing reasonable, science-based regulation of beverage alcohol in the EU and around the world. To that end, we propose the inclusion of a Spirits Annex to the TTIP agreement that outlines regulatory best practices for distilled spirits. The attached “Proposed Principles Regarding the Technical Aspects of Trade in Distilled Spirits” contains the key points that such an annex should include. We urge you to take up this strongly-supported effort, which will make TTIP a model 21st-century trade agreement for the distilled spirits industry.

Rules of Origin and “Accumulation”

Finally, the TTIP negotiations are an ideal opportunity to revise current rules of origin to better reflect today’s global supply chains. In particular, current U.S. free trade agreement language generally prohibits duty-free treatment of any product that “undergoes subsequent production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party.” This formulation impacts the use of regional hubs, which has grown increasingly important in the spirits industry. For example, U.S. spirits exporters may initially ship their products to an intermediate location, where the shipment may undergo minor processing such as splitting consignments or application of country-specific labels. We ask that the TTIP contain language to ensure that U.S. products are treated as such by the EU even if they undergo such minor processing.

Additionally, traditional rules of origin do not account for the number of mutual trade partners that the U.S. and EU currently share. For example, both the U.S. and the EU have existing trade agreements with Mexico, Korea, and several Latin American countries. The EU is also negotiating an agreement with Canada. Rules of origin should reflect the fact that the U.S. and EU share these trading partners by adding “accumulation” language conferring TTIP treatment to goods made with inputs from any mutual trade agreement partners.

Thank you for this opportunity to provide input on the upcoming TTIP negotiations. We hope that they will result in a comprehensive agreement that will improve market access for the U.S. distilled spirits industry. Please do not hesitate to contact us should you require any additional information.

Sincerely,



Christine LoCascio
Senior Vice President
International Issues and Trade

**Transatlantic Trade and Investment Partnership Agreement Negotiations:
Proposed Principles Regarding the Technical Aspects of Trade in Distilled Spirits**

Labeling Regulations

- ***Ingredient lists are not appropriate for all distilled spirits products.***

Because the fermentation and distillation processes so completely transform the raw materials used to produce distilled spirits products, the raw materials are not present in the final product in any form. As a consequence, distilled spirits are properly viewed as “single ingredient” products. For these reasons, distilled spirits should not be subject to any ingredient listing requirements. This approach is consistent with the Codex General Standard for the Labeling of Prepackaged Foods (CODEX STAN1-1985 (Rev. 1-1991), which defines “ingredient” as “any substance ... that is used in the manufacturing or processing of foods and is present in the final product (though possibly in a modified form)” [emphasis added]. Indeed, the ingredient listing provisions of the above-referenced Codex General Standard do not apply to single ingredient foods. Ingredient listing requirements should apply equally to all beverage alcohol products.

- ***Certain distilled spirits should not be subject to allergen labeling.***

Distilled spirits products that are made from cereals, whey (milk) and/or nuts should be exempt from any allergen labeling requirements, in recognition of the fact that the distillation process so transforms the raw materials used to produce the distillate that, as the European Food Safety Authority’s Scientific Panel concluded, it is generally acknowledged that the associated proteins, peptides or fragments are not carried over into the final distillate. In cases where a listed allergen is added to a beverage alcohol product after the distillation process is completed, a declaration should only be required in those cases where a product name does not already clearly indicate that they contain a potentially allergenic ingredient. Thus, products that are identified on the label as “egg liqueur,” “cream liqueur,” “nut liqueur” or other similarly-named products should not require further labeling.

- ***Date marking should not be mandatory for distilled spirits products.***

Date marking, such as dates of packaging/bottling/production, expiration dates or best-by dates, should not be required for distilled spirits products. Many brands are aged for many years before they are bottled and marketed, which makes the date of packaging/bottling/production irrelevant and potentially confusing to consumers. Moreover, most spirits have an indefinite shelf life. Thus, it is not possible to establish an expiration date for those spirits. Article 4.7.1 of the Codex labeling standard (referenced above) acknowledges this fact by stating that all beverage alcohol products containing more than 10% alcohol by volume (a.b.v.) shall not be required to list a date of minimum durability (*i.e.*, expiration or best-by date). However, spirits producers should be permitted to use such dates if appropriate. For example, some producers may use date marking to ensure that consumers receive a consistent product, as in the case of certain types of liqueurs.

- ***Certain, but not all, label information, should be translated when appropriate.***

It may be appropriate for certain necessary information, such as the net content, name and address of the producer and/or importer, country of origin and type of distilled spirit (*e.g.*, rum, vodka, gin, whiskey etc.), to be translated into the language of the importing country. However, geographical indications, such as Bourbon and Tennessee Whiskey or Scotch Whisky and Cognac, and trademark or trade names should not be required to be translated.

- ***Font size specifications should be reasonable.***

Consistent with Article 8.1.2 of the Codex labeling standard, statements on the label shall be “clear, prominent, indelible and readily legible by the consumer under normal conditions of purchase and use.” Where labeling regulations specify font sizes, they should be reasonable (*i.e.*, they should not mandate unnecessarily large font sizes), taking into account all of the mandatory and brand-specific information included on the label.

- ***Stickers should be permitted, and may be applied at origin or in the importing country.***

It is common practice internationally to permit the use of stickers to be applied to containers in order to provide information that is required only in the country where the product is marketed, such as certain translated information. Article 8.2.1 of the Codex labeling standard specifically addresses the use of stickers, which states “If the language on the original label is not acceptable, to the consumer for whom it is intended, a supplementary label containing the mandatory information may be used instead of relabeling” [emphasis added]. Producers and/or importers should have the right, at their discretion, to incorporate such market-specific information onto the labels of distilled spirits products or to apply stickers bearing the required market-specific information, either in the country of origin or at any time before the product enters the customs territory of the importing country.

- ***Use of drawings, figures, illustrations should be permitted.***

The labels of many internationally-traded distilled spirits include depictions of the predominant flavors used in their production. For example, orange-flavored vodka or rum may include an illustration of oranges as an integral part of the label design. In addition, many products use fanciful drawings and illustrations, including, for example, the depiction of birds, animals or humans that are well-established elements of the trademark or the trade dress of well-known, internationally-trade spirits products, but that are clearly are not intended to represent an ingredient of the spirits brand.

- ***Required statements on beverage alcohol labels should be based on scientific evidence.***

Any statements required on the label regarding the consumption of beverage alcohol should reflect the body of scientific literature and research, so as not to misinform consumers. In addition, any additional labeling requirements should not interfere or otherwise obstruct the consumer information, trademark or trade dress of the product.

- ***The use of lot codes should be permitted.***

Consistent with Article 4.6 of the Codex labeling standard, lot identification codes may be used on the containers. Flexibility on the specific sizing of the lot code and its placement on the bottle should be permitted. In addition, specific phrasing or other format requirements of the lot code should not be mandated. Tampering with or removal of lot codes should be prohibited and the sale of containers whose producers’ lot codes have either been tampered with or erased should not be permitted.

- ***A transition period of at least 18 months should be provided for new labeling requirements.***

Companies need at least eighteen months to prepare new labels and deplete existing stocks of old labels, as well as to ensure that there is no disruption in the marketplace. In addition, products that are already in the marketplace may continue to be sold until they are depleted.

Certification Requirements

- Where certifications are required to import spirits, they should be submitted with the initial shipment only unless there is a change in product formulation that would necessitate a new certification.
- If certifications of analysis, origin, and age and authenticity are required, certifications issued by the laboratories that are certified by the regulatory body in the exporting country (*e.g.*, in the United States, laboratories certified by the Alcohol and Tobacco Tax and Trade Bureau, U.S. Department of Treasury) shall be accepted by the relevant authorities in the importing country.