

This **TEXTUAL PROPOSAL** is the European Union's proposal for a chapter on "Wine and Spirit Drinks" in TTIP. It was tabled for discussion with the US and then made public on 21 March 2016. The actual text in the final agreement will be a result of negotiations between the EU and US.

## **DRAFT CHAPTER ON TRADE IN WINE AND SPIRIT DRINKS<sup>1</sup>**

### TITLE I

#### **INITIAL PROVISIONS**

##### *Article 1*

#### **Application**

The provisions of this Chapter apply to the United States of America and to the European Union, hereafter referred to as 'the Parties'.

##### *Article 2*

#### **Objectives**

The objective of this Chapter is to facilitate trade in wine and spirit drinks between the Parties, to improve cooperation in the development and enhance the transparency of regulations affecting such trade.

##### *Article 3*

#### **Definitions**

For the purposes of this Agreement:

- (a) 'wine-making practice' means a process, treatment, technique or material used to produce wine;
- (b) 'COLA' means a Certificate of Label Approval or a Certificate of Exemption from Label Approval that results from an approved Application for and Certification/Exemption of Label/Bottle Approval, as required under US federal laws and regulations and issued by the US Government that includes a set of all labels approved to be firmly affixed to a bottle of wine or to a bottle of spirit drinks;
- (c) 'originating' when used in conjunction with the name of one of the Parties in respect of wine imported into the territory of the other Party means the wine has been produced in accordance with either Party's laws, regulations and requirements from grapes wholly obtained in the territory of the Party concerned;

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<sup>1</sup> Provisions related to spirit drinks to be adapted and/or developed further.

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(d) 'WTO Agreement' means the Marrakesh Agreement establishing the World Trade Organisation, done on 15 April 1994.

#### *Article 4*

### **Scope and Coverage**

1. For the purposes of this Agreement, the term 'wine' shall cover beverages obtained exclusively from the total or partial alcoholic fermentation of fresh grapes, whether or not crushed, or of grape must, with the possible addition of any constituent parts of fresh grapes authorised in the producing Party, in accordance with wine-making practices authorised under the regulatory mechanisms of the Party in whose territory the wine is produced, which:

(a) contains an actual alcohol content of not less than 7 percent (7 %) and not more than 22 percent (22 %) by volume;

and

(b) contains no artificial coloring, flavoring or added water beyond technical necessity.

2. For the purposes of this Agreement the term 'spirit drink' shall cover alcoholic beverages:

(a) having a minimum alcoholic strength of 15 % vol.;

(b) having been produced:

(i) either directly:

— by the distillation, with or without added flavourings, of naturally fermented products,

and/or

— by the maceration or similar processing of plant materials in ethyl alcohol of agricultural origin and/or distillates of agricultural origin, and/or spirit drinks within the meaning of this Chapter,

and/or

— by the addition of flavourings, sugars or other sweetening products listed in Annex X and/or other agricultural products and/or foodstuffs to ethyl alcohol of agricultural origin and/or to distillates of agricultural origin and/or to spirit drinks, within the meaning of this Chapter,

(ii) or by the mixture of a spirit drink with one or more:

— other spirit drinks, and/or

— ethyl alcohol of agricultural origin or distillates of agricultural origin, and/or

— other alcoholic or non-alcoholic beverages

3. Measures taken by either Party for the protection of human health and safety are outside the scope of this Chapter.

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## TITLE II

### WINE-MAKING PRACTICES AND SPECIFICATIONS

#### *Article 5*

##### **Present wine-making practices and specifications**

1. Each Party recognises that the laws, regulations and requirements of the other Party relating to wine making fulfil the objectives of its own laws, regulations and requirements, in that they authorise wine-making practices that do not change the character of wine arising from its origin in the grapes in a manner inconsistent with good wine-making practices. These practices include such practices that address the reasonable technological or practical need to enhance the keeping or other qualities or stability of the wine and that achieve the winemaker's desired effect, including with respect to not creating an erroneous impression about the products character and composition.
2. Within the scope of this Agreement as defined in Article 4, neither Party shall restrict, on the basis of either wine-making practices or product specifications, the importation, marketing or sale of wine originating in the territory of the other Party that is produced using wine-making practices that are authorised under laws, regulations and requirements of the other Party listed in Annex X and published or communicated to it by that other Party.

#### *Article 6*

##### **New wine-making practices and specifications**

1. If a Party proposes to authorise for commercial use in its territory a new wine-making practice or modify an existing wine-making practice authorised under the laws, regulations and requirements listed in Annex X, and it intends to propose the inclusion of the practice among those authorised in the Annex X documents, it shall provide public notice and specific notice to the other Party and provide a reasonable opportunity for comment and to have those comments considered.
2. If the new wine-making practice or modification referred to in paragraph 1 is authorised, the authorising Party shall notify the other Party in writing of that authorisation within 60 days.
3. A Party may, within 90 days of receiving the notification provided for in paragraph 2, object in writing to the authorised wine-making practice, on the grounds that it is inconsistent with the objectives referred to in Article 5(1) or the criteria set out in Article 4(1), and request consultations pursuant to Article 12 concerning this wine-making practice.
4. The Parties shall amend Annex X, as provided for in Article 12, as necessary to cover any new winemaking practice or modification that has not been subject to objections pursuant to paragraph 3 or for which the Parties have reached a mutually agreed solution following

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consultations provided for in paragraph 3. With respect to new wine-making practices or modifications to existing practices that are proposed after day/month/year, but before the date of application of Article 5, as set out in Article X, either Party may specify that the modification to Annex X shall not be effective until the date of application of Article 5.

### TITLE III

## **SPECIFIC PROVISIONS**

### *Article 7*

#### **Names of origin**

1. The United States shall provide that certain names may be used as names of origin for wine and spirit drink only to designate wines and spirit drinks of the origin indicated by such a name, and shall include, among such names, those listed in Annex X, Part A, names of quality wines produced in specified regions and names of table wines with geographical indications, Part B, names of Member States, and Annex X, names of spirit drinks.
2. The European Union shall provide that the names of viticultural significance listed in Annex X may be used as names of origin for wine only to designate wines of the origin indicated by such name. The European Union shall provide that the names of spirit drinks listed in Annex X may be used as names of origin for spirit drinks only to designate spirit drinks of the origin indicated by such name.
3. Each Party's competent authorities shall take measures to ensure that any wine and spirit drinks not labelled in conformity with this Article is not placed on or is withdrawn from the market until it is labelled in conformity with this Article.
4. In addition to the obligations of paragraphs 1 and 3, the United States shall maintain the status of the names listed in Title 27 US Code of Federal Regulations, Section 12.31, set forth in Annex X, Part C, as non-generic names of geographic significance that are recognised as distinctive designations of a specific wine of a particular place or region in the European Union, distinguishable from all other wines, in accordance with Title 27 US Code of Federal Regulations, Section 4.24(c)(1) and (3) and Section 12.31, as amended.

### *Article 8*

#### **Wine and spirit drinks labelling**

1. Each Party shall provide that labels of wine sold in its territory shall not contain false or misleading information in particular as to character, composition or origin.

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2. Each Party shall provide that, subject to paragraph 1, wine may be labelled with optional particulars or additional information in accordance with the Protocol on Wine Labelling (hereinafter 'the Protocol').

3. Neither Party shall require that processes, treatments or techniques used in wine making be identified on the label.

#### *Article 9*

#### **Wine certification and other marketing conditions**

1. The European Union shall permit wine originating in the United States to be imported into, marketed and sold in the European Union if it is accompanied by a certification document, the format and required information for which are specified in Annex X.

2. The European Union shall permit the information on the document referenced in paragraph 1, excluding the producer's signature, to be pre-printed. The European Union shall permit the document to be submitted electronically to the competent authorities of its Member States provided they have enabled the necessary technology.

3. The United States shall ensure that decisions to approve or disapprove a COLA are consistent with published criteria and subject to review. The format and required information for the COLA application form are referenced in Annex X.

4. The United States shall permit the information on the application form referenced in paragraph 3, excluding the applicant's signature, to be pre-printed and transmitted electronically.

5. Each Party may modify its respective form, referred to in paragraphs 1 and 3, in accordance with its internal procedures, in which case the Party concerned shall give due notice to the other Party. The Parties shall amend Annex X, as necessary, in accordance with the procedure laid down in Article 12.

6. This Agreement does not require certification that the practices and procedures used to produce wine in the European Union constitute proper cellar treatment within the meaning of Section 2002 of US Public Law 108-429.

#### TITLE IV

#### **GENERAL PROVISIONS**

#### Article 10

#### **Committee on trade in wines and spirit drinks**

1. The Parties agree to set up a Committee on trade in wines and spirit drinks, herein referred to as 'the Committee', with the purpose of monitoring the development of this

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Protocol, intensifying their co-operation, exchanging information, notably product specifications, and improving their dialogue.

2. The Parties shall through the Committee maintain contact on all matters relating to the implementation and the functioning of this Protocol. In particular, the Parties shall ensure timely notification to each other of amendments to laws and regulations on matters covered by this Protocol that have an impact on products traded between them.

3. The Committee shall see to the proper functioning of this Protocol and may make recommendations and adopt decisions by consensus.

4. The Committee may modify the Annexes of this Chapter. The Parties may in particular modify Annex X and adopt specific rules, pursuant to their cooperation under Article 11(1), pertaining to the marketing of wine products and spirit drinks including labelling and related requirements as well as product definitions and certification of wine products and spirit drinks.

4. The Committee shall determine its own rules of procedure.

#### Article 11

##### **Cooperation and dispute avoidance**

1. The Parties shall address issues related to trade in wines and spirit drinks, and in particular:

- product definitions, certification and labelling of wines;
- use of grape varieties in winemaking and labelling thereof;
- use of traditional terms on labelling of wines;
- product definitions, certification and labelling of spirit drinks.

2. The provisions laid down in Part X (TTIP specific title of chapter on dispute settlement to be included) of the Agreement shall apply mutatis mutandis to any relevant matter arising under this Chapter.

#### Article 12

##### **Management of the Agreement and Cooperation**

*[This article may be adapted to take into account the provisions of Article 10.]*

1. The Parties shall maintain contact on all matters relating to bilateral trade in wine and spirit drinks and the implementation and the functioning of this Agreement. In particular, each Party shall, if requested, cooperate in assisting the other Party to make available to the other Party's

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producers information concerning specific limits on contaminants and residues in effect in the territory of the first Party.

2. Each Party shall notify the other Party in a timely manner of proposed amendments to its labelling rules and, except for minor amendments that do not affect labelling for the wine and spirit drinks of the other Party, allow for a reasonable period of time for the other Party to comment.

3. Either Party may notify the other Party in writing of:

(a) a request for a meeting or consultations between representatives of the Parties to discuss any matter relating to the implementation of the Agreement, including consultations with respect to new wine-making practices foreseen under Article 6;

(b) a proposal for amendment to the Annexes or the Protocol, including its appendices;

(c) legislative measures, administrative measures and judicial decisions concerning the application of this Agreement;

(d) information or suggestions intended to optimise the operation of the Agreement;

and

(e) recommendations and proposals on issues of mutual interest to the Parties.

4. A Party shall respond within a reasonable period, which shall not exceed 60 days from receipt, to a notification under paragraph 3(a), (b), (d) or (e). However, following a request for consultations under paragraph 3(a), the Parties shall meet within 30 days unless the Parties agree otherwise.

5. An amendment to an Annex or the Protocol, including its appendices, to this Chapter shall take effect on the first day of the month following receipt of a written response, pursuant to a notification by one Party under paragraph 3(b), of the amended text of the Annex or the Protocol, including its appendices, concerned, confirming the other Party's agreement with the amended text or on a particular date that the Parties shall specify.

6. Each Party shall provide all notices, requests, responses, proposals, recommendations and other communications under this Chapter to the contact point for the other Party in Annex X. Each Party shall notify changes in its contact point in a timely manner.

7. (a) Each Party and interested persons of that Party may:

(i) address inquiries regarding matters arising from Titles I, II and III of the Chapter, including the Protocol;

and

(ii) present information concerning actions that may be inconsistent with the obligations of those Titles to the contact point of the other Party as identified in Annex X.

(b) Each Party shall, through its contact point:

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(i) ensure that action is taken to examine the matter and to respond to the inquiry and information presented in a timely manner;

and

(ii) facilitate follow-up communications between the other Party or interested persons of that Party and the appropriate enforcement or other appropriate authorities.

## TITLE V

### FINAL PROVISIONS

#### Article 13

##### **Applicable rules**

Unless otherwise provided for in this Protocol or in the Agreement, importation and marketing of products covered by this Protocol, traded between the Parties shall be conducted in compliance with the laws and regulations applying in the territory of the Party of importation.

#### Article 14

##### **Relation to other agreements**

1. The Agreements of 1994 in the form of an exchange of letters between the European Community and the United States of America on the mutual recognition of certain distilled spirits/spirit drinks is hereby terminated.

2. The Agreements of 2006 between the European Community and the United States of America on trade in wine is hereby terminated.

3. Nothing in this Agreement shall:

(a) affect the rights and obligations of the Parties under the WTO Agreement;

(b) oblige the Parties to take any measures concerning intellectual property rights that would not otherwise be taken under the Parties' respective intellectual property laws, regulations and procedures, consistent with subparagraph (a).

4. Nothing in this Agreement prevents a Party from taking measures, as appropriate, to allow the use of homonymous names of origin where consumers will not be misled or to allow a person to use, in the course of trade, that person's name or the name of that person's predecessor in business in a manner that does not mislead the consumer.

4. This Agreement is without prejudice to the rights of free speech in the United States under the First Amendment of the US Constitution and in the European Union.

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5. Articles 7 shall not be construed in and of itself as defining intellectual property or as obligating the Parties to confer or recognise any intellectual property rights. Consequently, the names listed in Annex X are not necessarily considered, nor excluded from being considered, geographical indications under US law, and the names listed in Annex X are not necessarily considered, nor excluded from being considered, geographical indications under European Union law.

#### Article 15

#### **Final provisions**

1. The annexes to this Chapter shall form an integral part hereof.
2. If, pursuant to Article X of the Agreement, this Chapter is applied provisionally, references in this Chapter to the date of entry into force shall be deemed to refer to the date the provisional application of the Agreement takes effect between the United States of America and the European Union.

#### **Annexes**

Annex X (List of Winemaking practices)

Annex X (List of products to be allowed for sweetening of spirit drinks)

Annex X (Certification document)

Annex X: Part A, Part B, part C (list of EU wine names)

Annex X: (List of U.S. wine names)

Annex X: List of EU and U.S. spirit drinks

Protocol on wine labelling