

**DISTILLED
SPIRITS
COUNCIL
OF THE
UNITED
STATES**

November 15, 2013

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

Submitted via: www.regulations.gov

**Re: USTR-2013-0033: Public Comments Sanitary and Phytosanitary Measures (78
Fed. Reg. 63270 (October 23, 2013))**

Dear Mr. Shpiece:

On behalf of the Distilled Spirits Council of the United States, Inc. (Distilled Spirits Council) and its member companies, I am writing in response to your request for public comments (78 *Fed. Reg.* 63270 (October 23, 2013)) regarding sanitary and phytosanitary barriers to U.S. exports (SPS). The Distilled Spirits Council is a national trade association representing U.S. producers, marketers, exporters and importers of distilled spirits products (*i.e.*, HTS 2208 and 22071030 (bulk ethyl alcohol for beverage purposes)). Our member companies export spirits products to more than 130 countries worldwide. In 2012, U.S. exports of distilled spirits worldwide reached almost \$1.5 billion (FAS value). American whiskeys accounted for the vast majority (68%) of U.S. spirits exports.

The Distilled Spirits Council is pleased that the Office of the U.S. Trade Representative (USTR) and other U.S. government agencies continue to focus increased attention on the positive effect that harmonized product standards and other regulations can have on facilitating international trade and, conversely, on the adverse effect that inconsistent, arbitrary, burdensome and discriminatory standards-related measures can play in stifling -- and in some cases, blocking altogether -- U.S. exports and imports. As you are aware, the U.S. distilled spirits industry has faced a panoply of standards-related barriers in key overseas markets. Without prompt and concerted efforts by U.S. government agencies, some of these measures would have effectively barred shipments of U.S. distilled spirits products.

As directed in the above-referenced *Federal Register* notice, we have attached a country-by-country listing of the sanitary and phytosanitary barriers that currently plague the U.S. spirits industry. The attached summaries address the following matters:

- Brazil - Additives
- China - Plasticizers
- Colombia - Standards (Analytical Parameters)
- Taiwan - Plasticizers/Hygiene Standards

The Distilled Spirits Council greatly appreciates the U.S. government's past support in addressing these highly complex, technical matters. We look forward to continued close cooperation with USTR and other agencies in addressing the ongoing technical barriers that U.S. spirits exporters have identified and in tackling the new barriers that inevitably will arise. We would be pleased to provide any additional information or clarification you may require regarding any of these matters.

Sincerely,

A handwritten signature in black ink that reads "Christine LoCascio". The signature is written in a cursive, flowing style.

Christine A. LoCascio
Senior Vice President
International Issues and Trade

SANITARY AND PHYTOSANITARY BARRIERS TO DISTILLED SPIRITS EXPORTS

BRAZIL

Additives: In May 2011, Brazil issued a WTO notification (G/SPS/N/BRA/748) establishing a positive list of approved additives in non-fermented beverage alcohol products. The Distilled Spirits Council raised a number of preliminary concerns regarding the scope of the regulation and categorizations of various distilled spirits products, which were not clearly defined in the proposal. Moreover, while the proposal also indicated that food additives with a quantum satis limit are excluded from the regulation, the list of additives subject to this limit was not provided. It is also unclear whether there is a separate list of approved additives for beverage alcohol. The Council seeks an update on the status of this proposal.

Request: The Council seeks the U.S. government's assistance in clarifying the current status of the food additive regulation and in seeking assurances from Brazil that U.S. spirits exporters will have sufficient time to review and comment on the additive list before it takes effect.

Estimate of increase in exports: less than \$5 million.

SANITARY AND PHYTOSANITARY BARRIERS TO DISTILLED SPIRITS EXPORTS

CHINA

Plasticizers: In mid-January 2013, China's inspection and quarantine agency (AQSIQ) notified importers that, effective February 1, 2013, mandatory laboratory testing for the presence of certain phthalates in wines and distilled spirits would be required before imports could be released into the market. China did not notify the new requirements to the WTO and, due to the short lead time, a number of shipments were held up at the ports pending completion of the newly-required tests.

Each port, through the local inspection agency (or CIQ), is interpreting the new requirements differently: test methods and procedures continue to vary from port-to-port. Although the port of Shanghai has eased the requirements applicable to repeat shipments of certain brands, importers are still required to submit test results up front. Other ports have not similarly adjusted their procedures to ease the burden on imports. China has signaled that the new testing requirements will remain until China completes a comprehensive, nation-wide risk assessment.

Request: In the short run, the Distilled Spirits Council requests continued U.S. government assistance in seeking harmonization of test methods and procedures across all ports and the flexibility to submit test results from any laboratory accredited by the U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB). In addition, since there are no applicable international standards, the Council urges the U.S. government to take all necessary steps to ensure that any resulting Chinese standards will be transparent, based on sound scientific evidence and applied on a non-discriminatory basis and in a manner that does not continue to disrupt trade.

Estimated impact on U.S. exports: less than \$5 million.

SANITARY AND PHYTOSANITARY BARRIERS TO DISTILLED SPIRITS EXPORTS

COLOMBIA

Standards: Colombia notified the WTO in 2008 of a new proposed standard for spirits products (see G/TBT/N/COL/121 and G/SPS/N/COL/164). The Distilled Spirits Council submitted comments on the initial draft standard in March 2009, and made additional comments in January and December 2011 in response to revised versions of the draft standard. Colombia adopted the final standard in August 2012, and it entered into force in August 2013.

The final version adopted by Colombia is much improved from the initial draft, and it includes many of the revisions requested in the Council's comments. For example, the final standard appears to feature a more reasonable approach to the application of sticker labels and incorporates a recognition that Bourbon and Tennessee Whiskey may only be produced in the U.S., as agreed under the U.S. - Colombia Trade Promotion Agreement.

However, the final standard retained several problematic provisions, including a requirement for Colombia to establish analytical parameters for distilled spirits products. A draft resolution published in early 2013 contained details of such parameters. The Council has serious concerns regarding Colombia's intention to use analytical parameters to define distilled spirits, since the establishment of arbitrary maximum and/or minimum levels of naturally-occurring congeners – which can vary considerably from brand-to-brand – can have the effect of unnecessarily barring sales of those brands whose chemical composition may fall outside the established range. In particular, the proposed limits in the draft resolution could bar the importation of certain U.S. whiskey, rum, vodka, and gin products. There is no scientific evidence to suggest that any of the congeners may be harmful in the concentration in which they are found in distilled spirits. Thus, there is no scientific basis for regulating these compounds. The current status of the proposal is unclear.

Request: The Distilled Spirits Council appreciates the U.S. government's continued efforts to raise the spirits industry's concerns regarding various regulatory issues in Colombia. We request the U.S. government's continued assistance in this regard so as to ensure that Colombia does not implement analytical parameters that create unnecessary barriers to U.S. exports.

Estimate of increase in exports: less than \$5 million.

SANITARY AND PHYTOSANITARY BARRIERS TO DISTILLED SPIRITS EXPORTS

TAIWAN

Plasticizers/Proposed Amendments to Hygiene Standards: In March 2013, Taiwan's National Treasury Administration issued an order, effective immediately, requiring importers of Cognac to present the results of laboratory testing for the presence of certain phthalates. Taiwan did not notify the testing requirements to the WTO. Most of the Distilled Spirits Council's member companies have extensive product portfolios that include numerous classes and types of spirits, including Cognac. Accordingly, Taiwan's actions have directly affected the Council's members. Although Taiwan reportedly has agreed to take a "flexible" approach to the test requirements, providing, for example, that test results are valid for a two-year period, the Distilled Spirits Council remains concerned that the action, which is not based on international standards or on sound scientific evidence, remains an unjustifiable barrier to trade and could expand to cover other foods and beverages.

Separately, but reportedly in conjunction with the new phthalate testing requirements, Taiwan notified the WTO in April 2013 of proposed revisions to its Hygiene Standards for Alcohol Products. As drafted, the proposed amendments appear to establish a zero-tolerance for all substances or matters that may be harmful to health, regardless of the dose. Indeed, the proposed amendments are so broadly drafted that they may encompass an enormous range of products since most substances, if consumed in sufficient quantities, may be toxic or harmful to human health. The proposed amendments also are not consistent with the approach Taiwan has otherwise taken with respect to certain potentially harmful substances such as methanol and lead.

Request: The Distilled Spirits Council urges the U.S. government to monitor Taiwan's plasticizer testing requirements. The Council also requests that the U.S. government express strong opposition to the "zero-tolerance" approach reflected in Taiwan's proposed amendments to its Hygiene Standards for Alcohol Products, which is unworkable, not based on sound science and inconsistent with Taiwan's approach to other potentially harmful substances.

Estimated impact on U.S. exports: If Taiwan adopts the proposed amendments to the Hygiene Standards for Alcohol Products as drafted, all U.S. exports of distilled spirits may be barred because of the broad sweep of the "zero tolerance" mandate.