DISTILLED
SPIRITS
COUNCIL
OF THE
UNITED
STATES

October 22, 2013

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

RE: USTR-2013-0027: 2013 National Trade Estimate Report – Submission by the Distilled Spirits Council of the United States, Inc. (78 *Fed. Reg.* 50481 (August 19, 2013))

To Whom It May Concern:

On behalf of the Distilled Spirits Council of the United States, Inc., I am pleased to submit a compilation of the major trade barriers confronting the U.S. distilled spirits industry. The Distilled Spirits Council is a national trade association representing U.S. producers, exporters and marketers of distilled spirits products. Our member companies export to more than 130 countries worldwide, with total U.S. exports in 2012 valued at almost $1.5 billion (FAS value), surpassing the $1 billion dollar mark for the sixth consecutive year.

Our submission responds to USTR's request for public comments (78 Fed. Reg. 50481 (August 19, 2013)) and reflects the spirits industry's priority objectives in bilateral and multilateral negotiations. The Council will submit separate comments in response to USTR's expected request regarding sanitary and phytosanitary (SPS) and standard-related foreign trade barriers.

We very much appreciate the opportunity to provide these comments and will be pleased to supplement them in the weeks ahead as the issues evolve. I would be pleased to provide any additional information you may require.

Sincerely,

Christine LoCascio
Senior Vice President
International Issues and Trade

Attachment

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A FACT ABOUT ALCOHOL CONTENT:

FOREIGN TRADE BARRIERS

TO

U.S. DISTILLED SPIRITS EXPORTS

Distilled Spirits Council of the United States, Inc.

October 2013

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ARGENTINA

I. Import Policies

Tariffs

In January 2013, Argentina increased its tariff on whiskey from 20 percent to 35 percent *ad valorem*. Argentina currently applies a tariff of 20 percent *ad valorem* on all other imported distilled spirits, except bulk whiskey, which is assessed a tariff of 6 percent *ad valorem*. In addition, a separate 1.5 percent "statistical tax" is applied to all imported distilled spirits products. Argentina's current WTO-bound rate is 35 percent *ad valorem.*

U.S. distilled spirits exports to Argentina have fallen steadily in the past several years, but they have rebounded somewhat in 2012 and the first half of 2013.

Argentina's economic fluctuations, combined with high tariffs on spirits, have played a role in curtailing U.S. spirits exports over most of the past decade. Given the significant commercial potential of the Argentine market, the immediate elimination of Argentina's tariffs on imported distilled spirits should be a priority objective for the United States in multilateral or bilateral trade discussions.

BRAZIL

I. Import Policies

Tariffs

Brazil's currently-applied tariff on imported distilled spirits reflects the MERCOSUR common external tariff (CET) of 20 percent *ad valorem* on all imported distilled spirits, except bulk whiskey, which is assessed a tariff of 12 percent *ad valorem*. Brazil's WTO bound rate is 35 percent *ad valorem*.

In 2012, U.S. spirits exports to Brazil were valued at nearly $4.1 million, reflecting a nearly 12% increase from 2011 export values. The vast majority of this increase is accounted for by bottled Bourbon and Tennessee Whiskey.

Although U.S. spirits exports increased last year, they remain relatively small. Brazil's high tariffs on imports have made it very difficult for U.S. exporters to make significant inroads into Brazil's large and growing spirits market. Accordingly, securing the immediate elimination of Brazil's tariffs on imported distilled spirits should be a high priority objective for the United States.

CANADA

I. Other Barriers

Inspections

Canada's proposed "Improved Food Inspection Model," a final version of which was published in July 2013, includes licensing and inspection requirements, among other elements, that will apply to imported foods and beverages, including imported distilled spirits. The licensing requirements, in particular, appear to duplicate similar proposals incorporated in a draft "Imported Food Sector Regulatory Proposal (IFSRP)," which was issued in 2010 and is still pending. The Distilled Spirits Council understands that Canada intends to move forward with the IFSRP notwithstanding the substantial overlap with the provisions of the "Improved Food Inspection Model."

The new licensing requirements under both proposed schemes are in addition to other existing federal and provincial licensing requirements. Further, the Council understands that Canada intends to implement the IFSRP licensing requirements only for an interim period, with the intention of replacing them with the licensing requirements provided for in the "Improved Food Inspection Model." Thus, importers of distilled spirits (and other covered products) may potentially be subject to two different import licensing schemes in a very short period of time – on top of existing federal and provincial licensing requirements.

The Distilled Spirits Council has submitted detailed comments to Canada concerning both the proposed IFSRP and the "Improved Food Inspection Model," expressing serious concerns that the duplicative provisions are unnecessary and will serve only to increase compliance costs and administrative complexity while introducing new barriers to trade, without achieving any offsetting benefit. These concerns are compounded by the existing web of federal and provincial licensing and other requirements that currently apply to imported distilled spirits. Because of the plethora of existing requirements, the Council has urged Canada to exempt distilled spirits from these new licensing requirements, or, at a minimum, defer implementation of the IFSRP so that the licensing requirements under that proposal may be rolled into the import licensing requirements of the "Improved Food Inspection Model." Such an approach would at least help to minimize the dislocations and adverse effects on trade that will arise if importers must adopt and comply with two different licensing regimes within a short period of time.

The Distilled Spirits Council requests the U.S. government to urge Canada to ensure that any new inspection requirements do not disadvantage imported products, including imported distilled spirits.

CHINA

I. Import Policies

Tariffs

As part of its WTO accession agreement, China agreed to reduce its tariffs on spirits from 65% to 10% over a five-year period. Since January 2005, the tariffs on all imported spirits are 10% *ad valorem*.

Since China fully implemented its tariff reductions, U.S. spirits exports to China have increased significantly from $3.1 million in 2005 to almost $8.4 million in 2012. From January through July 2013, total U.S. spirits exports to China stood at almost $7.3 million, which represents a 55% increase compared to the same period in 2012.

The Distilled Spirits Council views China as a leading candidate for participation in the distilled spirits “zero-for-zero” agreement, which was launched during the Uruguay Round of multilateral trade negotiations. China’s participation in the zero-for-zero agreement on spirits would be fully consistent with its position as a major spirits-producing and spirits-consuming nation and would further stimulate U.S. exports to this growing market.

COLOMBIA

I. Import Policies

Tariffs

Under the U.S.-Colombia Trade Promotion Agreement (CTPA), Colombia eliminated its tariffs on U.S.-origin brandy, gin and liqueurs as of May 15, 2012. The tariffs on other U.S.-origin spirits, currently set at 15% ad valorem, will be phased out until they are eliminated either by 2016 (for one category of "other spirits) and by 2021 for all other spirits.

U.S. direct exports of spirits to Colombia in 2012 are relatively small, valued $2 million. From January through July 2013, U.S. spirits exports were valued at $1.4 million, up 62% over the comparable period in 2012. The Distilled Spirits Council expects that U.S. spirits exports will continue to increase as the tariffs on all U.S.-origin spirits are phased out.

Product Registration

Colombia requires that products be registered before they are imported. Often this process is tedious, costly and time-consuming. Documents from the U.S. embassy/consulate usually must be provided along with the submission, and approval of the registration can take anywhere from 4-8 weeks, if not longer. Colombia should establish clear deadlines for issuance of the approvals to help provide greater certainty and predictability for the importers.

II. Other Barriers

Taxes

On January 21, 2010 Colombia issued Decree 127 to modify the consumption tax (Impuesto al Consumo) for wines and spirits. In practice, the tax rates on spirits with an alcohol content of greater than 35% alcohol by volume (a.b.v.) remained unchanged, while the tax rates on wines, liqueurs and other spirits with an alcohol content of less than 15% a.b.v. were increased. The new rates were made effective February 1, 2010. Subsequent modifications to the rate to incorporate the VAT at a rate of 35% (subject to annual adjustment to take account of inflation) were adopted and entered into force on January 1, 2011. The current consumption tax rates are as follows:

Alcohol Content	Tax Rate
Less than or equal to 35 degrees	Col$264 per degree of alcohol
Over 35 degrees	Col$433 per degree of alcohol

In general, the tax regime continues to discriminate against imported distilled spirits through the arbitrary breakpoint that has the effect of applying a <u>lower</u> tax rate per degree of alcohol to domestically-produced spirits than the rate that applies to most imported spirits. For example, locally-produced spirits are dominated by *aguardiente* bottled at 35% alcohol-by-volume (a.b.v.) or less. By law, most categories of distilled spirits that tend to be imported and all whiskeys in Colombia must have a minimum alcohol content of 40% a.b.v. (*see* Decreto 1686 dated August 9, 2012) and are, therefore, subject to the highest tax rate. In contrast, local producers of *aguardiente* have a significantly lower tax burden because (a) their products contain less alcohol by volume, and (b) each unit of that alcohol is taxed at a lower rate.

Colombia's excise tax system further discriminates against imported spirits because the excise tax on imports is collected upon entry into the customs territory of Colombia, while the tax on domestically-produced spirits is collected from local producers as part of their periodic tax returns <u>after the first sale</u>. This discriminatory practice is costly and burdensome for the Council's member companies, which must carry the cost of the tax until the product is sold, while domestic producers do not pay the tax until after the first sale. Colombia should ensure that imported and domestically-produced distilled spirits are <u>treated equally</u> with respect to the point at which the excise tax is collected.

The Council understands that Colombia has started considering changes to its excise tax system after missing an August 2013 deadline to implement a non-discriminatory system under its free trade agreement with Canada. However, the current status and potential structure of the excise tax reform is unclear.

The Distilled Spirits Council welcomes Colombia's commitment under the CTPA to eliminate, by May 15, 2016, its discriminatory excise tax and bring it into compliance with its WTO and CTPA obligations. Now that the CTPA has entered into force, we urge the U.S. government to engage in discussions with Colombia regarding how it intends to reform its tax regime for spirits. As officials examine options to reform the current structure, we strongly urge Colombia to assess a single specific excise tax per degree of alcohol for all distilled spirits products as a simple and effective way of eliminating the current discrimination.

<u>Special Trade Zones</u>

Colombia maintains 'special customs zones' (SCZs) in the state of La Guajira, which permit a wide range of products, including distilled spirits, to be imported into the Colombian Customs territory at a lower duty. The Distilled Spirits Council does not challenge the existence of SCZs as such. We are concerned, however, that contrary to Colombian law many products, including distilled spirits, are imported into an SCZ, ostensibly for sale only in that SCZ or to be re-exported, but are then illegally re-sold throughout Colombia. These illegal imports compete directly with legally imported distilled spirits that are assessed the full import tariff and excise tax and otherwise

comply with Colombia's importation requirements. SCZ regulations limit the quantity of spirits that individuals may remove from SCZs (6 containers of alcohol (of unspecified volume) per year subject to a limit of US$2,500 in value) and prohibit the resale of these products in the domestic market, but these regulations are not enforced.

Overall, the situation has not improved significantly in the wake of the CTPA negotiation; a law (Law 1087 of 2006) was adopted on August 17, 2006 that regulates the legal importations of spirits into the SCZ in La Guajira, but the law did not address the problems described above.

In addition, the Distilled Spirits Council seeks the U.S. government's assistance in urging Colombia to ensure that the operation of the SCZs more closely reflects standard international practice for the operation of free trade zones, as outlined in the U.S. Code of Federal Regulations (15 CFR Part 400; 19 CFR Part 142) and the U.S. Code (19 U.S.C. §81). Specific measures might include:

(a) Abolishing the lower duty rate in the SCZ, and assessing Colombia's consumption tax on all imports;
(b) Eliminating the special rules exempting imports into the zones from the required sanitary registrations;
(c) Enforcing restrictions and/or prohibitions on retail sales from the zones;
(d) Requiring zone operators to use standard internationally-accepted accounting practices; and
(e) Increasing the number of Customs officers assigned to the zones.

Anti-competitive Practices

Colombia maintains spirits monopolies in 16 states, called *departamentos*, which engage in market-distorting and anti-competitive practices in the distilled spirits market. These monopolies control the distribution and marketing of distilled spirits, restricting the ability of U.S. distilled spirits companies to do business in Colombia. Spirits monopolies are significant revenue generators for state governments. Some of the *departamentos* established state-owned enterprises that produce spirits (mainly rum and cane spirits) also known as *licoreras*. The *departamentos* often provide preferential access for the products produced by the licoreras within their territory vis-à-vis imported spirits and spirits produce by other *departamentos*.

Specifically, the Colombian spirits monopolies impose arbitrary and discriminatory demands with respect to imported spirits. For example, the monopolies have required that distilled spirits importers: (1) share a percentage of their profits with the monopoly in return for approval to sell new brands in a department/state; (2) negotiate the minimum price and quantity (i.e., minimum introduction quota) that will be sold annually in a certain state; (3) pay a second consumption tax of 0.5%, which is assessed on the value of the contract; and (4) pay additional fees based on the minimum price

and quantity, which can be as high as 7.5% in certain *departamentos*. Companies that refuse such arrangements are denied market access. The *licoreras*, which do not enter into contracts with the *departamento*, are exempt from these fees. In addition, in some *departamentos* products produced by their own *licoreras* are exempt from state excise and local surcharges that are imposed on imported spirits. Often, *licoreras'* products are also exempt from local strip stamp requirements imposed by the *departamento* on all other spirits.

Additionally, in February 2011 the National Federation of Departments indicated it would suspend all spirits imports as of March 1, reportedly to address concerns regarding tax evasion. Some companies subsequently received notices from two of the *departamentos* indicating that contracts would be cancelled. Fortunately, shortly before the ban was to take effect, the *departamentos* reversed their position. Though major disruptions were in this case avoided, the potential for future disruption contributes to the difficulty of doing business in Colombia.

Although Colombia originally sought an exception from the national treatment (NT) obligations of the CTPA (Article 2.2) and from the Agreement's prohibitions against import/export restrictions (Article 2.8) to enable the state alcohol monopolies to continue their discriminatory practices, the final text (*see* Annex 2.2 of the CTPA) did <u>not</u> exempt the state alcohol monopolies from these obligations. Thus, the Distilled Spirits Council and its members urge the U.S. government to ensure that Colombia eliminates these discriminatory, anti-competitive and market-distorting practices without any further delay.

COSTA RICA

I. Import Policies

Tariffs

Costa Rica has eliminated tariffs on U.S. whiskey, gin, brandy, liqueurs, and certain other spirits under the U.S.-Dominican Republic-Central America Free Trade Agreement (DR-CAFTA). The tariffs on the remaining categories of U.S.-origin spirits (rum, vodka, and certain other spirits) are subject to phase-out periods ranging from 10-15 years from the date of implementation of the agreement.

In 2012, U.S. exports of spirits to Costa Rica were valued at $653,588, a 59% increase from 2011 export values. In the January through July 2013 period, U.S. spirits were valued at $323,544, representing a 52% increase from the same period in 2012.

II. Other Barriers

Taxes

In January 2004, Costa Rica introduced a new specific excise tax for spirits that is calculated per percent of alcohol per liter, with different rates based on the category of spirit (*see* Ley 7972). The specific tax rates are adjusted quarterly, presumably in line with inflation, although it is not entirely clear upon what basis.

Costa Rican Specific Excise Tax Rates
(Rates as of August 1, 2012)

Alcohol Strength	Tax Rate per mL pure alcohol (in colones (¢))
Less than or equal to 15% a.b.v.	2.90
Greater than 15% to 30% a.b.v.	3.47
Greater than 30% a.b.v.	4.03

The local spirit, *guaro*, (which is produced in largest volume by the state-owned alcohol company) is bottled at 30% alcohol-by-volume (a.b.v.). The vast majority of internationally-traded spirits are bottled at 40% a.b.v., and consequently cannot ever qualify for the lower tax rate. Furthermore, local producers pay the specific tax and the "impuesto selectivo de consumo" within the first 15 days of each month on sales made during the month prior, while importers must pay the tax as a prerequisite for release of their product from Customs.

The Costa Rican tax system appears to violate the obligations of the WTO in two respects. First, by applying a lower rate of tax to *guaro* (¢3.47 per mL of pure alcohol) –

the primary product category that is produced locally – than to categories such as whiskey, vodka, etc., (¢4.03 per mL of pure alcohol) – product categories that are mostly imported, 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 provides protection to the domestic industry in contravention of GATT Art. III:2. 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, the Council is concerned that there may be a potential GATT violation.

ECUADOR

I. Import Policies

Tariffs

Ecuador's WTO bound tariff rate for whiskey, rum, and grape brandy is 20 percent *ad valorem*, while its WTO bound rate for all other distilled spirits is 30 percent *ad valorem*. Ecuador generally applied its bound rates until June 2012, when the country introduced a new complex rate for beverage alcohol products including spirits. The new rate is calculated as 1% *ad valorem* plus $0.25 per percent of alcohol content times the volume in liters.

Due to the new formulation, Ecuador's tariff rates on whiskey, rum and grape brandy violate its WTO bound rate of 20% at any customs value under $39.47 per 750 ml bottle of 40% a.b.v. spirits. The 30% bound rate for vodka, gin, and liqueurs is exceeded if the customs value for a 750 ml bottle of those products is under $25.86. The Council understands that the vast majority of imported spirits range from $5 to $10 per bottle, which now incur an effective tariff rate of anywhere between 76% and 151% under the new system.

The Council requests that the U.S. government raise the industry's concerns at the earliest possible opportunity and urge Ecuador to, at a minimum, revise its tariff rate on spirits to ensure that it is not in excess of its WTO tariff commitments.

Product Registration

Ecuador requires that products be registered before they are imported. Often this process is tedious, costly and time-consuming. Documents from the U.S. embassy/consulate usually must be provided along with the submission, and approval of the registration can take anywhere from 4-8 weeks, if not longer. Ecuador should establish clear deadlines for issuance of the approvals to help provide greater certainty and predictability for importers.

II. Other Barriers

Discriminatory Taxation

In November 2011, Ecuador introduced new excise tax rates for spirits. Prior to this revision, Ecuador imposed a discriminatory reference price system that ensured imported spirits were taxed on an inflated tax base. While the Distilled Spirits Council welcomes the elimination of this system, the new system continues to have a discriminatory impact on imported spirits.

Under the current scheme, Ecuador applies a rate of $6.93 per liter of pure alcohol (lpa). If the ex-customs value or ex-factory value (for local spirits) exceeds $3.60 per liter, an additional 75% *ad valorem* tax is assessed.

As applied, Ecuador's tax rate appears to discriminate against imported spirits in favor of domestically produced products. The Council understands that the ex-factory value of domestically produced rum in Ecuador is generally between $2.50 and $2.70 per liter, and is therefore subject to only the $6.93 per lpa tax. However, the new tariff described above ensures that the ex-customs value of all imported spirits will be at least $10 per liter. Thus, all imported spirits are subject to the additional 75% tax rate. This is a clear violation of GATT Article III, paragraph 2, which prohibits discrimination of imports with respect to internal taxation.

The Council urges the U.S. government to engage with Ecuador to remove the discriminatory 75% additional tax, which appears to apply only to imported products.

U.S. distilled spirits exports to Ecuador remain quite small. In 2012, exports were valued at $134,841, representing decline of 18% from 2011. Through July 2012, U.S. exports were $143,748, reflecting a 13% increase relative to the same period in 2012. Nonetheless, Ecuador's high tariffs, taxes, and other barriers continue to restrict the ability of the U.S. industry to penetrate the Ecuadorian market.

EL SALVADOR

I. Other Barriers

Discriminatory Taxation

El Salvador's excise tax regime for beverage alcohol products (incorporated in its general beverage alcohol law -- Ley Reguladora de la Produccion y Comercializacion del Alcohol y de las Bebidas Alcoholicas) currently discriminates against imported distilled spirits by assessing significantly higher excise tax rates. For example, whiskey, which is entirely imported, is assessed an excise tax rate of USD 0.16 per degree (per cent) of alcohol per liter), while locally produced aguardiente (a sugarcane-based spirit) is assessed an excise tax rate of USD 0.0325 per degree of alcohol per liter.

New tax rates entered into force on January 1, 2010 (Decree No. 239 of December 17, 2009). Subsequently, on October 1, 2010, further changes to the excise tax regime for beverage alcohol (Decree No. 239, of September 9, 2010) entered into force. Currently the tax is a hybrid tax consisting of an *ad valorem* tax of 8% based on the retail price of the product; and a specific tax based on alcohol content, which varies by category. The current rates for spirits are listed below:

HTS Number	Product	Excise Tax Rate (US$ per liter of alcohol)
2205	Vermouth	$0.09
2206	Other fermented beverages	$0.09
2208.20	Brandy	$0.09
2208.30	Whiskey	$0.16
2208.40.10	Rum >37 % a.b.v.	$0.09
2208.40.10	Rum <37 % a.b.v.	$0.05
	Aguardientes from cane	$0.0325
2208.50	Gin	$0.16
2208.60	Vodka >37 % a.b.v.	$0.09
2208.60	Vodka <37 % a.b.v.	$0.05
2208.70	Liqueurs	$0.16

El Salvador's excise tax structure continues to run counter to GATT Article III, paragraph 2, which mandates non-discriminatory treatment of imports with regard to internal taxes. 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.

U.S. domestic spirits exports to El Salvador were valued at almost $94,000 in 2012, representing an increase of 25% from 2011.

EUROPEAN UNION

I. Other Barriers

Discriminatory Taxation

The EU grants tax "derogations" on certain locally-produced distilled spirits in various EU member states. These "derogations" may be classified in one of the following categories: 1) artisanal or home distillers; 2) all or certain spirits in specific regions; or 3) certain spirits in specific EU member states. 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 WTO national treatment obligations.

France

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

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.

Hungary

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

Romania is permitted under EU law 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.

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. Therefore, the Distilled Spirits Council requests that in the context of the Transatlantic Trade and Investment Partnership (TTIP) negotiations, the U.S. government urge the EU to end its tolerance of discriminatory spirits tax regimes and work with individual countries to create a level playing field for domestic and imported spirits.

HONG KONG

I. Other Barriers

Taxes

Hong Kong's excise tax policy has distorted its beverage alcohol market, undercut its goal of developing competitive, world-class tourism and hospitality sectors, and seriously eroded the competitiveness of distilled spirits producers, including U.S. spirits exporters.

In February 2008, Hong Kong eliminated its excise taxes on beverage alcohol products with an alcohol content of 30% alcohol by volume (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 also has developed into the world's foremost wine auction center.

The continued imposition of a 100% *ad valorem* excise tax on beverage alcohol products over 30% a.b.v. has, not surprisingly, led to significant price disparities between wine and spirits, distorting the beverage alcohol market. The market-distorting effect is magnified by the *ad valorem* nature of the tax, which, in effect, penalizes higher-value, higher-quality spirits. As a result, consumers have been "trading-down" in their spirits purchases, shifting from higher quality, higher-priced spirits to lower-priced "value" brands. Unlike the situation with wine, the number of spirits brands on the market, including new product launches, has declined.

Moreover, Hong Kong's regional competitors in the hospitality/tourism sectors assess significantly lower taxes on distilled spirits than does Hong Kong. Mainland China's tariffs and taxes on spirits (import duty of 10%, consumption tax of 20% plus CNY 0.5 per 500 ml, VAT of 17%) yield an effective tax rate of about 64%. Taiwan's taxes on spirits (zero import tariff, excise tax of NTD 2.5 per degree of alcohol per liter, VAT of 5%) yield an effective tax burden of about 59%. The Distilled Spirits Council urges Hong Kong, at a minimum, to close this gap between its tax rate on distilled spirits and the rates assessed by regional competitors.

Hong Kong's tax policies have impeded U.S. distilled spirits exporters' access to the Hong Kong market. U.S. spirits exports to Hong Kong were valued at just over $9 million (FAS value) in 2012. For the January – July 2013 period, U.S. exports were down 16% relative to the comparable period in 2012.

INDIA

I. Import Policies

Tariffs

India's excessive tariffs severely restrict access to the Indian market for U.S. spirits exporters. Currently, total imports of bottled spirits represent only 1% of India's spirits market. In 2012, total U.S. direct exports to India were valued at $2.86 million. In the January-July 2013 period, U.S. spirits exports to India were valued at just over $2 million, a 28% increase from the comparable 2012 export values. Despite this progress, U.S. spirits exports to India remain far below exports to comparable markets, particularly in light of the fact that, according to Euromonitor, India ranks as *the largest whiskey market in the world*, both in terms of volume (1.4 billion liters in 2012) and value ($21.6 billion in retail sales in 2012). (Note: Whiskeys accounted for 68% of total U.S. spirits exports globally in 2012.)

Base Tariff: India's applied base tariff on imports of bottled spirits is 150% *ad valorem*, which is its WTO bound rate. At 150% *ad valorem*, India's tariff is dramatically higher than distilled spirits tariffs in the vast majority of developing country markets. (China's tariff, *e.g.*, is 10% *ad valorem* on all spirits.) One of the Council's top priorities in the current round of WTO negotiations and during India's annual budget process is to secure a sharp drop in India's applied tariffs. This is a matter of urgency for the Council since the ongoing EU – India FTA negotiations may usher in a sharp drop in the tariffs on competing EU-origin spirits.

Additional Customs Duty: From April 2001 until July 3, 2007, India also applied additional customs duties (ACD) on imports of bottled spirits, beer and wine. These additional customs duties were assessed on top of the basic customs duty and varied depending on the per-case CIF value of the imported spirits. The ACD in effect from April 2003 – July 2007 ranged from 25% *ad valorem* or $53.20 per case, whichever was higher, to 150% *ad valorem*, in clear breach of India's tariff bindings.

India announced on July 3, 2007 that it would "exempt" beer, wine and spirits from the ACD, effective immediately. While the U.S. spirits industry warmly welcomed this action, which was unquestionably prompted by the U.S. WTO case (and similar action by the European Commission), we have yet to receive assurances that India will not reimpose the ACD in any form and that the states will not introduce (and, where in effect, will rescind) duties and fees that discriminate against imported spirits.

Extra Additional Duty: In connection with India's 2006/2007 Budget, the Indian government announced the imposition of an extra additional duty (EAD) of 4% *ad valorem* on most imported goods, including imported spirits. This duty is levied on the value of imported goods, which is the sum of the CIF value + Customs Duty (150%),

making India's effective tariff on imported spirits 160%, in breach of its WTO tariff binding. On September 14, 2007, Indian Customs published a notification that appears to provide a mechanism whereby importers may seek a refund of the EAD with respect to imported products that are subsequently sold within India (and therefore subject to VAT and/or sales taxes) if proper documentation is provided. The Distilled Spirits Council welcomed this announcement, but remains concerned that importers must still pay the EAD up front and then comply with burdensome documentation requirements in order to obtain a refund, requirements that are not imposed in connection with domestically produced goods. This discriminatory duty should be eliminated as soon as possible.

Goods and Services Tax: India has proposed the adoption of a single federal goods and services tax (GST) that would replace the various state taxes and cascading import taxes. This would be a welcome development; however, the draft GST bill currently under consideration would exclude beverage alcohol and certain other sectors from the new GST system. The Council notes that, in August 2013, the Parliamentary Standing Committee on Finance published its report on the draft GST bill and recommended that there be *no exclusions* from the scope of the GST. While this report is encouraging, it is not binding. The Distilled Spirits Council requests that the U.S. government urge India to include distilled spirits in the GST system as a means toward adopting a transparent and predictable tax system for beverage alcohol.

II. Other Barriers

State Restrictions

In addition to the almost-prohibitive import tariffs and additional duties India applies to imported spirits, several of India's states apply their own discriminatory measures to imported distilled spirits, in apparent violation of India's WTO obligations. We provide a few illustrations below.

The state of **Tamil Nadu**, for example, has not yet been fully opened to imported spirits in a meaningful sense, despite India's removal of quantitative restrictions in April 2001 in response to adverse WTO rulings. Tamil Nadu adopted a law in 2008 to permit the sale of imported products, but required that brands be registered before they can be sold by the state monopoly, *i.e.,* Tamil Nadu State Marketing Corporation Limited (TASMAC). Although companies have applied to register their imported brands, to date only 30 brands of imported spirits have been registered and only a handful are listed on TASMAC's price list. More telling, however, is that TASMAC does not routinely order imported products, and, as a result, often there is no inventory of imported spirits throughout its 7,500 retail outlets.

In addition, payment terms appear to discriminate against imported spirits. Suppliers of imported spirits are paid when the products are reported as sold from the TASMAC

retail outlets, whereas suppliers of locally-produced spirits are paid far more promptly – half upon supply of the goods to a TASMAC depot and half upon depletion of stocks to retail outlets. There is a further disincentive for off-premise TASMAC retail outlets to stock high-value imported spirits: the 4730 TASMAC off-premise retail outlets are linked to small low-end bars whose license fee is based on the value of sales from the retail outlet (2.5% of the sales value). These bars therefore have an incentive to sell lower-value domestic products in order to avoid the higher license fees that would be triggered by sales of more expensive imported spirits.

The excise policy of **Delhi,** unveiled in June 2011, imposes differential tax rates on domestically produced and imported spirits. In addition, retailers wishing to sell imported spirits to hotels, bars and restaurants are required to pay an additional licensing fee on top of the licensing fee they must pay for domestically-produced spirits. There is also differential treatment regarding the storage of imported spirits. Specifically, customs duties are not permitted to be collected in advance for imports, whereas domestically-produced spirits may pay the required excise taxes in advance and continue to be stored in a warehouse prior to sale. Clearance for imported products, however, may only be granted after an order is placed; the appropriate duty payments are only then received. The practical impact of this differential treatment is that orders for domestically-produced spirits can be satisfied in 1-2 days, while completing orders for imported spirits takes at least 1-2 weeks. More recently, the Delhi excise policy announced in May 2012 imposed discriminatory pricing restrictions on imported spirits: the declared wholesale price of imported (Bottled in Origin) spirits is required to be lower in Delhi than anywhere else in India, whereas locally-produced spirits are not subject to the same requirement.

The state of **Karnataka** imposes "special fees" on imported spirits using a "slab" structure, with the fees escalating as the declared price per case increases. Such a structure inherently disadvantages imported spirits, which are priced significantly higher than domestically-produced spirits.

The state of **Haryana** has established a discriminatory Value Added Tax (VAT) regime, with a much higher VAT applied to imported foreign spirits (25%) than to domestically produced spirits (4% VAT). Further, while the license fee for domestic spirits brands is a flat rate fee per annum, the license fee for imported spirits increases as the sales volume increases, yielding higher license fees for imported spirits.

The state of **Odisha** also applies a discriminatory excise tax regime, applying the highest rates to imported spirits. In addition, label registration fees are higher for imported spirits as compared to domestically-produced brands.

The state of **Andhra Pradesh** has established differential tax arrangements for domestic and imported spirits brands.

Bonding Period/Interest Rate

The interest-free bonding period for imports is 90 days and the interest rate applicable thereafter is 15%. In contrast, domestically-produced goods may be held in bond without time limits or payment of interest. This practice violates Art. III: 2 of GATT 1994.

INDONESIA

I. Import Policies

Tariffs

Since 2010, Indonesia has applied a specific tariff rate for spirits of 125,000 Indonesian Rupiah (IDR) per liter (approximately $10.96 per liter). While locally produced spirits dominate the Indonesian market, forecast data indicate that the sale of these products will contract by 23% (in value terms) by 2017, whereas the sale of imported spirits, such as American whiskeys, will expand by 10.5% over the same period. In light of the significant potential of the Indonesian market for U.S. spirits exports, Indonesia's exorbitant tariffs on imported distilled spirits should be a prime target for the United States in multilateral or bilateral trade discussions.

Import Quota/Import Licensing

On September 15, 2009, the Ministry of Trade issued regulation number 43/M_DAG/PER/9/2009 to permit companies to import duty-paid beverage alcohol products as of January 2010. Companies are required to apply for an import permit from the Directorate General of Foreign Trade. The permit is valid for three years and can be extended. Previously, the government only authorized two importers of beverage alcohol products in Indonesia. However, products containing more than 55% alcohol by volume are not permitted to be imported into Indonesia.

II. Other Barriers

Discriminatory Taxation

On March 17, 2010, the Ministry of Finance issued Regulation No. 62/PMK.011/2010, which modified the tax rates for beverage alcohol products. Specifically, the excise tax rates were increased substantially, while the 75% ad valorem luxury tax was abolished. While we are pleased that the luxury tax has been lifted, the discriminatory nature of the excise tax regime has been retained, as noted below:

Current Excise Tax as of April 1, 2010 (Rp. Per liter)		
Alcohol Content	**Local**	**Imported**
Up to 5% a.b.v.	11,000	11,000
Between 5% and 20% a.b.v.	30,000	40,000
Greater than 20% a.b.v.	75,000	130,000

Thus, imported products containing more than 20% alcohol by volume (a.b.v.) are now subject to an excise tax of 130,000 IDR per liter (US$11.31 per liter), whereas domestically-produced spirits are subject to an excise tax of 75,000 IDR per liter (US$6.59). Imported products containing between 5% and 20% a.b.v. are assessed an excise tax of 40,000 IDR per liter (US$3.55), in comparison to 30,000 IDR (US$2.66) for domestically-produced beverage alcohol products containing the same amount of alcohol.

This discriminatory taxation appears to be a clear violation of Indonesia's WTO obligations under Article III: 2 of GATT 1994. Thus, we seek the U.S. government's assistance in urging the Indonesian government to remove the discriminatory aspects of its taxation regime for spirits as soon as possible.

Registration Requirements

All products must be registered with the Ministry of Health, but the registration process can be lengthy, bureaucratic and costly. In order to register a product, suppliers/importers must provide extensive documentation, including: (1) an appointment letter; (2) certificate of free sale; (3) analysis of composition; (4) detailed description of the production process; and (5) schematic representation of the production facility. The fee for registration depends on the product and ranges from 100,000 IDR to 2.5 million IDR.

These prohibitive barriers have impeded U.S. spirits exports to Indonesia. According to Global Trade Atlas, in 2012 total spirits imports from the United States were valued at just $760,000. In 2011, spirits imports totaled only $436,000.

ISRAEL

I. **Import Policies**

Tariffs

Under the terms of the current U.S. – Israel Agreement on Trade in Agricultural Products (ATAP), all U.S.-origin spirits enter Israel duty-free. We urge the U.S. government to secure the permanent elimination of Israel's tariffs on all U.S.-origin spirits during the negotiations for a successor agreement.

JAPAN

I. Import Policies

Tariffs

As part of its settlement agreement with the United States, the European Commission and Canada in resolution of the World Trade Organization dispute settlement case (Japan – Taxes on Alcoholic Beverages: WT/DS8, WT/DS10 and WT/DS11), in 1997 Japan agreed to eliminate its tariffs on imports of brandy, Bourbon, rye and other whiskeys, rum, gin, vodka and liqueurs. Specifically, as indicated in Annex B to its "Mutually Acceptable Solution on Modalities for Implementation," which was circulated to WTO members on January 12, 1998, Japan agreed to apply a tariff of zero on imports of these spirits categories from April 1, 2002 forward. Furthermore, Japan stated in this communication that it "will not raise tariffs rates above those specified in Annex B" and that the "GOJ will apply the rates listed in Annex B in full recognition that Japan's WTO bound rates are higher and intends to bind these tariff reductions in the WTO at the next possible opportunity to modify the Schedule of Japan following a multilateral, multi-sectoral negotiation."

Japan has bound at the WTO the zero duty rate on brandy and whiskeys only. However, since the "next possible opportunity" in the WTO (i.e., the Doha Development Agenda of multilateral negotiations) to bind the remaining spirits tariffs has stalled, the Distilled Spirits Council requests that the U.S. government seek Japan's commitment to immediately bind all of its spirits tariff commitments at zero in the context of the TPP negotiations. In addition, the Council also seeks Japan's renewed commitment to bind its tariff commitments, consistent with the terms of the 1997 settlement agreement, with regard to rum, gin, vodka and liqueurs in the WTO as soon as possible.

II. Other Market Access Issues

Distinctive Product Recognition

In the context of the ongoing TPP negotiations, the Distilled Spirits Council urges the United States to seek a commitment from the government of Japan to provide explicit recognition of ***Bourbon*** and ***Tennessee Whiskey*** as distinctive products of the United States, using language similar to that found in NAFTA Annex 313, Article 3.15 of the U.S.-Chile FTA, Article 3.11 of the U.S.-Central American/Dominican FTA, Article 2.12 of the Peru and Colombia Trade Promotion Agreements, Article 2.13 of the U.S. – Korea FTA, Article 3.12 of the U.S. Panama FTA, in a side letter to the U.S.-Australia FTA, and in a bilateral agreement with the European Union. Accordingly, Japan should not permit the sale of any product as "Bourbon" or "Tennessee Whiskey" unless it has been produced in the United States in accordance with the laws and regulations of the United States, nor permit the use of these terms for any product that is not Bourbon or Tennessee

Whiskey.

Securing such recognition is critical for U.S. whiskey exporters to Japan. Of the $98 million in U.S. spirits exports to Japan in 2012, the vast majority (*i.e.,* 87%) was accounted for by Bourbon and Tennessee Whiskeys alone. In fact, Japan ranks as the fifth largest export market in the world for Bourbon and Tennessee Whiskey.

The Distilled Spirits Council understands that the Japanese spirits industry is seeking distinctive product recognition for "***Japanese Single Malt Whisky***," which is a single malt whisky that is only produced in Japan. The Council has been assured that the Japanese spirits industry strongly supports recognition of Bourbon and Tennessee Whiskey as distinctive products of the United States. Accordingly, the Distilled Spirits Council strongly supports the United States' and Japan's mutual recognition of each other's distinctive whiskeys. Thus, only single malt whiskies manufactured in Japan in accordance with the laws and regulations of Japan would be permitted to be sold in the United States as "Japanese Single Malt Whisky." Such mutual recognition would ensure that both countries' distinctive whiskey products are afforded similar protections in their respective markets.

KAZAKHSTAN

I. Other Barriers

Intellectual Property Rights

Although Kazakhstan's trademark law and the relevant provisions of its Civil Code grant trademark owners the exclusive right to use and dispose of registered trademarks, the Kazakh courts frequently have failed to enforce the laws. In recent years, U.S distilled spirits exporters and their authorized importers have reported serious problems with court rulings concerning the scope of trademark protection and with procedural hurdles that have undermined enforcement of trademark rights.

These deficiencies in the enforcement of trademark rights by the Kazakh courts were partially offset by the trademark registration system administered by Kazakhstan's Customs Control Committee. Under the registration system, Customs was authorized to suspend the entry of all imports that violated the trademark owner's rights as defined by Kazakhstan's trademark law (*i.e*., protection against both counterfeit and parallel imports). In December 2009, however, the Customs Code was amended to restrict Customs' authority to suspend importation of products bearing infringing marks, thus exacerbating the enforcement problems.

In January 2012, the Customs Union Intellectual Property Rights Treaty was adopted, which incorporated a regional exhaustion principle in all three member countries (Russia, Kazakhstan, and Belarus). Thus, trademarks to be protected are listed in a Customs Union Register, which allows customs officials to check whether a given importer is, in fact, authorized by the trademark holder to bring the goods into the market. Kazakhstan has since amended its trademark law to reflect the regional exhaustion principle and, as a result, Kazakh customs is regularly stopping and seizing goods that violate the law. This is certainly positive, as U.S. spirits exporters view this system as vital to preventing a flood of counterfeit and parallel imports from outside the Customs Union. Nonetheless, there has not yet been a similar improvement in terms of implementation of the amended law by the courts. The Council requests that the U.S. government work with Kazakhstan to improve the enforcement of intellectual property rights.

KOREA

I. Import Policies

Tariffs

Under the U.S. - Korea Free Trade Agreement (KORUS FTA), Korea eliminated its 20% ad valorem tariff on Bourbon (and Tennessee Whiskey) as of March 15, 2012. Korea will phase out its duties on other U.S.-origin spirits by 2016.

U.S. spirits exports were valued at $12.1 million in 2012; Bourbon and Tennessee Whiskey accounted for 32.8% of the total. From January through July 2013, spirits exports are up 42.4% compared to the same period in 2012.

II. Other Market Access Issues

Discriminatory Taxation

Revisions to Korea's Liquor Tax law, which entered into force on July 1, 2008, provide for a 50% reduction in the excise tax assessed on certain "traditional liquors," including distilled and diluted soju. Although the tax break is limited at this time to small producers, the U.S. spirits industry has serious concerns about providing preferential tax rates for domestically-produced spirits, including distilled and diluted soju, which the WTO Panel and Appellate Body determined to be directly competitive and substitutable with other distilled spirits in the Korea – Taxes on Alcoholic Beverages WTO dispute. Although a *de minimis* tax differential is permitted under WTO rules, in our view Korea's 50% tax reduction is not a *de minimis* difference. The Distilled Spirits Council seeks the U.S. government's continued support in opposing Korea's tax measure.

MALAYSIA

I. Import Policies

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
Other spirits (> 0.5% a.b.v. and < 1.14% a.b.v.)	3 per liter

Total direct U.S. spirits exports to Malaysia were valued at almost $3.5 million in 2012, representing an increase of almost 70% from 2011.

Although the recent increase is encouraging, Malaysia's high tariffs and discriminatory excise tax structure continue to restrict the ability of U.S. spirits exporters to penetrate the Malaysian market. Thus, the Distilled Spirits Council urges the U.S. government to seek Malaysia's agreement to immediately eliminate its tariffs on U.S.-origin spirits in the context of the Trans-Pacific Partnership (TPP) negotiations.

II. Other Market Access Issues

Distinctive Products

The Distilled Spirits Council urges the United States to seek a commitment from the government of Malaysia to provide explicit recognition of Bourbon and Tennessee Whiskey as distinctive products of the United States, using language similar to that found in NAFTA Annex 313, Article 3.15 of the U.S.-Chile FTA, Article 3.11 of the U.S.-Central American/Dominican FTA, Article 2.12 of the Peru and Colombia Trade Promotion Agreements, Article 2.13 of the U.S. – Korea FTA, Article 3.12 of the U.S. Panama FTA, in a side letter to the U.S.-Australia FTA, and in a bilateral agreement with the European Union. Accordingly, Malaysia should not permit the sale of any product as "Bourbon" or "Tennessee Whiskey" unless it has been produced in the United States in

accordance with the laws and regulations of the United States, nor permit the use of these terms for any product that is not Bourbon or Tennessee Whiskey.

III. Other Barriers

Taxes

Malaysia maintains an excise tax regime that discriminates against imported spirits by assessing a lower tax rate on domestic spirits (samsu, arrack, and other local spirits) than on imported spirits products. For example, the excise tax on samsu (overwhelmingly produced locally) is 22.50 RM per liter of pure alcohol, whereas the tax assessed on whiskey (the vast majority of which is imported) is 30 RM **per liter** and the tax on liqueurs and cordials is 42.50 RM per liter of pure alcohol.

Tariff Code	**Description**		**Excise Duty** (RM as of 09/1/06)
22.08	***Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol; spirits, liqueurs, and other spirituous beverages.***		
2208.20		- Spirits obtained by distilling grape wine or grape marc:	
	100	Brandy	30.00/liter + 15%
	900	Other	30.00/liter + 15%
2208.30	000	Whiskeys	30.00/liter + 15%
2208.40	000	Rum and tafia	30.00/liter + 15%
2208.50	000	Gin and Geneva	30.00/liter + 15%
2208.60	000	Vodka	30.00/liter + 15%
2208.70	100	Liqueurs and cordials (not exceeding 57%)	42.50/liter of pure alcohol + 15%
2208.90	300	Samsu	22.50/liter of pure alcohol + 15%
2208.90	500	Arrack and pineapple spirits	17.00/liter + 15%

The Distilled Spirits Council strongly encourages the United States to ensure that Malaysia will harmonize its current specific excise tax structure and, consistent with its WTO obligations, adopt a non-discriminatory excise tax regime that assesses the same tax rate per degree of alcohol regardless of the country of origin or category of distilled spirit. 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. Accordingly, the Council urges the United States to secure the elimination of the discriminatory aspects of Malaysia's excise tax regime.

NEW ZEALAND

I. Import Policies

Tariffs

New Zealand currently applies a tariff rate of zero on imports of whiskey, brandy and rum, but continues to assess tariffs of five percent *ad valorem* on liqueurs, vodka, and gin. Consistent with its Uruguay Round commitments, New Zealand's bound tariff rates for distilled spirits are as follows:

Product	Bound Rate
Brandy	26%
Whiskey	14%
Rum and Tafia	26%
Gin and Geneva	26%
Vodka	18.4%
Cordials	12%

U.S. spirits exports were valued at almost $23 million in 2012, demonstrating a 10% decrease from 2011.

The Distilled Spirits Council urges the U.S. government to secure the immediate elimination of New Zealand's remaining tariffs on distilled spirits in the Trans-Pacific Partnership (TPP) negotiations.

II. Lack of Intellectual Property Protection

A distillery in New Zealand doing business as "Bourbon New Zealand Ltd" produces a distilled spirits product that features the term "Bourbon" prominently on the label. The company sells the product in New Zealand and reportedly intends to export it to other markets.

Bourbon Whiskey and Tennessee Whiskey have long been recognized internationally and domestically as uniquely American spirits. The United States government has successfully promoted this principle internationally, chiefly through a series of bilateral and regional trade agreements, including NAFTA, the U.S.-Chile FTA, the U.S.-Australia FTA, the U.S. Central American-Dominican Republic FTA, the FTAs with Colombia, Panama, Peru and Korea, and an agreement between the United States and the European Union, all of which provide explicit recognition of Bourbon and Tennessee Whiskey as distinctive products of the United States. As such, parties to these agreements have committed not to permit the sale of any product as Bourbon or Tennessee Whiskey, unless it has been produced in the United States in accordance with the laws and regulations of the United States. Moreover, the WTO Agreement on Trade-

Related Aspects of Intellectual Property Rights (TRIPS Agreement) obligates WTO members to prevent the misleading use of such geographical indications as “Bourbon.”

The Distilled Spirits Council is concerned that consumers in New Zealand and other markets may mistakenly believe that the product made by “Bourbon New Zealand Ltd” is Bourbon. Moreover, the U.S. spirits industry is concerned that the sale of this product may jeopardize U.S. exports of genuine Bourbon to New Zealand and other markets. Thus, in the context of the TPP negotiations, the Distilled Spirits Council urges the U.S. government to secure the New Zealand government’s commitment to recognize Bourbon and Tennessee Whiskey as distinctive products of the United States, consistent with the bilateral and regional free trade agreements referenced above.

PERU

I. Other Market Access Issues

Discriminatory Taxation

Since 2004, Peru has imposed a discriminatory tax (*Impuesto Selectivo al Consumo*, or ISC) that negatively impacts imported U.S. spirits. While most spirits were subject to a 20% *ad valorem* tax rate, domestically produced pisco was assessed a specific rate of 1.50 Peruvian Nuevo Sol (PEN) per liter under Decreto Supremo N° 104-2004-EF.

This discrimination was exacerbated by an amendment in May 2013 that imposed a new excise tax structure. Under the new system, products other than pisco face the higher of either a specific rate or an *ad valorem* rate (which was increased to 25%). The current rates are indicated in the following table:

Product	Alcohol by Volume	Specific Rate	Ad Valorem Rate
Pisco	-	1.50 PEN/liter	(none)
Other beverage alcohol products	0% to 6%	1.35 PEN/liter	30%
	Over 6% to 20%	2.50 PEN/liter	25%
	Over 20%	3.40 PEN/liter	25%

As noted aboce, the specific tax rate on pisco is much lower than the minimum rate of 3.40 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. The Distilled Spirits Council urges the U.S. government to engage with Peru to reform the discriminatory tax regime as soon as possible.

Direct U.S. exports of distilled spirits to Peru increased over 30% to nearly $1.5 million in 2012. In January-July 2013, exports have remained relatively flat at approximately $792,000 compared to the same period in 2012.

PHILIPPINES

I. Import Policies

Tariffs

The Philippines applies a tariff of either 10 or 15 percent *ad valorem* on imports of all distilled spirits, and its WTO-bound rate is 45 percent *ad valorem*.

In light of the significant potential of the Philippine market for U.S. spirits exporters, securing the elimination of Philippine tariffs on imported distilled spirits should be a priority objective for the United States in multilateral or bilateral negotiations, or in the Trans-Pacific Partnership (TPP) negotiations, should the Philippines become a participant.

Import Processing Fee

The Philippines government assesses an Import Processing Fee, which varies depending on the dutiable value of the shipment. The fee structure discriminates against imported spirits, which are primarily high-value, premium products:

Dutiable Value of Shipment (in Philippine pesos)	**Import Processing Fee (in Philippine pesos)**
up to 250,000	250
between 250,000 and 500,000	500
between 500,000 and 750,000	750
over 750,000	1000

II. Other Barriers

Duty Free Sales

The 2004 tax law and accompanying implementing regulations eliminated the duty-free status of spirits imported into the duty free ports. Thus, since January 2005, distilled spirits are subject to the full tax and tariff burden upon entry into the duty free port, rather than upon entry into the national customs territory. However, only companies that did not file suit against the regulations are currently required to pay the tariffs and taxes on goods imported into the duty-free ports, which are clearly discriminatory *vis-à-vis* the non-litigants.

ROMANIA

I. Other Market Access Issues

Excise Tax

In August 2013, the Romanian government announced an increase in spirits excise tax rates to compensate for the loss in revenue caused by a significant reduction in the value added tax (VAT) rate on bakery products. The spirits excise rate was increased 33% to 1,000 EUR per hectoliter of pure alcohol (HLPA), effective September 1, 2013.

Part of the Romanian government's justification for the reduction in bakery product VAT is that the previously high rate (24%) contributed to significant tax evasion in the sector, creating an uncompetitive business environment. The government argues that lower VAT rates could improve collections and the overall business environment.

However, Romania already has a significant problem with non-tax paid spirits, which industry sources believe account for 40-50% of the total spirits market. The sharp increase in excise taxes will only increase the incentives for the non-tax paid market and counterfeit goods. In addition, the increase is likely to further exacerbate the distortions caused by Romania's excise tax "derogations" for certain spirits producers. As noted in the EU section above, Romania currently provides a reduced excise tax (half of the full rate) on small distillers producing for households. The Council understands that large volumes of such spirits leak into the commercial market.

In light of these concerns, the Council seeks the U.S. government's support in urging Romania to reconsider the excise tax increase. In particular, we believe that the Romania should focus additional efforts on enforcement of excise tax and VAT payment, rather increasing excise rates. At a minimum, Romania should reassess the excise tax levels as part of its planned review of the bakery product VAT rate.

RUSSIA

I. Import Policies

Tariffs

In the context of its WTO accession negotiations, Russia agreed to reduce its tariffs on spirits from 2 Euros per liter to 1.4 Euros per liter for whiskey and to 1.5 Euros per liter for other categories by 2015. The first phase tariff reduction occurred on September 1, 2013, and the Distilled Spirits Council welcomes this progress to reduce Russia's high tariff barriers. However, Russia's tariffs will still remain relatively high compared to most other advanced economies. Therefore, the Council urges the U.S. government to seek the elimination of Russia's spirits tariffs through further bilateral or multilateral negotiations.

Warehouse and Import Licensing

Russia maintains a complicated, burdensome and non-transparent licensing system for importers of distilled spirits products. Prior to Russia's WTO accession, spirits importers were required to obtain two licenses in order to import spirits: 1) a general **"activity" license** (*i.e.,* a wholesale license) from Federal Service for Regulation of the Alcohol Market (FSR); and 2) an **"import license"** from the Ministry of Industry and Trade (MIT). Importers are also required to register with the Ministry of Economic Development (MED). Upon WTO accession, Russia eliminated the import license requirements.

However, significant difficulties remain with respect to Russia's general **"activity" license**, which covers wholesale, purchasing, supply and storage and is necessary for importers to purchase the required excise stamps prior to importation. The requirement to obtain such a license has been in place since January 1, 2006. The fee for obtaining this license, which is valid for five years and includes an annual inspection provision, is now 500,000 Rubles (approximately $16,835). (This rate was increased from 250,000 Rubles on February 1, 2010.)

In early 2011, importers began to report serious problems with the "activity" license renewal process. Specifically, FSR refused to accept companies' applications or denied applications on spurious claims. In addition, on October 26, 2010 FSR issued Order #59n detailing new warehousing requirements for importers/wholesalers that are difficult, if not impossible, with which to comply (*i.e.,* requiring different temperatures for the storage of different spirits and wines, requiring different products (Bourbon vs. vodka) to be kept on different pallets, etc.). After significant delays, companies operating in Russia were able to renew their activity licenses. While the renewals were welcome and most should remain valid for five years, the unreasonable level of difficulty faced during this process is cause for considerable concern. In some cases, FSR appears to be implementing requirements in ways that are contrary to stated Russian policy.

Despite the renewals in 2011, U.S. spirits companies operating in Russia continue to face arbitrary and non-transparent enforcement of warehouse requirements. FSR has frequently denied applications to expand beverage alcohol warehouses on the basis of questionable interpretations of the technical conditions outlined in Order #59n. Often, these denials cite issues that are beyond the control of the company making the application and have no bearing on the proper storage of beverage alcohol. Despite mounting costs to comply with FSR inspectors' demands and constant re-application, some companies have made little progress and are unable to proceed according to their business plans. As of September 2013, FSR is revising its warehouse requirements and storage conditions for beverage alcohol, but despite some improvements to problematic requirements, the current drafts continue to raise major concerns for U.S. spirits industry.

The Distilled Spirits Council seeks the U.S. government's ongoing assistance in urging Russia to withdraw its onerous technical requirements for warehouses and regulate warehouse licensing in a fair, transparent manner.

Bank Guarantees

Russia requires that a bank guarantee or import deposit (see below) be provided prior to obtaining the required excise stamps. In theory, the bank guarantee for imported products covers 100% of the excise tax plus 100% of the VAT (18%) plus 100% of the import tariff. However, since the strip stamp application process does not include any information regarding the customs value, the Federal Customs Service (FCS) determines amount of the bank guarantee based on the type of product. Thus, importers are frequently required to obtain bank guarantees that far exceed the actual amount of tariffs and taxes owed.

Additional issues arise because the Russian government limits which banks may issue guarantees for imported spirits and places ceilings on the amount of guarantees each may offer at any time. This can be a major barrier during the busy holiday season, when an importer may not be able to find a bank able to issue a guarantee, essentially preventing imports.

The Council requests that the U.S. government seek Russia's agreement to permit importers to provide import values at the time the application for the excise stamps is made. This would enable Customs to calculate the exact amount of taxes and duties due and thereby ensure that companies secure the appropriate level of the required bank guarantee. Alternatively, a voluntary program could be established under which companies could work with FCS on an ad-hoc basis to determine an appropriate level of bank guarantee for a particular brand. For those that did not want to participate in the program, the current bank guarantee system would continue to be an option.

Russian legislation allows approved entities to issue a surety, by which that entity ensures that the importer will pay its full duty liability. However, there is no clear criteria for approving such entities. The Council requests that the U.S. work with Russia to create transparent criteria that will allow global spirits companies to issue sureties on behalf of their importers.

In addition to the excessive level of bank guarantees, Russia currently applies a duplicative guarantee requirement based on its interpretation of Eurasian Economic Commission (EEC) customs union rules. The customs union requires all imports to be accompanied by a Customs Guarantee Certificate indicating full payment of taxes and tariffs. Customs union regulations appear to allow national customs authorities to accept other documents, such as the Russia-specific bank guarantee for beverage alcohol products. In January 2012, some Russian customs posts began requiring both guarantees. A February 2012 FCS instruction indicated that the customs union Guarantee Certificates are not required for beverage alcohol; however, FCS subsequently repealed this instruction in December 2012. Thus, importers of U.S. spirits must currently either provide both guarantees or pay an additional fee to Rostek (a state-owned company under FCS) to provide a special escort from customs to the final destination. It is estimated that the customs escort fees cost over $1.3 million (1 million EUR) annually per importer. This duplicative requirement poses an unnecessary barrier to U.S. spirits exports to Russia and appears to violate Russia's WTO accession commitments.

II. <u>Intellectual Property Protection</u>

<u>Trademark Infringement</u>

In January 2006 a provision was reinstated authorizing Customs to require importers to verify that they have a licensing agreement with the producer. The industry continues to view this as an important and helpful tool in deterring imports of counterfeit goods.

Intellectual property concerns are especially important in the context of the Customs Union with Kazakhstan and Belarus. While Russian enforcement of beverage alcohol trademarks has been fairly strong in recent years, we note that Kazakhstan has a very porous border with China, which has been a significant source of counterfeit products. Therefore, it is vital to ensure that new Customs Union procedures due not provide a new route for counterfeit products into the Russian market.

In this context, the U.S. distilled spirits industry is concerned about recent efforts by Russia's Federal Antimonopoly Service to introduce a principle of international exhaustion of intellectual property rights in Russia. Such a change could have significant unintended consequences for imported beverage alcohol products, including U.S. spirits. Often, illicit producers may re-fill legitimate bottles bearing U.S. brands with counterfeit spirits and seek to import these products into Russia. Since the bottles do

not display any visible signs of counterfeiting, it can be very difficult for customs officials to identify such illicit products. Not only do these products infringe upon U.S. companies' intellectual property rights, but they also pose a serious public health concern for Russian consumers. We ask that the U.S. government urge Russia to maintain the regional exhaustion principle and its current system to ensure that only legitimate U.S. spirits products enter the country.

Direct U.S. distilled spirits exports to Russia remain relatively low as products destined for the Russian market are typically transshipped through Europe. However, Global Trade Atlas data shows that Russia's reported imports of U.S.-origin spirits products have grown tremendously in the past ten years to reach $104 million in 2012. Russia is not only a strong market for U.S. whiskey exports, but is also a significant market for U.S. rums.

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 percent), 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 percent *ad valorem*. Imports of these spirits in bulk containers are subject to a bound tariff rate of 121 percent *ad valorem*. South Africa's bound rate on imports of all other distilled spirits, *e.g.*, vodka and liqueurs, is 597 percent *ad valorem*, whether in bottles or in bulk containers.

The European Union-South African Trade, Development, and Cooperation Agreement places U.S.-origin spirits at a disadvantage relative to European spirits. As of 2012, ***all EU-origin spirits currently enter South Africa duty-free***. South Africa represents a very lucrative market for U.S. distilled spirits companies, but this tariff differential is eroding the ability of U.S. spirits exporters to maintain market share. For example, in 2007 South Africa ranked as the 9th largest export market for U.S. distilled spirits products, valued at $35.2 million. U.S. spirits exports to South Africa were valued at $13 million in 2012, representing an increase of 7.7% from 2011.

Accordingly, the Distilled Spirits Council 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-origin spirits.

SWITZERLAND

I. Other Market Access Issues

Excise Tax

The Swiss legislature has introduced a proposal for a reduced rate of excise tax (70% of the full rate) for spirits produced in Switzerland under a fixed production level or "yield" per volume of raw material. This "yield" amount is to be set by the Swiss Federal Department of Finances depending on the raw material in question. Production in excess of this yield would be completely exempt from excise taxes for additional volumes of up to 30% of the yield rate. Beyond that cutoff, production is subject to the full excise rate.

While the impact and incentives created by such a system will vary depending on the yield rates established by the government, the proposal would clearly create a discriminatory system that would benefit domestic producers. All other spirits (i.e., those not produced in Switzerland) would be subject to the full excise rate regardless of volume.

As proposed, the yield tax system would clearly violate GATT Article III, paragraph 2, which mandates non-discriminatory treatment of imports in respect of 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 most recently the Philippines -- Taxes on Distilled Spirits (DS396 and DS403)) the WTO has clearly upheld the position that all products under the HTS 2208 sub-chapter, regardless of type or origin, are at a minimum directly competitive and substitutable products and should therefore be taxed similarly.

The Distilled Spirits Council understands that, as of September 2013, the two houses of the Swiss Federal Assembly have approved different versions of the bill, both which contain the "yield" tax provisions, and that these versions must now be reconciled. The legislature has given every sign of moving forward with the legislation, despite indications from Swiss executive branch officials that the bill could violate WTO rules and other international trade agreements. Thus, the Council requests that the U.S. express to the Swiss government serious concerns regarding the proposed bill, which, if adopted as , would discriminate against U.S. spirits.

TAIWAN

I. 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, Taiwanese government introduced various proposals to modify the excise tax structure for spirits, including suggested modifications to the definition of "cooking alcoholic beverages" so as 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, from NT$185 per liter to NT$2.5 per liter per degree of alcohol content, which resulted in a significant effective tax reduction for all spirits.

In 2010, Taiwan's Legislative Yuan adopted a proposal to permit distilled rice wine to be subject to the tax rate applicable to "cooking alcoholic beverages" (*i.e.,* NT$9 per liter), effectively lowering the tax rate significantly on these products as compared to all other distilled spirits. However, "cooking alcoholic beverages" are in a completely different product category. Because of the minimum salt content requirement, they are not able to be consumed as beverages, unlike distilled rice wine.

The Distilled Spirits Council urges the U.S. government to continue to strongly oppose Taiwan's current tax rate for distilled rice wine, which is in violation of Taiwan's bilateral agreement with the United States and its WTO accession commitments.

U.S. spirits exports to Taiwan were valued at almost $7.6 million in 2012, representing a decrease of 31% from 2011. The vast majority (72%) of U.S. exports were accounted for by Bourbon and Tennessee Whiskey.

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 rates, which are the same as its WTO bound rates, are 54% *ad valorem* for gin and 60% *ad valorem* for all other spirits.

In 2012, U.S. exports to Thailand were valued at $4.7 million. From January through July 2013 exports totaled almost $3 million, a 32.2% increase from the comparable 2012 period. In connection with potential FTA talks or multilateral negotiations, the Council urges the United States government to seek Thailand's commitment to eliminate immediately its tariffs on distilled spirits imports from the United States.

Licensing Fees

Thailand's current licensing system applies differentiated licensing fees for sellers of domestic liquor and sellers of all liquor. The retail license fee rates are:

Category and Description	Applied Rate (THB per year)	Ceiling Rate (THB per year)
1. All liquor from 10 liters and up per transaction	7,500	10,000
2. Domestic liquor from 10 liters and up per transaction	500	5,000
3. All liquor <10 liters per transaction	1,500	2,000
4. Domestic liquor <10 liters per transaction	200	200
5. All liquor <10 liters per transaction for drinking at temporary outlet for up to 10 days	300	300
6. Domestic liquor <10 liters per transaction for drinking at temporary outlet for up to 10 days	100	100
7. All liquor <10 liters per transaction for drinking at associations or clubhouses	300	300

II. Other Barriers

Discriminatory Taxes

Thailand has maintained a discriminatory excise tax system for distilled spirits for many years, imposing lower "applied" specific excise tax rates on domestically-produced

"white liquor" and "blended liquor" than on imported spirits.

On August 27, 2013, Thailand's Cabinet approved a regulation overhauling the excise tax system with new "ceiling" rates. The new "applied" rates were subsequently published by the Thai Excise Department and entered into force on September 4. In a positive development, the new system eliminated the discrimination that had been in place in favor of domestic Thai brown ("blended") spirits. However, as noted below, the discrimination in favor of domestic white liquor remains.

APPLIED rates as of September 4, 2013

Product Description		**Ad Valorem**	**Specific Rate (whichever is greater applies)**		**Extra Charge**
Product	a.b.v.	(% of last wholesale price)	(baht/liter of pure alcohol)	(baht/liter)	(baht per % alcohol content above threshold per liter)
Local white liquor	40% and below	4	145	40	N/A
	Greater than 40%				3
All other distilled spirits	45% and below	25	250	50	N/A
	Greater than 45%				3

CEILING rates as of September 4, 2013 (Note: According to a Thai Excise summary of the changes, the ceiling rates have not changed from the previous system with the exception that there are new rates established for the baht/liter component.)

Product Description		**Ad Valorem**	**Specific Rate (whichever is greater applies)**		**Extra Charge**
Product	a.b.v.	(% of last wholesale price)	(baht/liter of pure alcohol)	(baht/liter)	(baht per % alcohol content above threshold per liter)
Local white liquor	40% and below	50	400	60	N/A
	Greater than 40%				3
All other distilled spirits	45% and below	50	400	60	N/A
	Greater than 45%				3

In addition, while the previous ad valorem rates applied on an ex-factory or ex-customs basis, the new "applied" ad valorem rates are based on the last wholesale price (excluding VAT). Reportedly, importers will be able to declare this value to the Thai Excise Department. However, the criteria for determining last wholesale prices and the method for declaring these prices is not clear.

In sum, these taxes continue to discriminate against imported products and provide protection to domestic producers of brandy and local white and brown spirits, in violation of the national treatment provisions of GATT Article III, paragraph 2. The Distilled Spirits Council urges the U.S. government to seek Thailand's commitment to replace its current discriminatory regime with a single specific tax based on alcohol content for <u>all</u> distilled spirits products.

TRINIDAD & TOBAGO

I. Import Policies

Tariffs

Trinidad & Tobago's WTO bound tariff rates for distilled spirits (HS 2208) are 100% *ad valorem*. In October 2006, Trinidad & Tobago implemented a specific tariff on spirits imported from outside the Caribbean Common Market (CARICOM), with most spirits (except vodka and liqueurs) subject to a rate of TT$ 59.16 per liter. Vodka and liqueurs were subject to tariffs of TT$ 67.60 per liter. Since September 2009, however, Trinidad's applied rates are TT$ 76.90 for all spirits except vodka and liqueurs, and TT$87.88 for non-CARICOM vodka and liqueurs.

The impact of the increase in tariffs varies from brand-to-brand, but in at least some cases, the new tariff rates yield *ad valorem* equivalents far in excess of Trinidad's bound rates – 237% for at least one U.S.-origin brand – in clear breach of Trinidad's tariff bindings. The Distilled Spirits Council urges the United States to ensure that Trinidad & Tobago abide by its WTO tariff commitment and revise its tariffs to ensure that the rates are well within its WTO-bound rates.

II. Other Market Access Issues

Excise Tax

Additionally, the Council understands that Trinidad & Tobago currently applies an excise tax that discriminates in favor of rum and against other spirits (which are primarily imported). We understand that the current excise rate for rum is TT$66.04 per liter of pure alcohol, while the rate for other spirits (such as whiskey, vodka, and gin) is TT$140.08. Though the preferential rum rate applies regardless of origin, industry sources indicate that rum is primarily domestically produced, where as other spirits are primarily imported. The Council is concerned that this is a violation of GATT Art. III: 2, which requires like products to be taxed similarly, and requests that the U.S. government engage with Trinidad & Tobago to remove this discrimination.

TURKEY

I. Import Policies

Tariffs

Pursuant to its customs union agreement with the European Union, Turkey applies the EU's Common External Tariff (CXT) to imports of distilled spirits. As of January 1, 2000, tariffs on imports of all distilled spirits, except rum, were eliminated on an applied basis. The tariff on rum (HS 2208.40.31 and 2208.40.39) is €0.6 per % alcohol by volume per hectoliter + €3.2 per hectoliter and is €0.6 per % alcohol by volume per hectoliter for rum under HS 2208.40.91.

However, Turkey's WTO bound tariff rates are exorbitant. Under the Uruguay Round agreement, Turkey's fully phased-in bound rate, as of January 1, 2004, for whiskey and gin is 85 percent *ad valorem*; the rate for all other spirits is 102 percent *ad valorem*. In multilateral and bilateral talks, the United States should urge Turkey to bind the zero tariff rates that currently apply to imports of distilled spirits.

Import Licensing/Clearance

In late December 2011, Turkey's Ministry of Agriculture published a decree overhauling import procedures for goods including beverage alcohol. The decree, which entered into force on January 2012, removed the previous control certificate regime for importing beverage alcohol and replaced it with a more streamlined approach. Under the previous system, importers were required to submit extensive and duplicative documentation to the Tobacco and Alcohol Market Regulatory Authority (TAPDK) in addition to the documents provided to the Ministry of Agriculture.

Under the new system, imports must be notified in advance to the Ministry of Agriculture. Importers are required to submit a health certificate, an ingredients declaration, and sample labels. The Distilled Spirits Council welcomes Turkey's efforts to reduce the burdensome documentation requirements for importers, but the current system continues to impose barriers on imported spirits.

In particular, imported spirits are currently subject to 100% sampling and analysis when shipments are depleted from bond. However, the sampling rate can be reduced to 10% if Turkish officials conduct inspections of production facilities in exporting countries. However, we note that the Alcohol and Tobacco Tax and Trade Bureau (TTB), U.S. Department of the Treasury, is the authority responsible for ensuring that U.S. distilled spirits plants are in compliance with all of the relevant U.S. laws and regulations for the production and exportation of distilled spirits. Meanwhile, the 100% sampling requirement creates unnecessary costs and burdens for importers of U.S. spirits in Turkey. The Council requests that the U.S. work to eliminate Turkey's unreasonable

sampling requirements. At a minimum, Turkey should recognize that existing TTB compliance review mechanisms are sufficient to address any concerns regarding the safety and quality of U.S.-origin spirits.

II. Other Barriers

Internal Taxation

For several years Turkey maintained a discriminatory Special Consumption Tax (SCT) on imported distilled spirits. Specifically, the SCT on spirits was 275.6% *ad valorem*, subject to a minimum specific rate per liter of alcohol, whichever is higher. Although the *ad valorem* rate was the same irrespective of the type of spirit, the minimum specific rate differed depending on the category of spirit, with the highest minimum specific rates applied to products that were almost entirely imported (*i.e.,* whiskey and rum). Thus, the effect of this system was to discriminate against most imported spirits in favor of local producers, placing Turkey in violation of its WTO obligations mandating non-discriminatory treatment of like and/or directly competitive and substitutable products.

On June 30, 2009 the Council of the European Union announced that Turkey agreed to harmonize the tax rates for spirits by 2018. This tax reform follows changes Turkey adopted on April 14, 2009 to its hybrid tax regime for distilled spirits--*i.e.,* eliminating the *ad valorem* tax (275.6%) and lowering the minimum specific rates for all categories of spirits. The rates were scheduled to be harmonized according to the following timetable:

EU-Turkey Excise Tax Rate Harmonization Schedule (Turkey Lira per liter of pure alcohol)				
	As of April 14, 2009	**April 2012**	**April 2015**	**April 2018**
Whiskey	60	50	45	40
Liqueurs	55	50	45	40
Brandy	50	50	45	40
Gin/Vodka	40	40	40	40
Raki	36	38	39	40

The Distilled Spirits Council was extremely pleased that Turkey agreed eventually to bring its tax system for spirits into compliance with WTO rules. However, Turkey has since increased the tax rates several times, expanding the differential between the raki and imported spirits. While Turkey took another step toward harmonizing its tax rates in May 2012, it has since increased rates again. Current tax rates are as noted below:

Turkey – CURRENT Distilled Spirits Taxes (Turkey Lira per liter of pure alcohol)	
	Current, as of September 2013
Whiskey	107.44
Liqueurs	107.44
Brandy	102.23
Gin/Vodka	85.54
Raki	81.01

Thus, the tax differential between imported liqueurs such as whiskey and rum and raki is currently 26.43 lira per liter of pure alcohol (lpa), compared to 24 lira per lpa when Turkey began the harmonization process in 2009. Turkey's interpretation is that it has agreed to reduce the ratio of the difference in tax, rather than having agreed to the specific tax rates outlined in the harmonization schedule with the EU.

Regardless of whether Turkey is adhering to its agreement with the EU, its current taxation regime is clearly in violation of GATT Article III, paragraph 2, which mandates non-discriminatory treatment of imports in respect of 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 most recently the Philippines -- Taxes on Distilled Spirits (DS396 and DS403)) the WTO has clearly 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. Therefore, the Distilled Spirits Council requests that the U.S. government urge Turkey to abide by its WTO commitments and remove the discriminatory tax regime as soon as possible.

In 2012, U.S. direct exports of distilled spirits to Turkey were valued at over $14.6 million, of which over 99% was Bourbon or Tennessee Whiskey. For the January through July 2013 period, direct spirits exports were valued at almost $10.1 million, representing a 3.6% decline from 2012 levels. Elimination of Turkey's many trade barriers would enable U.S. distilled spirits companies to increase substantially their sales in Turkey's potentially lucrative market.

UKRAINE

I. Import Policies

Tariffs

As part of its WTO accession agreements, Ukraine eliminated its tariffs on all imported spirits on January 1, 2011. The Distilled Spirits Council noted with concern Ukraine's announcement in September 2012 of its intention to increase WTO tariff bindings on a wide range of goods. In addition, there was an ultimately unsuccessful effort by some Ukrainian legislators in summer 2013 to increase tariffs on imported wine and spirits to protect the domestic industry. The Council urges the U.S. government to ensure that Ukraine does not re-introduce tariffs on distilled spirits products in contravention of its WTO accession commitments.

Excise Taxes

In addition, Ukraine agreed to eliminate the discriminatory aspects of its excise tax regime for distilled spirits prior to accession. Specifically, Ukraine applied significantly lower tax rates to Cognac and brandy (UAH 7 per liter of pure alcohol (lpa)) and cognac spirit (UAH 16 per lpa), compared to other distilled spirits (UAH 19 per lpa). In 2010, a law was adopted modifying the tax rates for distilled spirits. However, the discriminatory nature was retained. The preferential tax treatment of locally-produced brandy was scheduled to be eliminated in January 2013, at which point there would have been a single tax rate for all sprits. However, in late 2012, Ukraine passed a law extending the discriminatory tax structure. In fact, the tax differential between local brandies and other spirits increased from 15 UAH to 20 UAH. The Council understands that the following rates currently apply:

- Cognac and locally-produced brandies: UAH 29 per lpa*
- All other spirits: UAH 49.29 per lpa

*The rate will be increased annually to match the rate for all other spirits as of January 1, 2018.

Further, Ukraine is currently considering additional increases to spirits excise tax rates, which would exacerbate the discriminatory impact of the reduced rate for brandy. The Distilled Spirits Council seeks the U.S. government's assistance in ensuring that Ukraine comply with its WTO commitments to eliminate the discriminatory nature of the tax as soon as possible.

Transition Period for Excise Stamps

The 2012 legislation extending tax discrimination also contained revised language regarding the transition period for the introduction of new excise stamps. The Distilled Spirits Council understands that the previous law stated that when new excise stamps are introduced, products that legally entered the market using the previous stamps may be sold until their expiration date. Since spirits have an indefinite shelf life, Ukrainian law seemed to allow spirits with old stamps to be sold until their inventories are depleted, an approach that the industry strongly supports.

However, we understand that revised law indicates that any products with previous excise stamps must be sold within 12 months of the introduction of the new stamps. The law appears to indicate that products still on the market after 12 months must be re-labeled with new stamps; however, the process and responsibility for doing so is not clear. Relabeling of product that is already on the market would create considerable disruptions and increased costs.

The Council seeks the removal of this provision and a return to the previous system, under which spirits with previous versions of excise stamps that are already on the market may be sold until they are depleted.

II. Intellectual Property Rights

Trademark Restrictions

In early 2012, Ukraine's President ratified amendments to its Law on Advertising to impose more stringent requirements on the use of beverage alcohol trademarks. Prior to this, Ukrainian law prohibited the advertising of beverage alcohol products by means of the distribution and sale of goods displaying beverage alcohol trademarks to individuals who have not reached the legal drinking age of 18 years. However, the final text of the amendments imposed a full ban on the distribution and sale of goods with a beverage alcohol trademark, such as on promotional materials associated with a beverage alcohol brand. The amendment took effect in September 2012.

This new law places Ukraine in violation of its obligations under international trade agreements and unjustifiably restricts U.S. spirits companies' intellectual property rights. It is also discriminatory in that it limits the ability of importers to market brands that are not yet well-known in the Ukrainian market. Thus, the Distilled Spirits Council requests that the U.S. government urge Ukraine to revoke these amendments and revert to its prior formulation regarding the distribution and sale of goods bearing a beverage alcohol trademark.

URUGUAY

I. Import Policies

Tariffs

Uruguay applies the Mercosur common external tariff, which is currently 20 percent *ad valorem* on all imported distilled spirits, except bulk whiskey, which is subject to a tariff of 12 percent *ad valorem*. Uruguay's WTO bound rate is 20 percent *ad valorem.*

U.S. spirits exports to Uruguay were valued at nearly $2.3 million in 2012, representing an increase of 9.4% from 2011. The Distilled Spirits Council urges the U.S. government to secure a significant reduction in Uruguay's tariffs in multilateral or bilateral trade negotiations.

VENEZUELA

I. Import Policies

Tariffs

Venezuela's applied tariff on imports of distilled spirits, except undenatured ethyl alcohol (greater than 80% alcohol), is 20% *ad valorem*. The tariff on undenatured ethyl alcohol is 15% *ad valorem*.

Venezuela's WTO bound tariff rate for all distilled spirits is 40 % *ad valorem,* except undenatured ethyl alcohol (greater than 80% alcohol), which is subject to a 15% *ad valorem* bound rate. Securing the immediate elimination of Venezuela's tariffs on imported distilled spirits should be a priority objective for the United States in multilateral or bilateral trade negotiations.

Product Registration

Venezuela requires that products be registered before they are imported. Often this process is tedious, costly and time-consuming. Documents from the U.S. embassy/consulate usually must be provided along with the submission, and approval of the registration can take anywhere up to one year. Venezuela should establish clear deadlines for issuance of the approvals to help provide greater certainty and predictability for importers.

Venezuela's high tariffs have clearly impeded U.S. exports. U.S. spirits exports to Venezuela were valued at almost $2.7million in 2012, representing an increase of 614% from 2011 and an increase of 1,143% from 2010.

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 (January 11, 2007) and to reduce its tariff to 45% by 2013. Although the U.S. spirits industry was generally pleased with the overall terms of Vietnam's WTO accession package, its fully-phased in spirits tariffs are very high by international standards.

Nonetheless, Vietnam's growing economy offers lucrative opportunities for U.S. exporters, including distilled spirit producers. In 2006, U.S. direct exports of distilled spirits to Vietnam accounted for only $34,000, but by 2011 exports grew to $19.3 million. In 2012, U.S. exports were valued at almost $8.8 million, representing a decrease of 54% from 2011.

Accordingly, one of the U.S. spirits industry's high priorities within the Trans-Pacific Partnership (TPP) negotiations is to secure the immediate elimination of Vietnam's tariffs on all U.S. spirits products.

Import Procedures

Licensing: On January 1, 2013, Vietnam's decree on "Liquor Production and Trading" entered into force. The Decree provides for three types of trading licenses: (1) liquor distribution licenses; (2) liquor wholesale licenses; and (3) liquor retail or retail agency licenses. Under the decree, quotas are in place for each category of trading license: the distribution license quota is 1 license per 400,000 people in each province/city; the wholesale license quota is 1 license per 100,000 people; and the retail license quota is set at 1 license per 1000 people. The quotas may be adjusted annually based on changes in population.

Only importers with liquor distribution licenses are permitted to import beverage alcohol products directly. In contrast, local producers may organize their own distribution networks and may sell their products at retail at their own shops/outlets without being required to obtain a distribution, wholesale or retail license.

The small quota for distribution licenses, as well as the quotas for wholesale and retail licenses, places imported spirits at a significant competitive disadvantage in light of domestic producers' exemption from all trading license requirements. (Domestic producers are required to obtain a production license, but it appears that there is no quota on the number of such licenses.) In addition, Vietnam will grant priority to existing licensees with respect to the renewal of licenses. Thus, the quota system may

make it very difficult for new entrants to obtain licenses. Moreover, the provision restricting each trader to one type of license may significantly restrict the range of activities member companies may engage in.

The Council seeks the U.S. government's assistance in urging Vietnam to: 1) exempt importers and distributors of imported spirits from the trading license requirements or, at a minimum, abolish the quota on distribution licenses for imported spirits; 2) eliminate the provision stating that each trader may apply for only one type of license and 3) clarify how Vietnam will ensure that the licensing system will be structured to grant new entrants access to the market.

Certifications required for imports: Under the licensing decree mentioned above, importers must obtain a "statement of conformity" with applicable food safety laws for each shipment. Previously, only liquor products imported for the first time were required to be accompanied by a certificate of compliance. One company has indicated that the statements of conformity are required only for each stock-keeping unit, which, in effect, would be a one-time requirement whenever a new SKU is introduced. The Council requests assistance in seeking a clarification on when such certificates are required. If such certificates are required on a per shipment basis, we seek the U.S. government's assistance in urging Vietnam to revert to the previous requirement for a one-time submission of the required certifications.

II. Services

Advertising

Vietnam prohibits the advertising of products containing more than 15% alcohol by volume.

There is no justification for denying spirits products access to advertising media on the same terms that apply to beer. All types of beverage alcohol products are directly competitive and substitutable. Moreover, the U.S. Departments of Health and Human Services and Agriculture have advised that standard servings of beer, wine or spirits – *i.e.,* 12 ounces of beer, 5 ounces of wine, or 1.5 ounces of 80º proof (40% a.b.v.) spirits – contain the same amount of ethyl alcohol. We urge the U.S. government to seek a commitment from Vietnam that it will not discriminate among directly competitive and substitutable products in terms of access to advertising.