

DISTILLED  
SPIRITS  
COUNCIL  
OF THE  
UNITED  
STATES

February 3, 2012

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

**Re: Comments Regarding the U.S.-EU High Level Working Group on Jobs and Growth (77 Fed. Reg. 1778, (January 11, 2012))**

Dear Mr. Mullaney:

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

As a commercial matter, the U.S. spirits industry, which supports 667,000 direct employees, has become increasingly reliant on exports to fuel growth. The EU is the U.S. spirits industry's single most important export market, accounting for almost half of global U.S. spirits exports in 2011. Continuing to expand U.S. spirits exports to the EU will help to support current and future employment in the industry and will, therefore, contribute to the industry's economic growth. In addition to exports, U.S. companies also have invested in distilleries in the EU and import a significant amount of EU-origin spirits including spirits that, by law, may only be produced in the EU.

The EU generally has a very open market for U.S. spirits products, which has been enhanced by multilateral and bilateral agreements. Under the "zero-for-zero" agreement negotiated in connection with the Uruguay Round, the U.S. and EU (as well as several other countries) agreed to eliminate tariffs on virtually all distilled spirits products on an MFN basis. Since that agreement was implemented, U.S. spirits exports to the EU have more than doubled, reaching nearly \$578 million in 2011 (January through November). Additionally, the EU agreed in 1994 to recognize Bourbon and Tennessee Whiskey as distinctive products of the U.S. in a reciprocal agreement under which the U.S. provided similar recognition to Scotch Whisky, Irish Whiskey, Cognac, and other EU spirits. This agreement is of significant commercial importance to U.S. exporters of Bourbon and Tennessee Whiskey, two categories which accounted for over 85 percent of all U.S. spirits exports to the EU in 2011.



Furthermore, as the EU has expanded over the past decade, these agreements have continued to open new markets to U.S. spirits exports. For example, new EU members such as Poland, Hungary, Bulgaria and Romania have been required to adopt the EU's common external tariffs (*i.e.*, zero tariffs for practically all spirits). In addition, these countries must also now recognize Bourbon and Tennessee Whiskey as distinctive products of the U.S. Because these agreements were already in place, this new market access was achieved without any additional actions by the U.S. government.

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

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

- **France** imposes a reduced excise tax on rum from French Overseas Departments (FODs). Rum-producing FODs include Guadeloupe, French Guyana, Martinique, and Réunion. This derogation is permitted by the EU. The new French budget introduced in January 2012 further reduced the total excise tax on rum from FODs to 1,221.03 Euros per hectoliter of pure alcohol (hlpa) while increasing the tax on all other spirits, including rum from other countries, to 2,193 Euros per hlpa.
- **Greece** imposes a reduced special consumption tax on ouzo of 1,225 Euros per hlpa, compared with a rate of 2,450 Euros per hlpa for all other spirits, which is legal under EU regulations. Additional fees are applied on top of this, which further exacerbates the differential in the actual tax paid on these products. Greece further extends this reduced tax rate to spirits called tsipouro and tsikoudia, in violation of EU law.
- Under EU law, **Hungary** may impose a reduced excise tax on Pálinka produced in "for hire" distilleries by farmers with their own fruit for personal consumption. However, in 2010 Hungary eliminated the excise tax on such products and extended the application of this policy to all private citizens. Significant quantities of Pálinka are believed to enter the commercial market tax free. Furthermore, in November 2011 Hungary increased the excise rate on most spirits products (other than Pálinka) by 5% to 289,900 Forints per hlpa while raising the tax on spirits products that are not defined in EU regulations, such as flavored rum, by 50% to 414,150 Forints per hlpa.
- **Romania** is permitted to provide a reduced excise tax on small distillers producing for households. We understand that Romania charges excise and health taxes on most spirits of 750 Euros per hlpa, while

health and excise taxes on “for hire” distilleries total 375 Euros per hlpa. This facilitates black market production and tax evasion, which significantly distorts the Romanian spirits market.

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

In a related issue, Romania adopted a law (Ordinance 54/2010) in June 2010 to modify the duty-deferment and strip stamp application procedures for distilled spirits, among other products, as of September 1, 2010. The technical rules to implement the ordinance were published on July 30. Specifically, the law and associated technical rules:

- Require that importers register as “authorized consignees” in order to continue to operate a warehouse;
- Prohibit importers from storing their products in tax warehouses under permanent excise duty suspension arrangements;
- Require that the excise duties be paid on imported products stored in a bonded warehouse by the 25<sup>th</sup> day of the month following the month that the goods were received at the warehouse, *even for products that will continue to be stored in the warehouse after that date*;
- Require that the strip stamps for products originating outside of the EU be applied in “customs warehouses” or in free trade zones within Romania; and
- Permit domestic products to continue to defer payment of duties and application of the strip stamp *until the products are removed from the production tax warehouse*.

These requirements clearly discriminate against imported spirits. We ask that the working group engage with Romania on this issue and ensure that all spirits products are treated equally.

Thank you for this opportunity to provide input on the U.S.-EU trade relationship. Though we have few barriers to trade in spirits with the EU, we support this initiative and would likely support further efforts to liberalize trade, such as negotiations to conclude a comprehensive U.S.-EU free trade agreement as proposed by other industry groups and government officials. Please do not hesitate to contact us should you require any additional information.

Sincerely,



Christine LoCascio  
Senior Vice President  
International Issues and Trade