



POSITION SUMMARY

EU-US TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP

KEY MESSAGES

- **Specific chapter for Spirit Drinks Regulations:** A sector-specific chapter for spirit drinks should be included, setting regulatory best practices for distilled spirits and creating a benchmark for future FTAs.
- **Extending the mutual recognition of spirit drink geographical indications:** There should be an extension to the current list of geographical indications ('GIs') being recognized and protected equally on the US market.
- **Rules of origin:** Rules of origin that take into account the logistical organization of the industry (regional hubs) should be adopted.
- **Tariffs, duties:** US border fees should be removed. Consistent with the intent of TTIP and the spirits industry's long-standing commitment to trade liberalization, any residual tariffs and fees should be removed.
- **Labelling and traceability Issues:** Allergen labelling requirements, the protection of lot codes and the simplification of product approval mechanism are of particular importance to our sector.



Introduction

On 13 February 2013, following a recommendation by the High Level Working Group on Jobs and Growth, the EU and US agreed to initiate the internal procedures necessary to launch negotiations on a Transatlantic Trade and Investment Partnership (TTIP). Negotiations began in July 2013.

spiritsEUROPE strongly supports this FTA as it sends a positive signal to the EU's trading partners. Even though the US is a mature market for the European spirits industry, the FTA can help strengthen and increase the trade network that is already in place, to the benefit of both.

The US is the largest external market for European spirits. In 2013, the value of spirits exports to the US represented a total of €3.34bn, while US spirits exported to Europe represented a total of €719m. European spirits exports to the US market have grown by 74% since year 2000¹, and account for around a third of EU spirits exports.

This paper represents the views of the EU spirit industry in relation to this ground breaking agreement. However, given the close business connections that exist between the two continents, both the EU and US spirit associations have come together to present a Specific Chapter in relation to aligning the few regulatory differences that remain between both markets. This Chapter represents an unprecedented level of co-operation between both markets and something negotiators can hold up as an example of best practice.

We look forward to working with both sides as the negotiations on the agreement progress.

1. Specific Chapter for Spirit Drinks Regulations

In order to reduce costs arising from regulatory differences, it is thought that the TTIP could include provisions containing additional commitments or steps aimed at promoting regulatory compatibility in specific, mutually agreed goods and services sectors. Such a Chapter could remove existing non-tariff barriers and prevent the adoption of new ones.

The spirits sector on both sides of the Atlantic support the inclusion of a Spirit Drinks Chapter which would address labelling, certification/testing/sampling requirements and ensure a workable transition period for new regulations.

The joint goal of the EU and US spirit drinks industries is to establish a set of principles that would act to prevent unnecessary and unreasonable regulation on spirit drinks. As the Commission looks to establish globally relevant rules, spiritsEUROPE believes such a Chapter would have wider value in helping to create a benchmark for future FTAs with other trading partners. The EU and US industries have agreed language which could form the basis of a spirit drinks sector specific chapter to the TTIP.

Recommendation: The EU and US spirits associations *jointly* request the inclusion in the TTIP of the following Spirit Drinks Chapter, which would outline regulatory best practices for spirits.

¹ source Eurostat



SUGGESTED SEPARATE CHAPTER ON SPIRIT DRINKS

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

Labelling Regulations

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

Spirit categories are defined in detail in regulations. These definitions are normally based on a combination of the raw materials and production methods. Because the fermentation and distillation processes completely transform the raw materials used to produce distilled spirits products, the raw materials are not present in the final product in any form. For these reasons, distilled spirits should not be subject to any ingredient listing requirements after distillation. This approach is consistent with the Codex General Standard for the Labelling of Prepackaged Foods (CODEX STAN1-1985 (Rev. 1-1991), which defines “ingredient” as “any substance ... that is used in the manufacturing or processing of foods and is present in the final product (though possibly in a modified form)” [emphasis added]. Ingredient listing requirements should apply equally to all beverage alcohol products - including beer, wine, distilled spirits, and cider, among others.

- ***Distilled spirits should not be subject to allergen labelling except when the listed allergen is added after distillation.***

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

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

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



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

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

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

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

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

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

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

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

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

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



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

Consistent with Article 4.6 of the Codex labelling standard, lot identification codes may be used on bottles. These codes are important as they ensure a comprehensive system for traceability within the food chain for consumer safety. Flexibility on the specific sizing of the lot code and its placement on the bottle should be permitted. In addition, specific phrasing or other format requirements of the lot code should not be mandated.

Tampering with or removal of lot codes should be prohibited and the sale of containers whose producers' lot codes have either been tampered with or erased should not be permitted. Strong and coordinated enforcement of this principle is important.

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

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

Certification Requirements

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



2. EU-Specific Issues

2.1 Extending the mutual recognition of spirit drink GIs

An agreement signed in 1994 between the EU and the US protected a number of EU spirits geographical indications (GIs) in the USA, namely Scotch Whisky, Irish Whiskey/ Whisky, Cognac, Armagnac, Calvados and Brandy de Jerez. In return, US GIs: Tennessee whisky/Tennessee whiskey and Bourbon whisky/bourbon whiskey/Bourbon have been recognized by the EU. The European names are protected in the US Code of Federal Regulations (CFR), under title 27, para 5.22.

However, since 1994, the EU has expanded to 28 countries. New GIs have been added to the EU list and are therefore currently not recognized by the US, for example: “Swedish vodka”, “Polish vodka”, “Irish Cream”. The presence of those spirits is of significant commercial importance. The vodka category has grown fast in the past years and total European vodka exports to the US amounted to €840m in 2012, a growth of 50% in the past ten years.

Thus, we are convinced of the commercial relevance to extend the current list of recognised distinctive products. The 1994 agreement stated:

“C. The USA and the EC agree to meet at a mutually convenient time in the future to discuss the possibilities of extending restrictive recognition to additional distilled spirits/spirit drinks products which either Party may propose for such consideration. This willingness to meet and consider such requests is without prejudice to the rights and rulemaking processes of either Party.”

The US CFR already contains a regulatory language that reaches the level of the protection granted to GIs in the European Union. The regulatory language developed for “Scotch whisky” and “Irish whisky” can be used as a benchmark as it provides protection based on three elements: a) the definition of the product category, (b) the geographical origin, and (c) the specific features defining the GI product as elaborated in the technical file of the country of origin.

In practice TTB protection of spirits GIs is done through the Certificate of Label Approval (COLA) procedure. In order to obtain the COLA, a certificate of origin is requested for all imported spirits, regardless of GIs (See 27 CFR 5.52 (e)). The certificate of origin must also provide guarantees that the product has been manufactured in compliance with the laws of the respective foreign government.

We would therefore like to urge the Commission to work towards an open dialogue with the US so that additional GIs will be mutually recognized and protected in the future, in a similar manner to the spirits listed above.

Recommendation:

- **spiritsEUROPE asks for an extension of the regulatory language that already exists in the CFR for spirits to other already recognized EU GIs (such as Armagnac) and to additional EU GIs (Swedish vodka, Polish vodka, Irish cream etc) .**
- **It would also be useful to clarify the language used for Cognac and possibly to align it with the other names.**



- In addition we support the already existing enforcement mechanism via the COLA procedure and would like that certificates of conformity to the GI delivered by the designated organization continues to be requested by TTB during the COLA application procedure.

2.2 Rules of origin and accumulation

The current standard language used in US and EU FTAs does not permit trans-shipment or any processing of exports in third countries before arrival in the importing country, other than loading and offloading of a vessel. Businesses increasingly use regional hubs to consolidate shipments of non-country specific bottles, where country-specific back labels and tax stamps (where required) are applied.

Further, given the growing number of FTAs with common trading partners, “accumulation” is increasingly important to ensure that products that are produced wholly from qualifying inputs sourced from a number of countries that have FTAs with both the United States and European Union (e.g. Central America, Colombia, Korea, and Mexico) will qualify for the preferential treatment accorded by any of the FTA partners.

Recommendation: The rules of origin should allow qualifying goods to undergo these minor processes without losing their preferential treatment. The TTIP should also include rules of origin that allow for accumulation.

2.3 Tariffs, duties & Taxation

The US merchandise processing fee (MPF) is set at 0.3464% on formally entered imported merchandise (generally entries valued over \$2,500), subject to a minimum fee of \$25 per entry and a maximum fee of \$485 per entry. Lower fees apply to entries valued under \$2,500. This is not prohibitive in itself, but such fees do not apply to most competitors who have signed an FTA with the US. These fees are likely to impact smaller businesses. There is also a Harbour Maintenance Tax (HMT) applied to imports at a rate of 0.125% cif (Cost, Insurance and Freight). This is related to port use, applied once only and treated as a customs duty.

Recommendation: Consistent with the terms of most other US FTAs, the MPF and HMT should be removed.

Both the United States and the European Union eliminated their tariffs on virtually all spirits, irrespective of origin, except for certain rums (\$0.23 per litre of pure alcohol) and the generic “other” category for spirits not elsewhere specified (HTS 2208.90). It would seem consistent that the only remaining tariff in the sector be removed, in line with the EU’s trade liberalisation agenda.

Recommendation: Consistent with the intent of TTIP and the spirits industry’s long-standing commitment to trade liberalization, these remaining residual tariffs should be removed.

2.4 Labelling and traceability information



Labelling and traceability information are very important to protect consumers and businesses. Thus, EU and US spirits associations have outlined regulatory best practices on the matter in the Spirit Drinks chapter (see previous).

In addition for some imported spirits (including all imported vodka, but for example not gin or rum) there is a mandatory laboratory evaluation of samples, executed by the TTB. This evaluation is not applied to domestic products. The outcomes of the evaluation are not always transparent and can result in costly changes in labeling and marketing of the products concerned.

For more information about the procedure and the list of products concerned by the pre-evaluation, please refer to

- http://www.ttb.gov/industry_circulars/archives/2007/07-04.html
- http://www.ttb.gov/industry_circulars/archives/2007/pre-cola_eval_spirits.pdf

Request: Remove discriminatory requirement of laboratory evaluation of samples for European imports.

Formula approvals for domestic products in the US do not have an expiry while there is an expiry date for imported product. While it seems that the validity of the pre-import approval has recently been increased from 5 to 10 years, it is still a discriminatory practice.

Please refer to <http://www.ttb.gov/faqs/alf23.shtml#content> – responses to questions 31 & 41

Request: Apply equal treatment to European imports by removing expiry date on pre-import approval.

2.5 Certification of companies

Certification of companies and products is a complex issue for EU exporters, particularly when the exporter is not the actual producer.

There are also inspections carried out by US officials on EU territory, following legal approaches that are not always compatible with EU rules. Furthermore, these procedures have become more complex due to the accumulation of requirements on terrorism (Bioterrorism Act), food safety (Food Safety Modernization Act) and customs (Importer Security Filing and Additional Carrier Requirements, CSI and C-TPAT). Unnecessary and disproportionate documentation and inspection for legitimate traders should be avoided.

Recommendation: The FTA should seek mechanisms of mutual acceptance and equivalence to remove such difficulties and obstacles.

2.6 Distribution

At the moment, six U.S. states permit direct shipment of spirits to consumers from U.S.-permitted sources outside the consumers' states of residence. We believe European spirits producers should also be able to ship directly to consumers in those states.



Recommendation: spiritsEUROPE would like to see European producers being treated equally to their US counterparts and be allowed to ship their products directly to the consumer/retailer under the same conditions.

2.7 TTIP's role in a multilateral context

Reaching regulatory convergence between the US and the EU not only aims at easing bilateral trade but also contributes to the broader objective of setting common global rules. It would therefore be useful to ensure that the regulatory compromises found in the TTIP are then promoted towards third countries either in multilateral or in bilateral contexts. For the spirits sector it would be particularly helpful to promote a common language towards third countries granting protection of existing traceability information in the US and in the EU.

In addition we urge the creation of a formal, ongoing consultation mechanism between the European Commission and US government on trade policy aspects vis-à-vis third countries. This would help to identify areas of common interest in external trade and to ensure that these interests are jointly defended and in a more systematic manner. Whenever appropriate this common front approach could be taken in international fora (such as in Geneva before relevant WTO committees, at the IMF, at the OECD, etc.) but should also be encouraged for more ad hoc actions at the local level of EU delegations and US embassies in third countries (eg. joint visits/joint letters to Ministries). The main driver of such coordination between the EU and the US would be to encourage third countries to join them in eliminating barriers to trade pursuant to WTO agreements. As in the EU, we would also encourage the US government to allow for public access to their submissions in the context of the WTO TBT and SPS notifications.

Recommendation: spiritsEUROPE encourages the creation of a formal, ongoing consultation mechanism between the European Commission and US government on trade policy aspects vis-à-vis third countries.

2.8 Product definitions

US Whisky

We understand that some US micro-distillers have encouraged USTR to examine the EU's three year minimum maturation rule for whisk(e)y and USTR included this issue in its 2012 TBT report. As a result, it is possible that there will be a request to review the EU definition of 'whisk(e)y'.

spiritsEUROPE reiterates its position that any change in the EU whisky definition would be unacceptable. Products that do not meet the three year minimum maturation requirement can be sold in the EU as a 'spirit drink' but they should not benefit from the use of the term "whisk(e)y", as it is defined in EU Regulation 110/2008. If any exemptions are granted to "whiskies" from one country, the EU would be pressed by others to allow non-cereal based product to be sold as "whisky".

Recommendation: The Commission should stand firm against any suggestion that the EU's three year minimum maturation rule for 'whisk(e)y' should be reviewed, as any change would be unacceptable.



Definition of Aquavit

The existing standards for aquavit differ in the EU and the US. In the EU, the category *Akvavit or aquavit*² includes caraway and/or dillseed-flavoured spirit drinks flavoured with a distillate of plants or spices. Those spirit drinks are traditionally produced by using ethyl alcohol of agricultural origin². In the US, aquavit must be made in accordance with their definition of aquavit which is: caraway flavored distilled spirits³. The product must contain caraway in order for it to be classified as aquavit. This difference in standard prevents legitimate Aquavit products in Europe (made without caraway seeds – eg Danish Aquavit) to be sold as such in the US.

Request: We encourage the EU and the US to consider alignment of both standards on the definition of Aquavit.

² COMMISSION REGULATION (EU) No 426/2014 of 25 April 2014 amending Annex II to Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks.

³ US Federal Regulations Ch. 4 Class and Type Designation