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NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Draft Regulation of the European Parliament and of the Council on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, and the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008
- Information from the Commission further to WTO notification

Further to notification issued on 12 December 2018 by the Commission of the draft Regulation to the WTO (under Article 2.9.2 of the Uruguay Agreement on Technical Barriers to Trade), delegations will find attached the comments submitted by the United States government (USG) as received by the Commission on 20 February 2019.

This document will be on the agenda for the meeting of the Special Committee on Agriculture on 25 February 2019.

The United States appreciates the opportunity to comment on the European Union's WTO TBT notification [G/TBT/N/EU/432/Rev.1](#) concerning revisions to its regulations on distilled spirits, and respectfully offers the following comments:

Article 6

We note that Paragraph 40 of the Preamble to Regulation (EU) 1169/2011 discusses the unique and specific nature of alcoholic beverages. How will Article 6 of the EU's proposed draft regulation impact the applicability of 1169/2011 to alcoholic beverages, if at all?

Article 9

We note that the revised regulations provide a six-year period to issue supplemental rules related to the use of compound terms and allusions. This creates significant uncertainty for U.S. exporters of distilled spirits as it appears that these rules can change at any time within that period. Can the European Union please clarify if it intends to issue any changes in the near term and, further, how future changes would be made? Would said changes be notified to the TBT Committee prior to enforcement?

Article 15

The EU notes that "the obligation to indicate the country of origin or the place of provenance of a primary ingredient ... should not apply for spirit drinks, even if the country of origin or the place of provenance of the primary ingredient of a spirit drink is not the same as the place of provenance..." will this exception be applied equally to both domestic and imported goods?

Article 15a

Where can the United States find the reference methods of analysis described in this section?

Article 18(2)(a)

This section, in part, prohibits the wrongful use of a protected designation in areas "where those products are used as an ingredient." The draft wording appears to reflect an expansion of the scope of the existing article, which makes no mention of ingredients. Does the new language reflect existing practice within the EU, or does it further limit the use of GIs?

Article 18(3a)

We request clarification regarding the scope of this provision and the meaning of the phrase "goods entering the customs territory of the Union without being released for free circulation there."

How does this provision relate to the scope of the draft regulation, as set out in Article 1(2), which restricts the applicability of the regulation to products that are placed in the EU market, and to products produced in the EU for export?

Article 19

Is there a place where the product specifications laid out in Article 19 files can be accessed, or an online database where they will be made publicly available?

Article 23

Will the list contemplated by Article 23(1) be made electronically available to the public? If so, where can it be found?

Article 24

Will this be a public process, or handled by private correspondence? Will the notices of opposition be publicly accessible? We also ask for further details regarding specific procedures, including information on the “time limit” referenced in Article 24(1).

Article 25

Please clarify the meaning of Article 25(2) and, further, what it means for grounds for opposition to be assessed in relation to the territory of the EU. How does it relate to Article 18(3a) and the seeming expansion of GI protection to goods transitioning through but not circulated within the EU marketplace?

Article 32

Article 32(1)(a) lists “the existing situation in the Union, notably in areas of consumption,” as a relevant factor to establish whether a given name has become generic. However, is the situation outside the EU a relevant factor as well?

Please clarify the phrase “the existing situation in the Union” and what is encompassed by it, as well as the relationship of Article 32(1)(a) to Article 18(3a).

Annex II**General:**

Many of the category requirements specify that the drink in question “may only contain added caramel as a means to adapt colour.” (e.g., Annex II, Part I, paragraph e, applying to rum). The United States considers this formulation ambiguous. Does this mean that caramel may only be added to rum for the purpose of adapting color? Or does this mean that caramel is the only coloring agent allowed in rum, and the other drinks with this provision? Or both?

1. Rum

Please provide the scientific or other reasons for not allowing added flavor(s) to rum products. The United States allows the production of flavored rum. The proposed EU regulation may prevent the flavored rum products made in the United States (US) from entering the EU market.

2. Whisky

The proposed Regulation requires that for a product to be labeled “whiskey,” it must be aged a minimum of three years. The United States questions the necessity of the Union’s three-year whiskey aging requirement. The proposed regulation may prevent whiskey products made in the United States, which do not meet this requirement, from entering the EU market.

Please provide the scientific or other reasons for not allowing added flavor(s) to whiskey products. The United States allows the production of flavored whiskey. The proposed EU regulation may prevent flavored whiskey products made in the US from entering the EU market.

Please provide the scientific or other reasons for not allowing the addition of alcohol to whiskey products. The United States allows the addition of alcohol to certain whiskeys, such as blended whisky. The proposed EU regulation may prevent the U.S.-made whiskey products with added alcohol from entering the EU market.

Please provide the scientific or other reasons for not allowing added sugar to some whiskey products. With few exceptions, the United States allows added sugar to some whiskey products. The proposed EU regulation may prevent the U.S.-made whiskey products with added sugar from entering the EU market.

4. Wine Spirit

The proposed EU regulation requires the wine spirit products to be distilled at less than 86% alcohol by volume (ABV). The United States has a similar class, defined as brandy, which is required to be distilled at less than 95% ABV. Please provide the scientific or other reasons for requiring wine spirit products to be distilled at less than 86% ABV. The proposed EU regulation may prevent some U.S.-made brandy products distilled at less than 95%ABV, but higher than 86% ABV from entering the EU market.

Please provide the scientific or other reasons for not allowing added flavor(s) to wine spirit products. The United States allows the production of flavored brandy. The proposed EU regulation may prevent U.S.-made flavored brandy products from entering the EU market.

5. Brandy

The United States reiterates its comment above in section 4 on wine spirits regarding flavored brandy.

Further, the proposed regulation has aging container size requirements: 1-year aging in an oak container with a capacity of at least 1000 liters; and 6-month aging in an oak container with a capacity of less than 1000 liters. The United States does not have aging container size requirements for brandy products. The proposed regulation may prevent brandy products made in the United States, which do not meet those requirements, from entering the EU market.

6. Grape marc spirit or grape marc

The proposed EU regulation requires the grape marc products to be distilled at less than 86% ABV. As indicated above, the United States has a similar class defined as marc brandy or pomace brandy which is required to be distilled at less than 95% ABV. The proposed EU regulation may prevent some U.S.-made marc brandy products distilled at less than 95% ABV,

but higher than 86% ABV from entering the EU market.

The proposed regulation requires that lees added to grape marc shall not exceed 25 kg per 100 kg of grape marc. The United States does not have a similar regulation. The proposed EU regulation may prevent some U.S.-made marc brandy products with lees added exceeding the ratio of 25 kg of lees per 100 kg of grape marc from entering the EU market.

The proposed regulation requires that the quantity of alcohol derived from lees shall not exceed 35% of total alcohol in the finished products. The United States does not have a similar regulation. The proposed EU regulation may prevent some U.S.-made marc brandy with alcohol derived from lees which exceeds 35% of total alcohol in the finished products from entering the EU market.

Please provide the scientific or other reasons for not allowing added flavor(s) to marc brandy products. The United States allows the production of the flavored marc brandy. The proposed EU regulation may prevent some U.S.-made flavored marc brandy products from entering the EU market.

7. Fruit marc spirit

The proposed EU regulation requires the fruit marc spirit products to be distilled at less than 86% alcohol by volume (ABV). The United States has a similar class defined as fruit marc brandy or fruit pomace brandy, which is required to be distilled at less than 95% ABV. The proposed EU regulation may prevent some U.S.-made fruit marc brandy products distilled at less than 95% ABV, but higher than 86% ABV from entering the EU market.

Please provide the scientific or other reasons for not allowing added flavor(s) to fruit marc brandy products. The United States allows the production of the flavored fruit marc brandy. The proposed EU regulation may prevent some U.S.-made flavored fruit marc brandy products from entering the EU market.

8. Raisin spirit or raisin brandy

The proposed regulation has a grape variety requirement for the production of raisin brandy, only Corinth Black, or Moscatel of the Alexandria varieties can be used to produce the raisin brandy. The United States does not have a similar regulation. The proposed EU grape variety requirements may prevent some U.S.-made raisin brandy products made from other grape varieties from entering the EU market.

Please provide the scientific or other reasons for not allowing the addition of flavor(s) to raisin brandy products. The United States allows the production of the flavored raisin brandy. The proposed EU regulation may prevent some U.S.-made flavored raisin brandy products from

entering the EU market.

9. Fruit spirit

The proposed EU regulation requires the fruit spirit products to be distilled at less than 86% ABV. The United States has a similar class, defined as fruit brandy, which is required to be distilled at less than 95% ABV. The proposed EU regulation may prevent some U.S.-made fruit brandy products distilled at less than 95% ABV, but higher than 86% ABV from entering the EU market. The United States would like to know the EU's rationale for using this upper threshold.

10. Cider spirit, perry spirit and cider and perry spirit

The proposed EU regulation requires that cider spirit, perry spirit, and cider and perry spirit products to be distilled at less than 86% ABV. The US has a similar class, defined as fruit brandy, which is required to be distilled at less than 95% ABV. The proposed EU regulation may prevent some U.S.-made fruit brandy products distilled at less than 95% ABV, but higher than 86% ABV from entering the EU market. The United States would like to know the EU's rationale for using this upper threshold.

Please provide the scientific or other reasons for not allowing adding flavor(s) to the products of cider spirit, perry spirit, and cider and perry spirit. The United States allows the production of flavored fruit brandy. The proposed EU regulation may prevent some U.S.-made flavored fruit brandy products from entering the EU market.

12. Hefebrand or lees spirit

The proposed EU regulation requires the lees spirit to be distilled at less than 86% ABV. The United States has a similar class defined as lees brandy which is required to be distilled at less than 95% ABV. The proposed EU regulation may prevent some U.S.-made lees brandy products distilled at less than 95% ABV, but higher than 86% ABV from entering the EU market. The United States would like to know the EU's rationale for using this upper threshold.

Please provide the scientific or other reasons for not allowing adding flavor(s) to the products of lees spirit. The United States allows the production of the flavored lees brandy. The proposed EU regulation may prevent some U.S.-made flavored lees brandy products from entering the EU market.

19, 20, 21, and 22. Juniper-flavoured spirit drinks, Gin, Distilled *gin*, *London Gin*

Under this classification scheme, could a drink simultaneously fit categories 19, 20, 21, and 22? In such a case, how would the drink be labeled, or would the producer be allowed to choose the category to apply?

25. Aniseed flavoured spirits drinks

The proposed regulation has a minimum alcohol content requirement of 15% ABV for the product. The United States does not have a similar requirement. The proposed EU regulation may prevent some U.S.-made aniseed flavored liqueurs with alcohol content at less than 15% ABV from entering the EU market.

26. Pastis

The proposed regulation has a minimum alcohol content requirement of 40% ABV for the product. The United States doesn't have a similar requirement. The proposed EU regulation may prevent some U.S.-made pastis or a similar product with alcohol content at less than 40% ABV from entering the EU market.

27. Pastis de Marseille

The proposed regulation has a minimum alcohol content requirement of 45% ABV for the product. The United States doesn't have a similar requirement. The proposed EU regulation may prevent similar products made in the US with alcohol content at less than 45% ABV from entering the EU market.

28. Anis or jannezevec

The proposed regulation has a minimum alcohol content requirement of 35% ABV for the product. The United States does not have a similar requirement. A similar product made in the United States with an alcohol content of less than 35% ABV may be prevented from entering the EU market.

29. Distilled anis

The proposed regulation has a minimum alcohol content requirement of 35% ABV for the product. The United States does not have a similar requirement. A similar product made in the United States with an alcohol content of less than 35% ABV may be prevented from entering the EU market.

30. Bitter-tasting spirit drinks or bitter

The proposed regulation has a minimum alcohol content requirement of 15% ABV for the product. The United States does not have a similar requirement. A similar product made in the United States with an alcohol content of less than 15% ABV may be prevented from entering the EU market.

31. Flavoured vodka

The proposed regulation has a minimum alcohol content requirement of 37.5% ABV for the product. The United States has a minimum alcohol content requirement at 30% ABV for flavored vodka. U.S.-made flavored vodka with an alcohol content of less than 37.5% ABV but

higher than 30% ABV may be prevented from entering the EU market.

31a. Sloe-aromatised spirit drink or pacharan

The proposed regulation has a minimum alcohol content requirement of 25% ABV for the product. The United States does not have a similar requirement. A similar product made in the United States with an alcohol content at less than 25% ABV may be prevented from entering the EU market.

32. Liqueur

The proposed regulation has a minimum alcohol content requirement of 15% ABV for the product. The United States does not have a similar requirement. A similar product made in the United States with an alcohol content at less than 15% ABV may be prevented from entering the EU market.

33. Crème de (supplemented by the name of a fruit or other raw material used)

The proposed regulation has a minimum alcohol content requirement of 15% ABV for the product. The United States does not have a similar requirement. A similar product made in the United States with an alcohol content at less than 15% ABV may be prevented from entering the EU market.

37. Sloe gin

The proposed regulation has a minimum alcohol content requirement of 25% ABV for the product. The United States does not have a similar requirement. A similar product made in the United States with an alcohol content at less than 25% ABV may be prevented from entering the EU market.

39. Sambuca

The proposed regulation has a minimum alcohol content requirement of 38% ABV for the product. The United States does not have a similar requirement. A similar product made in the US with an alcohol content at less than 38% ABV may be prevented from entering the EU market.

40. Maraschino

The proposed regulation has a minimum alcohol content requirement of 24% ABV for the product. The United States does not have a similar requirement. A similar product made in the United States with an alcohol content at less than 24% ABV may be prevented from entering the EU market.

41. Nocino or orehovec

The proposed regulation has a minimum alcohol content requirement of 30% ABV for the product. The United States does not have a similar requirement. A similar product made in the United States with an alcohol content at less than 30% ABV may be prevented from entering the EU market.

42. Egg liqueur or advocaat or avocet or advokat

The proposed regulation has a minimum alcohol content requirement of 14% ABV for the product. The United States does not have a similar requirement. A similar product made in the United States with an alcohol content at less than 14% ABV may be prevented from entering the EU market.

43. Liqueur with egg

The proposed regulation has a minimum alcohol content requirement of 15% ABV for the product. The United States does not have a similar requirement. A similar product made in the United States with an alcohol content at less than 15% ABV may be prevented from entering the EU market.

44. Mistra

The proposed regulation has a minimum alcohol content requirement of 47% ABV for the product. The United States does not have a similar requirement. A similar product made in the United States with an alcohol content at less than 47% ABV may be prevented from entering the EU market.

45. Vakeva glogi or spritglogg

The proposed regulation has a minimum alcohol content requirement of 15% ABV for the product. The United States does not have a similar requirement. A similar product made in the United States with an alcohol content at less than 15% ABV may be prevented from entering the EU market.

46. Berenburg or Beerenburg

The proposed regulation has a minimum alcohol content requirement of 30% ABV for the product. The United States does not have a similar requirement. A similar product made in the United States with an alcohol content at less than 30% ABV may be prevented from entering the EU market.

We thank the European Union for its favorable consideration of these comments, and look forward to your response.