

**DISTILLED
SPIRITS
COUNCIL
OF THE
UNITED
STATES**

March 24, 2006

Submitted by electronic mail: FR0608@ustr.eop.gov

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the United States Trade Representative
1724 F Street, NW
Washington, DC 20508

Re: Public Comments Regarding Proposed U.S. – Korea Free Trade Agreement (71 Fed. Reg. 6820 (February 9, 2006))

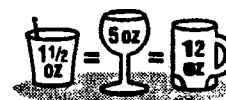
Dear Ms. Blue:

On behalf of the Distilled Spirits Council of the United States, Inc. (Distilled Spirits Council) and its member companies, I am writing in response to your request for public comments (71 Fed. Reg. 6820 (February 9, 2006)) regarding objectives for the proposed U.S. – Korea Free Trade Agreement (FTA). The Distilled Spirits Council is a national trade association representing U.S. producers, marketers and exporters of distilled spirits products, and U.S. importers of wine. Our member companies export spirits products to more than 130 countries worldwide, including Korea. In 2005, U.S. exports of distilled spirits worldwide reached \$743 million; exports to Korea totaled just over \$2.4 million, down from a record high of \$20.9 million in 1995. In 2005, U.S. imports of spirits from Korea were valued at over \$6.5 million.

The Distilled Spirits Council and its member companies enthusiastically support the Administration's intention to pursue an FTA with Korea, as it will provide a unique opportunity to address the various market access barriers inhibiting exports of U.S. distilled spirits products. The U.S. spirits industry views the Korean spirits market, which in 2004 was valued at \$2.8 billion (based on manufacturers' sales price), as one of the most promising markets for U.S. spirits in the region. We appreciate this opportunity to submit the U.S. spirits industry's specific objectives for the proposed U.S. – Korea FTA. Because we are still in the process of collecting updated information regarding the Korean spirits market, we may supplement this submission with additional information at a later date.

1. Tariffs

Korea applies a 20% *ad valorem* tariff on imports of all distilled spirits, with the exception of grape brandy, which is subject to an applied tariff of 15% *ad valorem*. Korea's WTO-bound rate is 30% *ad valorem* for all spirits.



As a participant in the "zero-for-zero" agreement on distilled spirits, which was launched during the Uruguay Round, the United States has already eliminated on an MFN basis its tariffs on nearly all imported distilled spirits products, including imports from Korea. As noted above, in 2005, the value of Korea's spirits exports to the United States (\$6.5 million) far exceeds the value of U.S. exports to Korea (\$2.4 million). Moreover, other countries in Asia, e.g., Japan and Taiwan, have also become participants in the "zero-for-zero" agreement on spirits. Accordingly, the U.S. spirits industry's primary objective in the proposed FTA is to secure the immediate elimination of Korea's tariffs on all distilled spirits imports from the United States.

If Korea agrees to the eliminate the tariff on all U.S.-origin spirits immediately upon entry-into-force of the FTA, the Distilled Spirits Council would strongly support the most rapid possible phase-out of tariffs on imports of rice wine from Korea; U.S. imports of rice wine were valued at \$3.9 million in 2005.

2. Distinctive Products

The Distilled Spirits Council urges the U.S. government to seek a commitment from Korea in the FTA negotiations 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, the U.S.-Chile FTA, the U.S.-Central American-Dominican Republic FTA, the U.S.-Peru FTA, and in a side letter to the U.S.-Australia FTA. Accordingly, Korea 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.

3. Warehousing

All importers, including beverage alcohol importers, may only have one warehouse in the area where the import license was issued and another at the port of entry. Domestic beverage alcohol producers, however, can have as many warehousing facilities as they wish in order to store and distribute their goods. It should be noted that an importer, just like the domestic producer, may only sell its products to a wholesaler. Thus, the limitation unfairly restricts importers' flexibility to receive product, maximize efficiency of their distribution channels, and expand their business, which is clearly discriminatory. The U.S. government should seek Korea's commitment to eliminate this discriminatory practice as soon as possible, so that U.S. spirits exporters will be permitted to compete on a level playing field with domestic producers in Korea.

4. Labeling

Korea's National Tax Service imposes burdensome and unnecessary labeling requirements on beverage alcohol products. Currently no fewer than eighteen pieces of information must be shown in Korean on the back label. These include, *inter alia*,:

- identification of the product's distribution channel and use (*i.e.*, discount stores, home use, military use, or duty-free);
- brand name;

- name, address and telephone number of the importer;
- country of origin;
- alcohol content;
- volume;
- a list of additives (if any);
- lot code (or date of bottling);
- sales license number;
- return and exchange office;
- mandatory health warning; and
- a statement indicating that the sale of alcohol to those under 19 years of age is prohibited.

Korea's mandatory labeling requirements for beverage alcohol products far exceed those provided for in the *Codex Alimentarius* General Standard for the Labeling of Prepackaged Foods, which is the only international standard that covers the labeling of beverage alcohol products. Therefore, the Distilled Spirits Council believes that Korea's labeling regime is incompatible with existing WTO rules under the Agreement on Technical Barriers to Trade, which mandate that countries should use internationally agreed-upon standards where they exist.

Moreover, the nature and frequency of modifications to Korea's labeling requirements have significantly increased the cost of doing business in Korea, impeding market access for imported spirits. In order to comply with each new labeling regulation, companies have had to destroy existing labels, redesign and print new labels for each brand and bottle size, thus multiplying costs substantially. In addition to the costs associated with preparing new labels, any company that supplies products to Korea for more than one of the designated distribution channels noted above must maintain multiple inventories, which is extremely costly.

In sum, Korea's labeling requirements are unnecessary, costly, inconsistent with standard international practice, and therefore, constitute a barrier to trade. Korea should, therefore, repeal the labeling requirements that exceed those prescribed by the *Codex Alimentarius* labeling standard.

5. Advertising

Korea does not permit the advertising on television of beverage alcohol products containing 17 percent alcohol by volume or greater, which includes the vast majority of distilled spirits products but excludes beer and almost all wines. In our view, these restrictions act as significant market access barriers by limiting the ability of U.S. spirits exporters to build brand recognition. There is simply no justification for imposing greater restrictions on distilled spirits advertising than on the advertising of beer and wine since, according to the U.S. Department of Health and Human Services, the alcohol content in a standard serving of each is equivalent (*i.e.*, a standard serving of beer (12 oz.), wine (5 oz.) and 80 proof spirits (1.5 oz.) contain the same amount of ethyl alcohol). The Distilled Spirits Council requests the U.S. government's assistance in urging Korea to eliminate this discriminatory treatment as soon as possible.

6. Sanitary and Phytosanitary Measures and Technical Regulations

Distilled Spirits Council members confront a proliferation of arbitrary sanitary and phytosanitary (SPS) measures that are not based on sound science and that constitute unjustifiable technical barriers to trade. In many cases, the lack of a scientific basis for an SPS measure results in unjustifiable discrimination between similar or like products. We strongly urge the United States government to obtain Korea's explicit agreement to strengthen its commitments to the use of sound science, thus constraining the ability to discriminate arbitrarily against imported products.

Increasingly, the distilled spirits sector encounters arbitrary technical regulations, many of which are addressed by WTO Technical Barriers to Trade (TBT) obligations. Many of these technical regulations are unjustifiable and/or not based on international practices, creating unnecessary barriers to trade that restrict or bar exports. The Distilled Spirits Council supports the inclusion of stronger TBT disciplines in the proposed U.S. – Korea FTA. The Distilled Spirits Council's members seek additional transparency and accountability from Korea so that final regulations do not create unnecessary barriers to trade. With respect to this point, we urge the United States to ensure the inclusion of the key principles – transparency, openness, and impartiality – found in Annex 4 “Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations” of the Second Triennial Review of the WTO TBT Agreement. These principles are not only important to the development of voluntary standards, but also need to be strengthened or enforced as they apply to the development of mandatory technical regulations.

Finally, the Distilled Spirits Council strongly recommends that the United States seek similar language to that found in Article 909.6 of the NAFTA, which provides foreign stakeholders the same rights of access and participation in the development of standards-related measures as domestic stakeholders. This would be a significant step that would allow U.S. companies to participate actively in the development of draft standards before the standards affect a company's ability to do business in Korea.

In sum, the Distilled Spirits Council and its members firmly believe that the Korean market has enormous potential for U.S. spirits exports. However, several barriers to trade are impeding the ability of U.S. spirits exporters to gain a significant market share. The proposed FTA provides an important opportunity to liberalize the market for U.S. spirits exports. In short, the U.S. spirits industry's goals for the proposed agreement are to:

- Eliminate Korea's excessive tariffs on U.S. distilled spirits immediately upon entry-into-force of the agreement;
- Secure recognition of “Bourbon” and “Tennessee Whiskey” as distinctive products of the United States;
- Provide U.S. spirits exporters the same access to warehousing that is afforded to domestic spirits companies in Korea;
- Eliminate excessive labeling requirements that are inconsistent with international standards for the labeling of distilled spirits products;
- Eliminate the discriminatory aspects of Korea's beverage alcohol advertising restrictions; and

Ms. Gloria Blue
March 24, 2006
5 of 5

- Enhance Korea's commitments regarding the use of sound science, transparency, openness, and impartiality in the development of standards and other technical regulations.

Thank you very much for giving us the opportunity to provide our initial comments regarding the U.S. spirits industry's objectives for the proposed U.S. – Korea FTA. Please do not hesitate to contact me if you require additional information.

Sincerely,



Deborah A. Lamb
Senior Vice President
International Issues and Trade