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Trans-Pacific Agreement Submissions  
FTP4  
Ministry of Foreign Affairs and Trade  
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Wellington

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### **DSANZ Submission on the Trans-Pacific Strategic Economic Partnership Agreement with the United States**

#### **The Association**

The Association is the national trade organisation representing New Zealand's leading brand owners, importers and exporters of premium spirits (e.g. brandy, whisky, rum, gin, vodka) and spirit drinks.

The Association's members include: Anchor Ethanol Ltd, Bacardi Martini Asia Pacific Ltd, Brown Forman Beverages Worldwide, Diageo (New Zealand) Ltd, Federal\*Geo, Lion Nathan Wines and Spirits Ltd, Maxxium NZ Ltd, Moët Hennessy NZ Ltd, Pernod Ricard New Zealand Ltd, The Rum Company (New Zealand) Ltd and Vintage Wines and Spirits Ltd.

The Association has a remit to deal with all matters that impinge on the manufacture, importation, distribution, sale and consumption of distilled spirits in New Zealand.

#### **Introduction**

Building on the recently concluded China and ASEAN Australia New Zealand (AANZFTA) free trade agreements, the New Zealand Government announced (23 September 2008) that the United States is to join the Trans-Pacific Strategic Economic Partnership Agreement ("TSEPA") as a partner.

The TSEPA, or so-called "P4 trade agreement", encompasses New Zealand, Singapore, Chile and Brunei.

The United States (US) is an important origin of imported spirits for sale in the New Zealand domestic market and is also an important export destination for New Zealand produced spirits.

The Association strongly embraces free markets and economic liberalisation and strongly supports the US as a partner to the P4. Further, the Association believes that an expanded agreement involving the US would be of tremendous value to New Zealand as a whole. The Association considers that a swiftly concluded agreement with the US would provide the same value as if it were a bilateral free trade agreement.

The Association supports initiatives and negotiations that can improve trade access and the protection of intellectual property especially when they relate to distilled spirit beverages.

### Trade in Distilled Spirits

Distilled spirits are highly processed agricultural goods which are classified under Chapter 22 of the Harmonised Tariff System headings:

- HS 2208.30 - WHISKEY
- HS 2208.50 - GIN
- HS 2208.60 - VODKA
- HS 2208.70 - LIQUEURS <23%abv and
- HS 2208.90 - ALCOHOLIC PREPARATIONS

The above are the principal spirit categories traded between New Zealand and the US and are therefore relevant to the TSEPA.

The following table shows the volume and value of duty-liable imports of distilled spirits to New Zealand, sourced from the US for the 12 months ended September 2008.

Table 1

<b>NZ imports from the US</b>	<b>Whiskey*</b>	<b>Gin</b>	<b>Vodka</b>	<b>Liqueurs</b>	<b>Totals</b>
Volume (litres of alcohol)	5,677,316	1,269	24,736	32,410	5,735,731
Value (NZD\$CIF)	34,662,847	48,271	598,422	2,292,058	37,601,598

\*The US is an extremely important source of distilled spirits for the New Zealand market – especially for “Bourbon Whiskey” and “Tennessee Whiskey” which are both distinctive products of the US.

Table 2 below, shows the volume and value of New Zealand spirit exports to the US for the 12 months ended September 2008. New Zealand spirit exports amounted to around \$5.7million (FOB) or about 12.5% of total export receipts. The US accounts for around 11% of New Zealand’s total distilled spirit export volumes. There is significant potential to further develop demand for New Zealand distilled spirit exports to the US which, in turn, could stimulate the demand for domestic agricultural raw materials, packaging and numerous other products.

Table 2

<b>NZ Exports to the US</b>	<b>Vodka</b>	<b>Cordials/liqueurs</b>	<b>Alcoholic Preparations</b>	<b>Totals</b>
Volume (litres of alcohol)	42,454	16,365	17,052	75,871
Value (NZD\$FOB)	1,771,903	1,647,187	706,880	4,125,970

### Tariffs

The Association applauds the comprehensive scope of the proposed TSEPA with the US and in particular the elimination of the tariffs on all imported distilled spirits.

Currently, all US origin GIN, VODKA and LIQUEURS <23%abv imported into New Zealand are subject to a 5% ad valorem tariff. In contrast, there is already duty free access for comparable New Zealand origin goods entering the US (see Table 3).

Table 3

<b>Distilled Spirits HS 2208</b>	<b>Tariff Rates</b>	
	<b>New Zealand</b>	<b>United States</b>
<b>Gin</b>	5%	0%
<b>Vodka</b>	5%	0%
<b>Liqueurs &lt;23%abv</b>	5%	0%

Domestically, the 5% import duty needlessly imposes an additional cost on all New Zealand consumers and its elimination would be of important benefit to consumers in terms of affordability and enhanced product choice. The tariff is of nuisance value affecting around 2% of total import volumes from the US. It adds very little to Government revenue.

The elimination of the 5% tariff would ensure a level playing field. As mentioned above, the US does not levy any import tariffs on New Zealand made distilled spirits.

In our view, it would make sense (and would be easier from an operational standpoint) if New Zealand would agree simply to extend the current P4 zero-tariff treatment of distilled spirits to US-origin gin, vodka and liqueurs as soon as the US becomes a party to the agreement.

Finally, it is the view of the Association that the elimination of the local tariff on distilled spirits would be agreeable to both sides and non-contentious. Moreover, a zero tariff, by 2010, is consistent with the 1994 Bogor declaration and commitments at APEC by both countries.

The Association wishes to see the elimination of all tariffs on US origin-distilled spirits.

**Intellectual Property**

In addition to eliminating tariffs, the Association notes that negotiations with the US will cover intellectual property rights. This is a crucial area of interest for the Association and the wider spirits industry, specifically the protection of intellectual property and the legal treatment of spirits with Geographical Indications (GIs), including Bourbon Whiskey and Tennessee Whiskey.

GIs are absolutely critical to the distilled spirits industry (which relies on brand recognition to maintain market share) as well as to New Zealand consumers who base their purchase decisions on these internationally recognised designations.

Further, the legal recognition of US spirit GIs under the TSEPA is important because there have been instances in New Zealand where the US product descriptions have been improperly used.

The Association notes that the New Zealand Government passed the Geographical Indications (Wines and Spirits) Registration Act in 2006. Frustratingly, spirit GI users can not use the Act's registration system as it has still not come into force. Its delay, for reasons (which have nothing to do with distilled spirits or the US), reflects poorly on New Zealand's commitments to protect intellectual property.

The Association submits that the time has come for the GI register to come into effect, enabling relevant parties to register their respective GIs. The immediate implementation of

the register (spirits only – if necessary) would signal to the wider international trading community and the US that the New Zealand Government is serious about providing legal certainty for spirits with geographical indications.

Additionally, it should be noted that the New Zealand Government recognises spirit GIs under the trans-Tasman Food Standards Code (standard 2.7.5 “Spirits”)<sup>1</sup> yet it continues to block the enabling of a domestic GI register.

Notwithstanding the above, New Zealand’s official recognition and extension of legal protection to the unique Bourbon Whiskey and Tennessee Whiskey spirit names would ensure a level playing field. In turn, the US would simultaneously recognise and afford the same protection to any exclusive New Zealand spirit names (such as “Blenheim Bay Gin” and “Hokonui Whiskey”). In practice, this essentially means that New Zealand will not permit the sale of Bourbon Whiskey or Tennessee Whiskey unless the named products have been manufactured in the US according to the laws and regulations of the US<sup>2</sup>. Additionally, with a functioning register, the relevant GI names could be so listed and gain enhanced legal certainty.

The Association considers that there should be no New Zealand resistance to this course of action, as an important precedent exists with the implementation of the P4 agreement that recognises Chilean Pisco.

Finally, it is the Association’s expectation that an agreement to protect distilled spirits geographical indications does not fall below that of the recently concluded United States – Chile free trade agreement not only because it includes explicit recognition of Bourbon and Tennessee Whiskey as distinctive products of the United States, but also because Chile is a party to the TSEPA.

The Association recommends that the TSEPA with the US incorporate important protection and explicit recognition of Bourbon Whiskey and Tennessee Whiskey as geographical indications and distinctive products of the United States.

### **Summary**

The Association enthusiastically supports the US partnership in the TSEPA and believes strongly that an expanded agreement would be beneficial for all New Zealand consumers and traders.

The TSEPA should eliminate all tariffs on distilled spirits originating from the US.

The TSEPA should ensure legal certainty and enhanced protection of distilled spirits intellectual property, namely the Geographical Indications of Bourbon Whiskey and Tennessee Whiskey.

### **Recommendation**

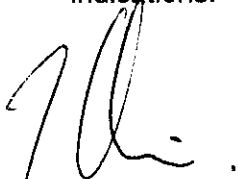
- That New Zealand eliminates the current 5% ad valorem import duty on spirit products (namely Gin, Vodka, and Liqueurs containing less than 23%abv) immediately on the agreement’s entry into force.
- That New Zealand recognises Bourbon Whiskey and Tennessee Whiskey as distinctive products of the United States and that the Geographical Indications

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<sup>1</sup> <http://www.foodstandards.gov.au/thecode/foodstandardscode.cfm>

<sup>2</sup> Title 27 (Alcohol, Tobacco Products, and Firearms) of the Code of Federal Regulations, Section 5.22

register be enabled to further enhance legal certainty for spirits with geographical indications.



**Thomas Chin**  
**for Distilled Spirits Association of New Zealand Inc**

- cc: Ambassador Bill McCormick, Embassy of the United States of America
- cc: Tom Walsh, Economic Officer, Embassy of the United States of America
- cc: David Murphy, Commercial Counselor for Australia & New Zealand, American  
Consulate General
- cc: Dr Peter Cressy, Distilled Spirits Council of the United States