



30 April 2010

Clare Kelly
Deputy Director
Trade Negotiations
Ministry of Foreign Affairs and Trade
Private Bag 18901
Wellington

By email: clare.kelly@mfat.govt.nz

Dear Clare

**UPDATED DSANZ PERSPECTIVES ON THE TRANS-PACIFIC PARTNERSHIP
(TPP) AGREEMENT TO INCLUDE THE UNITED STATES AND OTHER
COUNTRIES**

I write on behalf of the Distilled Spirits Association of New Zealand Inc (the Association), which is the national trade organisation representing New Zealand's leading producers, and marketers of premium distilled spirits and liqueurs.

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

As New Zealand officials undertake further consultations with stakeholders in preparation for the second round of negotiations for a Trans Pacific Partnership (TPP) agreement with the United States (US), Australia, Peru and Vietnam, the Association appreciates the opportunity to update our views and present the latest bilateral trade data between NZ and the US.

In this brief submission we also restate our key priorities in support of the expansion of the TPP with entry of the US and other countries. Our objective is to see the elimination of all tariffs on distilled spirit beverages imported from the US and greater certainty of legal protection for distilled spirit beverages with geographical indications.

CURRENT MARKET SITUATION

The US is a significant export market for New Zealand produced distilled spirit beverages. The US is also an important origin of imported spirits for sale in the New Zealand domestic market.

TRADE IN DISTILLED SPIRIT BEVERAGES

Distilled spirit beverages are highly processed agricultural goods that are classified under Chapter 22 of the Harmonised Tariff System headings, specifically:

- HS 2208.30 - WHISKIES
- 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 beverage categories traded between New Zealand and the US and are therefore relevant to the TPP.

The following tables show the volume and value of distilled spirit beverages traded between New Zealand and the US for the 12 months ended March 2010 compared with the same time in 2009.

Table 1

NZ Exports to the US	YE March 2010	YE March 2009	% change
Volume (litres of alcohol)	217,000	124,000	75
Value (NZD\$FOB)	4,361,000	5,620,000	-22

Source: Statistics NZ

Table 1 above (Statistics New Zealand data), shows New Zealand spirit beverage exports to the US in 2010 were worth around NZD\$4.3million (FOB). We see significant potential to further develop demand for New Zealand distilled spirit beverage exports to the US. This, in turn, could stimulate the demand for domestic agricultural raw materials, packaging and numerous other supporting products and services.

Table 2

NZ Imports from the US	YE March 2010	YE March 2009	% change
Volume (litres of alcohol)	3,713,000	3,164,000	17
Value (NZD\$CIF)	34,441,000	35,539,000	-3

Source: Statistics NZ

Table 2 shows that spirit imports from the US were worth over NZD\$34million.

SPIRITS TARIFF SETTINGS

New Zealand spirit beverage exports enjoy tariff-free entry into the US. In contrast, imports of US spirits, namely Gin, Vodka, and Liqueurs <23%abv attract a discriminatory tariff of five per cent ad valorem (see Table 3).

Table 3

Distilled Spirits Tariff Rates			
HS Number	Product	Tariff facing US goods to New Zealand	Tariff facing NZ goods to United States
HS 2208.50	Gin	5% ad valorem	zero
HS 2208.60	Vodka	5% ad valorem	zero
HS 2208.70	Liqueurs <23%abv	5% ad valorem	zero

Domestically, the five per cent import duty needlessly imposes an additional cost on all New Zealand consumers. Its elimination would be of important benefit to them in terms of affordability and enhanced product choice. The tariff is an administrative burden and presents a nuisance value. The Association strongly challenges the argument that the tariff be retained as a negotiating chip and we also note that the tariff does not appear to be an important source of revenue for the Government.

To ensure a reciprocal and level playing field, the Association strongly urges the elimination of the five per cent tariff currently imposed on US origin spirits and liqueurs.

Undenatured ethyl alcohol

The Association recognises that there is presently little or no New Zealand exports of undenatured ethyl alcohol or neutral spirits to the US. However, any export shipments do

incur a US tariff of US\$18.9c pf.liter charge¹, see Table 4 below. From a New Zealand spirit exporter's perspective it would be equitable for the TPP agreement to include the elimination of that US tariff line.

Table 4

Undenatured ethyl alcohol Tariff Rates		
HS Number	Tariff facing US goods to New Zealand	Tariff facing NZ goods to United States
HS 2207	zero	US\$18.9c pf.liter

A zero tariff regime on all distilled spirits is consistent with the so-called 1994 Bogor declaration of the Asia-Pacific Economic Cooperation (APEC) on free trade. This agreement stipulated a target of free and open trade for industrialised economies, including New Zealand, by the end of 2010.

The elimination of all tariffs by New Zealand is also consistent with the recently released 2025 Taskforce recommendations².

INTELLECTUAL PROPERTY RIGHTS

Geographical Indication Spirits

The Association notes that a comprehensive TPP includes coverage of intellectual property rights (IPR). Intellectual property rights and their legal treatment are absolutely critical for the spirits industry, which relies on brand recognition to maintain market share. It's also important for New Zealand consumers who base their purchase decisions on internationally recognised designations. Geographical Indications (GIs), such as **Bourbon** and **Tennessee Whiskey**, denote the geographical origin of a spirit where a special quality or characteristic is attributable to that origin.

Strong legal certainty and protections for spirits with GIs is vital for our sector. We note that there have been recent instances in New Zealand where the US product designations have been improperly used by local traders. This has potentially harmed the reputation of the affected rights users and their brands, financially and legally.

Geographical Indications (Wine and Spirits) Registration Act 2006

The New Zealand Government has shown that it understands the importance of protecting intellectual property rights. To this end, it has enacted legislation – namely the Geographical Indications (Wines and Spirits) Registration Act 2006 – which we strongly support. Frustratingly, spirit GI users cannot use the Act's registration system, as its enabling regulations have been deliberately stalled and remain inoperative. We remain deeply concerned at how our trade partners might interpret the delay, for reasons that

¹ Harmonized Tariff Schedule of the United States (2009) - Supplement 1 (Rev. 1), <http://www.usitc.gov/publications/docs/tata/hts/bychapter/0911C22.pdf>

² First report of the 2025 Taskforce was released on 30 November 2009, <http://www.2025taskforce.govt.nz/index.htm>

have nothing to do with distilled spirits, but rather as a crude way to influence negotiations in other forums. We believe that the continuing implementation delay is contrary to the New Zealand Government's stated commitment to serve industry and protect our intellectual property rights.

The Association submits that bringing the register into effect, to enable relevant parties to enter their respective GIs would be consistent with the objective of the agreement. The immediate and rightful implementation of the register (spirits only – if necessary) would clarify and give greater certainty of legal protection for quality spirits with international or New Zealand GIs. From a New Zealand national interest perspective, a functioning registry could encourage relevant domestic producers to innovate and develop products, secure in the knowledge that their rights will be well protected.

The Association believes that it is essential that New Zealand negotiators make certain that the TPP agreement provides explicit protection of intellectual property rights for our respective and distinctive spirits with geographical indications.

International precedent to protect GI Spirits

As a useful precedent, we note that the existing P4 Agreement³, the platform for an expanded agreement, contains notable and binding obligations on parties, including New Zealand, to recognise and protect Pisco as a designation of origin of Chile. Elsewhere, other parties to the TPP including Australia, Chile and Peru through their own bilateral agreements and side letters already separately recognise “Bourbon” and “Tennessee Whiskey” as distinctive products of the US. We would expect New Zealand to agree the same terms in the TPP agreement.

ACTA and Parallel Importing

In regard to the strengthening and safeguarding of intellectual property rights by enforcement at the border, we note that New Zealand is a participant in the Anti-Counterfeiting Trade Agreement⁴ (ACTA). At the same time, the New Zealand legislation allows parallel importing of goods, including GI spirits, which could be associated with the threat and menace of counterfeiting.

CONCLUSION

The Association appreciates this fresh opportunity to reiterate our support for the expanded TPP initiative.

The Association strongly supports greater trade liberalisation within the TPP framework and urges the elimination of all tariffs on distilled spirit beverages and undenatured ethyl alcohol/neutral spirits traded between New Zealand and the US.

Regarding intellectual property rights matters, we expect the US is likely to seek New Zealand acknowledgement and recognition of “Bourbon” and “Tennessee Whiskey” as distinctive products of the United States. The Association would be supportive of this. In

³ Trans-Pacific Strategic Economic Partnership Agreement between Brunei, Chile, NZ and Singapore

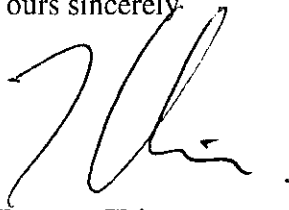
⁴ New Zealand hosted Round 8 of the ACTA talks in April 2010

addition, our position is that the New Zealand Government, having intimated the intention to set up a GI Register, should now follow through to safeguard all spirits (and wines) with geographical indications. Alternatively, if the legislation is to be unusable, it should be repealed.

In short, a completed TPP regional agreement has the potential to improve and add to a freer flow of trade, which would be beneficial for all spirit importers and exporters.

The Association looks forward to further discussion with negotiators about any of the information provided in our submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Thomas Chin', with a stylized flourish at the end.

Thomas Chin
Chief Executive
for Distilled Spirits Association of New Zealand Inc

cc: Hon Tim Groser, Minister of Trade