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HEARING ON U.S. – INDIA TRADE RELATIONS: OPPORTUNITIES AND CHALLENGES

STATEMENT OF THE DISTILLED SPIRITS COUNCIL OF THE UNITED STATES

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Dr. Peter H. Cressy
President/CEO
Distilled Spirits Council of the United States
1250 Eye Street, NW, Suite 400
Washington, DC 20005

The Distilled Spirits Council of the United States is a national trade association representing U.S. producers, marketers, exporters and importers of distilled spirits products. The Council's member companies export spirits products to more than 130 countries worldwide, including India. The Council applauds Chairman Nunes for focusing the first Trade Subcommittee hearing of this Congress on opportunities and challenges in the vast and dynamic Indian market. The Council is grateful for the opportunity to submit comments in connection with Chairman Nunes' examination in particular of India's agricultural market access barriers and system of cascading tariffs, taxes and other import fees.

Overview

U.S. distilled spirits exporters have achieved significant export growth globally over the past ten years. Since 2002, U.S. spirits exports have nearly tripled, to almost $1.5 billion in 2012 (FAS export value, not retail value). Despite the industry's global success, however, U.S. spirits export to India remain disappointingly low. In 2012, U.S. direct spirits exports to India were valued at $2.86 million, accounting for less than 0.2% of all U.S. spirits exports. Indeed, U.S. spirits exports to India remain far below U.S. exports to comparable markets, particularly in light of the fact that, according to Euromonitor, India ranks as *the largest whiskey market in the world*, both in terms of volume (1.3 billion liters in 2011) and value ($21 billion in retail sales in 2011). In fact, whiskey accounts for 58% by volume and 69% by value of the total Indian spirits market, which should play to U.S. export strengths; whiskeys accounted for 68% of total U.S. spirits exports globally in 2012.

The reasons for lackluster U.S. exports to India are simple: India's tariffs on imported distilled spirits are among the highest in the world and a labyrinthine – and in some cases discriminatory – regulatory maze at the state level impedes market access for imported spirits. In 2009, the most recent year for which data are available, imported spirits accounted for less than five percent of total apparent consumption in India by volume (Euromonitor International). We describe below some of the major challenges the U.S. spirits industry faces in India.

India's tariff barriers

Base tariff: India's applied base tariff on imports of bottled spirits is 150% *ad valorem*, which is its WTO bound rate. At 150% *ad valorem*, India's tariff is dramatically higher than distilled spirits tariffs in the vast majority of developing country markets. (China's tariff, *e.g.*, is 10% *ad valorem* on all spirits.)

Additional customs duty: From April 2001 until July 3, 2007, India also applied additional customs duties (ACD) on imports of bottled spirits, beer and wine. These additional customs duties were assessed on top of the basic customs duty and varied depending on the per-case CIF value of the imported spirits. The ACD in effect from April 2003 – July 2007 ranged from 25% *ad valorem* or $53.20 per case, whichever was higher, to 150% *ad valorem*, in clear breach of India's tariff bindings.

India announced on July 3, 2007 that it would "exempt" beer, wine and spirits from the ACD, effective immediately. While the U.S. spirits industry warmly welcomed this action, which was unquestionably prompted by a U.S. WTO case (and similar action by the European Commission), we have yet to receive assurances that India will not reimpose the ACD in any form and that the states will not introduce (and, where in effect, will rescind) duties and fees that discriminate against imported spirits.

Extra additional duty: In connection with India's 2006/2007 Budget, the Indian government announced the imposition of an extra additional duty (EAD) of 4% *ad valorem* on most imported goods, including imported spirits. This duty is levied on the value of imported goods, which is the sum of the CIF value + Customs Duty (150%), making India's effective tariff on imported spirits 160%, in breach of its WTO tariff binding. On September 14, 2007, Indian Customs published a notification that appears to provide a mechanism whereby importers may seek a refund of the EAD with respect to imported products that are subsequently sold within India (and therefore subject to VAT and/or sales taxes) if proper documentation is provided. The Distilled Spirits Council welcomed this announcement, but remains concerned that importers must still pay the EAD up front and then comply with burdensome documentation requirements in order to obtain a refund, requirements that are not imposed in connection with domestically produced goods. This discriminatory duty should be eliminated as soon as possible.

India's cascading import tariffs have clearly impeded U.S. spirits exports to one of the world's most important spirits markets. A significant reduction in India's import duty would certainly help level the playing field for U.S. distilled spirits, though near-term prospects for such a reduction are not likely in the absence of progress in the multilateral WTO Doha Development Agenda negotiations. Instead, the U.S. spirits industry's already tenuous position in the Indian market may be weakened even further if India's free trade agreement (FTA) negotiations with the European Union reach a successful conclusion. If India should agree to a significant reduction in its tariff on imported European spirits – the United States' chief competition in international spirits markets, particularly in the whiskey category – U.S. exporters would be placed at a significant competitive disadvantage in an already challenging market.

Goods and Services Tax: India has proposed the adoption of a single federal goods and services tax (GST) that would replace the various state taxes (some of which are described below) and cascading import taxes. This would be a welcome development, but a current draft of the constitutional amendment bill for GST would exclude beverage alcohol and certain other sectors from the new GST system. The Distilled Spirits Council continues to urge India to include distilled spirits in the GST system as a means to adopting a transparent and predictable tax system for beverage alcohol.

State-level restrictions on imported spirits

In addition to the almost-prohibitive import tariffs and additional duties India applies to imported spirits, several of India's states apply their own discriminatory measures to imported distilled spirits, in apparent violation of India's WTO obligations. We provide a few illustrations below.

The state of **Tamil Nadu**, for example, has not yet been fully opened to imported spirits in a meaningful sense, despite India's removal of quantitative restrictions in April 2001 in response to adverse WTO rulings. Tamil Nadu adopted a law in 2008 to permit the sale of imported products, but required that brands be registered before they can be sold by the state monopoly, *i.e.,* Tamil Nadu State Marketing Corporation Limited (TASMAC). Although companies have applied to register their imported brands, to date only 30 brands of imported spirits have been registered and only a handful are listed on TASMAC's price list. More telling, however, is that TASMAC does not routinely order imported products, and, as a result, often there is no inventory of imported spirits throughout its 7,500 retail outlets.

In addition, payment terms appear to discriminate against imported spirits. Suppliers of imported spirits are paid when the products are reported as sold from the TASMAC retail outlets, whereas suppliers of locally-produced spirits are paid far more promptly – half upon supply of the goods to a TASMAC depot and half upon depletion of stocks to retail outlets. There is a further disincentive for off-premise TASMAC retail outlets to stock high-value imported spirits: the 4730 TASMAC off-premise retail outlets are linked to small low-end bars whose license fee is based on the value of sales from the retail outlet (2.5% of the sales value). These bars therefore have an incentive to sell lower-value domestic products in order to avoid the higher license fees that would be triggered by sales of more expensive imported spirits.

The excise policy of **Delhi,** unveiled in June 2011, imposes differential tax rates on domestically produced and imported spirits. In addition, retailers wishing to sell imported spirits to hotels, bars and restaurants are required to pay an additional licensing fee on top of the licensing fee they must pay for domestically-produced spirits. There is also differential treatment regarding the storage of imported spirits. Specifically, customs duties are not permitted to be collected in advance for imports, whereas domestically-produced spirits may pay the required excise taxes in advance and continue to be stored in a warehouse prior to sale. Clearance for imported products, however, may only be granted after an order, and subsequently the appropriate duty payments, are received. The practical impact of this differential treatment is that orders for domestically-produced spirits can be satisfied in 1-2 days, while completing orders for imported spirits takes at least 1-2 weeks. More recently, the Delhi excise policy announced in May 2012 imposed discriminatory pricing restrictions on imported spirits: the declared wholesale price of imported (Bottled in Origin) spirits is required to be lower in Delhi than anywhere else in India, whereas locally-produced spirits are not subject to the same requirement.

The state of **Haryana** has established a discriminatory Value Added Tax (VAT) regime, with a much higher VAT applied to imported foreign spirits (25%) than to domestically produced spirits (4% VAT). Further, while the license fee for domestic spirits brands is a flat rate fee per annum, the license fee for imported spirits increases as the sales volume increases, yielding higher license fees for imported spirits.

The state of **Odisha** also applies a discriminatory excise tax regime, applying the highest rates to imported spirits. In addition, label registration fees are higher for imported spirits as compared to domestically-produced brands.

The state of **Andhra Pradesh** has established differential tax arrangements for domestic and imported spirits brands.

Other non-tariff barriers -- bonding period/interest rate

The interest-free bonding period for imports is 90 days and the interest rate applicable thereafter is 15%. In contrast, domestically-produced goods may be held in bond without time limits or payment of interest. In the Council's view, this practice violates Art. III: 2 of GATT 1994.

Summary

India's spirits market is massive yet remains dominated by domestically-produced spirits, particularly in the important whiskey category. India's expanding middle class, with higher disposable incomes and a growing interest in trying new and imported products, represents a potential consumer base for increased sales of U.S. spirits, including whiskeys.

However, the tariff and non-tariff barriers described above have severely restricted access to India's vast spirits market for U.S. spirits exporters. U.S. spirits exports to India remain far below exports to comparable markets, particularly in light of the fact that India is a significant spirits-producing and spirits-consuming nation. India's "suspension" of the ACD in 2007 has opened up the market somewhat. But, with one of the highest base tariffs in the world on spirits at 150% *ad valorem* (160% taking into account the extra additional duty), high and discriminatory taxes and other state-level restrictions, overall India's spirits market remains impenetrable for the vast majority of U.S. spirits products. Even worse, the U.S. position in India's spirits market is at risk of significant erosion if, as discussed above, the successful conclusion of EU-India FTA negotiations yields a significant reduction in the tariff on European spirits, particularly Scotch and Irish whiskies.

We applaud the Subcommittee's decision to focus on the promising but challenging Indian market. We thank you again for the opportunity to submit a statement for the record.

For additional information about this submission, please contact:

Timothy Harrison
International Trade Specialist
Office of International Issues and Trade
Distilled Spirits Council of the United States
1250 Eye Street, NW, Suite 400
Washington, DC 20005
Tel: 202-682-8826
Fax: 202-682-8832
Email: tharrison@discus.org