



## Annex 5

### GLOBAL TRADE POSITION AND PRIORITY OBJECTIVES OF THE INTERNATIONAL SPIRITS INDUSTRY

*The World Spirits Alliance reaffirms its commitment to a modern global trade agenda.*

#### INTRODUCTION

As the future of the World Trade Organisation is in jeopardy, we applaud the commitments made by its members to go through a reform process. It is time to change and make the organisation fit for the new global trade.

The World Spirits Alliance would like to stress that the WTO is not only the institution responsible for liberalising global trade, but it is a vital guarantor for the proper implementation of global trade rules as well as being an arbitrator of disputes between its members. Both functions are invaluable from a business perspective, because having a fair and predictable global trading system, which is based on common rules allows us to act for the long-term and put in place strategies that support growth, development and job creation.

Therefore, as a firm supporter of the multilateral trading system, we would like to contribute into turning the current challenges in the WTO into an opportunity to improve the institution.

Our core priorities have remained consistent: enhanced market access, improved certainty of legal protection for spirits with geographical indications, and the elimination of non-tariff barriers and other procedural/regulatory obstacles to the international trade in distilled spirits

Proposals below do not intend to be an exhaustive review of the WTO. These ideas are mainly based on our longstanding experience with this organisation and on business needs that do not fit into the current WTO setting. These proposals are structured across functions of the WTO: **rulemaking, monitoring and dispute settlement.**

While the WTO is a member driven organization, we would hope that the following submission from the distilled spirits industry, whose success relies on the global trade, will be considered as a useful contribution into this discussion amongst WTO members.

#### WORLD SPIRITS ALLIANCE PROPOSALS ON RULEMAKING ACTIVITIES IN THE WTO

##### **I. Market access & tariff reduction:**

If there is an agricultural negotiation in the WTO in the future, WSA would support the following priorities:

**Reduction** : Our priority is the reduction, and where possible, elimination of import tariffs on distilled spirits and key inputs (e.g., molasses, cereals, bulk ethyl, glass, labels, closures, and packaging materials), with particular emphasis on 'peak' tariffs. We call on WTO members to review the reduction formulas proposed in December 2008 together with permitted flexibilities for developing countries to ensure that

they deliver **meaningful reductions** in applied as well as bound tariffs for spirits, and to avoid any tariff increases.

**Preference for specific tariffs and taxes:** the international spirits industry strongly prefers specific tariffs and internal taxes (i.e. \$X per liter of pure alcohol). Particularly for distilled spirits, specific taxes have the advantages of being simple for national authorities to apply, while limiting the economic incentives for informal activities and making high quality products available to more consumers. *Ad valorem* tariffs and taxes lead to uncertainty and disputes over customs valuation tend to penalise premium products, exacerbate incentives for informal markets, and severely restrict choice for consumers.

**II. WTO to establish new rules to explicitly address illicit trade.** Illicit trade is a global issue and a concern for many sectors. Illicit trade in alcohol is widespread, representing significant percentages of alcohol consumption worldwide. It has been identified as one of the key challenges that our business faces in many parts of the world. Illicit trade in alcohol encompasses a wide variety of illegal activities, but their common denominator is that fraudulent actors operating in this area abuse the international trade law regime.

The subject of illicit trade has not been fully incorporated into the WTO agenda. While it is true that the key objective of the WTO is to promote trade liberalization, it also has an equally important role to promote a fair and hence licit trade where products do not compromise human health nor economic development. The discussions relating to illegal, unreported and unregulated (IUU) fishing taking place in the negotiations on fisheries subsidies constitute an interesting precedent of Member States addressing illicit trade concerns in a WTO context.

Improving the protection available for Geographical Indications (GIs) associated with distilled spirits, and enhancing the legal framework to help combat counterfeiting remains a key priority. However in light of the above, we would call on WTO members to continue and **deepen the discussion** on the illicit trade.

**III. New rules to address barriers to services and investments.** The spirits sector has traditionally engaged mainly in trade policy discussions related to trade in goods. However, as the geography of our business operations expands, we support the idea of having clear international rules to avoid the introduction of unjustified restrictions on foreign-invested trading companies undertaking import and/or distribution of spirit drinks. That includes barriers, such as excessive domestic participation in capital, minimum number of domestic employees or discriminatory minimum capital requirement. Addressing these barriers in our sector and many others would facilitate investment supporting trade.

## WORLD SPIRITS ALLIANCE PROPOSALS ON REGULAR WORK AND TRANSPARENCY

There are a variety of issues the spirits sector tries to address through the WTO's regular committees, including discriminatory domestic taxation, customs valuation, import quotas and bans, discriminatory licensing requirements; anticompetitive practices of state trading enterprises; and unnecessarily restrictive product standards, labelling and certification requirements.

In general, the business would support proposals that aim at improving the quality of notifications, their timely submission and the quality of responses to concerns raised by other WTO members on these notifications.

### Operation of TBT and SPS Agreements

We welcome the provisions of the TBT and SPS Agreements that require Members to notify the WTO of proposed regulations that may have an impact on trade at an early stage when amendments can still be



introduced, and comments considered. However, because **there is no requirement to notify the final regulation**, it is often difficult to determine the status of a proposal, which can impede the ability of exporters to comply with new requirements in a timely manner. Accordingly, we would strongly support efforts to encourage members to notify final regulations when they are adopted to ensure that all impacted stakeholders are **promptly informed of the final measure, its requirements and implementation period**.

Spirits sector TBT notifications are very common and often repetitive. For example, the fact that business needs to use bonded warehouses to apply labels for import markets has been discussed in several cases over the last 10 years. Despite all efforts to show its business necessity, certain WTO members continue notifying draft proposals that would require operators to apply country-specific labels in the country of origin which is more trade-restrictive and more costly. We would encourage WTO members to empower the WTO secretariat to develop **an analytical guide for WTO members** that would compile reactions, arguments and alternative proposals of WTO members to certain topics (e.g. allowed activities in bonded warehouses) that should guide WTO members in choosing the **least trade-restrictive policy options** at the drafting stage of the regulation. Acknowledging that the WTO is a member driven organisation, we do not suggest the secretariat will determine which options are least trade-restrictive, but simply analyse available options.

**Other committees' work.** The ways of working of the TBT and SPS committees, particularly as these committees are dealing with concrete trade concerns, should inspire **a step up** in the functioning of other WTO committees, such as market access, State Trading Enterprises and customs valuation: rationalisation of committee work and clarification of their scope, increased frequency of committee meetings, raising their importance at capital level and better cross committee coordination.

**Notifications.** Members are requested to notify regular domestic rules and relevant changes to the WTO in the context of the various committees. In order **to increase transparency**, it would be useful to reinforce the mandatory nature of these notifications by Member States, as well as to encourage the Secretariat to develop a database system with all yearly notifications by countries.

**Implementation of the Trade Facilitation Agreement.** The global spirits industry welcomed the TFA and the subsequent constitution of a WTO committee. So far, it has been challenging for business to understand the links between reforms in customs and the implementation of the TFA agreement. To accelerate and prioritise enforcement initiatives that will yield concrete benefits, we recommend the following measures:

- a. Clarify processes and ways of working on **TFA enforcement**. There is a myriad of players, including various international organisations, involved in the enforcement process of the Agreement. This situation makes it challenging for economic operators to engage and provide feedback on concrete experiences at borders. The WTO, through its TFA committee, could constitute a single platform convening all involved stakeholders, inventorying initiatives and reporting on progress to Member States and civil society.
- b. Develop a mechanism to allow economic operators to report on concrete trade facilitation challenges, as well as tangible changes and progresses encountered on the ground.

- c. Articulate more clearly the links between TFA enforcement and e-commerce facilitation, the former being a necessary starting point for more substantial progress on the latter in the future.

**Improvements to the Trade Policy Review Mechanism:** We encourage WTO Members to build on the Trade Policy Review Mechanism (TPRM) process to improve domestic rules' conformity with WTO framework.

To increase transparency, WTO Secretariat might want to consider putting a formal call for business contributions during the preparation of a given country's report and before it is finalised and adopted.

After TPR takes place in Geneva, we would encourage Members under review to organize informative sessions back in capitals with business representatives (e.g. through chambers of commerce) to brief them on the outcomes of the TPR discussions. The WTO Secretariat could be called to assist to organize these sessions as part of the TPR follow-up workshops.

TPRM is a useful mechanism to identify WTO compliance gaps in members' domestic trade regulations and practices. To improve domestic trade rules in identified areas, the WTO members could be encouraged to allocate aid and development funds to support capacity building with least developed and developing countries. WTO secretariat could consequently be empowered to boost further its **capacity building function** in areas where **compliance gaps** are identified thanks to TPRM.

**International inter-agency work.** Trade policy is no longer dealt with in isolation. It is more and more part of broader discussions including public health, environment, labour rules, etc. The whole of government, whole of society approach is now embedded in the spirit of the Sustainable Development Goals. The WTO is already involved in several inter-agency taskforces. Given the growing importance of this approach to international policy making and dialogue it is now of utmost importance that the WTO dedicates appropriate human resources (e.g. by having a dedicated team to inter-agency work in the Secretariat) to follow closely the inter-agency work, to promote and to be the guardian of existing international trade rules in broader policy discussions.

The WSA supports proportionate, evidence-based public health measures that legitimately tackle issues related to alcohol-related harm. As acknowledged in the World Health Organization's (WHO) global strategy to reduce the harmful use of alcohol, international trade rules allow governments ample 'policy space' to issue effective, non-discriminatory regulations to protect public health (*see GATT XX*). There is no clear correlation between trade liberalization and an increase in alcohol misuse. Moreover, there is no justification for excluding alcohol from international trade agreements. On the contrary, illicit and informal markets, which carry their own public health risks, tend to flourish in markets that are unnecessarily or unreasonably restricted.

## WORLD SPIRITS ALLIANCE PROPOSALS ON DISPUTE SETTLEMENT

The WSA encourages WTO members to resolve the deadlock as a priority, we would also like to put forward further proposals for consideration to improve the functioning of the dispute settlement mechanism.

Business is very interested **in a reliable and foreseeable system of interpretation of WTO rules.**

A strong history of GATT case law on non-discrimination have been providing the necessary guidance on how to adopt tax and other product regulations in a non-discriminatory way. The interpretation of "like" and of "directly competitive or substitutable products" showed how the DSB interpreted the non-discrimination principle contained in GATT Article III and helped our sector, inter alia, to increase its



export performance. The decisions made in Geneva are also very helpful in building arguments to tackle discriminatory practices in other countries.

As the functioning of the Appellate Body is under threat, alternative options to resolve disputes between the parties should be explored in more details. Article 5 of the DSU stipulates that the Director-General may, acting in an ex officio capacity, offer good services, conciliation or mediation with the view to assisting Members to settle a dispute. While, we acknowledge the fact that procedures under Article 5 can be triggered only on the voluntarily basis, business would support discussions on the ways to reinforce this alternative mechanism to resolve disputes.

#### **PRIVATE SECTOR WTO MODERNISATION ADVISORY COMMITTEE**

To ensure that the WTO modernisation process reflects on business needs, we would encourage WTO members to establish advisory committees to gather the views of private sectors' international trade experts with an expertise in the WTO matter. Such a body could play a similar role to the Business representation in the context of OECD<sup>1</sup>.

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<sup>1</sup> [Business at OECD](#) is the officially recognised business voice to the OECD communicating business perspectives to OECD committees.