January 6, 2020

Submitted electronically via www.regulations.gov

Joseph Barloon
General Counsel
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Notice of Determination and Request for Comments Concerning Action Pursuant to Section 301: France's Digital Services Tax (Docket No. USTR-2019-0009)

Dear Mr. Barloon:

On behalf of National Association of Beverage Importers, Wine and Spirits Wholesalers of America, Distilled Spirits Council of the United States, Wine Institute, American Beverage Licensees, Wine and Spirits Shippers Association, American Distilled Spirits Association, American Craft Spirits, Kentucky Bourbon Association, and National Restaurant Association, we are writing jointly to express our strong objection to the inclusion of sparkling wine from France on the proposed list of products under consideration for "additional duties" (tariffs) by the Office of the United States Trade Representative (USTR) in connection with the Section 301 determination on the Digital Services Tax (DST) imposed by France on certain digital service providers.

Our members include importers, producers, exporters, distributors, and retailers of beverage alcohol products, which conduct business operations in every state. Our members import products from all over the world, including sparkling wines from France. Many jobs are tied directly and indirectly to the export of wines and distilled spirits that are facing retaliatory tariffs in the European Union and elsewhere, which may be confronted with more retaliatory tariffs in the EU if the proposed tariff on French sparkling wine is imposed. Overall, beverage alcohol companies are responsible for hundreds of thousands of jobs across the United States and, as a result, have a direct and significant interest in this matter. As detailed below, we strongly oppose the imposition of retaliatory tariffs on imports of sparkling wine from France, because it will lead to numerous unintended negative consequences for U.S. businesses and jobs.

Digital Services Tax - Investigation and Action to Be Taken

This matter arose as a result of the Digital Service Tax (DST) adopted by France earlier this year *Initiation of a Section 301 Investigation of France's Digital Service Tax* (84 Federal Register 34042 (July 16, 2019)). Following its investigation and public proceedings, conclusions, and determination, USTR identified a preliminary list of products on 63 Harmonized Tariff Schedule (HST) subheadings from which it will draw a final list of French products for "additional duties" that could range up to 100% ad valorem, including sparkling wine, made from grapes, under 2204.10.00. Currently, sparkling wine imports face a tariff of 19.8 cents/liter.

USTR invited public comments on several areas, two of which we address below: 1) the potential economic harm to U.S. businesses and; 2) the imposition of a fee on services of French entities.

French Sparkling Wine Imports

French sparkling wine and Champagne account for about 12.14% of the total wine imports in the United States and 2.76% of the entire wine market in the United States. In 2018, this represented $743 million worth of sparkling wine that would be equal to a product value of $718 million after freight and insurance charges are deducted.[1]

Imposing Increased Duties on Sparkling Wine Would Cause Disproportionate Economic Harm to U.S. Interests, Including Small- or Medium-sized Businesses and Consumers.

The imposition of additional duties on sparkling wines from France would cause significant economic harm to the beverage alcohol sector and may result in over 17,000 U.S. jobs lost.[2] This includes importers, distributors/wholesalers, retailers as well as the related jobs throughout the distribution chain such as shippers, truckers, warehouse workers, bookkeepers and accountants, sales representatives, customs brokers, managers, hospitality, among others. Many are solid middle-class family jobs.

For example, a 100% additional duty on French sparkling wine would increase the cost to the importers by $718 million, which may result in a price increase to those in the domestic supply chain to the retailers and, ultimately, the consumer. By adding back in the transportation margin, the increased cost to distributors rises to over $743 million. A 100% tariff would result in the estimated loss of approximately 17,000 U.S. jobs across the entire beverage alcohol industry.

A 25% additional duty on French sparkling wine would increase the cost to importers by $179 million to importers. By adding back in the transportation margin, the increased cost to distributors rises to over $186 million. A 25% tariff would result in the estimated loss of almost 6,000 jobs across the entire beverage alcohol industry.

Importers of all sizes are not in a financial position to absorb this magnitude of increased costs between $186 million and $743 million. Moreover, the proposed additional duty on French

[1] Customs value (or CIF) for sparkling wine imported into the United States in 2018. Source US Department of Commerce, Bureau of the Census, USA Trade Online, at https://ustrade.census.gov
[2] The economic impacts identified in this letter are based on the analysis attached to this letter prepared for the Wine and Spirits Wholesalers of America.

sparkling wine must be considered in the context of tariffs that are already negatively impacting the U.S. beverage alcohol sector. Specifically, U.S. wines and distilled spirits exports face retaliatory tariffs in the EU, China and elsewhere in connection with other, unrelated, trade disputes. Importers of wines and spirits currently face retaliatory tariffs in connection with the WTO Airbus dispute.[3] According to the Congressional Research Service (CRS), approximately 17 percent of the current Airbus tariffs are borne by wine importers and 21 percent by distilled spirits imports.[4] Most importers of French still wines not over 14% also import French sparkling wines. Adding yet another additional duty to the cost of these products upon importation potentially could put them out of business.

Wholesalers/distributors in the United States would also be harmed. The cost increases from these tariffs would result in reduced sales, in turn, forcing cutbacks in their business operations. Distributors who purchase these wines from importers may also face job losses from these reduced sales.

Importers and wholesalers are local companies providing jobs in their communities. Most of the 12,000 importer basic permit holders for wine, distilled spirits, and beer issued by the Alcohol and Tobacco Tax and Trade Bureau (TTB), Department of the Treasury are small and medium sized businesses. They cover every State.[5] Small and medium sized business are less likely to have a range of wines from multiple countries so if a French portfolio, including Champagne and sparkling wines, is their business, they are significantly harmed. If it is a small business, then they are more likely to have to lay off employees or even close their doors. Lacking a diverse portfolio, they are unable to mitigate the tariff costs with other wines that are not impacted.

Both off-premise and on-premise retailers would also be harmed. These retailers need to be able to meet demands of consumers for specific categories of wine, such as Champagne and other sparkling wines from France. During the past five years, more than 16,700 certificates of label approval have been issued by TTB for sparkling wine and Champagne from France to importers of all sizes and in a huge range of brand names.[6] Consumers are clearly demanding these sparkling wines.

In sum, imposing additional tariffs on sparkling wine from France will harm the entire beverage alcohol industry and related industries, threaten to lead to additional tariffs on U.S. exports, and result in job losses across the United States.

<u>Imposing Increased Duties on Sparkling Wine Risks Exposing U.S. Beverage Alcohol Exports to More EU Retaliatory Tariffs</u>

The impact of this proposed additional duty on French sparkling wine must be viewed in the context of the United States producers of distilled spirits and wine who already face retaliatory tariffs in critical export markets including the EU as a result of the Section 232 steel and aluminum tariffs and the Airbus WTO tariffs. This potential escalation is particularly troubling since

[3] https://ustr.gov/sites/default/files/enforcement/301Investigations/84_FR_55998.pdf
[4] https://crsreports.congress.gov/product/pdf/IF/IF11364
[5] https://www.ttb.gov/resources/data-statistics/list-of-permittees
[6] https://www.ttb.gov/labeling/cola-public-registry

American spirits and wines are already being negatively impacted by retaliatory tariffs imposed by the EU and several countries resulting from other trade disputes unrelated to the U.S. beverage alcohol industry. For example, the EU's 25% retaliatory tariff on American Whiskey has resulted in a 28% decrease in exports.[7] The EU is the largest export market for American Whiskey, totaling $704 million in 2018.

A tariff on Champagne and sparkling wine from France will significantly increase pressure on the EU to impose additional tariffs on United States distilled spirits and wines. In fact, EU Commissioner for Trade Phil Hogan recently stated that the EU will retaliate in a "proportionate manner" to any tariffs imposed in this case and these tariffs would be applied at the EU level and not simply on products exported from the United States to France. The EU is the single largest export market for US wine producers, totaling $469 million in 2018.

Use of Non-tariff Measure to Address DST

Several alternatives to imposing the additional duties on French sparkling wine are available.

Organization for International Cooperation and Development

The Organization for Economic Cooperation and Economic Development (OECD) has been convening a multilateral consultation on the appropriate framework for a tax on digital services. While the United States and others have not reached a consensus and have serious differences, nevertheless, this remains a forum for reaching agreement on a digital service tax framework that could be applied uniformly.[8] In August 2019 during the USTR comment period on the DST investigation, several commenters urged the continued work at OCED and opposed the imposition of tariffs on goods.[9] We encourage the continued work at the OECD.

Services Sector

This is a dispute related to services and is completely unrelated to wine and spirits. Accordingly, in our view it is appropriate to limit the application of any action to fees and/or restriction on services of France and should not spill over to sparkling wine.

There are multiple precedents in trade disputes for limiting retaliatory tariffs to the same sector as that of the underlying violation, nullification, or impartment was found, including Article 22.3 of the WTO Dispute Settlement Understanding.

More specific to wine, it is noted that the industry section of the World Wine Trade Group, of which the United States is a member, has adopted a position that wine should be not targeted for retaliation in a trade dispute involving products other than wine.[10]

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[7] Through October 2018. Latest data available USITC dataweb.

[8] https://home.kpmg/us/en/home/insights/2019/12/tnf-oecd-responds-treasury-letter-digital-services-tax.html

[9] United States Chamber of Commerce Letter, dated August 14, 2019, at page 4. IBM Letter, dated August 19, 2019. Statement of the United States Council for International Business, dated August 19, 2019. Statement of the Internet Association. (Docket File USTR 2019-0009)

[10] Wine Institute Letter, dated May 28, 2019, filed in Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute (Docket File USTR-2019-0003).

There are French companies that provide services in the United States. We defer to the expertise of USTR economists and analysts to identify which of those services in the United States would be the most productive to impose fees on. USTR could impose monetary sanctions on those services up to $2.4 billion.

<u>Conclusion</u>

In sum, we urge USTR not to adopt tariffs on sparkling wine from France because, as detailed above, it will have numerous unintended consequences for U.S. businesses and jobs.

Thank you for this opportunity to share our comments and please do not hesitate to contact us should you need further information.

Sincerely,

Chris R. Swonger
President & CEO
Distilled Spirits Council of the U.S.

Michelle L. Korsmo
President & CEO
Wine & Spirits Wholesalers of America

Matt Dogali
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Economic Impact of Tariffs on Imports of Sparkling Wine and Champagne from France

Remarks first made by President Trump in September concerning ongoing trade disagreements with the European Union were again reiterated earlier this month as part of a proposal by US Trade officials. Included in those proposals is the prospect of raising taxes on imports of Champagne and other sparkling wines from France by up to 100 percent in response to a digital service taxes implemented by the French earlier this year.

A tax on French sparkling wine imports is nothing more than an ad valorem federal excise tax on consumers. In 2018, the United States imported $743 million worth of sparkling wines from French producers.[1] This would be equal to a product value of $718 million after freight and insurance charges are deducted.[2]

Champagne and sparkling wine imported from France accounts for about 12.14 percent of total wine imports and 2.76 percent of the entire wine market in the United States.[3] Under a 100 percent tariff prices rise and demand will begin to drop.

A 100 Percent Tariff

A 100 percent tariff on French sparkling wines would be equal to a price increase of approximately $718 million. By adding back the transportation margin, the increased cost to distributors rises to over $743 million.

Evenly distributed across the entire market, the cost of the tariff leads to an overall price increase on wine of 2.5 percent, or by about $1.87 a gallon at the purchaser level. This would be passed through from importers to distributors and ultimately to the final consumer.

Economic Impact of the Loss from a 100 Percent Tariff on French Champagne

	Jobs	Wages	Output
Direct	(9,032)	-$315,433,000.00	-$779,611,000.00
Beer	216	$15,898,000.00	$138,607,000.00
Wine	(1,292)	-$86,549,000.00	-$453,106,000.00
Spirits	76	$7,536,000.00	$105,344,000.00
Wholesale	(323)	-$35,425,000.00	-$110,590,000.00
Retail	(7,708)	-$216,894,000.00	-$459,867,000.00
Supplier	(3,302)	-$204,002,000.00	-$539,939,000.00
Induced	(4,791)	-$247,584,000.00	-$787,105,000.00
Total	(17,125)	-$767,019,000.00	-$2,106,655,000.00 [4]

Based on a demand model developed for WSWA, this price increase will result in 17.1 million gallons of lost sales.[5] This is a reduction of about 1.84 percent in wine sales. Lower volumes will result in lost jobs as wholesalers need fewer truck drivers, clerks and warehouse staff. As the table above shows, over 300 alcohol distributor jobs could be lost because of higher prices resulting from tariffs. Including all firms in the beverage alcohol industry, those that supply the industry and those who depend on re-spending by

[1] Customs value (or CIF) for sparkling wine imported into the United States in 2018. Source: US Department of Commerce, Bureau of the Census, *USATrade Online*, at: https://usatrade.census.gov/

[2] Data on international shipping costs are not available. US shipping margins of 3.5 percent which are the average margins for wine are used as a proxy. See: *Margins After Redefinitions: 2007 Detail*, Industry Economic Accounts Directorate, Bureau of Economic Analysis (BEA), U.S. Department of Commerce.

[3] Total wine imports were $6.124 billion from USATradeOnline. Domestic production of $20.8 billion is from the US Department of Commerce, Bureau of Economic Analysis NIPA Tables.

[4] Subcategories on table do not perfectly sum to totals due to rounding.

[5] Prepared for the Wine and Spirits Wholesalers of America by John Dunham & Associates, 2019.

direct and supplier firm employees, this would lead to a total of 17,125 lost jobs and $767 million in lost wages. On top of this, the total cost to the American economy could be over $2.1 billion.

A 25 Percent Tariff

A 25 percent tariff on French Champagne and other sparkling wines would be equal to a price increase of $179 million. Adding back the transportation margin, the increased cost to distributors would be $186 million.

Evenly distributed across the entire market, the cost of the tariff leads to an overall price increase on wine of 0.62 percent, or by about $0.47 a gallon at the purchaser level.

Economic Impact of the Loss from a 25 Percent Tariff on French Champagne

	Jobs	Wages	Output
Direct	(2,724)	-$95,508,000.00	-$236,806,000.00
Beer	65	$4,800,000.00	$41,851,000.00
Wine	(396)	-$26,490,000.00	-$138,682,000.00
Spirits	23	$2,259,000.00	$31,574,000.00
Wholesale	(102)	-$11,040,000.00	-$34,384,000.00
Retail	(2,315)	-$65,037,000.00	-$137,165,000.00
Supplier	(1,014)	-$63,149,000.00	-$165,838,000.00
Induced	(1,457)	-$75,651,000.00	-$240,510,000.00
Total	(5,195)	-$234,308,000.00	-$643,154,000.00 [6]

This price increase will result in 5.2 million gallons of lost sales, a reduction of about 0.56 percent in total wine sales. This fall in sales results in lost jobs as wholesalers need fewer truck drivers, clerks and warehouse staff. As shown above, over 100 alcohol distributor jobs and 2,300 retail jobs could be lost because of higher prices resulting from tariffs. By including all the suppliers to the alcohol industry, as well as industries supported by the spending of wages from the wine industry, we can see that the total economic impact of a 25 percent tariff on French Champagne and other sparkling wines is over 5,000 lost jobs and $234 million in lost wages. The total cost in terms of lost output is over $643 million.

[6] Subcategories on table do not perfectly sum to totals due to rounding.