

THE USMCA AND AMERICA'S ALCOHOL INDUSTRY



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On July 1, 2020, the U.S. - Mexico - Canada Agreement (USMCA) entered into force, replacing the North American Free Trade Agreement (NAFTA). The new USMCA is designed to improve trade opportunities for North American workers, farmers, ranchers, and businesses.

Specific to America's alcohol industry, USMCA's Alcohol Beverages Annex contains provisions regarding the sale and distribution of alcohol beverages, as well as labeling and certification provisions that address technical barriers to trade. The Annex also preserves the recognition of certain distinctive products of the U.S. (*i.e.*, Bourbon, Whisky and Tennessee Whisky), Mexico (*i.e.*, Tequila and Mezcal), and Canada (*i.e.*, Canadian Whisky). The USMCA also includes a side letter between the U.S. and Canada regarding wine, and a side letter between the U.S. and Mexico regarding Mezcal.

Annex 3-C Distilled Spirits, Wine, Beer and Other Alcohol Beverages

Annex 3-C reaffirms tariff-free trade with two of America's largest and most important export markets. Since tariffs were eliminated under NAFTA in 1995, U.S. spirits exports to Canada have grown by nearly 1,700 percent, and to Mexico by approximately 1,500 percent. Industry members are hopeful that by continuing the three nations' commitment to tariff-free trade in alcohol beverages, the USMCA can build upon the incredible growth

in U.S. alcohol exports under NAFTA to further increase American exports supporting new, good-paying American manufacturing jobs.

Annex 3-C of the USMCA also includes provisions to:

- Preserve recognition for “Bourbon” and “Tennessee Whiskey.” Canada and Mexico shall recognize Bourbon Whiskey and Tennessee Whiskey, which is a straight Bourbon Whiskey authorized to be produced only in the State of Tennessee, as distinctive products of the United States. Canada and Mexico shall not permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey, unless it has been manufactured in the United States in accordance with the laws and regulations of the United States governing the manufacture of Bourbon Whiskey and Tennessee Whiskey.
- Preserve recognition for “Canadian Whisky.” Mexico and the United States shall recognize Canadian Whisky as a distinctive product of Canada. Accordingly, Mexico and the United States shall not permit the sale of any product as Canadian Whisky, unless it has been manufactured in Canada in accordance with the laws and regulations of Canada governing the manufacture of Canadian Whisky for consumption in Canada.
- Fair Distribution. All three countries reaffirmed commitments concerning the non-discriminatory sale and distribution of alcohol beverages within each country.
- Non-discriminatory Application of Pricing Laws. All three countries reaffirmed each country’s commitment to treat domestic and imported products of the three countries equally with regard to any mandatory price mark-ups imposed by an applicable unit of government.
- Labeling and Certifications. Each of the three countries is encouraged to establish new best practices regarding labeling and certifications for alcohol beverage products, which will help to facilitate trade among the three countries.
- Permissibility of Laws Limiting Winery or Distillery On-Premises Sales. Each of the three countries is allowed to maintain or introduce a measure limiting on-premise sales by a winery or distillery to those wines or distilled spirits produced on its premises.

- *No Mandatory Use of Domestic Products for Bulk Importing.* The U.S., Canada and Mexico all agreed that that no country shall adopt or maintain a measure requiring that distilled spirits, wine, beer, or other alcohol beverages imported from a USMCA nation for bottling must be blended with distilled spirits, wine, beer, or other alcohol beverages of the importing nation.

The US-Mexico Side Letter on Spirits

American Rye Whiskey has become a very popular product over the past several years, with substantially increased demand in both domestic and foreign markets. In a separate side letter, Mexico agreed to consider prohibiting the sale of any product in Mexico as American Rye Whiskey, if it has not been manufactured in the United States in accordance with the laws and regulations of the United States governing the manufacture of American Rye Whiskey.

The US-Canada Side Letter on Wine

The United States and Canada currently are engaged in a trade dispute over the manner in which the Canadian province of British Columbia (BC) regulates sales of wine in BC grocery stores. A province-level policy enacted by BC in 2015 limits sales of wine in grocery stores to products made in British Columbia. The only way BC supermarkets can sell imported wine is in a physically separated area with its own cash registers. The Obama Administration filed two complaints with the World Trade Organization (WTO) asserting that BC's discriminatory measures limit sales opportunities for U.S. wine producers and provide a substantial competitive advantage for BC wine. (WTO disputes WT/DS520 and WT/DS531).

The issue is important because the United States sells more wine to Canada than to any country other than the European Union. Even though Canada has only about a tenth of the population in compared to that of the E.U, the U.S. exports almost as much wine to Canada as to Europe. Although most Canadians do not buy imported wines from grocery stores, American producers and their trade associations, led by The Wine Institute, have lobbied strongly for the elimination of the discrimination.

In conjunction with the negotiation of the USMCA, the US and Canada agreed through a side letter that Canada will act to ensure BC modifies the grocery store restrictions as demanded by the U.S. (WTO panel request WT/DS531/7, dated May 29, 2018). Specifically, "BC will eliminate the measures which allow only BC wine to be sold on regular grocery store shelves while allowing imported wine only to be sold in grocery stores through a so-

called ‘store within a store,’ and those contested measures shall not be replicated.” In return, the United States agreed to take no further action at the WTO in relation to the BC measures, including in relation to its pending complaints. If BC timely revises the discriminatory wine measures so as to ensure the treatment of United States goods consistent with existing international trade agreements, the U.S. shall join Canada to notify the WTO Dispute Settlement Body that the two countries have reached a mutually agreed solution to America’s pending disputes.

The full text of the USMCA is accessible online via the Office of the United States Trade Representative at: <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement> If you have questions, or would like more information, contact GrayRobinson’s Nationwide Alcohol Industry Team at: (866) 382-5132 or beveragelaw@gray-robinson.com



Richard M. Blau leads GrayRobinson’s *Nationwide Alcohol Industry Team*, focusing on the laws that govern the manufacture, importation, distribution, marketing, sale and consumption of beer, wine, distilled spirits and other licensed beverages. Richard devotes a substantial portion of his practice to trade regulation, brand development and protection, M & A compliance guidance, litigation and mediation involving the members of the alcohol industry.