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De: Siobhan Paterson <spaterson@swa.org.uk>
Enviado el: miércoles, 03 de septiembre de 2014 11:23 a.m.
Para: Virgilio Andrade Martinez
CC: Cofemer Cofemer; Campbell Evans; Marie Audren (audren@spirits.eu); Martin.PILSER@ec.europa.eu; Nanda Ruchi (ETID)
Asunto: Comments on the revision of NOM-142 from the Scotch Whisky Association
Datos adjuntos: pSWAHealthNorm0914.pdf
Importancia: Alta

Dear Mr Andrade Martinez,

Please find attached comments on behalf of the Scotch Whisky Association with regards to the revision of the **MEXICAN HEALTH NORM (NOM-142-SSA1-2014)**.

We are grateful for the opportunity to submit comments on the draft and would welcome these to be considered a final revision.

Please do not hesitate to contact me should you have any queries.

Kind regards,
Siobhan

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**MEXICAN HEALTH NORM (NOM-142-SSA1-2014)
SCOTCH WHISKY ASSOCIATION COMMENTS
September 2014**

Mexico has carried out a review of its above health norm dating back to 1995. In 2013 Mexico notified the draft legislation under the WTO Technical Barriers to Trade (TBT) consultation process (G/TBT/N/MEX/254).

Since the original Notification (NOM-142-SSA1-2013), a further revision dated 2014 has been published. This 2014 paper is the basis for the comments that follow. It has addressed some of the Scotch Whisky industry's concerns, but several outstanding matters remain. The Association has made two visits to Mexico recently, and this brief reflects information gathered during these visits. We remain hopeful that Mexico will show flexibility and make amendments to the text, remaining able to meet its legitimate objectives whilst respecting the terms of the TBT Agreement.

a. Maximum alcoholic strength for retail sale

EU law does not stipulate a maximum alcoholic strength for retail sale. In contrast, article 3.9 (previously 3.7) of draft NOM-142 imposes a maximum strength of 55% alc. vol. This provision could restrict market access for Scotch Whisky.

Whisky is, for example, invariably filled into wooden casks for maturation at a strength of more than 60% alc. vol. Some premium, high value whiskies will then be bottled at 'cask strength' (possibly more than 55% alc. vol.) in order to preserve the particular characteristics of the spirit coming out of the cask. There is a niche but growing international market for 'cask strength' products.

We would ask that the maximum strength for retail sale is removed or set a higher level, for example 70% alc. vol., to ensure no 'cask strength' brands are barred from the market.

We understand that this will require an adjustment to Art. 217 of Chapter 3 of the General Health Law that sets the strength of alcoholic drinks.

b. Analytical Parameters

Article 5.4 of the draft standard sets out analytical parameters in relation to aldehydes, furfural, and higher alcohols.

In principle, Scotch Whisky and other EU spirit drinks recognised and protected under the 1997 EU-Mexico spirits agreement should not be subject to such parameters, which have the potential to restrict market access.

Notwithstanding that point of principle and an explicit reference to an exemption for products covered by the 1997 Agreement, the use of such analytical ranges is

inappropriate. Spirit drinks should be defined on the basis of their raw materials and method of production.

At the very least, to avoid any future difficulties, the parameters should be adjusted to avoid potentially excluding brands from the market. We would wish to see the following adjustments to ensure continued market access:

- i. Aldehydes occur naturally due to oxidation during maturation. The draft standard sets a limit of 40mg/100ml anhydrous alcohol (AA). As spirit drinks, such as Cognac or Scotch Whisky, may have higher aldehyde content, we would suggest the limit for aldehydes is adjusted to a maximum of 50mg/100ml AA to avoid any potential difficulties.
- ii. Furfural is a naturally occurring compound present in a wide variety of foodstuffs. The draft standard sets a limit of 5mg/100ml AA. A more appropriate level for furfural would be 10mg/100ml AA and we would ask that the limit is revised accordingly to ensure market access is maintained.
- iii. The Scotch Whisky industry welcomes the flexibility shown in respect of Higher Alcohols for whisky and Cognac and hopes that it can be repeated in relation to the other parameters.
- iv. More generally, if the Mexican Government does believe such parameters are necessary, it is unclear why fermented alcoholic beverages are excluded from the relevant provisions of article 5.4 on aldehydes, furfural and higher alcohols (but they are subject to the methanol limit).

The adjustments mentioned above would pose no risk to consumer health. We would suggest that each of the parameters could be amended accordingly.

Alternatively, market access for spirit drinks of Geographical Indication could be secured by amending the draft standard to state that its terms are without prejudice to Mexico's commitments under its 1997 spirits agreement with the EU. This is the same approach the Mexican authorities took in relation to the amendment of the whisky standard in 2012 (NMX-V-1-NORMEX-2012). Article 5.0 of that standard notes that:

'The products subject to this Standard are classified according to the raw material used in their production or their country of origin. Regarding their production, the Whisky or Whiskey definitions that apply to a country's distinctive products and have been expressly recognized by Mexico through the signing of a Trade Agreement or Treaty mentioned in Section 10 of this Standard shall be governed by the provisions of the country of origin in strict compliance with international commitments entered into by the United Mexican States.'

To summarise, we request that the NOM-142-SSA1 be appropriately amended to avoid unnecessary barriers to trade in Scotch Whisky (and other EU spirit drinks) arising from the analytical parameter provisions.

c. Maturation

We are pleased to note and wish to thank the Mexican authorities in amending the draft to allow for maturation in barrels not exceeding 700 litres. This is now

consistent with EU Regulation 110/2008 (Annex II, 2(a)(iii)) which requires whisky to mature for at least three years in wooden casks not exceeding 700 litres in capacity, and with the capacity requirement included in article 3.1 of the Mexican whisky standard.

d. Labelling

The industry supports labelling rules that are proportionate, necessary, and meaningful in that they provide consumers with appropriate information to make informed choices. Such requirements should not create unnecessary barriers to trade. Article 9 of the draft standard raises a number of potential market access issues.

- i. Article 9.3.7.1.1 requires ingredient listing on a range of alcoholic drinks, including liqueurs, cream liqueurs, 'cocktails' and those beverages that use '*optional ingredients and/or additives that cause hypersensitivity, intolerance, or allergy*'. The list of such ingredients, which 'shall always be declared', includes grains containing gluten, eggs and egg products, milk and dairy products.

Within the EU, all alcoholic beverages containing more than 1.2% alcohol are exempted from any obligation to list their ingredients on the product label (see article 16.4 of EU Regulation 1169/2011). Moreover, whilst EU Directive 2003/89 introduced a requirement for certain allergenic ingredients to be declared on labels when present in any foodstuff, it also provided the means of requesting a derogation where such products have been used but are no longer present/allergenic in the final product.

After the presentation of detailed scientific evidence to the European Food Safety Authority, EU Directive 2007/68 provided a permanent exemption in respect of 'cereals, nuts and whey used for making distillates or ethyl alcohol of agricultural origin for spirit drinks and other alcoholic beverages'. (Note: any potentially allergenic ingredient added post-distillation, and which does not also benefit from a formal exemption, needs to be labelled.) As a result, in these circumstances, cereals, nuts and whey need not be declared on labels.

On the basis of the scientific evidence and EU assessment process, Mexico should be requested to amend the draft standard so that there is no need to label products where the potential allergenic ingredient is no longer present in the final product.

- ii. Article 9.3.7.2.1 notes that there is an existing requirement under Mexican law to include a health warning statement. We understand that the General Health Law of 1984 requires all alcoholic drinks to state on the label that '*El abuso en el consumo de este producto es nocivo para la salud*'.

The draft standard Article 9.3.7.2.5, (previously Article 9.3.7.2.3) appears to introduce an additional requirement that products also bear the statements '*Beber con moderación*' and '*Prohibida su venta a menores de 18 años*'.

A requirement to display three health warning statements is excessive and unnecessary. We believe that producers should include the statement on labels as required by the 1984 General Health Law but that the other statements should be optional.

We would welcome confirmation as to what health warning statement(s) will need to appear on the primary and secondary packaging of spirit drinks sold in Mexico.

- iii.9.2.1 The SWA has been advised by the Mexican authorities that in keeping with the 1997 EU/Mexico spirits agreement, there is no requirement to translate the spirit drink geographical indication into Spanish, and that the use of Spanish is only required on labels for mandatory health information and importer details. Such information does not have to appear on the front label.

We would welcome confirmation that Spanish language is only required for mandatory health information and importer details.

Scotch Whisky Association
Edinburgh
3 September 2014