



26th September 2022

Mr. Christopher M. Thiemann
Regulations and Ruling Division, Alcohol
and Tobacco Tax and Trade Bureau
1310 G Street NW, Box 12
Washington, DC 20005

Re: Docket No. TTB-2022-0007; Notice No. 213 – Proposed
Addition of American Single Malt Whisky to the Standards of
Identity for Distilled Spirits

Dear Mr. Thiemann,

The Scotch Whisky Association (SWA) is grateful for the opportunity to provide comments to The Alcohol and Tobacco Tax and Trade Bureau (TTB) regarding Notice No. 213 on the proposed addition of American Single Malt Whisky to the standards of identity for distilled spirits.

The SWA is the trade body for the Scotch Whisky industry and one of its main objects is the protection and promotion of the Scotch Whisky trade worldwide. Our 88 member companies, all of whom are distillers, blenders or brand owners together comprise around 95% of the industry's production. Our members own hundreds of brands and thousands of expressions enjoyed in more than 180 markets worldwide, including the United States.

What is Scotch Whisky?

There are two basic categories of Scotch Whisky. Single Malt Scotch Whisky is mashed, fermented and distilled exclusively from malted barley by batch distillation in pot stills at a single distillery and subsequently matured for at least 3 years in oak casks not exceeding 700 litres.

Single Grain Scotch Whisky is mashed, fermented and distilled from malted barley and unmalted cereals usually by continuous distillation in column stills at a single distillery and subsequently matured for at least 3 years in oak casks not exceeding 700 litres.

The product of each Scotch Malt Whisky and Scotch Grain Whisky distillery has its own unique distinctive character, which is determined by a wide range of factors, including geographical location within Scotland.

Nothing is added to Scotch Whisky except water to reduce to bottling strength of no less than 40% alcohol by volume (80 proof) and, if desired, plain caramel (E150a) for the adjustment of colour only.

Three types of blends can be produced from combinations of Single Malt Scotch Whiskies and Single Grain Scotch Whiskies. Blended Malt Scotch Whisky is a blend of more than one Single Malt from different distilleries. Blended Grain Scotch Whisky is a blend of more than one Single Grain from

different distilleries. Blended Scotch Whisky is a blend of both Single Malt Scotch Whiskies and Single Grain Scotch Whiskies.

The UK and European Union (EU) definitions of whisky

Attention is also drawn to the UK and EU definitions of whisky. They are the same and apply to all whiskies placed on those markets, regardless of origin. (Reference is made to Article 1(2) and Annex II(2) of Regulation 110/2008 and article 1(2) and Annex I(2) of EU regulation 2019/787). Whisky placed on those markets, including US whiskies, must be matured for at least 3 years in wooden casks not exceeding 700 litres and must not contain any added alcohol, flavouring or sweetening.

What is the interest of the Scotch Whisky Association?

Scotch Whisky producers have a large stake in the reputation of the whisky category and, as a result, the SWA has a strong interest in supporting quality definitions of whisky around the world. This helps provide a level playing field for all, protects consumers and recognises that hard won reputation and long term investment in the category.

Traditional whiskies, such Scotch Whisky, Irish Whiskey and Straight Bourbon Whiskey have formed consumers' expectations and understanding of what is meant by the term 'whisky' around the world. It is these whiskies which have been traded internationally. Today, as a result, consumers in different markets expect whisky to be made from cereals, distilled in a certain way, aged for a minimum period in wooden casks, and sold at a strength not less than 40% alc. vol. This ensures whisky retains the colour, aroma, and taste derived from its raw materials and production process. That consumer expectation is reflected in many statutory definitions of whisky around the world., including the UK and EU definitions of whisky referred to above. Consumers are misled if they buy products which do not meet those expectations.

Single Malt Scotch Whisky

Single Malt Scotch Whisky has a very high reputation in the United States and globally and has by far the largest share of internationally traded Single Malt Whiskies, making up more than 93% of internationally traded Single Malt Whiskies sold by volume. As a result of its fame, reference to 'Single Malt' is synonymous with Single Malt Scotch Whisky in the minds of many consumers globally.

In the United States Single Malt Scotch Whisky made up 94.3% of the malt whisky category by volume and 91.7% by value in 2021¹. As Single Malt Scotch Whisky has had the predominant market share of the Single Malt category in the United States for many decades, it is Single Malt Scotch Whisky which has principally created the reputation and understanding of what is meant by the description "Single Malt Whisky" among consumers. US consumers regard Single Malt Whisky as a prestigious and premium high quality product and with good reason. They are misled if they get something different to the very high standards set by the Single Malt Whiskies which have been sold in United States for many years and established its reputation.

Given the huge stake which the Scotch Whisky industry has in the Single Malt Whisky category, it is in the industry's interests to ensure that the reputation of Single Malt Whisky as a category is not damaged by the sale of products which do not accord with the international understanding of that product. A robust definition of Single Malt Whisky protects consumers who expect to get the product

¹ Data provided by IWSR Drinks Market Analysis <https://www.theiwsr.com/>

with the established reputation when they buy whisky. It also protects category integrity and quality and provides a level playing field for all producers.

TTB proposal for American Single Malt Whisky

The SWA would welcome an American Single Malt Whisky definition which meets high standards as a valuable addition to the Single Malt Whisky family.

The proposal contains some of the key characteristics expected of Single Malt Whisky, which the SWA supports. However, there several concerns which are set out in detail below.

Minimum maturation period

The proposal does not contain a specific minimum maturation period. This is a serious concern. It would mean that "American Single Malt Whisky" aged for a day would meet the requirements of the proposed standard. Single Malt Whisky has a very high reputation around the world as a premium category which is aged for a significant period. The lack of any specific minimum maturation period would be damaging for the reputation of Single Malts as a whole and mislead consumers who would expect Single Malt Whisky to have undergone more than just token maturation of a few months or even days. It would also create unfair competition with the Single Malt Whiskies, including Scotch, Irish and Japanese Single Malts which have created the reputation of Single Malt Whisky as a significantly aged category.

Whilst >99% of internationally traded Single Malt Whisky (including Scotch, Irish, Japanese and Canadian) are aged for at least 3 years, and usually much longer, in the circumstances a minimum maturation period of at least 2 years for American Single Malt Whisky should be introduced. This would be consistent with the US standard for "straight whisky". A maturation period consistent with the legal requirement for US straight whiskies would go some way to helping to protect the reputation of the Single Malt category as an aged whisky and of American Single Malt Whisky in particular, and meet consumer expectations for the category.

It should also be noted that all whisky sold in the UK/EU must be at least 3 years old, regardless of origin and there are specified minimum maturation periods of 2-3 years in many other markets because it is recognised this protects the whisky category and reflects consumer expectations. US whiskies exported from the US to these markets are required to meet these minimum ageing requirements.

Distillation only at a single distillery

The original proposal of the American Single Malt Commission was for mashing, fermentation and distillation to take place at the same distillery. The proposal in Notice No. 213 only requires distillation to take place at the distillery. This undermines the close link between Single Malt and its place of production. It is a fundamental part of the reputation of Single Malt Whisky that the unaged spirit is entirely produced at the same location. The requirement that only distillation needs to take place at the distillery would undermine the reputation of the category as a whole and mislead consumers as to the origin of the product i.e. not all the production processes to create the unaged spirit have taken place at the distillery.

It also gives rise to a concern over quality. The risk of contamination of the fermented wash, such as through bacterial growth, is significantly elevated by production at a separate site where there would inevitably be a delay in distilling the fermented wash, as well as the need for strict hygiene controls.

The definition should therefore contain a requirement that mashing and fermentation as well as distillation takes place at the same distillery, which would be both consistent with traditional practice as well as maintaining the necessary quality associated with its reputation.

100% malted barley

The SWA supports the description “American Single Malt Whisky” as a 100% malted barley product. The use of malted barley only in “Single Malt Whisky” is tightly bound up in its reputation as a whisky category globally. This requirement is reflected, for example, in the legal definitions of Single Malt Scotch and Irish whiskies, and it should be noted that all Single Malt Whisky placed on the EU market (regardless of origin) must be produced from 100% malted barley. (Reference is made to Annex I(2) of EU Regulation 2019/787).

Distillation strength of no more than 160 proof

This is consistent with Single Malt Whiskies produced elsewhere and is supported by the SWA.

Alcoholic strength of 80 proof (40% abv)

This is consistent with Single Malt Whiskies produced elsewhere and is supported by the SWA.

Specific questions asked by the Alcohol and Tobacco Tax and Trade Bureau (TTB)

- *Is a 700-liter limit for oak barrels for aging American single malt whisky necessary or appropriate?*

The 700-litre maximum size is consistent with legal requirements for Scotch and Irish whiskies and with the UK and European Union definitions of whisky. An upper limit helps ensure there is sufficient interaction between the spirit and the wood and the SWA supports its inclusion. The same limit should apply to both initial and subsequent maturation (such as “finishing”) for the same reasons, as it does with the UK and EU definitions of whisky.

- *Is it appropriate that the new standard of identity allows the use of used, uncharred new, and charred new oak barrels?*

This is consistent with Single Malt whiskies produced elsewhere and is supported by the SWA.

- *Should TTB amend its regulations to allow for the designation “straight” to be used with American Single Malt Whisky?*

The paragraph above headed “Minimum maturation period” is referred to. Rather than have two different grades of American Single Malt Whisky (one at least 2 years old and one which could be only a day old), a specified minimum maturation period should be introduced for the reasons set out above. At the very least, American Single Malt Whisky should automatically be a ‘straight’ whisky as a fundamental part of its definition.

- *Should the use of coloring, flavoring, or blending materials be allowed in the production of American single malt whisky?*

The proposed standard would allow flavouring and “blending materials” to be added. It is understood “blending materials” can include sugar, wine and glycerol. The addition of flavouring and blending

materials would undermine the category's traditional reputation as a natural product whose organoleptic characteristics derive from its raw materials and production process and should not be permitted.

The addition of plain caramel colouring (E150a) is only permitted for whisky in the UK and EU in small quantities to adjust colour.

- *Should TTB amend its regulations to allow for mixtures of American single malt whisky to be labeled as "blended American single malt whisky," similar to how TTB regulations allow for blended Scotch whisky and blended Canadian whisky to be labeled, respectively, "blended Scotch whisky" and "blended Canadian whisky"?*

The question may misunderstand the nature of Blended Scotch Whisky. A Blended Scotch Whisky, as noted earlier, is a blend of Single Malt and Single Grain Scotch Whiskies and is not a blend of Single Malt Scotch Whiskies. A blend of Single Malt Scotch Whiskies from different distilleries is described as a "Blended Malt Scotch Whisky."

The SWA does not support the description "Blended American Single Malt Whisky". It is confusing. Either the product is a blend or a single whisky but it cannot be both. Alternative descriptions such as "American Blended Malt Whisky" would be suitable as long as it is clear that neutral alcohol is not permitted (as is the case for "Blended Whisky" as defined in the Federal Code.)

- *What impact, if any, would this new standard of identity have on current producers of malt whisky? Would the addition of a standard of identity for American Single Malt Whisky affect competition in the alcohol beverage market?*

The introduction of a flawed definition of American Single Malt Whisky would create a distorted market for the reasons set out above under the paragraph headed "What is the interest of the Scotch Whisky Association?" The introduction of a robust definition, including a specific minimum maturation requirement, would have a positive impact on competition by providing a suitable minimum standard which reflects the nature of the category, its reputation and quality and set a level playing field for all.

Other comments

- Neutral alcohol

The SWA supports the exclusion of neutral alcohol as a permitted addition.

- Batch distillation in pot stills

In contrast to the definition of Single Malt Scotch Whisky there is no requirement that American Single Malt Whisky be distilled in a pot still or be made by batch distillation. This could enable manufacture through continuous distillation in column stills which would produce a very different product.

- The requirement to label whiskies less than 4 years old with their age

It has been suggested by others that the current Federal Code provision (27 CFR &5.74) on labelling requirements for whiskies less than 4 years old justifies the lack of a specific minimum maturation requirement in the proposed standard. However, the provision is not rigorously enforced in practice and does not apply to exports from the US. The existence of the provision does not remove the need

for a category with such a high reputation as Single Malt Whisky from having a specific minimum maturation period as a fundamental requirement.

It would, however, be helpful for the TTB to raise awareness of this requirement and to take measures to improve enforcement of it. This would help fair competition and protect consumers.

Concluding remarks

The trend in many markets is to tighten requirements for whisky, including maturation requirements. A robust definition of American Single Malt Whisky will make it easier to position American Single Malt Whisky as a premium product. It helps fair competition amongst producers whilst enabling them to enter a rapidly growing global Single Malt category where success depends on demonstrating to discerning consumers, who want transparency, that it is a premium product which deserves its premium price tag.

Yours sincerely,

Alan Park

Director of Legal Affairs

The Scotch Whisky Association

www.scotch-whisky.org.uk