AGREEMENT BETWEEN THE OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE AND THE SECRETARÍA DE ECONOMÍA OF THE UNITED MEXICAN STATES ON TRADE IN TEQUILA

The Office of the United States Trade Representative ("USTR") and the Secretaría de Economía of the United Mexican States ("SE") (hereinafter referred to as the Parties):

REAFFIRMING the rights, obligations, and undertakings of the United States and Mexico under the North American Free Trade Agreement ("NAFTA"), the Marrakesh Agreement Establishing the World Trade Organization and its annexes (including the Agreement on Technical Barriers to Trade and the General Agreement on Tariffs and Trade 1994), and other multilateral, regional, and bilateral agreements and arrangements to which both governments are parties;

SHARING a common concern for preserving the integrity of tequila marketed in the territories of the United States and Mexico;

DESIRING to ensure that the laws and regulations of the United States and Mexico operate effectively to preserve the status of tequila as a distinctive product of Mexico;

DESIRING to minimize barriers to exports of tequila from Mexico to the United States, and to avoid unnecessary barriers to the marketing of tequila and tequila-containing products; and

NOTING that representatives of the Mexican tequila production industry and the United States distilled spirits industry in collaboration with representatives of the Canadian distilled spirits industry (collectively "industry representatives") have concluded a set of joint recommendations for ensuring the integrity of tequila (attached as Annex 1) ,

HAVE AGREED AS FOLLOWS:

Article 1: Definitions

For purposes of this Agreement:

1. **enterprise** has the meaning given to that term in Article 201 of the NAFTA;

2. **industry circular** means with respect to the United States, a publication of the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury ("TTB"), announcing policies or rulings of that agency;

3. **measure** has the meaning given to that term in Article 201 of the NAFTA;

4. **Official Mexican Standard for Tequila** means Mexican Standard "NOM-006-SCFI-1994 *Bebidas Alcohólicas. Tequila. Especificaciones,*" including any amendments, and its successors;

5. **person** has the meaning given to that term in Article 201 of the NAFTA;

6. **tequila** is a distinctive product of Mexico, manufactured in Mexico in compliance with the laws of Mexico regulating the manufacture of tequila; and

7. **territory** has the meaning given to that term in Article 201 of the NAFTA.

Article 2: Obligations of USTR

1. USTR shall ensure that an industry circular concerning tequila will be issued within 12 months after this Agreement enters into force. From time to time thereafter, this industry circular may be revised, or additional industry circulars may be issued.

2. The industry circular concerning tequila will include information that:

   (a) notifies businesses that import, bottle, or distribute tequila in the United States of United States laws and regulations concerning these activities;

   (b) restates the basic elements of the 1975 industry circular (number 75-13), issued by the Bureau of Alcohol, Tobacco and Firearms regarding the Standard of Identity for Tequila; and

   (c) provides specific examples of unauthorized activities in connection with the importation of tequila.

3. USTR shall ensure that the bottling of, and bulk storage operations for, tequila is prohibited in the United States unless conducted by a distiller, warehouseman, or processor, as those terms are defined in United States law, on the bonded premises of a distilled spirits plant, as that term is defined in United States law, by a person qualified to carry out these operations under Title 27, Chapter I, Part 19, Subpart G of the Code of Federal Regulations, as may be amended.

4. To address the threat of fraudulent labeling of a product that claims to be tequila or claims to contain tequila, USTR shall ensure that no label for such a product shall contain any brand name which, standing alone, or in association with other printed or graphic matter, creates any impression or inference as to the age, origin, identity, or other characteristics of the product, unless TTB finds that such brand name (when appropriately qualified if required) conveys no erroneous impressions as to the age, origin, identity, or other characteristics of the product.

Article 3: Obligations of SE

1. SE shall ensure that the Official Mexican Standard for Tequila is reviewed as provided for in Mexico's domestic legislation. SE shall notify USTR of any revisions to that standard, and other relevant regulations and standards referenced in it.

2. SE shall ensure that no measure of Mexico:

   (a) prohibits or restricts the exportation or sale for export of tequila destined for bottling in the territory of the United States, whether in the form of a requirement that tequila be bottled in Mexico, or in any other form (including government-mandated provisions in private contractual agreements);

   (b) regulates, or seeks to regulate, the labeling or marketing of tequila outside the territory of Mexico; or

   (c) regulates, or seeks to regulate, the labeling, formulation, or marketing of products containing tequila outside the territory of Mexico.

Article 4: Tequila Bottlers Registry

1. SE may require, through the Official Mexican Standard for Tequila, that all bottlers of tequila in the territories of the United States and Mexico be registered on a "Tequila Bottlers Registry."

2. SE shall grant a Certificate of Approval and enroll a bottler in the "Tequila Bottlers Registry" if the bottler obtains a Distilled Spirits Plant Permit and fulfills the administrative requirements established in the Mexican Federal Law on Administrative Procedures and the Official Mexican Standard for Tequila. Any such requirements shall be equally applicable to all bottlers.

3. If TTB revokes or terminates a Distilled Spirits Plant permit from a bottler registered on the Tequila Bottlers Registry, USTR shall ensure that SE is notified of that action. Notwithstanding Article 6.5, SE may then remove that bottler from the Tequila Bottlers Registry.

4. SE shall not require inspections of bottling facilities located in the territory of the United States in order for those facilities to be enrolled, maintained, or reinstated on the Tequila Bottlers Registry.

5. SE shall not take any corrective or punitive action against bottlers in the territory of the United States with regard to any activities that occur there based on a presumption of

non-compliance with the Official Mexican Standard for Tequila. Such action includes reducing or denying exportation of tequila to bottlers. If SE believes that corrective or punitive action against such a bottler is warranted, it may submit inquiries or complaints to USTR pursuant to Article 6.

6. With respect to enterprises located in the territory of the United States, SE shall interpret and apply the provisions of the Official Mexican Standard for Tequila in a manner that is consistent with the provisions of this Agreement and the Industry Initiatives in Annex 1, Section I.

Article 5: Working Group on Tequila

1. The Parties hereby establish a Working Group on Tequila, comprising representatives of both Parties. The Parties may invite representatives of other relevant agencies to participate.

2. The Working Group's functions will include:

   (a) monitoring the implementation and administration of this Agreement;

   (b) exchanging available statistics at the country-level on trade in tequila; and

   (c) making available on request by one Party, in accordance with the laws and regulations by which the other Party must abide, information concerning the importation and exportation of tequila.

3. SE may submit inquiries or complaints to the Working Group regarding specific incidents or patterns of alleged non-compliance with any of the following:

   (a) Article 2.4;

   (b) 27 U.S.C. § 205(f), with regard to the advertising of tequila and products containing tequila; or

   (c) United States laws governing the bottling of tequila.

4. USTR shall ensure that such inquiries or complaints, and the resolution thereof, are addressed in accordance with applicable United States laws and regulations. If TTB determines that a bottler is in violation of applicable United States laws or regulations, USTR shall ensure that the bottler is brought into compliance with those laws or regulations.

5. The Working Group shall meet on request of either Party and, unless the Parties

otherwise agree, at least once each year.

6. The Working Group may, as it considers appropriate, consult with representatives of non-governmental bodies, including the industry representatives that participated in the development of the joint recommendations contained in Annex 1 of this Agreement.

Article 6: Enforcement

1. SE shall presume, and hence treat, a bottler of tequila located in the territory of the United States that is subject to supervision by the authority of TTB as having met all of the requirements of the Official Mexican Standard for Tequila concerning on-site inspection by the "Compliance Assessment Agency" or any similar entity.

2. SE may submit inquiries or complaints to USTR regarding specific incidents or patterns of alleged non-compliance related to the application of NAFTA Article 313 and Annex 313.3 with respect to tequila. USTR shall ensure that such inquiries or complaints, and the resolution thereof, are recorded and tracked.

3. On receipt of a submission described in paragraph 2, USTR shall ensure that the incident or pattern is reviewed or investigated, and that action is taken, where appropriate, such as the destruction of the product, relabeling of the product, assessment of fines, or any other action that TTB has authority to take. TTB may seek additional information from SE. SE shall respond to requests for additional information in a timely manner. TTB may suspend further action if it is unable to proceed without further information from SE.

4. USTR shall ensure that SE is provided with any publicly available information that it requests on the status of a submission. This information may be of a preliminary nature if the review or investigation has not been completed. When TTB completes its review or investigation, USTR shall ensure that, if it so requests, SE is provided with any publicly available information on the final disposition. USTR shall ensure that SE has an opportunity to seek clarification on the findings and disposition after the resolution has become final, subject to Article 8.

5. SE may remove the bottler concerned from the Tequila Bottler's Registry only if, following the completion of the process established in this article, TTB revokes or terminates the bottler's Distilled Spirits Plant Permit.

6. At each meeting of the Working Group, USTR shall ensure that SE is provided with any publicly available information that it has requested on the disposition of its submissions. This information shall include the date each submission was received and the date the investigation was concluded or, if the investigation has not concluded, its current status. The information shall also be compiled and submitted to the deputy trade ministers of the United States and Mexico for review.

Article 7: Consultations

1. Either Party may submit a written request for consultations to the other Party regarding any matter relating to this Agreement. The Parties shall consult within 30 days of the date of delivery of the request.

2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through consultations.

Article 8: Confidentiality

Nothing in this Agreement requires either Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to laws protecting personal privacy, trade secrets, confidential information, or the financial affairs and accounts of individual customers of financial institutions.

Article 9: Limitation of Scope

This Agreement does not require the United States to amend its laws and regulations that require tequila to be bottled at alcohol levels greater than that allowed by the Official Mexican Standard for Tequila.

Article 10: Entry Into Force and Termination

1. This Agreement shall enter into force on signature.

2. This Agreement may be amended as the Parties so agree.

3. Either Party may terminate this Agreement with effect one year after it submits a written notice of termination to the other Party. Before submitting written notice, a Party considering termination of the Agreement shall enter into consultations with the other Party during which it shall present its reasons for considering termination and the other Party may seek to address any concerns that the first Party has raised.

4. This Agreement shall be in effect for five years from the date on which the Agreement enters into force, and shall renew automatically every five years thereafter, unless either Party provides written notice to the other that it objects to the extension of the Agreement no later than the first day of the fifth year in any such five-year period.

DONE, in duplicate, in the English and Spanish languages, each text being equally authentic.

FOR THE OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

WASHINGTON
JANUARY 17, 2006

FOR THE SECRETARÍA DE ECONOMÍA OF THE UNITED MEXICAN STATES

WASHINGTON
JANUARY 17, 2006

Annex 1

CONSOLIDATED JOINT RECOMMENDATIONS

CANADIAN, MEXICAN, U.S. INDUSTRIES

June 2, 2004

These joint recommendations were developed at the request of the governments of Canada, Mexico and the United States by representatives of the Canadian distilled spirits industry (represented by the Association of Canadian Distillers), the Mexican tequila production industry (represented by the Mexican National Chamber of the Tequila Industry), and the United States distilled spirits industry (represented by the Distilled Spirits Council of the United States, The Presidents' Forum trade association, and the Tequila Bulk Importers Alliance).

These recommendations are the result of the meetings held in Canada, Mexico and the United States during the period October 2003 through June 2004 and are aimed at ensuring the integrity of the tequila sold in the North American market through the adoption of mechanisms for tracking bulk tequila and its associated bottling through the supply chain. The industries recognize that the labeling and marketing of tequila and the formulation, labeling, and marketing of products containing tequila are governed by the laws of the country of import and sale, emphasizing that these local laws represent the sole basis for regulating the use of tequila when used as an ingredient in distilled spirits specialty products. Part I describes initiatives that the Canadian, Mexican and U.S. industries agree to undertake. Part II sets forth the three industries' joint recommendations to their respective governments.

I. Industry Initiatives

A. **Certificate of Export and Related Documents**: The industries agree that certain improvements should be made to the Certificado de Exportacion de Tequila (Certificate of Export or CET) issued by the Consejo Regulador del Tequila or other Compliance Assessment Agency (CRT) and other documents related to the importation of Tequila, as follows:

1. The industries agree to provide the CRT with a joint proposal to update the CET to address documentation concerns and obtain additional information regarding the underlying transaction to enhance the ability for record-keeping safeguards to prevent fraud.

2. Each CET should include multiple identifiable originals and copies, which would be provided to suppliers, Mexican Customs, U.S. or Canadian Customs, importers and the CRT.

3. The importer of record should be listed on the CET, as well as on invoices and all importation documents.

4. Each importer of record should supply a list of all "doing-business-as" (dba) names and should update that list as modifications are made.

5. For bulk shipments to Canada, the CRT should identify the recipient with its Federal Excise License (FEL) number and require the FEL number as a precondition for issuance of a CET. For bulk shipments to the United States, the CRT should identify the recipient with its Distilled Spirits Plant (DSP) number and require the DSP number as a precondition for issuance of a CET.

B. **Bulk Tequila Report:** Each Canadian and U.S. bulk tequila importer agrees to provide a report documenting the use of bulk Tequila.

1. The report will be provided quarterly, but the industries agree to review periodically the frequency of the report.

2. Each importer will file with the CRT quarterly reports containing data related to the bottling of tequila and products containing tequila. Each report must state the following:

- Amount of bulk Tequila on hand at beginning of period
- Amount of bulk Tequila received
- Amount bottled as straight Tequila, by brand
- Aggregate amount bottled as specialty products, including a list of brands bottled
- Losses/scrap
- Amount of bulk Tequila on hand at end of period
- Supplier name

3. In circumstances where there may be discrepancies, the CRT may request additional information from the importer for clarification. Should the additional information not resolve the discrepancy, the CRT must first request the local responsible agency to review the data and report its findings on a timely basis. The CRT will provide the report to all interested parties. If the local responsible agency confirms a material discrepancy, the CRT may refuse the issuance of further CETs until such time as the CRT is satisfied that the discrepancy has been resolved.

C. **Co-responsibility Agreements**: The industries agree that improvements should be made to the co-responsibility agreement program with the goal of eliminating

outliers.

1. Bulk tequila shipments for direct use must be covered by co-responsibility agreements.

2. The federal excise license number should be required in order for Canadian parties to enter into a co-responsibility agreement and the DSP number should be required in order for U.S. parties to enter into a co-responsibility agreement.

3. The industries understand that once the revised mandatory standard is published, there will be a need to update the current authorized template for the co-responsibility agreements. The industries acknowledge that commercial conditions should be taken into account when updating the template, and that the template shall incorporate the applicable provisions of the revised mandatory standard. To this end, the industries agree to establish a joint working Task Force to develop recommendations for the revised template.

4. Subject to due process requirements, the industries accept that the breach of a co-responsibility agreement may result in cancellation of approval by the Mexican Institute for Industrial Property (IMPI) and CRT denial to issue additional CETs to the parties involved.

5. With respect to third party bottling arrangements, authorization for such arrangements should be given if the third party assumes the same obligations under the co-responsibility agreement and the contractor guarantees the third party's compliance with the terms of the co-responsibility agreement, including certification and/or verification processes.

D. Tracking Measures

The industries agree to implement the following measures to enable tracking of tequila products:

1. All bottles of tequila or products containing tequila bottled in the United States will bear the DSP registry number or similar distinct identifier to enable tracking of individual packages. The CRT's certification number for the U.S. bottler will be the aforementioned bottler's DSP registry number or similar distinct identifier.

2. All bottles of tequila or products containing tequila bottled in Canada will

bear the FEL number or distinct identifier to enable tracking of individual packages. The CRT's certification number for the Canadian bottler will be the aforementioned bottler's FEL number or similar distinct identifier.

E. **Other Industry Initiatives**: The industries agree to take the following additional steps:

1. The Canadian and U.S. industries encourage the Mexican industry to initiate "showcase" litigation to prosecute offenders and to discourage potential offenders.

2. The industries request the United States Alcohol and Tobacco Tax and Trade Bureau ("TTB") to issue a new Circular to update and enhance the 1975 Circular 75-13 (9/8/75).

3. The industries recognize the right of any interested party to initiate appropriate administrative or legal actions in the jurisdiction where the product is sold where circumstances present a demonstrable risk to the Appellation of Origin of Tequila.

II. Recommendations to Governments

The industries jointly make the following recommendations to the governments of Canada, Mexico and the United States ("the Governments"):

A. **Certificate of Export and Related Documents**: The industries recommend that:

1. The Governments develop procedures to enable cross-checking the documentation in Mexico, Canada and the United States.

2. Upon final approval of an improved/revised CET, U.S. and Canadian Customs immediately start requiring a CET for all imports of Tequila.

3. U.S. and Canadian Customs should refuse admission of bulk tequila without a CET.

4. U.S., Canadian and Mexican Customs should issue a new Customs Bulletin or an appropriate equivalent document announcing the new requirements.

B. **TTB Industry Circular**: In accordance with the industries' recommendation in section I.E.2, the new TTB circular should include the following:

1. Specify permissible and impermissible activities relating to Tequila;

2. Note the Mexican Government requirement for co-responsibility agreements;

3. List the penalties for non-compliance;

4. Acknowledge that the Mexican Government imposes specific requirements and limitations upon the purchasers of bulk tequila.

C. **Development of Complaint and Enforcement Procedures:** The industries recommend that the Governments establish, through an exchange of letters or Memorandum of Understanding (MOU), a formal mechanism or formal procedures for reviewing substantiated complaints regarding product integrity. The industries agree that such a mechanism should include the following elements: 1) notification; 2) documentation; and 3) identification of specific regulatory contacts in the U.S., Mexican and Canadian Governments.

D. **Information Exchanges**:

1. The industries encourage the governments to exchange information to facilitate reconciliation of import/export data.

2. The industries urge the governments to utilize the Bioterrorism Act regulations to facilitate additional tracking of Tequila.

E. **Bottling Plant Certification and Verification Procedures**

1. The industries recognize that it is necessary to verify the suitability of facilities for the safe and effective storage, processing, and bottling of tequila and that adequate quality control systems are in place to assure that tequila will be bottled without risk of contamination or adulteration.

2. Mexico, through its designated representative, will devise an appropriate certification mechanism to implement the elements identified in paragraph 1.

3. If the importer's Government has an existing qualification and registration process for licensing distilled spirits bottlers and certifying their facilities, that process should be accepted by the CRT to satisfy certification requirements.

4. If a consensus develops between the Governments of Mexico and of the

importer that the qualification and registration process referenced in paragraph 3 above is inadequate, then CRT may initiate unilateral certification of the importer's bottling facilities.

F. Additional Recommendations

1. The industries acknowledge that there are different criteria in the three countries for recognizing trademarks and brand names. To further the goal of ensuring that all tequila can be tracked to the bottler and the producer, the industries urge the governments to provide a mechanism for registering brand names as trademarks or define if the brand names may satisfy the requirements for the registration and approval of the co-responsibility agreements.

2. We encourage the Governments to review their policies and procedures regarding the granting of intellectual property rights or recognition of common law rights with respect to the word "Tequila" to ensure that consumers are not misled as to the nature of a product.

G. Implementation of Recommendations

The industries encourage the Governments to:

1. Formalize in an MOU or through other appropriate means their commitments to implement these industry recommendations;

2. Ensure that all documents or measures that may be enacted, executed, or adopted, particularly the revised mandatory standard, the co-responsibility agreements, and the MOU (or other appropriate instrument), are consistent with these industry recommendations; and

3. Consider current commercial arrangements that may require either the grandfathering thereof or the granting of commercially reasonable phase-in periods to adjust those commercial arrangements to the provisions of the revised mandatory standard.