

# Federal Spirits: Single Markets in Goods in the United States and the European Union and the Case of Spirits Drinks

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This article compares the politics of internal market governance in the European Union and the United States by focusing on a shippable but highly regulated “sin” good: distilled spirits. A few generations ago, both arenas governed spirits in highly decentralized and varied ways. Over time, Europe has centralized regulation to increase market openness while the United States has seen little change. Today regulatory differences between American states create higher barriers to trade than those which persist among their European counterparts. Drawing on 102 interviews with firms, associations, and public officials, we explain this divergence by two factors: institutions and ideas. The EU’s institutional agents have encouraged market openness, including mobilizing pro-liberalization European businesses, while American firms have no similar public allies. Ideationally, European businesspeople are broadly comfortable with centralized enforcement of single market rules, while Americans view federal enforcement as unrealistic or illegitimate.

**Key words:** comparative federalism; distilled spirits; European Union; single markets; United States.

Alcoholic spirits are well suited for cross-border trade. They are shippable, with long shelf life, often high value-added, and frequently derive appeal from specific geographic origins. They are also “sinful” goods that pose health risks. Most

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governments regulate and tax them much more than other goods, creating jurisdiction-specific rules that complicate trade. This combination of features generates contestation around spirits in multi-jurisdictional markets.

Such fights stand out in the European Union (EU), whose “single market” project has confronted enormous variety in member-states’ alcohol regimes. Many legal cases that defined EU goods law *in general* arose over spirits, including *Dassonville* (1974, over Scotch whisky, C-8/74), *Cassis de Dijon* (1979, over French liqueur, C-120/78), and *Keck and Mithouard* (1993, another French liqueur, C-267/91, C-268/91). In the United States, too, decentralized alcohol regulation has clashed with market openness. Thanks to its twenty-first constitutional amendment—which ended the “Prohibition” era by agreeing to disagree, giving states special authority over alcohol—states’ regimes vary from public monopolies to fairly liberalized markets, much like European countries. Their different rules can hamper internal openness, potentially running afoul of the federal government’s mandate over interstate trade under the constitutional Commerce Clause. Although the Supreme Court (SCOTUS) became less inclined in the past half-century to invoke the Commerce Clause to invalidate state laws, prominent exceptions involve alcohol, including *Bacchus* (over a protected Hawaiian spirit, 468 U.S. 263 1984), *Granholm* (over discriminatory online wine sales, 544 U.S. 460 2005), and *Tennessee Retailers* (over discriminatory retail licenses, 588 U.S. 2019).

But if comparable internal-market tensions arise around spirits in these arenas, their resolutions look different. The EU has pushed its mandate for cross-border market access into this challenging sector. While member states retain wide powers to control spirits sales and advertising in the name of public health, over which the EU lacks authority, cross-border trade has been substantially liberalized. Products marketable in one member state are marketable in others without further authorization (although often with different labeling) due to EU policies against favoring home-country products. In the United States, the state regimes installed after Prohibition have encountered much less pressure from Commerce Clause-style concerns. Despite a market context of relatively homogeneous consumer preferences and fairly nationalized retail channels, producers treat states as distinct markets due to their idiosyncratic governance. European producers also tend to treat their continent as multiple markets, but outside the Scandinavian monopolies this reflects market-based variation in consumer preferences and retail outlets more than governance.

This article begins by reviewing scholarship on the two polities and comparative federalism to highlight that this divergence constitutes a puzzle. Each spirits regime may seem reasonable in its institutional context, but broader theoretical expectations suggest that Europe’s sovereign nations should have retained more control over this sector than US states. We combine variants of institutionalist and ideational theory to explain why they did not. Both arenas feature conflicting

institutional orders that intersect in this sector, one defending subunit sovereignty in the name of public health and another deploying central authority to promote open commerce. In analyzing policy trajectories and findings from 102 interviews with European and American businesspeople and officials, we highlight the mechanisms that empowered one order relative to the other. One mechanism concerns the specific mandates and organizational resources each polity assigned to internal-market openness. The other reflects political culture or ideology: if many Europeans question the EU's legitimacy, Americans often take an even dimmer view of federal-level action. Overall, the comparison in spirits shows more than the idiosyncratic politics of a sin-good sector. It is revelatory of the broad dynamics of single-market politics in both polities.

## The literature: why expect spirits liberalization?

Given well-known features of US federalism or European integration, scholars of either arena might see their spirits-governance trajectories as unsurprising. In comparative perspective, however, theories about change in federal or EU institutions suggest that liberalizing change should have been more likely in the United States. This section highlights this puzzle and then draws in theoretical tools to explain it.

American institutional and cultural features offer some obvious explanations for its relative lack of spirits liberalization. As the *Granholm* decision noted, "Our constitution places commerce in alcoholic beverages in a special category" (544 U.S. 460, 494 2005). In a country with Protestant temperance traditions, long-running fights culminated in federal-level Prohibition in the Eighteenth Amendment of 1919. The resulting corruption, revenue loss, and failure of enforcement brought repeal in the Twenty-first Amendment of 1933, which instead banned transportation of alcohol into a state "in violation of the laws thereof." States retained some similarities because all adopted a "three-tier system," barring ties between producers, distributors and retailers due to concerns at the time about big-producer dominance. Otherwise they strongly diverged. About a third (seventeen today) chose to imitate the "Gothenburg Model" of Scandinavian countries, becoming "control states" with public monopolies. The rest regulated private actors through licensure in varied ways. They imposed variable excise taxes alongside federal duties. The result, argue histories of the sector, is inertia: these laws empower distributors to block change in defense of their middleman role, states want to maintain tax revenue and control, and a lingering "zeal for temperance" makes it difficult to attract support for change (Mendelson 2009, 14; Colman 2008).

Broad features of US federalism also raise generic roadblocks to federal action against state-level barriers. The Constitution envisaged separate spheres of authority

in “dual federalism.” Although the Commerce Clause gave Congress responsibility for interstate commerce, the states retained “police powers” to regulate within their borders. The early Supreme Court inferred a “Dormant Commerce Clause” (DCC) doctrine that even in the absence of federal legislation, states could not *purposefully* discriminate against out-of-state firms—but still generally allowed rules justified by other purposes (like, say, temperance, or public health) even if they had discriminatory effects. Moreover, even as the twentieth-century explosion of regulation at all levels in produced a more overlapping system of “cooperative federalism” (Zimmerman 2001), the Court preserved state autonomy by identifying a “presumption against preemption” (federal law only constrains the states where specifically legislated to do so: *Rice v. Sante Fe Elevator Corp.* 331 U.S. 218 1947) and a ban on “commandeering” (the federation may not require states or their officers to address particular problems or enforce its programs: Halberstam 2001). Even without the Twenty-First Amendment, federal actors who wanted to pry open state spirits regimes would face institutional obstacles (Glassman 1987).

In Europe, by contrast, sector-specific institutional and cultural features and the broader system plausibly favored some liberalization of spirits trade. The EU’s founding Treaty of Rome (1957) and later upgrade around the “Single Market 1992” plan were negotiated among countries with a Catholic core, none with powerful temperance traditions. Even Denmark, which joined in 1973, never had prohibition or an alcohol monopoly, unlike Sweden and Finland which joined in 1995. Alcoholic drinks were classified as agricultural goods, which agricultural exporters France and the Netherlands insisted on including in the European project, and over which the European institutions developed early and strong authority (Tigerstedt 1990). More generally, the Treaty included a strong mandate for across-the-board removal of state-level obstacles to the “four freedoms,” which the resource-poor European institutions could only pursue through “commandeering”—requiring action or inaction by member-states. The executive European Commission duly sought to craft rules for internal-market openness, while the Court of Justice of the EU (CJEU) gave expansive interpretations of the “freedoms,” casting state measures with discriminatory *effects* (not purposes) as potential violations (Barnard 2019). In spirits like other sectors, these institutions incentivized export-oriented producers to ally with EU agents to decrease barriers (Nicolaidis 2017). Still, spirits liberalization did not go as far as in other sectors due to rising public-health concerns, bolstered by Scandinavian accessions, and member-states’ authority over health policy (Baumberg and Anderson 2008).

Our literature review cannot stop there, however, because no scholar expects simple institutional or cultural inertia to determine governance. Governance can be defined as the processes that steer society through collective action (Ansell and Torfing 2022). At a basic level, such processes always feature inbuilt tensions between competing concerns, actors, ethics, resources, and time horizons (Olsen

2010). If work on federal and multilevel governance often acknowledges institutional path dependence or cultural constraints, it also characterizes such arenas as “constantly in motion” (Benz and Broschek 2013: 7). They evolve in centralizing or decentralizing ways to adapt institutions to changing conditions (Dardanelli et al. 2019). A survey of scholarly arguments about liberalizing change makes the puzzle of these outcomes stand out. Most predict more pressure for such change on American institutions than European ones.

The most directly relevant scholarship about transatlantic regulatory trajectories in recent decades, from David Vogel and co-authors, argues that the United States has generally moved away from “precautionary” health, safety, and environmental rules since the 1980s, while Europe has done the reverse (Vogel 2003; Kelemen and Vogel 2010; Vogel 2012). The explanation points to falling US public and political-elite demand for prudential rules, especially with growing Republican commitments to deregulation as of the 1990s, while Europeans became more concerned about similar risks. Although public health and alcohol are not directly addressed, this work clearly emphasizes a more pro-liberalization context in the United States. Moreover, consumer data hint at Americans’ low precautionary concern about spirits: their spirits consumption rose steadily after the 1980s, surpassing EU levels except in a few eastern member states.<sup>1</sup>

A powerful tradition of liberal-economic theory adds general expectations in similar directions. In multilevel politics, it hypothesizes, the more firms do business across internal borders, the more we should expect pressure for central action to integrate the internal market. This theorizing has been especially prominent in explaining EU liberalization (Moravcsik 1998; Sandholtz and Sweet 1998), but arises in US scholarship as well (Beer 1973)—and clearly predicts more liberalizing pressure on that side. Today goods trade across EU member-states remains roughly half as dense as across US states.<sup>2</sup> Big business dominates the US economy far more than Europe’s, with notable ongoing concentration in the alcohol sector (Alcohol and Tobacco Tax and Trade Bureau [TTB] 2022). By this logic, more (and more powerful) US businesses should favor liberalizing institutional change.

Broad institutionalist theorizing adds other parallel expectations (unlike more targeted strands of institutionalism, as we see shortly). Specific features of EU institutions may be more conducive than analogous US features to removing internal-market barriers, but prominent scholars hypothesize a broad institutional snowball effect: the more federal actors enjoy an overall preponderance of resources relative to their states, the better they can seize later opportunities to expand their mandates and authority (Skowronek 1982; Ziblatt 2006). Whether in the 1950s or today, the US federal government has enjoyed broader responsibilities and far more resources than the EU. It faces far less diverse and institutionally robust member states. In terms of overall institutional landscapes, that is, EU action to limit French or Swedish sovereignty over alcohol seems more remarkable than if Washington,

DC narrowed the authority of Texas or Connecticut under the Twenty-first Amendment.

Cultural or ideationally focused scholarship adds still more parallel points. Scholars of comparative federalism argue that shared identity and homogeneous culture favor accretion of central authority (Erk 2007; Erk and Koning 2010). Students of political economy suggest that distinctively pro-market attitudes in the United States—either broadly or focused among “market fundamentalist” conservatives—have carried it to especially deep liberalization (Swarts 2013; Block and Somers 2014; Campbell and Pedersen 2018). Meanwhile, neoliberalism has “remained marginal” in most EU countries (Vail 2018: 13).

In strictly legal terms, finally, the implied counterfactual of more liberalization in the United States and less in Europe seems plausible. Experts regard American law around alcohol as muddled, with contradictory rulings (Knettel 2016; Croxall 2022). In the EU, if the CJEU seized upon alcohol cases to define goods law, scholarship on these decisions emphasizes their extraordinary boldness (Regan 2010; Amtenbrink et al. 2019). This implies plausible scenarios of less aggressive rulings, or rulings involving other goods while treating alcohol as more exceptional. In sum, plausible institutional-legal indeterminacy and theories about broad economic, institutional or ideational conditions raise questions about these polities’ trajectories.

What other conditions might have favored a centralizing “commerce” agenda to prevail more over decentralization and public-health concerns in Europe than the United States? One answer emphasizes specific federal/EU-level mandates and resources in these areas. If the broad institutional balance favored US federal actors over their states more than European agents over theirs, institutional features may empower actors and agendas in more targeted ways. Many scholars emphasize the issue-specific path-dependence of agencies in American federalism (Moe 1995; Huber and Shipan 2000; Gailmard and Patty 2007; Potter 2019). Invoking principal-agent theory, they posit that within complex institutions, agents can leverage specific mandates and resources to achieve unintended influence. Similar thinking underlies EU-focused literature on the market-building activities of the Commission and CJEU, which employed technical-legal mandates and political obscurity to pursue “integration by stealth” behind a “veil of law” (Burley and Mattli 1993; Majone 2005; Genschel and Jachtenfuchs 2016). On the EU side, this theoretical perspective highlights the specific institutional empowerment of a barrier-reduction project. It extends into spirits despite the overall robustness of member-state institutions, the diversity of national regimes, and reserved sovereignty over public health. On the US side, the same hypothesis would include a conventional emphasis on the Twenty-first Amendment and the institutionalized leverage of distributors to block change, but further emphasizes the absence of EU-style specific federal mandates or resources to promote interstate

commerce. Without these specific institutional features, the broad conditions that favor American liberalization have not been mobilized into major pressure on the post-Prohibition regime.

A second answer evokes more specific mechanisms of political culture or ideology. Federalism scholars emphasize that attitudes about balances of shared and self rule—the “federal spirit”—vary across arenas (Burgess 2013). Although many data points show that Americans hold generally more positive views of markets than Europeans (Alesina and Glaeser 2004; Zitelmann 2023), they are also widely characterized as perceiving a strong antagonism between markets and government, especially federal government and especially on the Right (Nash 1976; Dobbin 1994; Block and Somers 2014; Springer 2021). By contrast, pro-market actors on the European continent are frequently described as relating to “ordo-liberal” thought, which envisions the central state as the guarantor of competitive markets (Hein and Joerges 2017). When connected in a theorem about contextually specific ideologies of market governance, these literatures suggest a striking hypothesis about our puzzle: opposition to American federal authority over its economy might exceed that to analogous powers for the EU. These ideological contexts interact with and reinforce the institutional specificities noted above.

Stepping back, these hypotheses about internal markets and alcohol regimes fit well with the notion of “intercurrence,” or “relatively independent institutions moving in and out of alignment with one another” over time (Orren and Skowronek 2004: 96), or can be understood as contestation between political “orders” (Smith 1993; King and Smith 2005).

## Methods

Our study began with surveys of literature and public documents of the overall EU and US goods regimes, the specific rules for spirits, and recent public debates about them. We checked and specified this information in twenty-two preliminary interviews with spirits firms, associations and spirits-related officials in the United States and Europe. After this survey of the landscape, we designed comparable semi-structured interview protocols for EU and US actors (see [Supplementary Materials](#)), and recruited firms, associations and officials for eighty-two more Zoom interviews in 2022–2024 (Table 1). Transcripts of the one-hour interviews were first analyzed separately by three members of our team, followed by collective discussion, to identify patterns in responses. The main questions are summarized below in reporting our data. Given finite resources, we focused on four countries in the EU Single Market that vary in size, region, wealth, and alcohol traditions (Germany, France, Poland, Norway) and four US states across regions, with two control states (Pennsylvania, Oregon) and two noncontrol (California, Florida). Given our interest in pressures for change, we focused on producers. All sources

**Table 1.** Interview breakdown.

Interviewee category	Total interviews	Profile description
EU alcoholic drink producers	24	Large to small based in DE, FR, NO, PL
US alcoholic drink producers	24	Large to small based in CA, FL, OR, PA
EU alcoholic drinks association representatives	15	Including some EU, national, regional
US alcoholic drinks association representatives	11	Including national and state-level
EU public officials	14	EU Commission + national in DE, FR, NO, PL
US public officials	6	TTB + state agencies
Other relevant actors	8	Distributors, compliance consultants/lawyers
Grand total	102	

agree that distributors systematically oppose liberalization in the United States but not in the EU, which we verified in distributors’ associations’ positions online and one strongly verifying American interview reported below.

## Summarizing the landscape of spirits regimes

### The EU single-market regime and its relationship to spirits

The EU’s founding document, the European Economic Community (EEC) treaty of 1957, aimed to liberate the “four freedoms” of goods, services, persons, and capital. Signatories committed to eliminate tariffs, quotas, and “all measures of equivalent effect” for goods. Two spirits cases played central roles in interpretation of EU goods law. In *Dassonville* (1974), the CJEU supported a spirits importer’s objection that Belgium’s requirement for a special certificate for imported spirits was a “measure of equivalent effect,” defining this category hugely as “all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade.” In *Cassis de Dijon* (1979), it supported a spirits importer in overriding German regulations that classified the French aperitif as too weak to be a liqueur. This decision clarified a rule of mutual recognition: goods marketable in one member-state may in principle be sold elsewhere without further requirements. In both cases, defendants argued that national authority over public health warranted exceptions to EEC “freedoms.” The Court disagreed, on the way to elaborating that exceptions must be nondiscriminatory by nationality, “imperative,” “suitable,” and “proportional” for a public purpose (a “*Gebhard* test”: [Barnard 2019](#)).

Especially since the 1980s, the European Commission has worked to enact these principles into legislation and administrative systems. The “Single Market 1992” legislative agenda sought to “complete” the single market for goods with harmonized requirements and mutual recognition. It gradually harmonized rules for roughly 80 percent of goods, mixing maximum (uniform), and minimum harmonization (looser, with mutual recognition of allowed variations). Member-states may set higher requirements for their own producers but cannot exclude other states’ products that meet EU rules. Overall, the single market for goods is widely viewed as “complete,” although it still struggles with national transpositions, “gold-plating” that adds national requirements to EU rules, and enforcement issues (Pelkmans 2016).

This regime’s principles apply to spirits, with important exceptions linked to culture and public health. Food and drinks have distinct legislation, but like other goods are governed by principles of EU-wide market access that mix harmonization—with forty-seven categories of allowable spirits production—and mutual recognition.<sup>3</sup> Member-states have been forced to dismantle import, export, wholesale, and production monopolies that were once common. As goods with distinctive excise-tax regimes, alcohol also justified an unusual expansion of EU internal-market authority over taxation. Many national excise duties once favored national products and producers, leading to jurisprudence and legislation that forced some convergence (Baumberg and Anderson 2008). That said, excise duties still vary hugely (by a factor of nine between Bulgarian and Finnish spirits<sup>4</sup>), incentivizing cross-border purchases and competition for revenue, like at the largest Swedish monopoly store—which sits on the Norwegian border. Many other single-market derogations persist. Like with other food products, the EU enforces Geographical Indications (GI) that assign names of around 250 spirits to regions. Member-states may retain public retail monopolies, ban online spirits sales for all producers, set minimum pricing for alcohol, and ban alcohol advertising entirely or in part. In recent years, moreover, the EU has acquiesced to expanded public-health limits in several member-states. To some observers’ surprise, the CJEU allowed Scottish minimum-pricing schemes against Commission challenges in 2017, and the Commission demurred from opposing Irish requirements for cigarette-style cancer warnings on alcohol—even as nine member-states and industry insisted that this violated internal-market law (Pogatchnik 2023). Legally speaking, however, these are exceptions allowed by an EU whose alcohol regime is often critiqued by health experts or legal scholars as privileging market access over health (Greer et al. 2013; Davies 2017).

### **The American interstate commerce regime and its relationship to spirits**

Relative to the EU, the US goods regime exhibits weaker openness principles. They are rooted in the constitutional authority assigned to Congress for interstate

commerce. From it SCOTUS inferred the “Dormant Commerce Clause”: even without Congressional legislation, courts should invalidate state laws that unduly burden interstate commerce. Today this principle is interpreted to bar “purposeful discrimination.” Jurisprudence also includes the notion that states may advantage in-state commerce if the burden on commerce is “balanced” by public purposes, but legal scholars have long noted that erratic treatment of “burdens” and balancing purposes make a ban on purposeful discrimination the only consistent rule (Regan 1986; Friedman and Deacon 2011). A 2023 case consolidated that interpretation in upholding California animal-welfare rules for pork production, clearly “burdening” commerce because California produces almost no pork (*National Pork Producers Council v. Ross*, 598 U.S. 356). Although jurisprudence is not exactly settled on these questions, the apparent rule today is that states may set conditions on access to their markets given goals other than *purposeful* protectionism.

Congress clearly has authority to go further, “preempting” state rules in the name of interstate commerce, but in goods has pursued little of the national market-building legislation that governs services sectors like transport, telecommunications, or finance. Except for some standards like weights and measures, practically all goods-oriented federal legislation is focused on prudential requirements—food and drug safety, environmental protection, social conditions of work—rather than openness (see this issue’s introduction). Such requirements harmonize market-access conditions across states to some degree, but given a prudential focus, most legislation sets floors that states may exceed with other varied requirements.

Spirits governance reflects this general regime in some ways, with federal floors on misleading advertising and product promotions, but also features unusually strong preemption alongside exceptionally strong state autonomy. Since alcohol taxes were a longstanding source of federal revenue, the Federal Alcohol Administration Act of 1935 sets federal excise taxes and requires licensing of all sectoral actors, approval of product labeling (including health warnings), and product registration—one of very few sectors needing federal approval to place products on the market. Otherwise, the Twenty-First Amendment authorizes state-level control in enormous variety. Each state defines its own “three tier” relationships between producers, distributors and retail (although no federal law requires the three-tier system). Control states run idiosyncratic monopolies of wholesalers and/or retail outlets. Noncontrol states enforce intricate rules for distribution contracts, direct sales to customers, or retail placement. State spirits excise duties vary from \$33 per gallon in Washington to zero in New Hampshire (roughly half Europe’s variation). Like in Europe, border arbitrage is substantial; New Hampshire locates large state monopoly stores on highways at its borders. Overall, as one legal blog puts it (in language we encountered repeatedly in

interviews), selling in the United States “can feel like operating in 50 countries instead of a single one” (Malkin 2019).

By the mid-20th century, the public justifications of this system shifted from health or morality to revenue generation. A study of state alcohol agencies in the mid-1970s found that “both control and [noncontrol] states’ officials generally disclaimed any connection between their agency’s activities and prevention of alcohol problems” (Medicine in the Public Interest 1976). Control-state monopolies increasingly “move[d] in the direction of greater convenience and increased sales” (Room 1987: 520). Some states set aside alcohol revenue for public-health purposes, but not much. For example, in 2022–2023 the Pennsylvania Liquor Control Board contributed \$870 million to general revenue, \$5.2 million to drug and alcohol programs—and \$2 million to promote local producers.<sup>5</sup> Overall, alcohol availability is certainly constrained to some degree by state monopolies, and by noncontrol arrangements like retail-license quotas: in New Jersey, for example, restaurants or bars must buy alcohol licenses from a previous license-holder at costs that approach \$1 million. When coupled with much looser constraints on alcohol advertising than in European countries, however, these US arrangements are at most “a regime of mild discouragement” for alcohol consumption (Room and Örnberg 2019).

Alcohol governance has seen legal contestation, but without much impact in spirits. Starting in the 1990s, with the rise of the internet, the California wine industry sought access to consumers that bypassed the middlemen of three-tier systems. Several states with budding vineyards specifically banned online purchases out-of-state but not in-state—directly pitting Twenty-First Amendment powers against the Dormant Commerce Clause. The 2005 *Granholm* decision found for the latter, barring otherwise-unjustified “attempts to discriminate in favor of local producers,” as did the 2019 ruling against Tennessee’s residency requirements for liquor licenses (588 U.S. 504). Uncertainly prevails, however, over how much this logic extends beyond wine to spirits or other elements of state rules. Lower courts draw different conclusions (Knettel 2016; Croxall 2022). State monopolies routinely give preference to in-state producers in purchasing. In spirits, California itself currently authorizes online sales only for in-state distillers, while recognizing in public documents that this may be unconstitutional under *Granholm*.<sup>6</sup> In Pennsylvania and many other states, rapid growth of craft distilling has been promoted by new licenses for smaller producers that give local firms “huge advantages” (Stapleton and Laver 2022). Overall, despite legal potential for stronger interstate-openness rules and only muted reference to public health in defending current arrangements, the decentralized American spirits regime seems largely stable.

## Firms' views of interstate barriers in spirits

Interviews began with open-ended questions about barriers to interstate activity, with follow-up questions to ensure all respondents were asked about five areas of barriers identified in preliminary interviews: taxes, distribution, labeling, packaging, and advertising. This section summarizes how firms described the ease or difficulty of market access across their respective markets. The next displays how firms, associations, and officials characterize such barriers as public-policy problems and mobilize around them (or not). Numbered citations track interviews in our registry (1–82, anonymized descriptions of interviewees in the [Supplementary Materials](#)).

### The EU: a “mature” market with some remaining barriers

At a broad level, most European respondents expressed appreciation that the EU has removed barriers and made cross-border trade relatively straightforward. A Polish spirits association official summarized, “Thanks to the fact that, praise God, we have the European Union, it’s much easier for us to act really: a very wide market has opened up, we’re making good use of it” (41). One Norwegian producer echoed, “We have the EEA [European Economic Area] agreement (...) so within the EU, it’s super easy” (40). A French association official described the single market in spirits as “clearly very mature” (70). This perception of market access in a regulatory sense was accompanied by observations that national market conditions remain quite distinct. Larger producers operate through subsidiaries targeted at national (or sometimes regional) arenas (58, 65). Smaller firms complain about the cut they pay to national distributors—30–40 percent of profit margins, according to one French SME (37)—and worry that distributors deprioritize small brands: “[T]he distributor must have an adequate budget to be interested in selling this merchandise. (...) for small businesses it’s an insurmountable barrier” (41). But our respondents presented these challenges in selling across diverse markets as commercial problems that firms confront on their own, not as issues of collective action or governance (30, 58).

Within broad perceptions of improved openness, virtually all European interviewees identified the five kinds of barriers that emerged from preliminary interviews. They often focused first on taxation. All respondents complained that spirits are taxed more than other alcohol, and most portrayed varying excise duties as bureaucratic hassles. Distributors pay most excise, but related documentation is still “complicated” and “takes an enormous amount of time,” according to Polish and French producers (48 and 76; similarly 34, 40, 48, 68). A large French producer explained that varying tax makes pricing much more complex for firms with substantial sales across member-states (32; also 34).

Also prominently mentioned by many respondents were challenges with Scandinavian retail monopolies, especially for small producers (41, 45, 47, 76, 80).

An official from Cognac's trade association, for example, complained that these systems exclude some potential importers: "there are invitations to tender every year... and then, once you're in, well, that's pretty good, but as long as you're not in, well, you don't have the right" (71). Conversely, some small producers and a European association official noted that new brands may have better chances in this process than with big retailers in non-monopoly countries (81; also 34).

National variations in labeling rules drew the ire of all respondents, both for increasing health-warning demands and especially the costs of frequent changes. One Norwegian association representative describes the EU market as "less harmonized now than what it has been," pointing in particular to Irish cancer warnings (60). Smaller producers tend to see such costs as particularly unfair because they cannot diffuse them across economies of scale like larger producers. A Calvados producer told us, "It's the instability of labeling requirements that makes things complicated. You cannot say to yourself, 'Well I'm going to print a back label that will last 5 or 10 years.' Instead you have to do little print runs" (73; also 76). One annoyance combines excise and labeling: Poland and Italy require "strip stamps" (or *banderoles*) showing paid excise on bottles. This mostly bothers importers but also forces domestic producers to sort and pack exports differently (32, 45, 46, 47, 48).

Most interviewees saw potentially rising barriers in packaging, especially as environmentally concerned governments push for bottle re-use. Member-states are actively changing rules in this space, like recent Dutch moves on acceptable bottle weights that troubled an Armagnac producer: "...this body in the Netherlands threatened us in France with a fine if we didn't fill out a report and do what they wanted. Just crazy. And that ate up about three weeks, on and off, of my time" (75). At the EU level, although, the industry recently staved off major new requirements. Spirits bottles have generally been exempt from national re-use schemes, based on arguments that they feature more product-specific design and are less numerous than those for other beverages ([Spirits Europe 2024](#): 11; also 75, 59). European Parliament amendments to the Commission's 2023 proposal for a Packaging and Packaging Waste Regulation (PPWR) threatened to standardize spirits bottle design to facilitate re-use, but spirits associations successfully won exemption from these elements in the final Regulation (2022/0396(COD)).

Lastly, respondents noted that variations in advertising rules affect their strategies and opportunities. A Polish association summarized simply, "...if there is advertising then the strong players take advantage of it" (41). Overall bans in Scandinavian countries and the French ban on TV and sports-related advertising constrain and complicate how small producers can broaden their sales, lead larger producers to approach national markets differently, and are challenging to track as national policies change over time (42, 43, 58, 65, 70). At the same time, larger producers have taken advantage of country-based advertising regulation in digital

media. They can use Irish subsidiaries to reach audiences elsewhere because social media companies concentrate there, and Ireland's main alcohol advertising restrictions do not cover digital channels (79, 60).

### **The United States: interstate commerce like "selling to another country," but with some federalized rules**

At a general level, US respondents were less inclined than their EU counterparts to view internal cross-border trade as straightforward. They tended to describe it as complex and unpredictable. As one Oregonian producer joked, "uranium is easier to sell" in the United States than spirits (13). A Californian echoed a common phrase: "we jokingly talk about the fact that selling to another state is sometimes harder than selling to another country" (9).

Against that backdrop, producers' descriptions of barriers tended to start with state-by-state product registration and firm licensing. State licenses comes in many forms, some simple and some with dozens of specific licenses. Fees can be substantial, and complexity itself is costly, with producers often paying for support from "compliance" specialists. As one California producer said, "It can get pretty tricky to get yourself licensed, and make sure that you've met everything that that state wants. And it's very time consuming. There are companies you can hire to be compliant, but again, then they're going to have a fee. (...) I don't even know how you get to break even, nevertheless make money [*sic*]" (9).

Separate from licensing, and generally portrayed as more of a barrier to interstate sales, are distributional complications from states' "three-tier" variations. Like Europeans, producers (especially small ones) complain about paying a large cut of profits to distributors, but in the United States this is a legal requirement, not just commercial dependence on a business-to-business service. Laws create jurisdictional specificities that go far beyond the distinction between control and noncontrol states. Consider the following summary from a large-producer executive who handles the control states. Each state is "absolutely different" in how distribution works, he said, with many variations (and note that we intend this quotation to illustrate complexity, not to summarize this landscape comprehensibly):

First, who's actually running the warehouse? Is the state doing it or has it outsourced it? At this point, I think over half are outsourcing it. [*Mentions state examples*] That's one. A second distinction is. . .are they handling wine? Some states do, some don't. . . But so what are the advantages and disadvantages [for a spirits seller] that they're doing wine as well. And then the third variable is. . .do they have [publicly run] state stores? The majority do not. Jurisdictions like Iowa, Michigan have outsourced that. In those states, you tend to have a greater [spirits] presence, more equivalency with beer and wine, more outlets. You introduce a private retailer, it's usually then available in grocery stores or

convenience stores. And there's a [fourth] variable there too that I should mention. That's those states that outsource it, but through an agent. And they, so the retail stores, they use an agent. The state is still engaged in the retail to a greater degree. (21)

In noncontrol states, key idiosyncracies concern the number or conditions of allowable distribution contracts. For example, Georgia and Texas require producers to enter effectively unchangeable distribution contracts in perpetuity. A Florida producer said they focused first on other states, despite the appeal of those large-state markets, because they cannot go lightly into such relationships: "When we look at this, let's hold off till we have some power" (Spirits 17; also 19). Small producers also share their European analogues' commercial concerns about distributors—large distributors dominate outlets and put little effort into selling niche brands (2, 4, 17, 23, 35)—but US distributors' power is amplified by their legally required role. Producers systematically focused on legal regimes that empower distributors as their problem, not just the raw market power of distributors.

US respondents also complained about taxation, much like Europeans. They dislike high taxes and see spirits as unfairly burdened compared to wine and beer. Their main complaint, however, was complexity. One Oregonian producer asked, "Do I ever look at the fact that Tennessee has significantly lower spirits taxes than Washington, would I ever say that I should be selling more to Tennessee than Washington? No." But, he said, the complexity of accounting and compliance are a "huge problem. (...) and everyone's different" (12). A compliance consultant said that for small-producer clients, "taxes are a pain point. (...) how do you pull in and understand what the specific rates are? So, this is not merely excise tax, which is different in each state. But it is also sales tax, that's another very unique United States thing. . . we have 12,000 different sales tax jurisdictions. . ." (7).

Unlike EU firms, US respondents complained little about issues in labeling, packaging or advertising. These are federalized elements of spirits markets—with the TTB authorizing labels and bottles and the Federal Telecommunications Commission overseeing most advertising rules—and producers generally reported that these issues do not affect strategizing or success in interstate sales. That said, these areas are not entirely federalized, and our interviews just show that producers do not complain about regulatory variations on these issues, not that none are present. If federal authority predominates in media advertising, states have idiosyncratic rules on advertising via promotions or in stores. In recycling, just as the EU moved new rules forward in 2023, so did California, becoming the sixth US state to require deposit fees and related labels on spirits, effective in 2025 (Strike and Johns 2022). Producers whose spirits are sold in California must register with the program and pay processing fees. Although interviewees did not describe this as

a significant problem, the fact that Europeans complain about quite similar state-level changes in compliance and labels suggests that some of the difference lies not in the existence of regulatory variation but in perceptions about it as a public problem.

## How spirits producers see public problems in their sector

After questions about barriers, we asked interviewees whether they wanted anything done about such challenges. In both arenas we encountered considerable acceptance of existing barriers, often expressed as resigned fatalism. The key difference was that acceptance or resignation was partial in the EU but fairly complete in the United States. EU producers pointed to selected barriers as illegitimate and active targets for EU pressure (or as already-achieved liberalization to defend). Not only were US producers more disposed to defend the status quo as legitimate, those who saw change as desirable—a majority of our sample—also saw no prospect for major change.

### The EU: selected barriers as single-market priorities

EU producer interviewees implicitly organized their cross-border challenges on a spectrum from immovable fixtures to objectionable barriers they hope to remove.

On the immovable end are issues where EU authority is weak and national restrictions are rooted directly in public-health claims: advertising and the retail monopolies. As a Europe-wide producer summed up, “Well...the EU doesn’t have any harmonized legislation, so it’s all member states and some decide to be tougher than others” (58; also 65, 70). A Polish association used similar language: “...if there is no advertising then there is no advertising” (41). Officials at another Polish association traced these differences to culture: “...this is such a delicate issue...that harmonization at the EU level would probably be difficult... because this is the specifics not only of the law, but the specifics of certain habits, what is allowed, what is not allowed” (42, 43). On monopolies, as a Cognac association official said, “...they’re public health choices that for the most part are fifty or sixty years old, or even more. Well, the Nordics are very happy with them, or so they say, and they don’t want to change their minds, so we do what we do” (71; also 73). Among Norwegian interviewees, most support the monopoly, citing public health, good customer experiences, and transparent access criteria (37, 38, 59, 60). Some were more critical, but without advocating change: “We very soon realized that the prospect of getting a broad distribution in Norway through the wine monopoly is hopeless. It’s just nonsense spending money and time and energy on that” (40).

This producer decided to prioritize sales abroad, which is “much easier” than at home and “straightforward” in the EU (40; also 59).

In an intermediate position, with varying responses about contestability, were respondents’ characterizations of tax (where EU powers are also weak). A French producer said, “Well, it is a challenge, but what else can we do except accept? ... it is true that the excise tax is different [across countries]... So, all these things are challenging, but there’s no control that we have on it” (20). Some Polish producers justified some variations as reflecting wealth: “... I hesitate to say that this should also be harmonized excise tax level. Why did I hesitate? Well... the level of excise tax should be correlated with the purchasing power of the consumer. ...” (42, also 43, 49). Others were more direct that excise harmonization is desirable but hard to imagine. A Calvados producer depicted varying excises as “fiscal injustice,” adding “It would be simpler if we had... single excises... but that seems to me pretty complicated” (73). A Polish association official echoed, “I believe all formal-legal and tax issues should be harmonized... [but] it’s certainly not possible to unify all this” (44). Several respondents with similar views hoped that the EU will get rid of Polish and Italian *banderoles* (32, 44, 45, 46, 47, 48).

Most but not quite all of our respondents presented labeling and packaging as areas where the EU can and should prioritize harmonization. The exceptions were two British transplants to France, interestingly, who said they have given up on Europe: “... I would love to see harmonization, but I’m not a dreamer anymore. I know unfortunately you have now 27 countries in the EU. We don’t agree on immigration... Why should we agree on spirits and labeling?” (20; also 75). Our other respondents, by contrast, basically agreed with a large French producer: “I think the single market must play a role and must go further... I think we can really move towards harmonization, particularly of labeling, of packaging regulations” (32; similarly 34, 45, 47, 48, 58, 70, 71, 76). They generally hoped that the Commission would take a stronger role against what they perceive as ill-justified national exceptions. Many invoked Single Market principles in expressing disappointment that the Commission did not block Ireland’s cancer warnings, as did a Norwegian association official: “[I]t is clear that the Commission could have put its foot down. And said that this is an obstacle to trade because there is labeling on the bottle... But they haven’t done that... If you’re going to have [a health warning], it should be harmonized” (60; similarly 42, 43, 60, 65, 70). Such product regulations are the core terrain of the EU goods regime, and European producers perceive it as a supportive frame to reduce or at least limit what they see as market fragmentation and overregulation.

### **The United States: more uniform regulation as undesirable or desirable but impossible**

American respondents were more divided over the desirability of federal action to facilitate interstate commerce in their sector. Unlike in Europe, some producers fully argued against it. This included some small and medium firms, like distillers in Oregon, Florida, and Pennsylvania who appreciated that the regime creates barriers for newer competitors to catch up with them (13, 19, 23, 28). A larger Oregon producer worried that federal action was untrustworthy or unpredictable (although this person was not politically conservative): “I trust this state more than I trust the federal government. . . . Who knows what the federal government might do?” (12). Most supportive of the current system was a nationwide-producer executive, who defended it as democratic:

You could be more efficient with, if it were a uniform system in the United States. Again, I think that could lead to problems because each jurisdiction has its unique aspect, unique history, unique immigration background. I think the system works so that people in those jurisdictions, in those borders get the system they want (21).

Another camp of producers was more ambivalent (5, 11, 16, 22). They highlighted the need for locally adapted rules—“I don’t see that doing a general federal law would meet everybody’s needs” (5, in California)—while still seeing appeal in harmonization: “. . . in a perfect world, there’s one rule to rule them all. And then occasionally, you understand that there’s some exceptions that need to be made” (11, in Oregon). Small Florida firms complained about interstate barriers but worried that federal governance was too distant: “It’s one thing for us to go to Tallahassee and get to know our local regulators. We are a constituent here. I feel I lose that if I’m trying to communicate with federal regulation and oversight” (19), and the states are necessary “partners on the ground” to regulate well (22).

The largest group of producers—all small or medium-sized—endorsed more federal action to unify spirits regulation (2, 3, 4, 9, 15, 16, 17, 19, 23, 24, 27). They generally expressed interests in simplicity: “I don’t think I should be beholden to the rules of every single different state. I think that there should be a unified regulatory approach to the sales and distribution of alcohol throughout the United States” (4). For a California producer, “. . . it would be like other industries. If I make computer chips, I don’t have to worry about all this stuff. I don’t have to worry about who my customer is, or how I’m going to get my product to my customer. . . .” (9). For a small Florida producer, “to deal with one entity rather than 50, that would be awesome” (17). A small Pennsylvania producer would “like to see more of a one kind of uniform federal requirement. . . . As long as you meet those requirements, you should be able to sell wherever you want to” (15).

Unlike in Europe, however, supporters of change universally said they saw no prospects for major reform. Pennsylvania and Florida firms both said that a stronger federal role is “never going to happen” (16, 17). Some respondents gave unprompted explanations of inertia, citing the lobbying power of distributors (17, 22, 27) or big producers (15), states protecting their tax revenue (18; also 17, 23), or general polarization: “We can’t even elect a Speaker of the House,” remarked a Florida producer, “How can we decide to do something like this?” (24).

## **Associations’ agendas and institutional allies**

We reported some data from interviews with associations in previous sections, since we asked them about barriers and complaints they hear from their members, but now we give direct attention to associations’ agendas and interviews with some of their public-official interlocutors. Here, we encounter evidence for the proximate reason why European producers are less resigned than their American analogues to status-quo market governance. European spirits associations are enthusiastic participants in EU Single Market discussions and view internal-market-focused officials as key allies. American spirits associations echo many of their members’ complaints about the status quo but have no similar allies. They focus mainly on dispersed state-level efforts to liberalize where they can, but report powerful opposition from legally empowered distributors.

### **EU business built into single market institutions**

*SpiritsEurope*, an umbrella association for producers and national associations, names protection of a “frictionless EU single market for food and drink products” their number one priority ([Spirits Europe 2024](#)). They see Single Market-related EU officials as allies, as well as officials at DG AGRI, and unsurprisingly worry about public-health priorities at the health directorate, DG SANTE (80, 82). Leading into the 2024 European Parliament elections, *SpiritsEurope* worked with other food and general-business associations on messaging and events aimed at “relaunching” the Single Market. Distributors, too, echo this agenda through the European Confederation of Beverage Wholesaler Associations, with support for harmonization of excise rates and recycling policies and EU competition policy.<sup>7</sup> In the six interviews we did with national-level producer associations, all report strong agreement with *SpiritsEurope*, as implied by several remarks cited earlier (41, 42, 43, 44, 60, 70). As a French association official summed up, their priorities are wide openness and predictability: “We are exporters. So we work with free trade agreements. At the same time, we need to have a competitive framework. We have a lot of SMEs. This is fundamental for us. So anything that can be done as widely as possible will necessarily be more solid for us. And it’s true that we’re like all other sectors. We don’t like things that change or move too quickly, that aren’t

stable.” The Norwegian spirits association strongly defends Norway’s system—“We are the staunchest defender of [the monopoly]...because the underlying regulations require equal treatment and ensure market access”—but also stated more generally, “We are for harmonization,” and supported EU membership, like all Norwegian producers we interviewed (60; and 36, 37, 38, 40, 59).

It will not surprise EU experts that our public-official interviews confirmed the other side of this allied relationship. Interviews with spirits-relevant officials at DG GROW, DG AGRI, DG COMP (competition), and DG TAXUD (tax) confirmed their focus on reducing barriers to cross-border activity. For example, both DG GROW and DG AGRI were as surprised as the spirits industry that Commission leadership did not challenge the Irish cancer warnings on single-market grounds (a victory for DG SANTE). On excise tax, while recognizing that EU powers are weak and little movement is likely, Commission officials made their starting point clear: “Our position is that we are always trying to seek maximum harmonization and maximum convergence.” Competition-focused officials emphasized their surveillance of national nondiscrimination in Scandinavian monopolies’ product selection. Overall, while the Single Market agenda has not been a first-order priority for recent Commissions, these officials continue to work to enforce existing openness rules, argue against weakening those rules, and target barriers where EU authority supports it.

### **US business limited and divided by institutions**

The agenda and landscape for US spirits associations is different. The main association is the Distilled Spirits Council of the United States (DISCUS), with the American Craft Spirits Association (ACSA) specifically representing smaller producers. Like most of our producer respondents, they are critical of state-level restrictions. The DISCUS website notes, “Although Prohibition ended nearly a century ago, there are still many outdated laws and restrictions in states across the United States that keep adult consumers from being able to enjoy spirits when, how and where they want.”<sup>8</sup> In interviews, officials at both associations talked freely about these problems. “The very fractured nature of the regulations is a problem in itself,” said one, noting that DISCUS sells a state-rules database but that “It is a nightmare to keep it up to date...[which creates] huge risks for producers to run into a regulation they didn’t track” (62). While ACSA’s smaller members sometimes criticize the power of large producers, DISCUS officials emphasized that big producers welcome the rise of craft distillers for strengthening the sector’s appeal, both for consumers and for legislators as a site of local job creation (61, 62, 78). ACSA and DISCUS frequently work together at state and federal levels. At the federal level both mainly seek lower taxes, and are pushing to remove a Prohibition-era ban on Postal Service alcohol delivery. Both work with state associations for targeted state-rule liberalizations, with a recent focus on

expanding direct-to-consumer (DTC) sales beyond the seven states that currently allow it.

They do not, however, seek federal legislation or court rulings to significantly alter the overall regime. When we asked why, given their complaints and apparent legal openings after *Granholm*, one person said, “After a while in this business, at a certain point you just accept all these difficulties...” (61). These interviewees agreed on the main explanations (61, 62, 63, 78). First, obviously, is the institutional obstacle of the Twenty-First Amendment. But they also said they “can’t really criticize it” (62) because a major part of their own industry—the distributors, their direct customers and legally required partners—aggressively defends states’ rights (and also opposes changes like DTC sales or Postal Service reform). The Wine and Spirits Wholesalers of America (WSWA) does so with discourse of local oversight and public health that is politically resonant but—in our view—rather dissonant from alcohol sellers in an extremely concentrated industry.<sup>9</sup> The WSWA website lauds a system that “has prevented monopolies, ensured consumer safety, guarded against counterfeit alcohol, and promoted healthy oversight to bring the greatest variety of products to American consumers” and created “the world’s most reliable and cost-effective system of revenue collection.”<sup>10</sup> We heard similar arguments in a WSWA interview:

You know, talking to the public health sector...there’s a general sense that we’re pretty close to getting it right...we think that state and local regulation...is a much better way to reflect societal interests than a one-size-fits-all federal approach...[A]lcohol is best regulated by governmental entities more closely connected to the consumer who is affected by alcohol’s use and potential misuse and there are many jurisdictions for instance that drive retail licensing to the local level, so the town or city, because they are, in the opinion of that state, the best situated to decide the time, place, and manner of alcohol sales. (77)

Our interviews with public officials underscored that producers who sought liberalization have no obvious institutional allies. Federal and state officials were generally perplexed by our questions about whether their role included facilitation of interstate commerce. A top TTB official underscored their limited mandate: “we do our work to make sure there are safe products on the market and no misinformation, otherwise it’s a state issue” (64). A leader in one state agency took the legal framework for granted: “It’s like asking me, what do you think about the...Fifth Amendment protection against self-incrimination? Well, it’s what statute is. It’s what we’re familiar with” (29). Another head of a control-state liquor board engaged more with scenarios of unified rules, but mused, “As a nation, I think the fact that we have multiple models in actuality makes it a better system”—arguing that diversity in governance encourages “a wide variety of product

and...enough ways of getting it to market that people who want it can access it” (25). This person also emphasized that control agencies share best practices, and even attempt some coordination. For example, a control-state group is promoting unified warehouse tracking codes to replace disparate codes for the same products—although several states have rejected it. As an example of the attention to facilitating interstate commerce we can find in US spirits, this small and piecemeal effort underscores the contrast to Europe’s Single Market.

## Conclusion

Not very long ago both the United States and Europe regulated distilled spirits in profoundly decentralized, varied, and interventionist ways. Over time both saw powerful shifts toward market liberalization, but it reached further into European spirits. Liberalization was certainly not the only dynamic of European change; the same period witnessed growing public-health concerns, increasing restrictions on advertising and labeling, and falling consumption. But alongside those developments, EU member-states’ spirits regimes were substantially opened to cross-border access. The United States, meanwhile, saw some similar increase in public-health concerns but little change in decentralized market rules. American traditions of Protestant temperance seem to play little role in institutional inertia: this period saw alcohol regulators shift broadly from temperance-style discourse to revenue-based justifications for their powers, comparatively modest limits on alcohol advertising, and rising spirits consumption.

Our study approaches this comparison with data on recent views and mobilization, not by tracing these historical trajectories, but we see evidence in contemporary interviews for mechanisms that limited or fostered change over time. The proximate mechanism, which we highlighted in the preceding sections, is institutional—but in an active, agential way, going beyond a simple inertial observation that the EU signed treaties with specific commitments to broad liberalization while the United States walled off decentralized alcohol governance with a hard-to-alter constitutional rule. Those broad institutional-legal backdrops matter but were not written in stone. We strongly suspect that an EU with the same treaties could have carved out stronger exceptions for alcohol governance, and a United States with the same constitution could have seen more Commerce-Clause pressure on the 21st Amendment. Non-institutional theories support that expectation: high internal trade, high big-business concentration, and pro-market political culture in the United States should have favored pressure for market-opening governance more than in the EU. Our interviews suggest why they did not. While distillers everywhere want to sell spirits easily and widely, like other producers of tradeable goods, the active work of EU Single Market agents has encouraged business to mobilize for these goals over time. In the United States, not

only do institutions offer no such allies, they create veto points and ready-made discourse of local control and public health that empowers rent-seeking middlemen.

In our view this institutionally elicited-mobilization thesis is important but insufficient. We see signs of an ideational mechanism in our interviews—with more evidence in other contributions to this issue, and more research to be done. Not only have institutions elicited more market-integrating mobilization in the EU than the United States, but Americans appear to see local control on these issues as more legitimate and central-institutional action as more suspect than Europeans do. This is not true as a blanket statement: as other studies find in the wine sector (Colman 2008; Mendelson 2009), many US distillers find a single federal regime appealing. But relative to European respondents, our American interviewees were inconsistent in endorsing more uniform rules, and mixed that theme much more with others—justifying decentralization with rationales of varying local preferences, need for on-the-ground oversight, or distrust of central governance. All these rationales are striking in comparative perspective. The EU has far more varied preferences, far weaker capacities for central oversight, and—one might think—deeper resistance to central authority than in an old federal nation-state.

Our finding that such resistance is stronger among American distillers than European ones is broadly parallel to findings in our construction-sector study (see article in this issue; also Springer 2021), although with some differences in emphasis. In construction, many American businesspeople simply equate “federal” with “overregulated.” Some have difficulty even understanding how federal action could be understood as pro-market. By contrast, spirits producers have more complaints about the states, and generally accept that strong regulation is inevitable in their sector. While they still end up supporting or resigning themselves to more state-controlled governance than their European analogues—and show some distrust of “the feds”—they can at least imagine that federal rules in their sector would be liberalizing in a relative sense. The especially restrictive state-level rules around spirits make American producers more open to federal action.

With that qualification, our US-EU contrasts in spirits provide more suggestive evidence of political-ideological contexts that bolster the different institutional mechanisms in these arenas. They also begin to explain, perhaps, the huge nonbarking dogs that are off-screen in our interviews with sectoral actors: the US Congress and the EU member-states. In principle, Congress’s Commerce powers allow it to wade into the DCC-versus-21st-amendment terrain—imaginably with legislation supported by spirits producers and consumers—but it has not gone further than considering Postal Service alcohol deliveries. In the EU, member-states hold ultimate authority, and could have set stricter bounds to limit the institutional expansion of the Single Market agenda. The restraint of these actors with formal authority—holding back from change in the United States, allowing it

in Europe—hint that the institutional dynamism of US federalism and European integration operate within different ideological parameters: enduringly resonant anti-statism in the United States and surprisingly broad acceptance of a federal-state-like project in Europe.

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## Supplementary material

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## Notes

1. See data at <https://ourworldindata.org/alcohol-consumption>.
2. Economist Keith Head personally communicated this rough estimate, based on figures in Head and Mayer (2021).
3. [https://agriculture.ec.europa.eu/farming/crop-productions-and-plant-based-products/spirit-drinks\\_en](https://agriculture.ec.europa.eu/farming/crop-productions-and-plant-based-products/spirit-drinks_en).
4. <https://taxfoundation.org/data/all/eu/distilled-spirits-taxes-europe-2021/>.
5. PLCB Annual Report 2022–23, [lcb.pa.gov](http://lcb.pa.gov).
6. See Tom Wark’s *Fermentation* blog, <https://tomwark.substack.com/>, post on 23 March 2023.
7. See <https://www.cegrobb.org/en/insights/>.
8. See <https://www.distilledspirits.org/state-issues-market-modernizations/>.
9. In data that combines spirits and wine distribution, the Shanken Impact Databank report (<https://www.impactdatabank.com/>) estimates the top two firms controlled 53 percent of distribution in 2024, the top ten 81 percent. These firms serve as intermediary agents in most control states as well.
10. <https://www.wswa.org/issues/state-issues>.

## References

- Alcohol and Tobacco Tax and Trade Bureau (TTB). 2022. *Competition in the Markets for Beer, Wine and Spirits*. Washington, DC: Department of the Treasury.
- Alesina, Alberto, and Edward Glaeser. 2004. *Fighting Poverty in the U.S. and Europe*. Oxford: Oxford University Press.
- Amtenbrink, Fabian, Gareth Davies, Dmitry Kochenov, and Justin Lindeboom, eds. 2019. *The Internal Market and the Future of European Integration*. Cambridge: Cambridge University Press.
- Ansell, Christopher, and Jacob Torfing, eds. 2022. *Handbook on Theories of Governance*, 2nd ed. Cheltenham: Edward Elgar.
- Barnard, Catherine. 2019. *Substantive Law of the EU*, 6th ed. Oxford: Oxford University Press.
- Baumberg, Ben, and Peter Anderson. 2008. "Understanding the Impact of European Single Market Law on Alcohol Policies." *European Journal of Public Health* 18: 392–98.
- Beer, Samuel. 1973. "The Modernization of American Federalism." *Publius: The Journal of Federalism* 3: 49–95.
- Benz, Arthur, and Jörg Broschek. 2013. *Federal Dynamics: Continuity, Change, and the Varieties of Federalism*. Oxford: Oxford University Press.
- Block, Fred, and Margaret Somers. 2014. *The Power of Market Fundamentalism: Karl Polanyi's Critique*. Cambridge, MA: Harvard University Press.
- Burgess, Michael. 2013. *In Search of the Federal Spirit*. Oxford: Oxford University Press.
- Burley, Anne-Marie, and Walter Mattli. 1993. "Europe before the Court: A Political Theory of Legal Integration." *International Organization* 47: 41–76.
- Campbell, John L., and Ove K. Pedersen, eds. 2018. *The Rise of Neoliberalism and Institutional Analysis*. Princeton, NJ: Princeton University Press.
- Colman, Tyler. 2008. *Wine Politics: How Governments, Environmentalists, Mobsters, and Critics Influence the Wines We Drink*. Berkeley: Univ of California Press.
- Croxall, Daniel. 2022. "Delirium of Disorder: Tension between the Dormant Commerce Clause and the Twenty-first Amendment Stunts Independent Craft Brewery Growth." *Penn State Law Review* 126: 435–64.
- Dardanelli, Paolo, John Kincaid, Alan Fenna, André Kaiser, André Lecours, and Ajay Kumar Singh. 2019. "Conceptualizing, Measuring, and Theorizing Dynamic De/Centralization in Federations." *Publius: The Journal of Federalism* 49: 1–29.
- Davies, Gareth. 2017. "Between Market Access and Discrimination: Free Movement as a Right to Fair Conditions of Competition." In *Research Handbook on the Law of the EU's Internal Market*, edited by Panos Koutrakos and Jukka Snell, 13–28. London: Edward Elgar.
- Dobbin, Frank. 1994. *Forging Industrial Policy*. New York: Cambridge University Press.

- Erk, Jan. 2007. *Explaining Federalism*. Abingdon: Routledge.
- Erk, Jan, and Edward Koning. 2010. "New Structuralism and Institutional Change: Federalism between Centralization and Decentralization." *Comparative Political Studies* 43: 353–78.
- Friedman, Barry, and Daniel T. Deacon. 2011. "A Course Unbroken: The Constitutional Legitimacy of the Dormant Commerce Clause." *Virginia Law Review* 97: 1877–938.
- Gailmard, Sean, and John W. Patty. 2007. "Slackers and Zealots: Civil Service, Policy Discretion, and Bureaucratic Expertise." *American Journal of Political Science* 51: 873–89.
- Genschel, Philipp, and Markus Jachtenfuchs. 2016. "More Integration, Less Federation: The European Integration of Core State Powers." *Journal of European Public Policy* 23: 42–59.
- Glassman, Ronald M. 1987. "The State and Public Bureaucracies." In *The United States: The Anti-Statist Society*, edited by Martin Heper, 27–40. New York, NY: Greenwood Press.
- Greer, Scott L., Tamara K. Hervey, Johan P. Mackenbach, and Martin McKee. 2013. "Health Law and Policy in the European Union." *The Lancet* 381: 1135–44.
- Halberstam, David. 2001. "Comparative Federalism and the Issue of Commandeering." In *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union*, edited by Kalypso Nicolaïdis and Robert Howse. Oxford: Oxford University Press.
- Head, Keith, and Thierry Mayer. 2021. "The United States of Europe: A Gravity Model of the Four Freedoms." *Journal of Economic Perspectives* 35: 23–48.
- Hein, Josef, and Christian Joerges, eds. 2017. *Ordoliberalism, Law and the Rule of Economics*. London: Bloomsbury.
- Huber, John, and Charles Shipan. 2000. "The Costs of Control: Legislators, Agencies, and Transaction Costs." *Legislative Studies Quarterly* 25: 25–52.
- Kelemen, R. Daniel, and David Vogel. 2010. "Trading Places: The Role of the United States and the European Union in International Environmental Politics." *Comparative Political Studies* 43: 427–56.
- King, Desmond S., and Rogers M. Smith. 2005. "Racial Orders in American Political Development." *American Political Science Review* 99: 75–92.
- Knettel, Paul. 2016. "Constitutional Mixologists: Muddling the Analysis of Protectionist Alcoholic Beverage Laws after *Granholm v. Heald*." *Wash. UL Rev* 93: 1071–101.
- Majone, Giandomenico. 2005. "Delegation of Powers and the Fiduciary Principle." In *Dilemmas of European Integration*. Oxford: Oxford University Press.
- Malkin, Ryan. 2019. "How to Enter the US Market with a New Alcohol Brand," *Seven Fifty Daily*, July 15, 2019. <https://daily.sevenfifty.com/how-to-enter-the-u-s-market-with-a-new-alcohol-brand/>.
- Medicine in the Public Interest. 1976. *A Study in the Actual Effects Alcoholic Beverage Control Laws*. Washington: MIPI.
- Mendelson, Richard. 2009. *From Demon to Darling: A Legal History of Wine in America*. Berkeley, CA: University of California Press.

- Moe, Terry. 1995. "The Politics of Structural Choice: Toward a Theory of Public Bureaucracy." In *Organization Theory*, 117–53. New York: Oxford University Press.
- Moravcsik, Andrew. 1998. *The Choice for Europe*. London: Routledge.
- Nash, George. 1976. *The Conservative Intellectual Movement in America since 1945*. Wilmington: Intercollegiate Studies Institute.
- Nicolaïdis, Kalypso. 2017. "The Cassis Legacy." In *EU Law Stories*, edited by Fernanda Nicola and Bill Davies, 278–300. Cambridge: Cambridge University Press.
- Olsen, J. P. 2010. *Governing through Institution-Building*. Oxford: Oxford University Press.
- Orren, Karen, and Stephen Skowronek. 2004. *The Search for American Political Development*. New York: Cambridge University Press.
- Pelkmans, Jacques. 2016. "Why the Single Market Remains the EU's Core Business." *West European Politics* 39: 1095–113.
- Pogatchnik, Shawn. 2023. "Ireland Signs Law Requiring Cancer Warnings on All Alcoholic Beverages." *politico.com*, May 22, 2023.
- Potter, Rachel Augustine. 2019. *Bending the Rules: Procedural Politicking in the Bureaucracy*. Chicago London: The University of Chicago Press.
- Regan, Donald. 1986. "Making Sense of the Dormant Commerce Clause." *Michigan Law Review* 84: 1091–287.
- . 2010. "An Outsider's View of Dassonville and Cassis de Dijon: On Interpretation and Policy." In *The Past and Future of EU Law*, edited by Miguel Poiares Maduro and Loïc Azoulay, 465–73. Oxford: Hart.
- Room, Robin. 1987. "Alcohol Monopolies in the U.S.: Challenges and Opportunities." *Journal of Public Health Policy* 8: 509.
- Room, Robin, and Jenny Cisneros Örnberg. 2019. "Government Monopoly as an Instrument for Public Health and Welfare: Lessons for Cannabis from Experience with Alcohol Monopolies." *International Journal of Drug Policy* 74: 223–28.
- Sandholtz, Wayne, and Alec Stone Sweet, eds. 1998. *European Integration and Supranational Governance*. Oxford: Oxford University Press.
- Skowronek, Stephen. 1982. *Building a New American State: The Expansion of National Administrative Capacities, 1877–1920*. Cambridge: Cambridge University Press.
- Smith, Rogers M. 1993. "Beyond Tocqueville, Myrdal, and Hartz: The Multiple Traditions in America." *American Political Science Review* 87: 549–66.
- Spirits Europe. 2024. "Re-Strengthening the European Spirit: Our Priorities for the 2024 European Elections and the Next European Commission." [https://spirits.eu/upload/files/publications/GEN.DOC-026-2023%20-%20European%20Spirits%20Manifesto%202024\(1\).pdf](https://spirits.eu/upload/files/publications/GEN.DOC-026-2023%20-%20European%20Spirits%20Manifesto%202024(1).pdf).
- Springer, Benedikt. 2021. "When Thinktanks Refuse Thinking: Why American Pro-Market Conservatives Oppose Market Integration." *Studies in American Political Development* 35: 239–252.

- Stapleton, Patrick, and Matthew Laver. 2022. "Pennsylvania Alcohol Laws Give Local Manufacturers a Huge Advantage." *Legal Intelligencer* 265: 5–8.
- Strike, Kerr and Johns. 2022. "California to Add Wine and Spirits to Recycling Bottle Bill." September 28, 2022. <https://www.alcohol.law/index.php?digest/california-to-add-wine-and-spirits-to-recycling-bottle-bill>.
- Swarts, Jonathan. 2013. *Constructing Neoliberalism: Economic Transformation in Anglo-American Democracies*. Toronto: University of Toronto Press.
- Tigerstedt, Christoffer. 1990. "The European Community and the Alcohol Policy Dimension." *Contemporary Drug Problems* 17: 461–79.
- Vail, Mark. 2018. *Liberalism in Illiberal States*. New York: Oxford University Press.
- Vogel, David. 2003. "The Hare and the Tortoise Revisited: The New Politics of Consumer and Environmental Regulation in Europe." *British Journal of Political Science* 33: 557–80.
- . 2012. *The Politics of Precaution*. Princeton: Princeton University Press.
- Ziblatt, Daniel. 2006. *Structuring the State: The Formation of Italy and Germany and the Puzzle of Federalism*. Princeton: Princeton University Press.
- Zimmerman, Joseph. 2001. "National-State Relations: Cooperative Federalism in the Twentieth Century." *Publius: The Journal of Federalism* 31: 15–30.
- Zitelmann, Rainer. 2023. "Attitudes towards Capitalism in 34 Countries on Five Continents." *Economic Affairs* 43: 353–71.