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Reference: Treaties tabled on 3 February 2009

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**JOINT STANDING
COMMITTEE ON TREATIES**

Monday, 16 March 2009

Members: Mr Kelvin Thomson (*Chair*), Senator McGauran (*Deputy Chair*), Senators Birmingham, Cash, Farrell, Ludlam, Pratt and Wortley and Mr Briggs, Mr Forrest, Ms Hall, Mr Murphy, Ms Neal, Ms Parke, Mr Simpkins and Ms Vamvakinou

Members in attendance: Senators Birmingham, Cash, Farrell, Pratt and Wortley and Mr Briggs, Ms Hall, Mr Murphy, Ms Parke and Mr Kelvin Thomson

Terms of reference for the inquiry:

To inquire into and report on:

Treaties tabled on 3 February 2009

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Committee met at 10.01 am

CHAIR (Mr Kelvin Thomson)—I now declare open this public hearing for the Joint Standing Committee on Treaties ongoing review of Australia's treaty obligations. Today the committee will receive evidence on two treaty actions tabled in parliament on 3 February this year. We will be hearing from witnesses representing various government departments, and I thank witnesses for being available for this hearing.

[10.04 am]

ARNOTT, Dr Stephen, Assistant Secretary, Film and Creative Industries, Department of the Environment, Water, Heritage and the Arts

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Convention on the Protection and Promotion of the Diversity of Cultural Expressions

CHAIR—Although the committee does not require you to give evidence under oath, I should advise you that this hearing is a legal proceeding of the parliament and warrants the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. I invite you to make some introductory remarks before we proceed to questions.

Dr Arnott—Thank you very much. I will make a short opening statement on behalf of the department. The Convention on the Protection and Promotion of the Diversity of Cultural Expressions plays an integral role in achieving UNESCO's core aims, which are to promote unity and diversity and to recognise the common heritage of humanity. The convention recognises the pluralism of cultural identity within society and promotes cultural diversity as a renewable and transformative human resource.

Australia has a long-standing commitment to the protection and promotion of cultural diversity, which is in harmony with the aims of the convention. The Australian government is supportive of promoting creativity and dialogue between cultures and ensuring people can express themselves through their artistic works and cultural expressions while also having access to those of others. The government's objective in acceding to the convention is to develop and maintain measures that protect and promote cultural diversity and to broaden opportunities for Australian artists and cultural practitioners both locally and overseas. Becoming a party to the convention would give Australia an opportunity for greater international engagement on cultural issues through the UNESCO forum and would be an expression of Australia's ongoing commitment to protecting and promoting cultural diversity in its territory. The convention was adopted by UNESCO in 2005, and entered into force in March 2007 following ratification by the

required 30 states. As of today, there are 95 state parties to the convention, plus the European community. Australia was involved in the development of the convention in 2005.

The Australian government committed to ratifying and giving effect to the convention in the *New direction for the arts* policy paper in 2007. Accession to the convention would be a positive contribution to the government's efforts to protect and promote Australia's cultural goods, services and activities, both here and overseas. Adoption of the convention would also encourage Australian artists to participate in cultural exchanges and to have further engagement with international audiences. The convention has the potential to make a wider range of cultural goods, services and activities available to Australian audiences and consumers, fostering a greater recognition of the diversity among Australia's Indigenous and immigrant cultures and cultures from around the world. Becoming a party to the convention would also give Australia an opportunity for greater international engagement on cultural issues through the UNESCO forum and be an expression of Australia's ongoing commitment to protecting and promoting cultural diversity.

On 30 September 2008, the Department of the Environment, Water, Heritage and the Arts sent out a call for submissions to 121 arts, culture, Indigenous, academic and collecting institutions, individuals and organisations. Written submissions were invited in relation to significant policy resourcing or infrastructure implications that would affect activities under the convention, opportunities created or constraints imposed by the convention on the organisation's ability to protect and promote diversity of cultural expressions, and any other significant implications of Australia's accession to the convention. A total of 17 submissions were received from organisations and agencies, plus two letters of support. All submissions were supportive of the Australian government's accession to the convention. Many stated that the aims of the convention are already integral in their own organisational aims and activities, and suggested new programs that could be implemented by their organisation under the convention. That concludes my opening statement. Thank you.

CHAIR—Thank you. I understand that, during consultations on the convention, some Indigenous advocacy groups argued that, in order for Australia to meet its obligations, heritage and land access laws might have to be modified in order to protect lands and territories that are culturally significant for Indigenous Australians. Do you have a response to that? Do you think that there might be a need for legislation to preserve Indigenous cultural expressions?

Dr Arnott—We are not of the view that that is required now. Our advice is that we can ratify the convention without any need for change to current legislation. It was raised that Indigenous Australians and their cultural expressions may not be afforded preferential treatment under the treaty, but Australia does have a range of measures in place already to support Indigenous culture and cultural expression.

CHAIR—An issue also raised by Indigenous organisations was that the capacity of Australian cultural organisations, including Indigenous organisations, to apply to the convention's International Fund for Cultural Diversity could be undermined due to our status as a relatively wealthy developed nation. Does the department have a view about that?

Mr Richards—The details of how the fund will operate as far as Australian cultural organisations are concerned is really yet to be determined, because Australia is obviously not a

signatory to the convention. Our understanding, though, is that, while the convention favours preferential treatment for cultures from developing countries, it certainly does not preclude cultural organisations and indigenous cultures from developed countries from benefiting from the access to the convention's fund.

CHAIR—This is the final question from me. Article 6(2)(a) of the convention states that parties may adopt 'regulatory measures aimed at protecting and promoting diversity of cultural expressions'. Some UNESCO members, including the United States, have not supported the convention due to concerns that that article might justify economic protectionism and may impede world trade. Do you think that concern is valid?

Dr Arnott—It has not been raised in the context of our work, as far as I am aware. Is that right, Stephen?

Mr Richards—That is certainly the case, and our understanding is that the convention, particularly in the way that Australia has adopted a reservation to article 20, means that Australia's international treaty obligations remain in effect and Australian government aspirations in terms of free trade through its free trade negotiations will not be compromised by ratification of the convention.

Ms PARKE—I am glad you raised the issue of the reservation to article 20, because there has been a submission from Mr Ben Goldsmith, who said that the reservation 'effectively negates' many of the protections provided under the treaty, particularly in relation to trade agreements. Why does the government see the need to make a reservation to article 20? How will this reservation be received by other states party to the convention?

Ms Robertson—I might just clarify that what we are seeking to do here is not a reservation but an interpretive declaration. They are two distinct things under international treaty law. A reservation performs a different function. A reservation seeks to limit—

Ms PARKE—I am sorry, but the background material we have says that the government proposes to accede to the convention with an interpretive declaration to article 16 and a reservation to article 20.

Ms Robertson—I beg your pardon; I thought you were talking about article 16. I think the reason why a reservation was viewed as necessary in relation to article 20 was that the treaty text is a little unusual in that sense. Certainly, under international principles of treaty law, we tend to interpret treaties in a manner consistent with our existing obligations. Even though I think that is captured, in a sense, if we look at—

Ms PARKE—Article 20(2).

Ms Robertson—article 20(2), it is to clarify and underline that point.

Ms PARKE—That would tend to suggest that it is not necessary, given the article which says:

Nothing in this Convention shall be interpreted as modifying rights and obligations of the Parties under any other treaties to which they are parties.

It seems to me that this reservation is unnecessary.

Ms Robertson—I think the concern at the time was that article 20(1)(a) and (b) was unusual text and could cause confusion, and that was why the reservation was put in.

Ms PARKE—Presumably many other different treaties are entered into by Australia and their differing obligations are interrelated. Presumably Australia manages those interrelated obligations and still manages to abide by the terms of those differing treaties. Why is this one treated differently?

Mr Braddock—If I may add to that answer: treaties will often have a provision in them dealing with relations with other treaties. I think in this case the relationship clause, article 20(2), is unusual—for example, in paragraph (1) it states ‘without subordinating this convention to any other treaty’, which causes some ambiguity when you read that together with the provision in article 22 which you just mentioned. So, from my understanding, the purpose of the reservation is to clarify the operation of this treaty and its relation to other treaties which we are already a party to and may become a party to in the future.

Ms PARKE—How do you think this reservation will be received by other states that are parties to the convention? Making a reservation to a treaty is a very serious thing to do.

Mr Braddock—It can be a serious thing to do. It is permitted by this treaty and we know that at least one other state has made a similar reservation. Others might. I am not aware of any adverse reaction to that reservation.

Dr Arnott—We are not aware of any adverse reaction.

Ms PARKE—In relation to article 16, on which the government proposes to make an interpretive declaration clarifying that the convention will not affect the content or interpretation of Australia’s immigration laws, there has been a submission from Dr Ben Saul, who claims that the declaration reinforces the discriminatory nature of Australia’s immigration laws against people from developing nations. How might domestic laws be affected if Australia acceded without this interpretive declaration?

Ms Ireland—We thought there were two interpretations open with that particular clause, one which would mean there is no change to Australian immigration laws and one which would require, for example, a new visa class to be created. The interpretive declaration was just to make it clear that the visa regime would continue as is rather than having to have specific new visa regimes created.

Senator CASH—My questions are for Dr Arnott, in relation to some of the issues you raised in your opening statement. You stated that accession to the convention would broaden opportunities for Australian artists both locally and overseas. Could you expand upon how you see the convention broadening these opportunities? What opportunities are you referring to, and how would it broaden them?

Dr Arnott—Obviously, currently, Australian artists do get lots of opportunities to perform overseas or to display their works and so on. Being a part of the convention just means that

Australia is a part of a broader forum which regularly engages on issues of cultural diversity, and being part of that forum will hopefully grow opportunities for Australian artists.

Senator CASH—So it is awareness raising?

Dr Arnott—Yes, that is right.

Senator CASH—You also said that the treaty has the potential to make a wider selection of Australian cultural goods, services and activities available locally. What did you mean by that?

Dr Arnott—Once awareness is out there that we have acceded to the convention, there is likely to be some interest from cultural organisations in promoting that and working with artists to develop activities and so on which are clearly in line with the aims and principles of the convention.

Senator CASH—Are you saying that we do not do that already because we are not party to the convention?

Dr Arnott—No. I think we do that extensively already, but I would hope that there would also be a bit of impetus to increase that activity as a result of acceding to the convention.

Senator BIRMINGHAM—Thank you for your time today. This convention, I believe, was finalised in 2005. Has consideration of ratification been a matter of government for some time now that spans the period of the previous government as well?

Dr Arnott—I believe that is correct.

Mr Richards—The government made a commitment in its New Directions for the Arts policy statement, which came out in September 2007, to ratify the treaty, and that is the action that we are acting on at the moment. When the treaty was first negotiated by UNESCO in 2005, the government at that time made a decision to not support the convention; in fact, to abstain from the vote. The motivation for that were concerns over the ambiguity of article 20 and also concerns over article 16 relating to immigration. So, taking on board those considerations, they have been a key deliberation for government in terms of making a judgment about how to appropriately ratify the convention on this occasion.

Senator BIRMINGHAM—Obviously, by September 2007, they thought they had found a pathway for appropriate ratification.

Mr Richards—That was the government's policy commitment, and we, since that time, have been working with relevant departments such as Foreign Affairs and Trade, the Attorney-General's Department and other affected departments through an IDC to ensure an appropriate framework in which that would operate and to determine the extent to which legislative amendment may or may not be required. Through that IDC, we have confirmed that that is not necessary but that the interpretive declaration to article 16 and the reservation to article 20 are appropriate mechanisms.

Senator BIRMINGHAM—I will turn to the International Fund for Cultural Diversity. What is its annual targeted budget expected to be? I note in the NIA that Australia's annual contribution is expected to be \$70,000 per annum. That does not strike me as a sum that is going to see an international fund for cultural diversity add up to terribly much.

Mr Richards—I am not aware of the specific size of the fund. That may be something we can take on notice. Our understanding is that contributions from countries are one per cent of their GDP.

Ms Carter—It is still actually being formalised through the intergovernmental committee for the convention at the moment, so the amount is not known and the specific fundraising mechanisms are still being worked out.

Senator BIRMINGHAM—I am guessing it is not one per cent of GDP, not if Australia's contribution is going to be \$70,000 per annum—not unless the Rudd recession is going to hit much harder than anybody is willing to admit at present.

Mr Richards—Sorry, it is one per cent of the annual UNESCO contribution; our apologies.

Senator BIRMINGHAM—Thank you, Mr Richards. How is that fund money to be distributed? What is its purpose?

Dr Arnott—I think that is still being decided by the interdepartmental committee, so we are not aware of how that is actually going to be implemented at this stage.

Senator BIRMINGHAM—And its purpose? Is it expected that it is for grants to artists from developing countries or grants to arts agencies in developing countries? Does it have a purpose?

Ms Carter—As far as I know, there are not specific restrictions on who can apply as yet. Those are still being worked out.

Senator BIRMINGHAM—So it is a grants based fund?

Ms Carter—Yes, I think so.

Senator BIRMINGHAM—Perhaps you could take that on notice and provide us with a bit of a precis of what that is. That would be helpful.

Dr Arnott—Sure.

Senator CASH—I would like to pick up on one question in relation to that. I know, in relation to the International Fund for Cultural Diversity, that it is financed in part by the voluntary contributions made by parties and that there is a high level of expectation that Australia would make a contribution. How many of the countries that have already ratified the convention make voluntary contributions?

Mr Richards—That is not detail that we have available at the moment. That may be something that we can endeavour to find more information on and pass that back to the committee.

Senator CASH—That would be appreciated, thank you.

CHAIR—As there are no further questions, thank you very much for attending to give evidence today. There are a couple of things that you indicated that you might take on notice. We would appreciate your responding to the committee secretariat in due course on those.

[10.22 am]

GUY, Mr Stephen William, General Manager, Compliance and Trade, Australian Wine and Brandy Corporation

MARTINEZ, Mr John-Michael Jacques Louis, Assistant Manager, Wine Policy Section, Department of Agriculture, Fisheries and Forestry

WILLIAMSON, Mr Gregory John, Acting Executive Manager, Agricultural Productivity Division, Department of Agriculture, Fisheries and Forestry

Agreement between Australia and the European Community on Trade in Wine

CHAIR—We will now take evidence on the Agreement between Australia and the European Community on Trade in Wine. I draw to the attention of the committee that we have received a submission from Dr Matthew Rimmer, who is an academic at the Australian National University College of Law. Is it the wish of the committee that the submission from Dr Rimmer and associated exhibits as listed in the supplementary meeting papers for treaties tabled on 3 February be received as evidence and authorised for publication? There being no objection, it is so ordered.

Although the committee does not require you to give evidence under oath I should advise you that this hearing is a legal proceeding of the parliament and warrants the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. If you nominate to take any questions on notice, could you please ensure that your written response to questions reaches the committee secretariat within seven working days of your receipt of the transcript of today's proceedings. I invite you to make some introductory remarks before we proceed to questions.

Mr Williamson—Thank you, Chair. By way of introduction, Australia and the European Community signed the Australia-European Community agreement on trade in wine on 24 January 1994. This started the process of phasing out the use by Australian winemakers of European Union geographical indications and Australia committed to protect a number of the European Community's so-called traditional expressions. This 1994 agreement, however, left a number of matters regarding the protection of geographical indications and traditional expressions unresolved. For the benefit of the committee, a 'geographical indication' is a label or sign used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that place of origin. Under the agreement, the European Community and Australia will prevent the use of each other's geographical indications to describe wine. 'Traditional expressions' are words or expressions used in the description and presentation of a wine to refer to the method of production, or to the quality, colour or type of the wine.

The new agreement finalises the matters left unresolved from the 1994 agreement and updates this previous agreement in a number of key areas. It is particularly important to note that the new agreement has significant advantages for Australian wine producers and exporters, because all Australian winemaking techniques will now be accepted by the European Community. In total,

16 additional winemaking practices, including the use of oak chips, spinning cone technology and reverse osmosis will be added to the 28 approved in the 1994 agreement. In addition, any new winemaking practices will automatically receive provisional approval from the date of notification. This is a major step forward for the industry, as it secures access to Australia's largest wine export market—the European Community. In the context of this market the European Community accounted for just over half of all Australian wine exports in 2007-08. During that year Australia exported 397 million litres of wine to the European Community worth A\$1.3 billion while importing 18 million litres from Europe valued at A\$212 million.

It is fair to say that the Australian wine industry strongly supports the new agreement coming into force. The industry, through its peak representative organisation, the Winemakers Federation of Australia, was closely involved in the negotiations for the new agreement. The industry's statutory, regulatory and marketing authority, the Australian Wine and Brandy Corporation—Mr Stephen Guy is here today representing the corporation—was also intrinsic in the development of the new agreement.

The negotiating team was led by the Department of Agriculture, Fisheries and Forestry with representatives from Department of Foreign Affairs and Trade and IP Australia as well as from the Australian Wine and Brandy Corporation and the Winemakers Federation of Australia. Wine industry leaders have also been directly briefed through the Australian Wine and Brandy Corporation's Market Development Advisory Committee and its predecessor, the International Trade Advisory Committee. These committees collectively comprise representatives of large- and medium-scale winemakers, and they have been kept briefed on progress over the course of the negotiations—which, I might add, began around 2002. They have also been consulted on negotiating positions at all points in the process. The Winemakers Federation of Australia has also been provided with regular briefings to its board and members, which comprises an equal number of small-, medium- and large-scale winemakers and works on a consensus basis.

Fortified winemakers are considered to be the most affected by the new agreement. While most winemakers have shifted from using European geographical indications, style and names to describe their wines, shifting instead to grape variety and Australian region names, for fortified winemakers there were no obvious alternative names, particularly in the case of sherry and tokay. However, under the previous government a grant of \$500,000 was provided towards a fortified wine rebranding project which looked at developing alternative names and using this opportunity to reposition the fortified sector. This project is nearing completion and the renaming will see 'sherry' being referred to as 'apera' within a year of the agreement coming into force and 'tokay' will be known as 'topaque' within 10 years of that date.

With support of this project and the concessions from the European community concerning use by Australian winemakers of terms such as 'cream', 'vintage', 'tawny' and 'ruby', the fortified sector supports the new agreement. State and territory government officials have also endorsed the agreement, following the circulation of a national interest analysis and regulation impact statement through the Joint Standing Committee on Treaties. There are no implications from the agreement for the state and territory governments, and we are not aware of any issues they have with the proposed agreement. That concludes my opening statement. I am happy to take you through the details of the agreement, if you wish. If not, we are more than happy to take questions.

CHAIR—Was any consideration given to rebadging any of the fortified wines as rocket fuel! The national interest analysis describes the impact of the agreement on the fortified wine industry as significant. Can you tell us more about measures the fortified wine industry will need to take to be compliant with the agreement?

Mr Guy—I think if you were to take an Australian winemaker back to 1994 when the initial agreement was negotiated and told them that one day they would have to concede the use of the term ‘port’, for instance, they would have replied, ‘That’s okay because we still have access to the terms ‘ruby’, ‘tawny’ and ‘vintage’ to describe and differentiate the various classes of fortified wine. Of course, in the meantime, the rejoinder from the Europeans was that those words—‘ruby’, ‘tawny’ and ‘vintage’—along with a significant number of others, were traditional European expressions and therefore deserved to be afforded protection along the same lines as geographical indications. That was the main reason in this agreement that the industry was very keen not to concede use of those three terms and, indeed, we have clawed back the use of ‘ruby’, ‘tawny’ and ‘vintage’ for continuing use by Australian winemakers in any market, and that even includes European markets. We see that as a significant benefit from this agreement.

CHAIR—The committee received a submission which notes that previous agreements which regulate the naming of wines are under pressure to be expanded to larger geographical regions, particularly the Champagne region. Does that kind of expansion contradict the purpose of the agreement in the first place which is to contain the labelling to strict geographic regions? Do you think that has the potential to undermine the purpose of the agreement?

Mr Guy—Yes, it is true that the French have enlarged the area of their country that the wines from which are entitled to the use of the designation ‘champagne’. Australia could hardly object, however, since we have one of the largest geographical indications of all, being south-eastern Australia. Although it is possible to make an academic argument that when geographical indications are subject to change over time it might undermine the very principle of a GI, which is that there is a certain reputation, quality or character associated with wines from that defined region which are somehow specific to that defined region and when that agreement is subject to change geographically somehow the concept of a geographical indication is undermined. I think it is an academic argument and I think it is of little practical interest to Australian winemakers, who will not be able to continue the use of the word ‘champagne’ regardless of changes that are made to the boundaries of champagne within France.

CHAIR—The agreement has been negotiated over a 13-year period. Why has it taken that long?

Mr Williamson—This revised agreement in fact started in 2002. It was initialled in 2007. So it was a five-year negotiating period. It is a very detailed agreement. There are some provisions in there that were subject to some serious negotiation and concessions from both sides. With an agreement like that, you would expect time to be taken. There are some pretty sensitive issues in the agreement that were dealt with the constructively.

Senator WORTLEY—Mr Williamson, you said in your introductory statement that all Australian winemaking techniques will be approved and that is obviously of benefit to the Australian winemaking industry. Can you tell us about other benefits that will be achieved through this agreement?

Mr Williamson—I can tell you about the benefits at a high level, but I think Mr Guy would be best placed to provide you with more detailed information on that in terms of the benefits as to labelling and from the provisional agreement on winemaking practices. There is a whole range of benefits that accrue to the Australian industry from this agreement.

Mr Guy—Probably the main benefit is that this agreement will provide certainty to Australian winemakers going forward because it includes a standstill provision which prevents the European Union from imposing any more onerous requirements, such as labelling requirements or wine compositional requirements, on wine from this country in the future. So it will give Australian winemakers confidence to continue to produce wines in the manner in which we do in this country and to present them in the way that we typically do and not be denied access to European markets. I think that is probably the main benefit.

Senator BIRMINGHAM—Gentlemen, thank you for your time today. Mr Guy, it is very good to see you again. Can I touch firstly on the industry support through the \$500,000 package. Is that targeted purely to the adjustment for fortifieds?

Mr Williamson—Yes.

Senator BIRMINGHAM—Over what period of time is that? What restrictions or otherwise apply to that package as to how it can be used?

Mr Martinez—The project started a while ago and, now that replacement names have been developed, I think it is essentially at the stage of relaunching the new products, if you like. So the project is nearing completion. In terms of applicability, the word Sherry will need to be phased out within a year of the agreement coming into force and for Tokay it will be within 10 years of the agreement coming into force. So, apart from Tokay, all the other names—like Port and Sherry—will have to be phased out within a year.

Mr Guy—I would add that the Australian Wine and Brandy Corporation has already lodged an application for registration of the terms, Apera and Topage, as trademarks with IP Australia as certification marks. So these words will be available to all Australian winemakers provided they meet the conditions, yet to be determined, which will be associated with those two words. But I can also comment that, although there is a 10-year phase-out associated with the Hungarian geographical indication Tokay, Australian winemakers are wasting no time. In fact, I am aware of at least one that has already redesigned the label of a Rutherglen product with the brand Topage. That could well be on shelves within Australia within weeks.

Senator BIRMINGHAM—Just as consumers adjusted fairly quickly—and they were led by industry—to the transition from Champagne to a range of brand names based around the terminology of sparkling and otherwise, they should now expect to be seeing vintage, Tawny, Topage and the like replacing these items. Going back to the funding package, how much has been expended so far of that \$500,000?

Mr Martinez—The area I work in is not directly responsible for it; another section is. I cannot answer your question but I am happy to take it on notice.

Senator BIRMINGHAM—Yes, if you could; thank you. That funding has obviously assisted in establishing the names and the alternative names and how they might be used. Does it also extend to assisting in the promotion of those names?

Mr Martinez—That is correct. The funding was provided essentially to do extensive research and surveying as to customers' preferences and how readily acceptable the names would be. It was also about rebadging and relaunching. Essentially, now that the names have been registered and agreed it is entering the final stage of relaunching.

Senator BIRMINGHAM—In relation to tokay becoming topaque, is the relaunching and rebadging of that with government support also taking place in the short term, given that we have many first leaders in the industry seeking to change that?

Mr Williamson—Could you repeat that question?

Senator BIRMINGHAM—With the 10-year time frame for the change from tokay to topaque, is the government support front-ended over that 10 years to support those industry first leaders who are changing names and repackaging now or is it not until the 10-year critical date hits by which time many presumably would have already changed?

Mr Guy—As far as I am aware, most of that \$500,000 has already been expended on the market research, which led to the development and selection of the new names. Only a relatively small proportion remains to support the marketing of those products.

Senator BIRMINGHAM—Perhaps the department could provide us with the details of what support there is for those producers to market their new product names. Is legislative change required as a result of the agreement?

Mr Martinez—That is correct. There will be legislative changes required to the Australian Wine and Brandy Corporations Act 1980, obviously, as a result of the registration of new GIs, and there will also be consequential amendments required to the Trade Marks Act 1995 to ensure that provisions in the Australian Wine and Brandy Corporations Act are correctly mirrored in the Trade Marks Act.

Senator BIRMINGHAM—What is the time line for that change to meet the terms of the agreement?

Mr Martinez—Essentially, the department is working towards tabling an amendment bill during the winter session of parliament this year and aiming to have the agreement come into force sometime in the second half of this calendar year.

Mr Williamson—I would like to be clear that the agreement says nothing of the timing of the legislation. That is a matter for the Australian parliament. In fact, the agreement only comes into force when the enacting legislation has been enacted by the Australian parliament. But the agreement itself says nothing about the operations of the parliament.

Senator BIRMINGHAM—Are there other FTAs or other changes that you will be bundling up in that legislative package?

Mr Martinez—Yes, there are changes to the Label Integrity Program. I have not been closely involved with that side of things, but I believe the opportunity will be taken to ensure that all the requirements that need to be met to allow the agreement to come into force will be covered.

Senator BIRMINGHAM—Okay. We will see that legislation in due course. I assume comparable legislation is required in the EC?

Mr Guy—No. In Europe the treaty itself is a statutory instrument. It has the force of law, so it is not congruent with here.

Mr Martinez—The EC side of the equation has been settled, as Stephen indicated. I believe that at the end of last year the agreement was published in what is called the official journal, which is equivalent of the Australian gazette. So, essentially, the agreement is ready to come into force.

Senator BIRMINGHAM—Lastly, in terms of GIs and traditional expressions and so on, does this agreement place an increased responsibility on AWBC to assess any of those European GIs or are they purely a matter for the Europeans to assess and that, in a sense, we provide recognition for all those listed automatically upon the Europeans saying, ‘We have assessed it and settled that it is a GI’?

Mr Guy—Not in terms of assessment; in terms of determination of the geographical indications. But enforcement of the provisions is incumbent upon AWBC. We are the competent body established for the purposes of enforcing the treaty. But in principle there is no difference between the obligations that we are required to fulfil now and what we were required to fulfil under the earlier agreement. It is just the extent in terms of the number of geographical indications that we now have to deal with. Of course, since the signing of the initial agreement back in 1994, a number of countries have acceded to the European Union. There are now 27 member states not 15. So there is a much larger and broader range of geographical indications but the principle that AWBC is there to enforce—the provisions of the agreement—remains the same.

Senator BIRMINGHAM—If a Spanish winery were to send a shipment of wine to Australia that was called ‘champagne’, for example, would that be an enforcement matter for the AWBC to enforce?

Mr Guy—That is exactly right. Perhaps I should distinguish between the level of protection that is afforded to geographical indications and that afforded to traditional expressions. Were a Californian burgundy—a third country product—using a European geographical indication presented on the Australian market, AWBC would be required to prevent the sale of such a wine. But were a Californian spatlese—that is a traditional European expression meaning late harvest—presented on the Australian market, that would be perfectly legitimate because even though, under the agreement, Australian winemakers have agreed not to use those traditional expressions, we do not need to prevent third countries from using them. We are not recognising intellectual property in traditional expressions in the same way that we are with geographical indications.

Senator BIRMINGHAM—In relation to those geographical indications for third countries, do the other major wine producing countries recognise those GIs of the EC?

Mr Guy—Every country of course that is a member of the WTO has obligations under the TRIPs agreement, which does afford an extended level of protection to the geographical indications of wines and spirits. But, over and above that, a number of wine-producing countries have individually signed their own bilateral agreements with the European Union—Canada, the United States and South Africa come to mind, and Chile, though broader, was part of a free trade agreement

Senator BIRMINGHAM—Whilst there may be some exceptions in general, we are not enforcing terms on the United States, South African or other winemakers from outside the EC or Australia that they do not already recognise?

Mr Guy—That is exactly right. There should not be any objections to this from any third country in terms of any breach of WTO obligations that Australia has.

Ms PARKE—I am interested to know what the catalyst was for most of the Australian wine industry moving away from the geographical indications. Was it the 1994 agreement that anticipated an agreement on phase-out dates? As most of the wine industry has moved that way, why didn't the fortified wine industry move that way along with the rest of the industry?

Mr Guy—The catalyst was the request from the European Union for us not to use these words anymore. But, having said that, I think it would be wrong to characterise this as simply Australia being forced to stop using these words and in return receiving some benefits in terms of wine labelling and winemaking practices in that market. I think the result of this requirement to stop using those words has in fact benefited Australian wine producers because it has allowed us to be innovative, you could say forced us to be innovative, in terms of differentiating our product in different ways. So, even though the word 'champagne' technically is still available to Australian producers until this agreement comes into force, it would not be possible to find an Australian product described using that word anymore because we have moved on. We have not merely moved on prosaically just replacing the word 'champagne' with Australian sparkling wine but we have differentiated our products using recognisable brand names such as Yarra Glen, Croser, Arras, Midnight Cuvee—these sorts of words are household names in Australia now. So I think it would be wrong to say that the Australian industry has suffered in any way through having been forced to stop using these words.

Coming back to your question about fortified producers, yes, they were probably the segment that was most directly impacted and that is probably why the terms 'port' and 'sherry' were in that final tranche of geographical indications for which there was no phase-out date determined in the original agreement. But, as I said earlier, in relation to port there are viable alternatives in ruby, tawny and vintage in order to continue presenting those products. With sherry, it is more difficult but we are hoping and expect the word Apera, being short for aperitif, to be a reasonable replacement which over time will develop some consumer cachet.

Ms PARKE—What about words like 'methode champenoise'? I know that some Australian sparklings still put that at the bottom. Presumably that would be prohibited under the new agreement under article 3.

Mr Guy—Methode champenoise is not protected under article 3 of the agreement but rather under a joint declaration concerning article 13(3)(c) of the agreement.

Ms PARKE—Those sorts of things will be phased out.

Mr Guy—Yes.

Mr MURPHY—I have a few questions for Mr Guy and I want to pick up on the introductory remarks made by Mr Williamson in terms of this agreement improving our export performance. I have to declare an interest here. I have been talking to a lot of wine producers and exporters particularly over the last 12 months, so what I am about to ask Mr Guy is without prejudice. There has been quite a bit of criticism of the AWBC from the smaller wine producers and the smaller exporters because they would argue that the AWBC is very much driven by volumes of wine exported. I am interested in what this agreement might do for the smaller producers, the smaller exporters, who would argue that their product is a superior product—and against a background that dollar for dollar I do not think there would be anyone in this room who would not think that Australian wine is superior to French wine.

When one goes overseas there is the ubiquitous presence of Penfolds Rawson's Retreat, for example, Orlando's Jacob's Creek, Baseline Shiraz, Hardys Nottage Hill, an abundance of Yellow Tail. People who know anything about wine would say, 'Whilst it is very good that the volumes of our exports are improving our trade performance, what is this doing to improve the image of the products that we make here in Australia?' I am not being critical of you personally, but I am interested to know how the so-called better quality wines can be exported all over the world and enhance our overall reputation.

When I have been abroad and Rawson's Retreat is trotted out, Nottage Hill is trotted out, Jacob's Creek is trotted out and Yellow Tail is trotted out, they do not actually get well reviewed. Nevertheless, it has made a very significant contribution to our performance as evidenced by the latest statistic that the worldwide exports to June 2007 of 800 million litres will result in \$3 billion, which is not insignificant. I am interested in what AWBC is doing to improve the image of our wine overseas, apart from just concentrating on volumes which is obviously a benefit to trade.

Mr Guy—I do not think it is fair to say that AWBC is only interested in volumes. In fact, our general manager for market development recently said that we would willingly sacrifice a couple of percentage points of market share in exchange for enhanced profitability. So it is very much the objective of the Australian Wine and Brandy Corporation to increase the average price per litre of Australian wine exported. To that end, we have developed in recent years a marketing strategy designed to do precisely that: to promote Australia's fine wine offering both at the regional level and at the iconic end. That I think segues quite well into a discussion of the treaty because whereas we have been talking about geographical indications from a European context of course this protection of graphical indications is reciprocal and the Europeans must also protect Australia's GIs, of which there are something like 107 that have now been determined. So a promotion of regionality, regional differences and the unique characteristics of wines associated with those regions, I think would probably disproportionately benefit small wine producers above the larger companies that have, as you say, been very successful in accessing supermarket shelves in the UK with high-volume, commercial wine product.

Mr MURPHY—There is Penfolds Rawson’s Retreat, for example, but what if you wanted to market something superior overseas, say, Penfolds Bin 28 Kalimna shiraz from South Australia, one of our premium wine-growing districts, I think Australians would like to see more done even if it means assisting the bigger players to deliver superior quality. I have been working on free trade agreements over the last 12 months and I accept that some of the tariffs are horrendous, particularly in South-East Asia, but there is a perception in South-East Asia that they ought to be serving us French wine, which galls me when I know the quality and price of our wine, as you do. This might be getting away from this agreement, but I would hope that this would go some way to improving our export performance with something a little better because clearly some of the product being sold in South-East Asia and presented as quality French wine would not measure up against some of the wines that we buy off the shelf in Australia for \$20. That is a fact.

Mr Guy—I could not agree more. At all price points, the Australian wine offering is unequalled. In relation to Asia, you are right. There are very high tariff barriers in some countries, India perhaps being the most significant. But we have been working to erode those barriers and in that context it is interesting to see how Hong Kong, for instance, has reduced the tariff to zero. There are negotiations underway, as you know, with China aimed at lowering the barriers facing Australian wines accessing that market. In fact, China is now in the top 10 international destinations for Australian wine. Albeit off a low base, it is showing encouraging signs, at a time when our traditional markets are maturing and the growth that we have experienced over the last 10 to 15 years is showing signs not necessarily of decline but certainly of levelling out.

Mr MURPHY—Finally, I hope that we can exploit, for example, Hong Kong’s zero-tariff entry point to China, which is showing much more interest in our wine these days, to promote the better quality wines. I am heartened that the UK is buying more wine from us than the French. I think there is great capacity for us to become the No. 1 wine producer in the world, dollar for dollar. I do not think we can be beaten, and we can do a lot better than the No. 1 wine that is being sold in the UK, Jacob’s Creek. I am not being a snob, but we have better quality wines and we should be telling the world.

Mr Braddock—I would like to add a point of clarification, for the benefit of the committee, to an earlier comment made by Mr Guy with regard to the protection for traditional expressions. I think Mr Guy said that we are not required to prevent wines from third countries from using these traditional expressions. That is the case under the wine agreement, provided they comply with three conditions. The three conditions are that consumers are not misled, that the true origin of the wine is stated and that the use would not constitute unfair competition.

CHAIR—Thank you very much for attending to give evidence today.

Resolved (on motion by **Senator Wortley**):

That this committee authorises publication of the transcript of the evidence given before it at public hearing this day.

Committee adjourned at 11.02 am