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Submission to:

The Joint Standing Committee on Treaties (JSCOT), regarding the Inquiry into aspects of the Peru-Australia Free Trade Agreement (PAFTA) revisited.

October 2018

wfa Winemakers'
Federation of
Australia

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Introduction

Australia and Peru signed the Peru-Australia Free Trade Agreement (PAFTA) on 12 February 2018. Completion of our domestic treaty making process before the end of the year will give Australia the added bonus of a secondary tariff reduction on 1 January 2019. Therefore, we would urge a rapid conclusion to this inquiry. However, we would be prepared to engage in a broader conversation about ISDS and the plethora of free trade agreements at a later date with all interested parties.

PAFTA has again been referred to the joint Standing Committee on Treaties (JSCOT) by the Trade Minister, Mr Simon Birmingham following issues raised with him by the Shadow Minister, Mr Jason Clare. We understand the key issues relate to concerns about ISDS and about the increasing complexity created by multiple agreements with the same partner.

PAFTA is a good agreement for the wine sector. Immediate elimination of duties across lines of commercial interest to Australia with the remainder being phased out over 5 years (up to 9 per cent) provides an opportunity for exporters.

As one of the fastest growing economies in Latin America over the last decade, Peru presents a growing opportunity for Australian businesses, as we seek to diversify our export markets.

Background

The Winemakers' Federation of Australia (WFA) is the national peak body for Australia's winemakers. Our objective is to represent the interests of Australian wine industry on national and international issues. The Australian wine industry includes 65 regions nationally with over 2500 wine businesses and around 8000 wine grape growers, contributing to growth of regional economies, exports, tourism and jobs.

The Australian government as a representative organisation under the Australian Grape and Wine Authority (AGWA) Corporation Act recognises WFA. WFA is incorporated under the SA Associations Incorporation Act 1985.

WFA voluntary membership represents around 80% of the national wine grape crush. WFA represents small, medium and large winemakers from across the country's winemaking regions, with each having a voice at the Board level. WFA Board decisions require 80% support, so no one category can dominate the decision-making process. In practice, most decisions are determined by consensus. WFA works in partnership with the Australian Government and our sister organisation, Australian Vignerons (AV), to develop and implement policy that is in the wine industry's best interests.

WFA's activities are centred on providing leadership, strategy, advocacy and support that serves the Australian wine industry now and into the future.

We welcome the opportunity to provide a submission on behalf of the Winemakers Federation of Australia and the Australian wine industry.

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Key Issues

Australia exports more than 60 per cent of the wine we produce, so it's important that we continue to build our export markets. Growth and profitability in the Australian wine sector is strongly correlated with export performance. Australian exports have shown a pleasing return to growth in the past few years. The past 12 months have seen growth in both value and volume, with an increase of 11 per cent in value to \$2.71 billion and 5 per cent in volume to 842 million litres (or 94 million 9-litre case equivalents) for the year ended **30 September 2018 (see Table 1)**.

Shipments of bottled wine increased by 8 per cent in value to \$2.16 billion and 2 per cent in volume to 366 million litres (41 million 9-litre case equivalents). Shipments of unpackaged wine also grew strongly, with a 23 per cent increase in value to \$525 million and a 9 per cent increase in volume to 468 million litres.

There were also increases in the average value of wine exported, with a 7 per cent increase for bottled wine to \$5.90 per litre, a 13 per cent increase of unpackaged wine to \$1.12 per litre and a 5 per cent increase of all wine exported to \$3.21 per litre.

In the 12 months to 30 September, there was healthy growth across the price spectrum. Exports above \$10 per litre increased by 20 per cent to \$804 million, with the \$20 to \$29.99 segment in particular, showing considerable growth. Below \$10 per litre, the \$5 to \$7.49 segment was the best performer, growing by \$50 million.

Table 1: Exports by price segment (million AUD FOB)

Price segment (A\$/litre)	MAT September 2018	Value change	Growth rate
\$2.49 and under	\$543	\$38	8%
\$2.50 to \$4.99	\$838	\$33	4%
\$5.00 to \$7.49	\$362	\$50	16%
\$7.50 to \$9.99	\$159	\$11	8%
\$10.00 to \$14.99	\$207	\$16	8%
\$15.00 to \$19.99	\$73	-\$8.4	-10%
\$20.00 to \$29.99	\$168	\$60	55%
\$30.00 to \$49.99	\$98	\$14	16%
\$50.00 to \$99.99	\$189	\$43	30%
\$100.00 to \$199.99	\$20	\$5.1	35%
\$200.00 +	\$50	\$4.2	9%
Total value	\$2,706	\$266	11%

Exports grew to all but one of the major destination regions. The standout growth of 24 per cent was experienced in Northeast Asia, where exports grew to \$1.14 billion in value, while in North America, a \$16 million increase in exports to Canada only partially offset a \$38 million decline in exports to the United States of America (USA).

Regions in growth:

- Northeast Asia, by 24 per cent to \$1.14 billion
- Europe, by 5 per cent to \$604 million
- Southeast Asia, by 5 per cent to \$170 million

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- Oceania, by 21 per cent to \$105 million, and
- the Middle East, by 41 per cent to \$30 million.

Multiple free trade agreements

Ideally, the government would be able to rely on the multilateral trading system negotiations through the World Trade Organisation (WTO) to pursue trade liberalisation.

The WTO is the principal forum for setting the rules of international trade. It has helped reduce barriers to trade in both goods and services and created a dispute resolution system that supporters say has reduced the threat of trade wars. However, the institution is under considerable pressure. Negotiations on a comprehensive development agenda have foundered on disagreements over agricultural subsidies and intellectual property rights, while members have increasingly turned to separate bilateral and regional free trade agreements to advance their trade interests. Since the WTO was established, following World War Two, it has proved pivotal to the ability of smaller nations (such as Australia) to overcome trade distorting policies of trading partners. The international rules-based trading system is integral to any exporting nations' ability to trade on the global market. WFA remains a strong supporter of the WTO.

Unfortunately, for a number of well documented reasons the WTO has been hamstrung in the pursuit of multilateral reform. However, our reliance on exports mean that WFA is a strong supporter of free trade. In the absence of an effective negotiating platform for multilateral negotiations through the WTO, Free Trade Agreements provide an effective mechanism to liberalise trade.

The other advantage of a network of agreements is that once a country, in this case Peru, is a partner in an FTA, it means it gets easier to get other countries across the line in regional agreements such as the Pacific alliance. We support continued engagement in FTAs, both bilaterally and in the form of regional agreements.

Investor State Dispute Settlement

One of the key areas of contention around the text of the recent FTAs concerns provisions around investor-state dispute settlement (ISDS). ISDS is a mechanism in a free trade agreement (FTA) or investment treaty that provides foreign investors, including Australian investors overseas, with the right to access an international tribunal to resolve investment disputes.

Australia has negotiated ISDS provisions to provide protection for Australian companies investing abroad. ISDS promotes investor confidence and can protect against sovereign or political risk. If a country does not uphold its investment obligations, an investor can have their claim determined by an independent arbitral tribunal, usually comprising three arbitrators.

Australia has ISDS provisions in six in-force FTAs and there are ISDS provisions in the Trans-Pacific Partnership (TPP) Agreement, Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Peru-Australia Free Trade Agreement (PAFTA), which are not yet in force.

Over the past 30 years, there has been just one ISDS tribunal hearing against Australia. The dispute was brought by Philip Morris Asia challenging Australia's tobacco plain packaging legislation. On 18 December 2015, the tribunal issued a unanimous decision agreeing with Australia's position that the tribunal had no jurisdiction to hear Philip Morris Asia's claim.

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The key concern around ISDS is that it will allow Australia's laws and policies, to be threatened by trans-national corporations pursuing their own interests, backed by these provisions. Current discussions around the ISDS provisions in the TPP-11 have directly suggested that ANNEX 8 of the Agreement that deals with technical aspects of wine and spirits labelling and composition may prevent the Australian Government from introducing health warning labels on alcohol containers. This is clearly incorrect as the Agreement explicitly contains text that enables a government to introduce measures for public health and safety.

The view of WFA is that ISDS does not create a wide-ranging ability for large companies or interest groups to take action against the Australian government for a policy it doesn't like because the policy hurts its profits. ISDS disputes must involve the commitments that are made between the countries under the investment chapter. You can't just raise a dispute about anything. It has to relate to whether the state is observing the commitments it has entered into under the investment chapter. When you look at it under that lens, and look at the small number of disputes around the world under ISDS provisions of FTAs, you wonder what all the fuss is about.

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