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Agreement between Australia and the European Community on Trade in Wine

Background

3.1 It is proposed that Australia enter into the *Agreement between Australia and the European Community on Trade in Wine* (the Agreement).

3.2 The Agreement's purpose is to facilitate and promote trade in wine originating in the European Community (EC) and Australia.

3.3 Australia and the EC concluded a similar Agreement in 1994 to facilitate and promote trade in wine. The 1994 Agreement authorised a number of winemaking practices and provided for the protection of the names of wines originating from particular regions in Australia and the EC. However, the 1994 Agreement left unresolved a number of issues relating to the protection of certain EC Geographical Indications[1] and Traditional Expressions[2]. The proposed Agreement aims to resolve these issues and will replace the 1994 Agreement.[3]

3.4 The Agreement will enter into force after the Parties have notified each other in writing that their respective requirements for the entry into force of the Agreement have been complied with. The EC has already completed its requirements to bring the Agreement in to

1 A Geographical Indication is a sign used on goods that have a specific geographical origin and are claimed to possess qualities or a reputation attributable to that place of origin.

2 A Traditional Expression, in relation to wine, means a word or expression used in the description and presentation of the wine to refer to the method of production, or to the quality, colour or type, of the wine.

3 Regulation Impact Statement (RIS), p. 1.

force. For Australia to bring the Agreement into force, amendments will have to be made to the *Australian Wine and Brandy Corporation Act 1980*, the *Australian Wine and Brandy Corporation Regulations 1981* and the *Trade Marks Act 1995*.[4]

Obligations

3.5 Article five requires both Parties to authorise the importation and marketing of wine produced using the processes or practices outlined in the Agreement. In particular the EC is required to authorise the importation and marketing of Australian wines produced using 16 additional winemaking techniques which previously lacked authorisation, or were only provisionally authorised, under the 1994 Agreement.[5]

3.6 Article 10 sets out that where a dispute arises between the two Parties over recognition of a new production procedure or practice, a process of arbitration shall take place. The determination of this arbitration is binding on both Parties.[6]

3.7 Article 12 requires both Parties to prevent the use of certain protected names in the labelling of wines produced in their territories. Australia is required to prevent the use of names listed in Annex II, Part A and Annex III of the Agreement. The EC is required to prevent the use of names listed in Annex III of the Agreement. Both Parties are required to prevent the use of names that refer to the territories of the other Party.[7]

3.8 Articles 13 and 16 distinguish between how Geographical Indications and Traditional Expressions are regulated for wine imported from countries outside the Agreement. Article 13 requires that Parties prevent the misuse of Geographical Indications in the labelling of wine produced within their territories and imported from third countries. Article 16 requires that Australia prevent the misuse of EC Traditional Expressions only in the labelling of wine produced within Australia.[8]

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4 Mr John-Michael Martinez, *Transcript of Evidence,* 16 March 2009, pp. 13-14; National Interest Analysis (NIA), para 1.

5 NIA, paras 10 & 19.

6 NIA, para 19.

7 NIA, para 20.

8 NIA, para 21.

3.9 The Australian Wine and Brandy Corporation (AWBC) provided the Committee with an example of how these provisions would function:

> 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.[9]

3.10 Articles 15 and 17 permit Australia to use a range of sensitive names in the labelling of its wine for a limited period following entry into force of the Agreement. Australia may use the names Burgundy, Chablis, Champagne, Graves, Manzanilla, Marsala, Moselle, Port, Sauterne, Sherry, White Burgundy, Amontillado, Auslese, Claret, Fino, Oloroso and Spatlese for 12 months, and may use the term Tokay for 10 years, following entry into force of the Agreement.[10]

3.11 Article 23 permits Australia to continue to use a range of names listed in Annex V. These include commercially important terms for the Australian fortified wine industry including 'cream', 'ruby', 'tawny' and 'vintage'.[11]

3.12 Article 27 prohibits Parties to the Agreement from introducing more onerous labelling requirements than those that exist when the Agreement enters into force.[12]

Reasons for Australia to take treaty action

3.13 Under the 1994 Agreement, Australia and the EC resolved to agree on dates for the phasing out the use of EC-claimed Geographical Indications and Traditional Expressions in the labelling of Australian wine. The proposed Agreement resolves this issue and makes these dates clear.[13]

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9 Mr Stephen Guy, *Transcript of Evidence*, 16 March 2009, p. 14.

10 NIA, para 22.

11 NIA, para 24.

12 NIA, para 25.

13 RIS, pp. 1-2.

3.14 The Government stated that negative impacts on the Australian wine industry would be limited, as much of the industry has already shifted away from using European wine styles as a descriptor of Australian wines.[14]

3.15 However, the Government noted that the requirement that Australia phase out the use of 'Port' and 'Tokay' in the labelling of wine will have a significant impact on Australia's fortified wine industry.[15] Nonetheless, the Agreement permits Australia to continue to use a range of sensitive EC-claimed terms which are of high value to Australia's fortified wine industry including 'ruby', 'tawny', 'vintage' and 'cream'.[16] Australia would not be permitted to use these terms if it did not become a Party to the Agreement.[17]

3.16 Furthermore, a representative from the Department of Agriculture, Fisheries and Forestry informed the Committee that assistance was provided to the fortified wine industry:

> … a grant of $500,000 was provided towards a fortified wine rebadging 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.[18]

3.17 The Government noted that, whilst the Australian wine industry has great potential for further growth, there is only limited growth potential in the Australian domestic market. Thus any future increase in Australian wine production will need to be exported.[19] The Government considered that the Agreement will help to consolidate Australian access to European wine markets and will in turn facilitate growth in the Australian wine industry.[20]

3.18 By requiring that the EC not impose more restrictive labelling requirements in the future, the Agreement will reduce the risk to the Australian wine industry of any difficulties or costs that might arise if the EC was permitted to implement more onerous wine labelling

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14 NIA, para 7.
15 NIA, para 15.
16 NIA, para 17.
17 RIS, p. 3.
18 Mr Gregory Williamson, *Transcript of* Evidence, 16 March 2009, p. 10.
19 RIS, p. 1.
20 NIA, para 9.

requirements in the future.[21] The AWBC informed the Committee of an additional benefit of this provision:

> … [this provision] will provide certainty to Australian winemakers going forward … 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.[22]

3.19 Under the 1994 Agreement a range of new winemaking techniques important to Australia were not recognised. Thus these techniques have had to be provisionally authorised every 12 months. The proposed Agreement permanently authorises these new techniques and provides that any new winemaking practices will automatically receive provisional approval. This aspect of the Agreement secures Australia's access to European wine markets.[23]

3.20 The AWBC argued that the requirements under the 1994 Agreement, and under the proposed Agreement, for Australian winemakers to move away from using EC-claimed names has encouraged Australian winemakers to be innovative in the naming of their product. In turn, the Australian wine industry has benefited through differentiating their product from other wines, and in some cases, establishing these new products as household names.[24]

3.21 The AWBC claimed that small wine producers in particular will benefit from this Agreement. The Agreement requires the EC to protect a range of Australian wine names, which will in turn promote the regional differences of wine and the unique characteristics of wines associated with those regions. Thus, small producers may have a greater capacity to differentiate their wines through labelling and the characteristics associated with that label.[25]

Opposition to the Agreement

3.22 The Committee received a submission from Dr Matthew Rimmer, Associate Director of the Australian Centre for Intellectual Property in Agriculture which operates as a partnership between the University

21 NIA, para 11.

22 Mr Stephen Guy, *Transcript of Evidence*, 16 March 2009, p. 12.

23 Mr Gregory Williamson, *Transcript of* Evidence, 16 March 2009, p. 10; NIA, para 10.

24 Mr Stephen Guy, *Transcript of Evidence*, 16 March 2009, p. 15.

25 Mr Stephen Guy, *Transcript of Evidence*, 16 March 2009, p. 16.

of Queensland, Griffith University and the Australian National University. Dr Rimmer's submission urges the Committee to take into account a range issues including:

- the potential for Geographical Indication regulations to be used beyond their initial intent;
- the history of Geographical Indications in Australia;
- the potential costs of the proposed Agreement; and
- the Agreement's interaction with current laws.

Dr Rimmer's submission argues that a range of issues pertaining to the Agreement have not been properly considered by the Government.[26]

3.23 The submission argues that previous Agreements that regulate the naming of wines are at risk of being expanded beyond their initial geographical scope. In particular, the submission points to the Champagne region in France which was enlarged in 2008 to facilitate greater production. The submission urges the Committee to be wary of the possibility that the terms of the Agreement could be expanded to assist European winemakers.[27]

3.24 The AWBC noted that whilst some regions have been expanded beyond their initial geographical scope (such as the Champagne region) this issue has little impact on Australian winemakers. It was suggested that, under the terms of the Agreement, Australian winemakers are not permitted to use certain names regardless of the size of the EC region that can use those names. Thus the AWBC considered that Australian winemakers would be unaffected by this issue.[28]

3.25 Dr Rimmer questions whether the benefits to Australia of increased access to European markets truly outweigh the cost of more restrictive labelling requirements and claims that the Government has downplayed the costs of the Agreement to the Australian wine industry. Dr Rimmer argues that the Agreement may have significant economic, legal, social and political impacts on Australia. Dr Rimmer urges the Government to conduct a clear and detailed cost and benefit assessment of the Agreement.[29]

3.26 The Government's Regulatory Impact Statement (RIS) contains a cost and benefit impact analysis. This analysis concludes that, whilst

26 Dr Matthew Rimmer, *Submission No. 7*, pp. 5-6.

27 Dr Matthew Rimmer, *Submission No. 7*, pp. 9-10.

28 Mr Stephen Guy, *Transcript of Evidence*, 16 March 2009, p. 11.

29 Dr Matthew Rimmer, *Submission No. 7*, pp. 11-28.

Australia will be required to prevent the use of a range of wine names, the EC will be required to accept a range of new wine making techniques which are of high value to Australia. Also, due to the standstill provision, Australia will be protected from more onerous labelling requirements in the future. The analysis argues that due to these provisions Australia will gain greater, and more secure, access to foreign wine markets. Thus, based on this analysis, the RIS determines that it is in Australia's national economic interest to enter in to the Agreement.[30]

Implementation

3.27 The AWBC informed the Committee that they are responsible for enforcing Australia's wine labelling requirements under the Agreement.[31]

3.28 Articles 29 to 32 establish, and outline the functions of, a Joint Committee consisting of members of the EC and Australia. Parties shall maintain contact through this Joint Committee on issues relating to the implementation of the Agreement.[32]

3.29 The *Australian Wine and Brandy Corporation Act 1980* will need to be amended in order to accept new winemaking techniques and labelling requirements, resolve issues around exceptions to the false and misleading description and presentation of wine and also to introduce or amend key definitions.[33]

3.30 The *Australian Wine and Brandy Corporation Regulations 1981* will need to be amended to reflect the use of Australian quality wine terms, provide phase-out dates and transitional periods for the use of certain labelling names and to change wine labelling rules.[34]

3.31 The *Trade Marks Act 1995* will need to be amended to ensure key definitions are consistent with the *Australian Wine and Brandy Act 1980*, and to give power to the Registrar of Trade Marks to amend the Register consistently with the Agreement.[35]

30 RIS, pp. 2-4.
31 Mr Stephen Guy, *Transcript of Evidence*, 16 March 2009, p. 14.
32 NIA, para 26.
33 NIA, para 32.
34 NIA, para 32.
35 NIA, para 33.

Costs

3.32 There will be administrative costs associated with updating the Register of Protected Names by the Australian Wine and Brandy Corporation and amending the *Australian Wine and Brandy Corporation Act 1980* and *Australian Wine and Brandy Corporation Regulations 1981* to enable Australia to comply with its obligations under the proposed Agreement. These will be absorbed within existing budgets.[36]

3.33 The Government is assisting the fortified wine industry to meet the costs of phasing out some terms with a contribution of $500,000 to assist with determining suitable replacement terms. At the time of the Committee's hearing, $450,000 of this funding had been used to facilitate the transition including through the development and testing of alternative wine names. A further $50,000 will be provided to facilitate the launching of these new names in the market place.[37]

Future treaty action

3.34 Article 39 provides that Parties may amend the Agreement by consensus. This consensus may occur through the Joint Committee mentioned above.[38]

3.35 The Government anticipates that technical amendments to the Agreement are likely in order to authorise new or modified wine-making techniques.[39]

3.36 Article 44 provides that Parties may terminate the Agreement one year after a written notice of termination is provided to the other Party.[40]

Consultation

3.37 Negotiations for the proposed Agreement have been carried out over the last 13 years in consultation with the Winemakers' Federation of Australia (WFA) which represents more than 90 per cent of Australia's wine production. Wine industry leaders have also been

36 NIA, para 34.

37 Department of Agriculture, Fisheries and Forestry, *Submission No. 8*, p. 1; NIA, para 35.

38 NIA, paras 26 and 38.

39 NIA, para 38.

40 NIA, para 41.

consulted through the AWBC International Trade Advisory Committee. These consultations provided input into the negotiation of the Agreement and supported Australia entering into the Agreement.[41]

3.38 Relevant Commonwealth Ministers and agencies and State/Territory Governments were consulted about the Agreement and raised no issues with Australia becoming a Party to the Agreement. [42]

Conclusions and recommendation

3.39 The Committee is of the view that the Agreement will provide Australian winemakers with greater, and more secure, access to European markets. The Committee considers that accession to the Agreement will strengthen trade between Australia and the EC, and will provide an additional forum through which future issues relating to trade in wine can be considered and agreed upon.

Recommendation 2

The Committee supports the *Agreement between Australia and the European Community on Trade in Wine* and recommends that binding treaty action be taken.

41 Mr Gregory Williamson, *Transcript of* Evidence, 16 March 2009, p. 10; NIA, Attachment on Consultation, para 42.

42 NIA, Attachment on Consultation, para 43.