

REGULATION IMPACT STATEMENT

FOR THE PROPOSED AUSTRALIA – EUROPEAN COMMUNITY AGREEMENT ON TRADE IN WINE

Background

Wine is an important industry in Australia, contributing significantly to a number of regional economies and directly employing some 30,000 people in both winemaking and grape growing (2001 Census), with further downstream employment in retail, wholesale, tourism and hospitality industries. The Australian wine industry is based on approximately 8,000 wine grape growers supplying 2,400 wineries. In 2006, the total vineyard area reached 168,791 hectares. Wine grapes are grown in all states of Australia, with South Australia, New South Wales and Victoria accounting for most of the production.

The rapid expansion of wine production in Australia over the last decade combined with a small domestic market has seen the Australian industry become increasingly export oriented. In the twelve months to June 2007, wine exports totalled a record 800 million litres with a value of \$3.0 billion. Wine exports to the European Community (EC) in 2006-07 totalled 421 million litres with a value of \$1.3 billion. Australia is the world's third largest wine exporter, in value terms exporting to 104 countries and accounting for 11 per cent of world wine exports. In 2006-07, 63 per cent of Australia's wine sales by volume were exported. Approximately half of Australia's wineries currently export. The Australian wine industry is facing the challenge of maintaining profitability in global markets characterised by flat demand, increasing supply and declining prices.

Maintaining a strong presence in the international market is of fundamental importance to the continued viability of the Australian wine industry. With limited growth potential in the domestic market, any future increase in Australian wine production will need to be exported. To remain successful in the international market, the Australian wine industry will need to be able to compete through continued innovation, product targeting and marketing, quality improvements and cost reductions.

Australia and the EC concluded an agreement in 1994 to facilitate and promote trade in wine. The 1994 Agreement authorised a number of wine-making practices and provided for the reciprocal protection of the names of wines originating in the territory of the contracting parties. The 1994 Agreement, however, left the phase out dates for the protection of 11 EC Geographical Indications unresolved along with the terms for protection of a number of EC claimed Traditional Expressions. Australia and the EC have been engaged in negotiation of a replacement agreement for a number of years. In June 2007 negotiators initialled the text of a replacement agreement, signalling that negotiators had reached agreement on the substance and wording of a treaty to replace the 1994 Agreement.

Statement of the Problem

Under the 1994 Agreement, Australia and the EC resolved to agree phase out dates for the use of EC Geographical Indications such as Champagne, Burgundy, Chablis, Graves, Manzanilla, Marsala, Moselle, Port, Sauterne, Sherry and White Burgundy and terms for the protection of EC claimed Traditional Expressions. In addition, under the 1994 Agreement there is a slow, cumbersome process for authorisation of new wine-making practices. No new practices have been authorised under the 1994 Agreement and the use of cation exchange resins to stabilise wines originating in Australia, which was provisionally authorised for 12 months under the 1994 Agreement, requires its provisional authorisation to be periodically extended for 12-month periods. Expansion of the EC since 1994 has also added a raft of new member states and associated Geographical Indications for wines.

Objective

The objective of the proposed replacement Agreement is to facilitate and promote trade in wine originating in the EC and in Australia; to allow mutual recognition of wine-making practices and mutual protection of wine-related Geographical Indications and recognition of wine-related Traditional Expressions.

Identification of options to achieve the objective

Option 1: Sign the proposed replacement Australia - EC Agreement on Trade in Wine

Under the 1994 Agreement, Australia and the EC resolved to agree phase out dates for the use of a number of sensitive EC Geographical Indications and terms for the protection of EC Traditional Expressions. To this end Australia has been engaged in negotiations with the EC for a number of years.

The proposed replacement Agreement settles these matters. It also authorises 16 new wine-making practices for wines originating in Australia; provides a simple mechanism for approval of new wine-making practices; and protects new Australian and EC wine-related Geographical Indications.

This option provides, on the basis of non-discrimination and reciprocity, for the facilitation and promotion of trade in wine originating in the EC and in Australia.

Option 2: Do not sign the proposed replacement Australia - EC Agreement on Trade in Wine

Under this option the existing state of affairs would remain. Australia would not be required to prevent the use of the 11 sensitive European Geographical Indications or of the EC claimed Traditional Expressions (eg chateau, vintage and tawny) until terms are agreed.

Authorisation of any new wine-making practices would also be considered under existing arrangements and the Australian wine industry would be required to comply with future changes to the EC's wine labelling requirements and regulations.

Cost and benefit impact analysis

Impact group identification

The wine industry including some trade mark owners will be the main group affected by the entry into force of the proposed replacement Agreement. The phase out of some wine terms will also affect the familiarity of consumers with some wine styles, particularly in regard to fortified wines.

Option 1: Sign the proposed replacement Australia - EC Agreement on Trade in Wine

The main requirements for Australia under the proposed replacement Agreement are to protect EC Geographical Indications and EC claimed Traditional Expressions subject to a number of conditions.

The protection of EC Geographical Indications would include a phase out date for the 11 EC Geographical Indications unresolved under the 1994 Agreement of 12 months after entry into force of the Agreement and a phase out date for the use of Tokay of 10 years after entry into force of the Agreement. The protection of EC claimed Traditional Expressions would include provisions to allow continued use of existing trade marks that incorporate these terms and also allow Australian winemakers to continue to use some of these terms in export markets, notably ruby, tawny, vintage and cream which are important to makers of fortified wines, under certain conditions.

Australia will also be required to accept wine from the EC made using wine-making practices authorised under the Agreement.

There will be administrative costs associated with updating the Register of Protected Names and amending the *Australian Wine and Brandy Corporation Act 1980*, the *Trade Marks Act 1995* and the *Australian Wine and Brandy Corporation Regulations 1981* to enable Australia to comply with its obligations under the proposed replacement Agreement. There will also be a small administrative burden in time and effort for the Registrar of trade marks. Costs to the fortified wine industry in phasing out some terms for which there are no obvious alternatives are substantial and the Australian Government has committed \$500,000 to the sector's initiative to assist with determining suitable names.

The EC in turn will need to protect the Australian Geographical Indications listed in the Agreement and to accept wine from Australia made using wine-making practices authorised under the Agreement. The proposed replacement Agreement authorises 16 additional wine-making practices used in Australia. One such practice is the use of cation exchange resins to stabilise wines originating in Australia. This practice has been subject to a series of 12 month provisional authorisations which require renewal periodically. Through the World Wine Trade Group's Agreement on Mutual Acceptance of Oenological Practices, Australia's other key export markets (namely the United States of America, Canada and New Zealand) have already agreed to accept wine made according to winemaking practices authorised for use in Australia.

The standstill clause provides that with respect to labelling requirements, the EC cannot impose conditions less favourable than those which apply at the time the Agreement comes into force. This will result in savings for the industry as there will not be a need to amend labels for the foreseeable future.

Option 2: Do not sign the proposed replacement Australia - EC Agreement on Trade in Wine
Trade in wine with the EC would continue to be governed by the 1994 Agreement.

While the 1994 Agreement has provided a stable base for the development of a healthy two-way trade in wine, some improvements in its operation are desirable. In particular continuing the 1994 Agreement would mean that Australia would need to seek authorisation of wine-making practices under the current arrangements. To date no new wine making practices have been authorised under the 1994 Agreement.

New Australian and EC Geographical Indications would not receive protection unless the parties agreed to amend Annex II to the 1994 Agreement and Australia would also potentially face issues regarding changes to labelling of wine exported to the EC.

While Australia would not be required to prevent the use of some sensitive EC Geographical Indications, the Australian wine industry has progressively shifted away from use of European wine styles as a descriptor of Australian wines – relying mainly on grape variety for wines other than fortified wine styles. In addition, some European winemakers (particularly those from the Champagne region) have been active in taking private action to prevent use of some terms. Thus the value of not preventing use of these terms is significantly less than it was prior to 1994 and it does not necessarily follow that not implementing the proposed replacement Agreement would allow continued use of all terms proposed for protection under it. Maintaining the 1994 Agreement would also retain the Australian industry's ability to use a number of EC claimed Traditional Expressions. However the proposed replacement Agreement would provide for use of some of commercially important terms, notably ruby, tawny, vintage and cream, in the EC which Australian winemakers would otherwise be prohibited from using.

Consultation

Negotiations of the proposed replacement Agreement have been carried out over the last 13 years in close consultation with the peak industry body representing the interests of Australia's winemakers – the Winemakers' Federation of Australia (WFA) - and the industry's statutory regulatory and marketing authority – the Australian Wine and Brandy Corporation (AWBC). WFA's voluntary membership represents more than 90 per cent of Australia's wine production, with WFA structured so that the small, medium and large winemaking enterprises have equal voting power and representation on issues considered by the WFA. WFA and the AWBC have actively supported and provided input into the treaty negotiations aimed at fostering wine trade with the EC and both have confirmed their support for the text of the proposed Agreement. Wine industry leaders have also been directly briefed through the AWBC's Market Development Advisory Committee.

IP Australia has also been involved in the negotiations of the proposed replacement Agreement since their inception. Consultations with state and territory government officials have also taken place since the inception of negotiations and states and territories have no issue with the proposed Agreement being ratified. These consultations are finalised and were conducted by the Australian Government Departments of Agriculture, Fisheries and Forestry and Foreign Affairs and Trade in conjunction with IP Australia and the industry bodies referred to above.

Conclusion and recommended option

Option 1 will facilitate ongoing access to one of Australia's largest export markets - the EC. It is therefore recommended that the Australia Government agree to sign the Australia - EC Agreement on Trade in Wine to enable progress towards its entry into force.

Implementation and review

Assuming the Australian Government signs the proposed Australia - EC Agreement on Trade in Wine, some amendments to the *Australian Wine and Brandy Corporation Act 1980* as flagged above and subsequent updating of the relevant parts of the *Australian Wine and Brandy Corporation Regulations 1981*, as well as a change to the structure of the Register of Protected Names and amendments to the *Trade Marks Act 1995* will be required. The Trade Marks Act will be amended so that its interpretation is consistent with that of the AWBC Act. This will entail amending common definitions relevant to the proposed replacement agreement and provide for circumstances in which the Registrar of Trade Marks can amend the representation of a trade mark or an application to register a trade mark. The addition of the trade mark related amendments would have a low additional impact on business, and would appear to impose no or low compliance costs.

It is expected that the ongoing impact of the proposed replacement Agreement would be monitored through the AWBC's Market Development Advisory Committee.

Department of Foreign Affairs and Trade and
Department of Agriculture, Fisheries and Forestry
2008