

AGREEMENT ON MUTUAL ACCEPTANCE OF OENOLOGICAL PRACTICES

The Parties to this Agreement,

Desiring to facilitate international trade and to avoid the application of obstacles to trade in wine in accordance with the Marrakesh Agreement Establishing the World Trade Organization of 15 April 1994 (hereinafter the WTO Agreement);

Having an interest in regulating the wine produced as well as consumed in their respective territories;

Having concluded such assessments of each Party's laws, regulations and requirements in respect to oenological practices as are required by their respective domestic laws;

Having a fundamental and legitimate interest in regulating the health and safety aspects of wine imported into their respective territories;

Having an interest in preventing the use of deceptive labelling practices;

Recognizing that:

Import restrictions based on oenological practices have been used as obstacles to international trade;

Oenological practices are the subject of laws, regulations and requirements in the territories of the Parties and that uniform oenological practices cannot take account of all local conditions, climatic variations and traditions;

Each Party has established acceptable mechanisms for regulating oenological practices;

Grape growing and oenological practices will continue to evolve;

AGREE AS FOLLOWS:

Article 1 Objective

The objectives of this Agreement are:

- (a) to facilitate trade in wine among the Parties; and
- (b) to avoid, in accordance with the WTO Agreement, the application of obstacles to such trade

through the mutual acceptance by the Parties of their respective mechanisms for regulating oenological practices as provided for in their respective laws, regulations and requirements.

Article 2

Multilateral Obligations

Nothing in this Agreement shall limit the rights or obligations of the Parties under the WTO Agreement.

Article 3

Scope

1. This Agreement shall be limited to international trade in wine as that term is defined in Article 4(a) of this Agreement.
2. Nothing in this Agreement shall in any way prevent a Party from taking measures, including but not limited to monitoring, for the protection of human health and safety, provided such measures are in accordance with the provisions of the WTO Agreement.
3. Nothing in this Agreement shall impose commercial obligations on any entity with respect to the purchase and sale of products covered by this Agreement.
4. Nothing in this Agreement is intended to interfere with the provisions of a Party's existing agreements or preclude Parties, either individually or collectively, from concluding agreements regarding oenological practices with third countries.
5. Nothing in this Agreement shall require a Party to repeal, derogate from or amend its definition of wine or its laws, regulations and requirements relating to oenological practices for the production of wine in its territory.

Article 4

Definitions

For the purposes of this Agreement, the following definitions apply:

- (a) "Wine" is a beverage produced by the complete or partial alcoholic fermentation exclusively of fresh grapes, grape must, or products derived from fresh grapes in accordance with oenological practices which are authorized for use under the regulatory mechanisms of the exporting Party, and contains an alcohol content of not less than 7% and not more than 24% by volume;
- (b) "Oenological practices" relate to wine making materials, processes, treatments and techniques permitted by law in the exporting Party, but do not include labelling, bottling or packaging for final sale; and
- (c) "Consensus" is achieved if, after such notice as the Council's procedures provide for, no party present at the meeting when a decision is taken formally objects to that proposed decision.

Article 5

Mutual Acceptance of Oenological Practices

1. The Parties shall accept each other's laws, regulations and requirements relating to oenological practices and the mechanisms to regulate them.
2. The Parties shall permit the importation of wine produced in the territory of another Party in conformity with that other Party's laws, regulations and requirements relating to oenological practices and the mechanisms to regulate them.
3. Wine exported by a Party to another Party shall conform to the exporting Party's laws, regulations and requirements relating to oenological practices governing wine intended for the exporting Party's domestic consumption. The exporting Party, at its option, also may export to an importing Party wine produced in compliance with the laws, regulations and requirements relating to oenological practices governing wine intended for the importing Party's domestic consumption.
4. No Party shall require any other Party to apply for a derogation or other exemption or to provide routine certification with regard to any oenological practice except as a Party may require consistent with Article 3(2).
5. When a Party has reason to believe that any wine produced in, exported from or imported into its territory would compromise human health or safety, the Party shall notify all other Parties immediately via a mechanism to be determined by the Council.

Article 6

Labelling of Wine Subject to this Agreement

1. Technical regulations and standards relating to labelling shall be transparent, and non-discriminatory, and issued in accordance with the WTO Agreement, and particularly the Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Technical Barriers to Trade and not be used as a mechanism to frustrate the object and purpose of this Agreement.
2. The Parties shall enter into negotiations for an agreement on labelling with a view to concluding such an agreement within a period of one calendar year from the date that this Agreement has entered into force.

Article 7

Management of this Agreement

1. A Council of the Parties, in which each Party has equal representation, is hereby established to manage this Agreement. All decisions by the Council shall be by consensus. The Council shall determine its own rules and procedures.
2. The Council may consider any matter relating to the effective functioning of this Agreement. In particular it shall be responsible for:
 - (a) seeking resolution of any questions relating to the application of this Agreement;

- (b) providing a forum for discussion of issues that may arise concerning this Agreement;
- (c) considering ways to enhance the operation of this Agreement;
- (d) adopting amendments to this Agreement and its annexes in accordance with Article 10;
- (e) determining the working languages under this Agreement; and
- (f) deciding upon the application of States to accede to this Agreement pursuant to Article 13(2).

Article 8 Transparency

1. The laws, regulations and requirements relating to oenological practices and the mechanisms to regulate them of the States referred to in Article 12(1) as at the date of entry into force of this Agreement for each Party shall be incorporated in the Schedule.

2. Upon the decision of the Council referred to in Article 13(2) to agree to the accession of a State to this Agreement, the laws, regulations and requirements relating to oenological practices and the mechanisms to regulate them of that State as submitted to the Council pursuant to Article 13(1) shall be incorporated in the Schedule.

3. Any modification of the laws, regulations or requirements relating to oenological practices and the mechanisms to regulate them of a Party shall be:

(a) published or otherwise made available in a manner consistent with and to the extent provided in the WTO Agreement, and in particular the Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Technical Barriers to Trade; and

(b) included in the Schedule.

4. Each Party shall, in a manner consistent with and to the extent provided in the WTO Agreement, and in particular the Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Technical Barriers to Trade, notify to the Council any proposals to amend its laws, regulations or requirements relating to oenological practices and the mechanisms to regulate them prior to such amendments coming into effect in its territory and give the other Parties the opportunity to comment on such proposals.

Article 9

Consultations and Dispute Settlement

1. If one or more Parties considers a measure taken by one or more Parties to be inconsistent with this Agreement, that Complaining Party or Parties (the Complainant) may request in writing consultations with the other Party or Parties (the Respondent). The Parties to the dispute shall, within 20 days of receipt of the request, consult with each other with a view to resolving the issue.
2. If the issue has not been resolved through consultations within 45 days of receipt of the request for consultations, and imports have been prohibited or restricted, any of the Parties to the dispute may request, in writing, to the other Party to the dispute and the Chairman of the Council that a Committee of Experts be established to consider the issue in accordance with procedures set out in Annex 1. Any conclusions adopted by the Committee shall be by consensus.
3. After the request for a Committee of Experts has been made and the Committee formed to hear the dispute, the Complainant shall submit its views in writing (the complaint) to the Chairman of the Council and the Respondent. Within 30 days of receiving the complaint, the Respondent shall forward its reply to the Chairman of the Council and the Complainant, together with its supporting evidence and documentation.
4. The Committee of Experts shall forward its conclusions to the Parties to the dispute within 60 days of the date on which the Committee of Experts received the Respondent's submission provided for in paragraph 3 of this Article or the expiration of the period in which such submission is to be made in accordance with paragraph 3 of this Article.
5. Where the Committee of Experts finds that the Respondent has breached this Agreement, the Committee shall provide in its decision a reasonable period of time for the Respondent to rectify its breach. The period established shall be the shortest reasonable time period feasible. If the Parties to the dispute have not agreed by the expiry of that period that the breach has been rectified, the Complainant may set forth in writing, to the presiding expert and the Respondent evidence of non-compliance and request the Committee to decide whether the breach has been rectified. The Respondent shall have 21 days from the date of receipt of the Complainant's request to the presiding expert to respond to the Complainant's allegations. The Committee shall issue its decision within 15 days after the expiration of the deadline for the Respondent's response.
6. If the Committee finds that the Respondent has failed to rectify such breach within the designated period of time, the Complainant may suspend its obligations in relation to the Respondent under paragraphs 1 to 4 of Article 5 of this Agreement.
7. The Parties to the dispute may agree for purposes of a specific dispute under this Article to follow different procedures than those set out in this Article for the purpose of expediting, enhancing, or facilitating the resolution of the specific dispute.

8. Paragraphs 2 to 6 of this Article shall not apply to matters arising under Article 3(2) of this Agreement or to any matters under this Agreement that also raise issues of WTO consistency. Nothing in this Article shall be interpreted as implying any change in the rights and obligations of a Party under the WTO Agreement, including the dispute settlement provisions of that Agreement.

Article 10 Amendment

1. Any Party may propose amendments to this Agreement or its annexes. The text of any proposed amendment shall be submitted to the depositary, which shall promptly communicate it to all Parties at least ninety days in advance of its consideration by the Council.

2. Initial consideration of any proposed amendment shall take place at the first meeting of the Council following communication of the proposed amendment. Amendments shall be adopted by the Council by consensus.

3. Instruments of acceptance in respect of an amendment shall be deposited with the depositary. An amendment shall enter into force for Parties having accepted it on the thirtieth day following the receipt by the depositary of the instruments of acceptance of a majority of Parties. Thereafter, it shall enter into force for each Party depositing its instrument of acceptance on the thirtieth day following the receipt by the depositary of that Party's instrument of acceptance. Each State that accedes to this Agreement after the entry into force of any amendment shall become a Party to the Agreement as amended.

Article 11 Withdrawal

A Party may withdraw from this Agreement by written notification to the depositary. Withdrawal shall take effect six months after the date of receipt of the notification, unless the notification specifies a later date or the notification is withdrawn prior to this date.

Article 12 Parties and Entry into Force

1. This Agreement shall be open for signature by Argentina, Australia, Canada, Chile, New Zealand, South Africa and the United States of America until March 31, 2002.

2. This Agreement is subject to ratification, acceptance or approval by signatory States. Instruments of ratification, acceptance or approval shall be deposited with the depositary.

3. This Agreement shall enter into force on the first day of the month following the date of deposit of the second instrument of ratification, acceptance or approval. It shall enter into force for each subsequent signatory State thereafter on the first day of the month following the date of deposit of its instrument of ratification, acceptance or approval.

4. A signatory State that has not deposited an instrument of ratification, acceptance or approval within thirty months of the date this Agreement enters into force or such additional period as approved by the Council shall be deemed not to have signed this Agreement.

Article 13 New Parties

1. Any State that has not signed this Agreement, and States having signed but not ratified, accepted or approved this Agreement according to Article 12, may by written application to the depositary seek to accede to it. Such application shall include a copy of that State's laws, regulations and requirements relating to oenological practices and the mechanisms to regulate them.

2. The Council, at its first meeting following the receipt of any such application, shall assess the laws, regulations and requirements relating to oenological practices and the mechanisms to regulate them of the State concerned. If the Council finds these acceptable, it shall notify the State of its decision and may invite the State to accede to this Agreement.

3. Following receipt of the notification of the Council's decision in favour of accession, but in no case later than 30 months thereafter or such period as approved by the Council, the State concerned shall deposit its instrument of accession with the depositary. This Agreement shall enter into force for that State on the first day of the month following the date of deposit of its instrument of accession.

The original of this Agreement, of which the English, French and Spanish language texts are equally authentic, shall be deposited with the Government of the United States of America.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE at Toronto on the 18th day of December in the year two thousand and one.

Schedule

[schedule referencing the laws, regulations and requirements relating
oenological practices of the parties in accordance with Article 8]

The Schedule can be found at http://www.ita.doc.gov/td/ocg/eng_schedules.htm

Annex : The Committee of Experts

1. The Parties shall establish a list of experts in the field of oenological practices.
2. Each Party shall appoint four experts to the list, who shall be its nationals.
3. The list shall be maintained by the depositary.
4. The Parties to the dispute shall agree on the selection of three experts from the list, none of whom shall be nationals of the Parties to the dispute. In the event the Parties to the dispute cannot agree within 15 days from the date of the request for the establishment of a Committee of Experts made to the Chairman of the Council, the Chairman of the Council shall select these three experts, none of whom may be nationals of the Parties to the dispute, at random from the list. The Chairman of the Council shall conduct such random selection in the presence of official representatives designated by the Parties to the dispute.
5. When the Chairman of the Council receives the Complainant's and Respondent's complete submissions in accordance with Article 9 of this Agreement, the Chairman of the Council shall forward the submissions to the experts appointed by the Parties to the dispute within three days. Should an expert not be available, a replacement shall be appointed by the affected Party or Parties, or selected by the Chairman of the Council, in accordance with procedures set out above in paragraph 4.
6. The Committee shall utilize telephonic and electronic communications to the greatest extent possible.
7. The Parties to the dispute shall bear their own respective costs and expenses incurred in relation to the proceedings before the Committee of Experts. The fees and expenses of the experts shall be borne by the Parties to the dispute, in equal shares.
8. The Council shall adopt rules of procedure that will apply to the Committee of Experts established pursuant to Article 9 of the Agreement and this Annex.