

**AGREEMENT ON MUTUAL ACCEPTANCE OF
OENOLOGICAL PRACTICES**

DONE AT TORONTO, CANADA ON 18 DECEMBER 2001

[2003] ATNIF 02

Documents tabled on 22 June 2004:

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Date of Tabling of Proposed Treaty Action

1. 22 June 2004.

Nature and Timing of Proposed Treaty Action

2. Australia signed the Agreement on Mutual Acceptance of Oenological Practices (MAA) on 18 December 2001. The MAA entered into force on 1 December 2002 following ratification by Canada and the United States of America (USA). Signatories must ratify the MAA within 30 months of the treaty entering into force or their status as a signatory state lapses. The other signatories yet to ratify, are Australia, Argentina and New Zealand.

3. The Australian Government is proposing to ratify the treaty within 30 months of its entry into force, in accordance with Article 12. In the event this is not possible, the Government will seek to accede in accordance with Article 13. For Australia the MAA will enter into force on the first day of the month following the date of deposit of the instrument of ratification (Article 12.3) or accession (Article 13.3).

Overview and National Interest Summary

5. The purpose of the MAA is to facilitate trade in wine among countries that are parties to the Mutual Acceptance Agreement on Oenological Practices. The main objective of the World Wine Trade Group (WWTG), which developed the MAA, is to explore options for facilitating the trade in wine and to minimise potential barriers to such trade.

6. Under the provisions of the MAA each member country will, subject to health and safety considerations, accept wine imported from another member country, regardless of whether it meets all the domestic wine production requirements of the importing country. This recognises that oenological practices may vary from country to country for a variety of climatic and other reasons. Overall, the MAA provides a more liberal approach to arrangements governing oenological practices because it limits the basis of an importing country's objections to any wine imports to health and safety grounds only.

7. In 2002-03 Australia exported nearly \$2.4 billion worth of wine, which represents 56% of total wine sales. Exports to the USA and Canada, who have already ratified the MAA, were worth over \$1 billion in 2002-03. This MAA is an important development as it will provide a more secure trading environment for Australian wine exporters in these key markets.

8. Specific advantages to the Australian wine industry include:
- the provision of greater security of access to overseas wine markets by reducing one important area of potential future dispute;
 - encouraging the development and adoption of new wine technologies; and
 - providing an alternative model to the more prescriptive regulatory model adopted by the European Union countries, which requires individual assessments of new practices that go beyond health and safety considerations.

Reasons for Australia to Take the Proposed Treaty Action

9. The MAA will facilitate trade in wine between member countries by providing a flexible approach to oenological (wine making) practices. In the past, import restrictions based on oenological practices have been obstacles to international trade. The MAA minimises these obstacles by obliging member states to accept wine imports from other member states regardless of the oenological practices used, limiting any objections by the importing member state to those on health and safety grounds only.

10. Under the MAA each country retains total control over health and safety matters in relation to imported and domestically produced wine. This is made clear in Article 3(2). Should any practices approved in other Parties to the MAA not meet Australia's health and safety requirements, Australia will not permit wine using that practice to enter the country.

11. The health and safety based approach of the MAA is consistent with the approach adopted under the new Australia-New Zealand Joint Food Standard for wine, which focuses on the health and safety aspects of the additives and processing aids used in wine. A detailed assessment of other members' laws, regulations and other requirements governing oenological practices was undertaken by Food Standards Australia New Zealand (FSANZ) to assess the health and safety aspects of these practices. These assessments included the oenological practices of the USA, Canada, Chile and Argentina. Should any future oenological practices, either by existing members or new Parties to the MAA, be considered not to meet our health and safety requirements, Australia will not permit wine using that practice to enter Australia. The assessment of the health and safety aspects of future oenological practices will be conducted by FSANZ in accordance with its standard operating procedures including the provision for public consultation on receipt of notification of a new practice.

12. The WWTG includes both government and industry representatives from the various member countries. The Australian delegation includes representatives from the Australian Government Departments of Agriculture, Fisheries and Forestry and Foreign Affairs and Trade, the Australian Wine and Brandy Corporation and the peak Australian wine industry body, the Winemakers' Federation of Australia. Australia played an active role in developing the MAA through its representatives on the WWTG and has been a strong supporter of its early entry into force.

13. If Australia does not ratify the Treaty, the current and future level of market access for Australia's wine may be exposed to possible restrictions based on grounds such as differences in wine making practices rather than on health and safety requirements. In particular, USA legislation is in the process of being amended with the intention that wine imported into the USA from countries that have not ratified the MAA will be required to go through a more detailed certification system.

Obligations

14. The MAA's main and overriding obligation is the mutual acceptance of other Parties' mechanisms for regulating oenological practices as provided for in their respective laws, regulations and requirements (Article 5.1), subject to meeting the health and safety requirements of importing Parties.

15. For Australia this means an obligation that wines produced by another Party, in accordance with that Party's laws, regulations and requirements governing oenological practices, are to be permitted for importation provided that they meet Australian health and safety

requirements. Similarly, any wine Australia exports to these Parties that has been made in accordance with laws, regulations and requirements governing oenological practices for our domestic market must be accepted, subject to the health and safety requirements of the importing Party (Article 5.2 and 5.3).

16. However, whilst the purpose of the MAA is to oblige a reduction in trade barriers for wine, it does *not* place any commercial obligations on Parties with respect to the purchase and sale of products covered by the MAA.

17. Australia has an obligation to notify all other Parties immediately if it has a reason to believe that any wine produced in, exported from or imported into its territory would compromise human health and safety (Article 5.5).

18. Australia will be obliged under Article 8 of the MAA to notify the Council of Parties, as described under Article 7, of any proposals to amend its laws, regulations or requirements relating to oenological practices and to give the other Parties the opportunity to comment on such proposals.

19. Australia will be obliged under Article 9 of the MAA to enter into a specific method of dispute settlement should one or more Parties consider a measure taken by Australia to be inconsistent with the MAA. The dispute settlement mechanisms in paragraphs (2) – (6) do not apply to measures carried out in accordance with the WTO Agreement or change the rights and obligations of Parties under that Agreement.

Implementation

20. Before Australia ratifies or accedes to this treaty it is required to ensure that our legislation is in conformity with the provisions of the treaty. As an element of this Australia was required to assess the oenological practices of other member countries to ensure that they met Australian requirements of the *Australia New Zealand Food Standards Code* (the Code).

21. At the request of the Australian and New Zealand Governments, FSANZ undertook an assessment of oenological practices approved in MAA signatory countries (i.e. Argentina, Canada, Chile and the USA). Following this assessment FSANZ identified a number of oenological practices in those countries that were not permitted in Australia. As such FSANZ proposed a number of amendments to the Code in order to bring the Code into conformity with obligations under the MAA.

22. Amendments to the Code were subject to the procedures set out in the *Food Standards Australia New Zealand Act 1991*, and included a round of public consultation (see Annexure A). The proposed amendments were supported by the Australian industry and were finally approved by the FSANZ Board on 17 March 2004. The amendments came into force on 29 April 2004.

23. The amendments made to the Code were for the:

- inclusion for use in wine of the food additives gum arabic, calcium ascorbate, sodium ascorbate and sodium erythorbate;
- inclusion for restricted use in wine of the food additives ethyl maltol and maltol (flavourings and flavour enhancers), with use limited to wine made with non-*Vitis vinifera* grapes; and
- inclusion of argon, ammonium sulphite and the enzyme urease, as new processing aids in the Code.

24. No legislative amendment is required to give effect to the obligation to notify the Council of Parties of any reason to believe that any wine produced in, exported from or imported into its territory would compromise human health and safety. In the event of a need to make a notification Australia, through the Department of Agriculture, Fisheries and Forestry, would notify the Council of Parties via the depositary.

25. No legislative amendment is required to give effect to the obligation of a Party to notify the Council of Parties of any proposals to amend requirements relating to oenological practices. In the event that FSANZ considered any changes to relevant wine standards, Australia would notify the Council of Parties via the depositary.

26. In terms of implementing the MAA it is important to note that as Australia's Food Standards laws are essentially based on health and safety considerations there is no requirement to alter any legislation to enable Australia to ratify the MAA. All oenological practices will be required to continue to meet the Code.

Costs

27. FSANZ is likely to incur some continuing maintenance costs of the Food Standards Code if it is required to assess new oenological practices for existing Parties to the MAA. There will also be costs involved in assessing the oenological practices of any new Parties. These costs are difficult to estimate as they depend on the extent and need of any future assessment.

28. Although there are no annual membership costs or fees, the Australian Government Departments of Agriculture Fisheries and Forestry and Foreign Affairs and Trade are likely to incur minor costs in attending future meetings of the WWTG or the MAA Council. These costs will be undertaken in the normal course of portfolio budgetary requirements.

Consultation

29. Consultations occurred at various stages (e.g. July 2000 and January 2001) during the development of the MAA, including with all State and Territory Governments, FSANZ, the Australian Customs Service, the Australian Quarantine and Inspection Services, the Australian Government Departments of Agriculture, Fisheries and Forestry, the Department of Foreign Affairs and Trade and the Department of Health and Ageing. Details of consultations are set out in Annexure A.

30. The Australian wine industry through its recognised peak body the Winemakers' Federation of Australia, and the Australian Wine and Brandy Corporation as the wine export regulatory body, participated in the MAA negotiations and strongly support the Australian Government's ratification of the Treaty.

Regulation Impact Statement

31. The Office of Regulation Review (Productivity Commission) has been consulted and confirmed that a Regulation Impact Statement is not required as no changes are required to Australian domestic legislation that will result in any additional regulatory impacts on the wine industry.

Future Treaty Action

32. Amendment procedures for the treaty are outlined in Article 10. Any party to the MAA can propose amendments by submitting them to the depositary. The depositary is required to communicate the amendment to all Parties at least 90 days in advance of its consideration by the Council. Amendments are adopted by consensus, which is defined in Article 4 of the treaty to mean that no party present at the meeting, when a decision is taken, formally objects.

33. Instruments of Acceptance in respect to any amendments adopted shall be submitted to the depositary. It shall enter into force for each Party 30 days following the receipt by the depositary of the acceptance. Parties that later accede to the Agreement after the entry into force of any amendments become a Party to the Agreement as amended.

34. Any amendments would be subject to Australia's domestic treaty process.

35. Under Article 6 of the MAA, Australia will be obliged to enter into negotiations with other Parties to the MAA on wine labelling. The WWTG is currently negotiating a wine labelling agreement.

Withdrawal or Denunciation

36. Any Party may withdraw from the MAA with a written notification lodged with the depositary. A withdrawal takes effect six months from the date of receipt (Article 11), and would be subject to Australia's domestic treaty process.

Contact details

Wine Policy Section
Food and Agriculture Business
Australian Government Department of Agriculture, Fisheries and Forestry

Annexure A

Agreement on Mutual Acceptance of Oenological Practices, done at Toronto, Canada on 18 December 2001 [2003] ATNIF 2

Consultations

1. In July 2000 the Department of Agriculture, Fisheries and Forestry (the Department) wrote to all States and Territories seeking their views on the draft text of the Agreement on Mutual Acceptance of Oenological Practices (MAA). The States and Territories broadly supported the MAA approach, provided health and safety considerations were adequately safeguarded. At the same time, the Department also consulted with Food Standards Australia and New Zealand (FSANZ), Australian Customs Service, Australian Quarantine and Inspection Services (AQIS) and with the Australian Government Departments of Foreign Affairs and Trade and Health and Ageing, seeking responses to the draft text of the Agreement.
2. In February 2002 the Department again wrote to the States and Territories, FSANZ, Australian Customs Service, AQIS and the Australian Government Departments of Foreign Affairs and Trade and Health and Ageing to inform them that Australia had formally signed the MAA on Oenological Practices on 18 December 2001. The States and Territories were asked to contact the Department if they had any queries including the process for ratifying the MAA. The Queensland Government replied and expressed support for the ratification of the MAA, subject to the finalisation of the new Wine Processing Standard (the Standard is now operational).
3. The Australian wine industry through its recognised peak body, the Winemakers' Federation of Australia (WFA), participated in the MAA negotiations and now strongly supports the ratification of the Treaty. WFA is a strong advocate of the MAA as it not only provides greater security for the important and growing trade with countries such as the USA, but it also provides a clear working demonstration of an alternative regulatory approach to the positive listing approach, preferred by the European Community.
4. The Australian Wine and Brandy Corporation, as the wine industry regulatory body, also participated in the MAA negotiations and now strongly supports ratification of the MAA.
5. At the request of the Australian and New Zealand Governments, FSANZ undertook an assessment of oenological practices approved in MAA signatory countries (i.e. Argentina, Canada, Chile and the USA). Following this assessment FSANZ identified a number of oenological practices in those countries that were not permitted in Australia. As such, FSANZ proposed a number of amendments to the Food Standards Code (the Code) in order to bring the Code into conformity with obligations under the MAA.
6. These amendments were subject to the procedures set out in the *Food Standards Australia New Zealand Act 1991*, including a round of public consultation. FSANZ received six submissions all of which supported the amendments.

Annexure B

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Current Status List

Source: *World Wine Trade Group*

http://www.ita.doc.gov/td/ocg/eng_parties.htm (accessed 4 May 2004)

Countries	Date of Ratification	Agreement in Force
Argentina	n/a	n/a
Australia	n/a	n/a
Canada	November 27, 2002	December 1, 2002
Chile	November 5, 2003	December 1, 2003
New Zealand	n/a	n/a
South Africa	n/a	n/a
United States of America	November 27, 2002	December 1, 2002

Note: South Africa is a member of the World Wine Trade Group but is not a signatory to the Agreement on Mutual Acceptance of Oenological Practices.