

Documents tabled on 3 February 2009:

National Interest Analysis [2009] ATNIA 2

with attachment on consultation

**Australia - European Community Agreement on Trade in Wine,
done at Brussels on 1 December 2008 ([2008] ATNIF 20)**

Regulation Impact Statement

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY SUMMARY PAGE

Australia - European Community Agreement on Trade in Wine, done at Brussels on 1 December 2008 ([2008] ATNIF 20)

Nature and timing of proposed treaty action

1. The proposed treaty action is to amend the Australian Wine and Brandy Corporation Act 1980 (Cth), the Australian Wine and Brandy Corporation Regulations 1981 (Cth), and the Trade Marks Act 1995 (Cth) to bring into force the Australia – European Community Agreement on Trade in Wine (the Agreement), following its signature on 1 December 2008. The Agreement deals with critical issues related to trade in wines originating in Australia and the European Community (EC), particularly: authorised wine-making techniques; wine labelling, Australian and EC geographical indications; and EC traditional expressions. Upon entry into force, the Agreement will terminate and replace the 1994 Australia - European Community Agreement on Trade in Wine [1994] ATS 6 (the 1994 Agreement).
2. The Agreement was initialled on 5 June 2007 and is being tabled after signature, in Brussels, on 1 December 2008. The Agreement will enter into force on the first day of the second month after the date on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of the Agreement have been complied with.
3. The Agreement will be supplemented by a binding ‘Consolidated Exchange of Letters’, dealing with particular details of the Agreement. This Exchange will be signed when the Agreement enters into force. The Agreement is also supplemented by the Consolidated Negotiators’ Side Letter and Joint Declarations, but these instruments are non-binding.

Overview and national interest summary

4. The purpose of the Agreement is, on the basis of non-discrimination and reciprocity, to facilitate and promote trade in wine originating in the European Community and in Australia. It resolves several issues not dealt with the 1994 Agreement.
5. The new Agreement will facilitate improved market access to the EC for Australian wine-growers by: providing for EC recognition of 16 new Australian wine-making techniques; establishing an effective process for recognition of additional techniques; providing for EC recognition of new Australian geographical indications; and establishing a ‘stand-still’ clause by which the EC may not introduce laws in relation to the labelling of Australian wine that are more restrictive than those that apply at the time the proposed Agreement comes into force. The Agreement permits continued use of some quality terms which are commercially important for the Australian fortified wine industry.
6. The Agreement obliges Australia to recognise and protect certain sensitive EC geographical indications for which no phase-out date for use in Australia was agreed in the 1994 Agreement. The Agreement also requires Australia to recognise and protect EC traditional expressions. This was not covered by the 1994 Agreement.
7. The impact on the Australian wine industry will be limited because it has shifted away from using European wine styles as a descriptor of Australian wines. Instead, the industry uses grape variety to describe most wine styles apart from fortified wines. The Government has agreed to an industry package to assist Australia’s fortified wine industry to develop new terms for its wine.

Reasons for Australia to take the proposed treaty action

8. In 2006-07, Australia exported 421 million litres of wine to the EC with a value of \$1.3 billion, and imported 10.2 million litres with a value of \$168 million. Key regulatory and intellectual property issues related to trade in wine between Australia and the EC are currently regulated by the 1994 Agreement.

9. The Agreement offers a number of advantages to Australian wine-growers, which will help consolidate their access to the EC market at a time when the domestic industry still faces concerns about an over-supply. The new Agreement also resolves several outstanding issues not covered by the 1994 Agreement, and thus will help maintain a mutually beneficial trade relationship with the EC.

10. In particular, the Agreement obliges the EC to permit the import and marketing of Australian wines produced using 16 additional wine-making techniques. It also sets out a simpler process for recognition of further techniques, with an option for disputes to be resolved by a binding arbitration. Under the 1994 Agreement, by contrast, the process for authorisation of new wine-making practices has no binding dispute settlement procedure, and no new practices have been authorised under the 1994 Agreement. This has been particularly problematic for Australian wines produced with an important wine-making technique involving the use of cation exchange resins to stabilise the wine. This technique was provisionally authorised for 12 months under the 1994 Agreement, and this authorisation has since had to be periodically extended for 12-month periods.

11. The Agreement also obliges the EC not to impose any new wine labelling requirements that are more restrictive than those which apply when the proposed Agreement comes into force. This means that industry will not face the difficulties and additional costs that might arise if the EC was permitted to introduce more onerous wine labelling requirements.

12. Finally, the Agreement obliges the EC to recognise and protect new Australian wine Geographical Indications. A Geographical Indication is a label or sign used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that place of origin.

13. The Agreement imposes a range of obligations on Australia, notably with respect to recognition and protection of EC wine-related Geographical Indications and Traditional Expressions.

14. Australia will continue to be obliged to prohibit use of an extensive list of EC Geographical Indications to describe and present a wine sold in Australia or exported from Australia. The Agreement contains phase-out dates, which were not agreed in the 1994 Agreement, for some sensitive Geographical Indications. In particular, the obligation to prohibit use of the following names will arise only after 12 months of the Agreement entering into force: Burgundy, Chablis, Champagne, Graves, Manzanilla, Marsala, Moselle, Port, Sauterne, Sherry and White Burgundy. The impact of these changes is limited, with respect to non-fortified wine, because the industry has progressively moved away from using these Geographical Indications, instead categorising non-fortified wines by grape variety.

15. The impact of the prohibition on use of EC Geographical Indications would be significant for Australia's fortified wine industry, since Australia will be required to prohibit use of the term 'Port' within 12 months of the Agreement entering into force, and to prohibit use of the name 'Tokay' within 10 years of the Agreement entering into force.

16. Australia will also be obliged to prohibit use of EC Traditional Expressions for wine produced in Australia. Traditional expressions are words or expressions 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.

17. The proposed Agreement will affirm Australia's continued use, subject to certain conditions, of a number of EC claimed terms, notably ruby, tawny, vintage and cream which are important for the fortified wine sector in Australia and overseas markets.

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

Obligations

19. The EC and Australia are required to authorise the importation into and marketing in their territory of wine produced using the processes or practices, or in the case of the EC having the compositional requirements, outlined in the Agreement and, with respect to Australian wine-making techniques, the Protocol (Article 5). The Agreement sets out a simplified process for modifications or additions to the list of permitted oenological practices, processes or compositional requirements (Articles 6 - 11). The Agreement allows dispute about these matters to be subject to a binding arbitration (Article 10).

20. The EC and Australia are required to prevent, where wines produced in their territory are exported and marketed outside their territory, use of the enumerated protected names (Article 12(2)). Australia will be required to prevent, for wines produced in Australia, use of EC geographical indications (in Annex II, Part A), traditional expressions (in Annex III) and categories of wines and sales descriptions (Annex IV), as well as references to EC Member States (Article 12(1)(b)). The EC will be required to prevent, for wines produced in the EC, use of Australian geographical indications (in Annex II, Part B) and references to Australia (Article 12(1)(a)).

21. Further details about each of these obligations, including transitional arrangements, are set out in Articles 13 – 18. Importantly, the obligation on Australia and the EC to prevent misuse of geographical indications extends to wine imported from third countries (Article 13(1)). By contrast, Australia's obligation to prevent misuse of traditional expressions only applies to wine originating in Australia or the EC (Article 16(1)).

22. Australia may permit, for Australian wines, use of 11 sensitive geographical indications (Burgundy, Chablis, Champagne, Graves, Manzanilla, Marsala, Moselle,

Port, Sauterne, Sherry and White Burgundy) for 12 months from the Agreement's entry into force, and use of the name 'Tokay' for 10 years from the Agreement's entry into force (Article 15). Australia may also permit, for Australian wines, use of six sensitive traditional expressions (Amontillado, Auslese, Claret, Fino, Oloroso and Spatlese) for 12 months from the Agreement's entry into force.

23. There are various obligations related to the presentation and description of wine (Articles 19 – 26). Article 19 provides generally that wine may not have false or misleading labelling. Article 20 contains particular types of wine descriptions that may be used on labels, depending on whether the wine bears an authorised geographical indication. These rules are supplemented by the requirements for terms used to describe certain product types and production methods set out in Annexes VII and VIII. There are also rules about describing wines by reference to vine varieties (Article 22) and, for Australian wines, with a geographical indication (Article 24).

24. Australia may continue to use the quality wine terms listed in Annex V to describe Australian wines (Article 23). These are commercially important terms used for Australian fortified wine including 'cream', 'ruby', 'tawny' and 'vintage'.

25. Article 27 contains a 'stand still' provision which prohibits Australia and the EC from introducing more onerous labelling requirements than exist at the date the Agreement enters into force.

26. Several provisions deal with the parties' cooperation in ongoing management of the Agreement's implementation and functioning (Articles 29 – 32). Among other matters, the Agreement establishes a Joint Committee which may by consensus decide to modify certain provisions of the Agreement and Protocol. The Committee is responsible for the proper functioning of the Agreement, and may play a role in facilitating contacts between wine producer and industry representatives of Australia and the EC (Article 30).

27. Article 33, as supplemented in the Protocol, and Article 40 contain further transitional arrangements, exempting for limited purposes certain wines that are in transit or which are in existing stocks from requirements of the Agreement.

28. Article 37 provides that disputes in relation to the Agreement should first be subject to consultations between the Contracting Parties. If it is not possible to resolve the dispute by consultations, the Contract Parties may, if both Parties agree, submit the dispute to a binding arbitration.

29. Article 41 clarifies that the Protocol and Annexes are an integral part of the Agreement.

30. The Consolidated Exchange of Letters, which will be binding on the Parties, concern the Parties' understanding of the relationship between the Agreement and aspects of the Agreement on Trade-Related Aspects of Intellectual Property Rights, as well as protecting the rights of certain registered trademark holders in Australia and the EC.

Implementation

31. A number of amendments will be required to the Australian Wine and Brandy Corporation Act 1980 (Cth), the Australian Wine and Brandy Corporation Regulations 1981 (Cth), and the Trade Marks Act 1995 (Cth) to implement the Agreement in Australia.

32. Necessary amendments to the Australian Wine and Brandy Act include making provision for accepting new wine-making techniques and EC geographical indications, removing the concept of Australian traditional expressions and replacing it with quality wine terms, resolving issues around exceptions to provisions regarding false and misleading description and presentation of wine, and introducing or amending key definitions. The Australian Wine and Brandy Corporation Regulations will need to be amended to reflect the move to the use of Australian quality wine terms, provide phase-out dates and transitional periods for the use of certain traditional expressions and geographical indications, and change wine labelling rules.

33. The Trade Marks Act will need to be amended to ensure key definitions are consistent with the Australian Wine and Brandy Act, and to give power to the Registrar of Trade Marks to amend the Register consistently with the Agreement.

Costs

34. 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.

35. The Australian 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.

36. There are no costs associated with the Agreement for States and Territories.

Regulation Impact Statement

37. A Regulation Impact Statement is attached.

Future treaty action

38. Article 39 provides that the Parties may by mutual consent amend the Agreement to enhance cooperation in the wine sector. In particular, technical amendments to the Protocol or Annexes are considered likely, and are provided for in Articles 29(3)(a) and 30(3)(a). Article 11(1) provides that the Contracting Parties shall modify Annex I or the Protocol in accordance with Articles 29(3)(a) or 30(3)(a) to take account of new or modified wine-making technique.

39. The Consolidated Negotiators' Side Letter and Joint Declarations, which are all non-binding instruments, envisage future discussions on matters including wine-

making practices, labelling and the international wine trade.. It is possible that such discussions will lead to agreed amendments to the Agreement.

40. Any amendments to the Agreement, including to the Protocol and the Annexes, will be subject to Australia's domestic treaty processes.

Withdrawal or denunciation

41. Article 44 provides that either Contracting Party may terminate the proposed Agreement by giving one year's written notice to the other Party. Withdrawal by Australia would be subject to Australia's domestic treaty processes.

Contact details

Section: Wine Policy

Division: Agricultural Productivity

Department of Agriculture, Fisheries and Forestry.

ATTACHMENT ON CONSULTATION

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CONSULTATION

42. Negotiations of the proposed 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 International Trade Advisory Committee.

43. IP Australia has also been involved in the negotiations of the proposed 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 raised 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.