



Winemakers' Federation of Australia

For the Industry by the Industry

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WINEMAKERS' FEDERATION OF AUSTRALIA

SUBMISSION TO THE JOINT STANDING COMMITTEE ON TREATIES ON THE FREE TRADE AGREEMENT BETWEEN THE UNITED STATES AND AUSTRALIA

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INTRODUCTION

The Free Trade Agreement between Australia and the United States is a key element in the Australian wine industry's strategy for success. The United States market remains the key driver for growth for the Australian wine industry.

As the fastest growing export market for Australian wine the importance of an FTA that achieves the elimination of tariffs and opens up a dialogue to remove other trade restrictions for Australian wine in the United States is clear. In addition, the strategic importance of locking in technical requirements for exports so these can not be used as a future technical barrier to trade is paramount.

The benefits from a successful FTA run into the millions of dollars from reduced tariffs and provide a platform to grow our most important export market.

Failure to progress the FTA would mean that our key competitors on the United States market would enjoy preferential treatment. South Africa already has preferential tariff treatment in the United States, while Chile has negotiated a phase-out of tariffs and Argentina is likely to also gain preferential access through the Free Trade Agreement of the America's.

BACKGROUND

Australian wine exports recorded exceptional growth in both volume and value in 2003, with sales up 19% to reach a total of A\$ 2.42 billion and export volume reaching 517 million litres (up 22%). In the past 12 months, the United States has overtaken the United Kingdom in terms of dollar value of wine exported, with United Kingdom imports of 208 million litres with a FOB value of \$857 million and United States imports of 147 million litres with a FOB value of \$858 million (an increase of 41% by value).

ISSUES

The chief benefit to our industry from the agreement is in terms of:

- Lower tariffs and duties
- A platform to achieve liberalisation of labelling laws
- Positive changes to our system of protection for Geographic Indications

TARIFFS

Under the FTA we will see a progressive elimination of all tariffs for wine over 11 years. The benefits from this will be in the region of \$25 million per annum given the expected growth in the market.

Table 1.1: Tariff Elimination/Phase Out Schedule for Key Types of Wine.

Wine Type	Tariff Code	Current Tariff rate (US cents/litre)	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11
*Sparkling Wine	22041000	19.8 cents per litre	19.8	19.8	19.8	19.8	19.8	19.8	19.8	18.2	12.6	7.1	Free
Effervescent Wine (in containers not over 2 litres)	22042120	19.8 cents per litre	19.8	19.8	19.8	19.8	19.8	19.8	19.8	18.2	12.6	7.1	Free
*Tokay (not over 14% vol alc and in containers not over 2 litres)	22042130	6.3 cents per litre	6.3	6.3	6.3	6.3	6.3	6.3	6.3	5.8	4.0	2.2	Free
Wine (not over 14% vol alc and in containers not over 2 litres)	22042150	6.3 cents per litre	6.3	6.3	6.3	6.3	6.3	6.3	6.3	6.3	6.3	6.3	Free
*Marsala (over 14% vol alc and in containers holding 2 litres or less)	22042160	5.3 cents per litre	5.3	5.3	5.3	5.3	5.3	5.3	5.3	4.8	3.3	1.9	Free
*Wine (over 14% vol alc and in containers over 4 litres)	22042180	16.9 cents per litre	16.9	16.9	16.9	16.9	16.9	16.9	16.9	15.5	10.8	6.0	Free
Wine (not over 14% vol alc and in 2 - 4 litre containers)	22042920	8.4 cents per litre	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.4	8.1	5.6	Free
Wine (over 14% vol alc and in 2 - 4 litre containers)	22042940	22.4 cents per litre	22.4	22.4	22.4	22.4	22.4	22.4	22.4	22.4	22.4	13.0	Free
Wine (not over 14% vol alc and in containers holding over 4 litres)	22042960	14 cents per litre	11.7	10.5	9.4	8.3	7.1	6.0	4.8	3.7	2.6	1.4	Free
**Wine (over 14% vol alc and in containers holding over 4 litres)	22042980	22.4 cents per litre	18.7	16.9	15.0	13.2	11.4	9.6	7.8	5.9	4.1	2.3	Free

*Denotes those items that Chile currently does not pay a tariff on under the Generalised System of Preferences (benefit given to it by the US because of its developing country status).

**In this tariff line Australia has received a slightly more advantageous rate of reduction than Chile. In all other lines (except the denoted GSP lines) the reduction for Australia is the same as that for Chile.

In addition we will see the immediate phase-out of a number of items that are important inputs into Australian wine production. Key items include American oak, which is a major cost to producers of premium red wines although other items including bottling plants, irrigation equipment and stainless steel may also be affected favourably.

AGRICULTURE

Parties restated their commitment to the WTO agriculture negotiations to reach the following objectives:

- improve market access;
- reduce, with a view to phase out, all forms of agricultural export subsidies;
- develop disciplines that eliminate restrictions on an entity's right to export; and
- substantially reduce trade-distorting domestic support.¹

Export subsidies will be removed and not re-introduced on agricultural goods traded in each Party's market. Of interest to the Australian wine industry is Article 3.3.2. It appears to allow Australia to make a written request to the US for it to impose measures against wine from a third country that is being sold in the US and which benefits from export subsidies. Such a request would require the Parties to discuss and agree upon specific measures which the US may adopt to counter the effect of such subsidised wine. The US may then apply agreed measures. Australia would be unable to apply export subsidies for its wine being exported to the US market.

STANDARDS AND REGULATIONS

The Parties reaffirmed their existing rights and obligations with respect to each other under the TBT Agreement. In particular, consistent with Article 2.4 of the TBT relevant international standards are to be used, where possible, as a basis for its technical regulations.

The FTA also commits to discussion and exchange of views in relevant international or regional bodies that develop standards, guidelines, recommendations, or policies relevant to this Chapter. This may help formalize cooperation in such forums as the Codex Alimentarius Commission and the International Organisation of Legal Metrology which are increasingly being used to create standards that may impede trade.

Of particular interest to the Australian wine industry is Article 8.5 which requires ' The Parties shall give positive consideration to accepting as equivalent technical regulations of the other Party, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfill the objectives of their own regulations.

Where a Party does not accept a technical regulation of the other Party as equivalent to its own technical regulation, it shall, at the request of the other Party, explain the reasons for not accepting the technical regulation of the other Party as

¹ Article 3.1

equivalent. The Parties may agree to further engagement on accepting equivalence of particular technical regulations, including through the possible establishment of an *ad hoc* working group, as provided for in Article 8.9.

Article 8 also allows the Parties to establish a working group to deal with matters set out in Chapter 8 (standards and technical regulations).

If such a Working Group is established, it may provide an opportunity for the Australian wine industry to pursue several outstanding labelling issues it has with the US for example: vintage requirements, varietal labelling etc. Working Groups are designed to identify workable, practical solutions that can facilitate trade.

SAFEGUARDS

Safeguard measures have been applied to a limited range of products, for example, horticultural products. Wine is not subject to these measures.

Article 9.1 allows the Parties to apply safeguard measures to products, including wine, within the transition period² if a Party can show that as a result of tariff reductions under the Agreement the other Party is:

- causing or threatening to cause serious injury within the domestic industry; and
- importing a product in greatly increased quantities.

Once these matters are demonstrated, further tariff reductions can be stopped by the relevant Party.

However, such actions can only be taken:

- Once an investigation (completed within one year, identical to the requirements of the WTO) has been conducted;
- For a period of up to two years, with a further option to extend for another two years after a further investigation has been conducted;
- During the agreed transition period; which could be within ten years after the Agreement applies, or as a result of a phase-in period for a particular product if it is longer than ten years; and
- Once on any given product.

² Transition period means the 10 yr period following the Agreement coming into force, unless the good is listed in Schedule in Annex 2B regarding Tariff Elimination

INTELLECTUAL PROPERTY

Each Party:

- Shall provide that the owner of a registered mark shall have the exclusive right to that mark;
- Shall provide pre-existing trademark holders with an appropriate mechanism to oppose an application for a geographical indication as well as providing for cancellation;³
- May provide limited exceptions to the rights conferred by a mark, including the fair use of descriptive terms.⁴
- Grounds for refusing an application for protection or recognition of a geographical indication include the following;
 - the geographical indication is likely to cause confusion with a mark that is the subject of a good-faith pending application or registration; and
 - the geographical indication is likely to cause confusion with a pre-existing mark, the rights to which have been acquired through use in good faith in that Party.

The *Australian Wine and Brandy Corporation Act 1980* will need to undergo minor changes as a result of the second dot point. Some of these changes are of importance to the Australian wine industry.

Parties are not required to enact legislation which is retrospective. Geographic Indications registered before the Agreement comes into force will not be affected. The FTA will not effect the protection provide for European GIs under the *Bilateral Agreement on Wine between the European Union and Australia*.

COMMITTEES AND WORKING GROUPS

The establishment of Committees and Working Groups is provided for under Articles 3, 7, 8 and 21 of the Agreement, providing the Australian wine industry with several forums to progress a number of issues of interest to it, for example, labelling.

³ Article 17.2.12

⁴ As referred to in Articles 17.2.4 and 17.2.5

The key Committees and Working Groups relevant to wine are:

Joint Committee

Article 21 establishes a Joint Committee, which will meet on an annual basis. Primarily, the Joint Committee is structured to supervise the implementation of the Agreement as well as review the trade relationship between the Parties⁵, and further:

- consider any improvements or amendments that either country may wish to propose; and
- discuss, where further clarity is required, the ability to issue interpretations of the Agreement (This reserves the power to interpret the Agreement to the Australian and US Governments operating together).

The Joint Committee is given the power to establish smaller Committees, Working Groups etc on an ad hoc basis.

Key roles of the Joint Committee are:

- establishing a fair, transparent, timely and effective procedure for settling disputes arising under the Agreement;
- providing high standards of openness and transparency in the resolution of disputes between Australian and US Governments; and
- providing for flexible compensation arrangements for resolving disputes.

Agricultural Committee

Under the Agreement⁶, an Agricultural Committee is established for the purpose of providing a formal opportunity for Australia and the US to discuss agricultural issues.

The Committee will meet annually and discuss:

- trade promotion activities;
- barriers to trade;
- export competition issues; and
- any other matters relevant to the Agricultural Chapter, for example: export subsidies, duties etc.

Committee on Sanitary and Phytosanitary Matters

Under Article 7 a Committee is established on Sanitary and Phytosanitary Matters. It will, as with all the other Committees under the Agreement, meet annually and initially within 45 days of the Agreement coming into force.

⁵ Article 21.1

⁶ Article 3.2

The key functions of the Committee are inter alia:

- to assist in increasing mutual understanding of the SPS measures and regulatory processes, as well as continuing the cooperative efforts of the Parties internationally;
- to provide a forum where various agencies can participate as necessary to enhance mutual understanding of the SPS processes and policies adopted by each Party. They will then provide advice on international rights and obligations, particularly those relating to SPS measures in the WTO.

CONCLUSION

The FTA provides some small immediate benefits to the Australian wine industry from reduced tariffs on inputs. In the longer term it will at least ensure that we do not fall behind the liberalisation achieved by South Africa and Chile in their deals with the United States and will provide Australia with significant reductions in costs due to the elimination of tariffs after 11 years. It also provides us with a platform from which to seek the liberalisation of labelling procedures which currently are a significant impediment to trade.