

FOR INDUSTRY,
BY INDUSTRY

**Australian
Grape and Wine Inc**

Postal Address
PO Box 2414
Kent Town SA 5071

Adelaide
Level 1, Industry Offices
National Wine Centre
Botanic Road
Adelaide SA 5000
T +618 8133 4300

Canberra
NFF House
14-16 Brisbane Avenue
Barton ACT 2600
T +612 6239 8300

ABN 45 903 873 163

E info@agw.org.au
W agw.org.au

1 July 2019

Alison Burrows
Lead Negotiator
Australia and the European Union Free Trade Agreement
Department of Foreign Affairs and Trade
RG Casey Building
John McEwen Crescent
Barton ACT 0221

Dear Alison

Re: Australia and the European Union Free Trade Agreement negotiations

Following the completion of the last round of negotiations with the European Union, it is timely that we remind you of our position as we progress through the formal trade negotiations phase.

Offensive interests

Elimination of tariffs - Wine imports into the European Union are subject to import duties - Common Customs Tariff (CCT). Tariffs between both countries are small, and there is strong industry support from industry sectors of both parties to eliminate tariffs immediately on entry into force of the agreement. Despite the small size of the tariff, its elimination will have an important positive impact on wine exports for Australian producers.

We are interested in all the tariff lines relating to wine, but also the tariff lines relating to grape concentrate. There is a growing market for the export of grape concentrate to the EU for the production of grape juice and non-alcohol beverage sector products. There are two tariff rates for concentrate in the EU dependent on the Brix (sugar content as percentage by mass):

- Brix value exceeding 30 but not exceeding 67: 22.4%
- Brix value exceeding 67: 40% + 20.60 EUR / 100kg

This is particularly important for Australian grapegrowers, in time of high supply. It provides an important measure to counteract the highly subsidised European Union grape and wine production sector.

Wine Agreement

Many of Australia and the European Union's trade issues have been resolved through the Wine Agreement. While this agreement is by no means perfect, it does provide the certainty that promotes our exporters interests in this major market. As such, we would prefer it not to be opened up in the negotiations. While we understand the political reality that this may occur, as it did with South Africa and Canada, we also do not want to lose any of the advantages we have won. In such a case, we need to defend our current position, although there are a number of issues on which we could seek improvements. These are primarily technical issues that we should pursue.

Geographical indications

We understand that protection of European Geographical Indications will be a key outcome for the European Union from these negotiations. The issues that the Australian wine sector have had with the continued creep of the European Union's reach of our existing GI protection system is well known. Protection of the rights of Australian producers and exporters to describe their products with grape variety names, including, inter alia, 'prosecco' are vital for a system that has integrity and will give certainty.

Australia will need to design a GI system that protects the interests of Australia's food and wine producers and manufacturers. Industry needs to be part of the process to ensure our commercial interests are managed appropriately. It should also be noted that GI protection is not restricted to food and wine and that major producers of goods and services are also seeking to use them as a protectionist measure (eg. cotton in India).

Australia has a separate GI system for wine. Any moves to consolidate this system into a single GI system must maintain its current level of protection and recognise the obligations under existing FTAs. We note, that other countries currently negotiating with the European Union will be seeking to keep protection of Wine GIs separate to other GIs. We recognise that the European Union is seeking a stronger level of protection than exists under the Trade Marks Act. This is broadly equivalent to what exists under the *Wine Australia Act* for wine.

Australia needs to recognise in these negotiations that the EU will seek to erode the benefits of any GI agreement by negotiating with third countries to override and benefits. Reliance on TRIPS and TRIPS text, or even TPP-11 text is not sufficient to protect our interests with use to grape variety names.

Prosecco needs to be considered separately as it possess a unique set of circumstances. Prosecco is a grape variety recognised by the International Organisation of Wine and the Vine (OIV). It is similar to chardonnay, shiraz, riesling etc. Prosecco is not the same as Champagne. Champagne is a well known region producing a specific style of wine. There is no grape variety 'champagne'. In 2013, the EU was unsuccessful in gaining legal recognition of Prosecco as a Geographical Indication (GI) in Australia. Australian courts ruled that Prosecco was a grape variety, with well-established use by Australian wine producers. To change this position means reversing a legal decision.

There is a simple solution to the 'prosecco' issue that has been offered up by the Australian producers. This is to allow recognition of 'prosecco' as a grape variety by Australian producers and protection of the Italian GI 'prosecco'. Homonymous use is clearly permitted in both the Wine Agreement and under international law.

The 'prosecco' issue also has implications under Section 51(xxxi) of the Constitution of Australia that provides the Commonwealth with the power to make laws with respect to "the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws." As it is both a power and a constitutional guarantee of just compensation for property rights contingent on its exercise, this needs to be clarified.

It is clear from the hard-line position of the European Commission on Geographic Indications, that while the Australian wine sector has a clear defensive interest in maintaining our right to use grape variety terms such as 'Prosecco', there are a number of other considerations that need to be taken into account in these negotiations.

The Agreement between Australia and the European Community on Trade in Wine (the Wine Agreement) that entered into force on 1 September 2010, resolved many of the issues around GIs for wine.

There are a number of issues referring to GIs that were raised in side-letters to the Wine Agreement. That exchange of letters only remains in force as long as the Wine Agreement remains in force.

We understand that the European Commission has not yet made a proposal to Australia concerning the status of the Wine Agreement. However, if it is rolled into the Free Trade Agreement, then these provisions will need to be explicitly clarified within the text or associated annexes.

These provisions include, inter alia,:

- *The trademarks "Ilya", "Lienert of Mecklenburg", "Lindauer", "Salena Estate", "The Bissy", "Montana" and "Karloff" registered in Australia can continue to be used in Australia.*
- *Notwithstanding Articles 13(2) and (5) of the Agreement and the second paragraph of the Exchange of Letters 'Concerning the protection of Geographical Indications', attached to the Agreement, the trademarks "Stonehaven Limestone Coast", "John Peel", "William Peel", "Old Peel", "South Coast" and "Domaine de Fleurieu" registered in the Community and/or one or more of its Member States can continue to be used in the Community and / or in the territory of the Member State concerned.*
- *Nothing in the Agreement shall be deemed to prevent the trademark right holders from using these trademarks elsewhere where laws and regulations so permit.*
- *The Contracting Parties note that trademarks that do not contain or consist of a geographical indication as listed in the respective annexes to the Agreement are not affected by the provisions of Articles 13(2) and (5) of the Agreement and can therefore continue to be used as far as the Agreement is concerned.*

- *The Contracting Parties agree on discussing this issue, if needed, in the framework of the EC/Australia Joint Committee, established by Article 30 of the Agreement.*
- *The Contracting Parties also note that the Community Geographical Indication "Vittorio" is subject to a verification process in Australia in relation to the trademarks "Vittoria" and "Santa Vittoria". Once this process is completed, and subject to settling any issues that might arise from this process, the Contracting Parties will use best endeavours to update the list of Geographical Indications in Annex II expeditiously, through the EC/Australia Joint Committee.*

We would also require that the Joint Declarations also continue in place.

There are a number of broad principles that also need to be adhered to that have been made clear in the list of GIs submitted to New Zealand.

The list of proposed GIs contains a number of words or phrases that are either common words, or that would be common words in translation to English. These include:

- GIs that constitute common words or phrases either in English or in translation to English;
 - compound GIs that include common geographical terminology (hill, mountain, river etc.) either in English or in translation to English;
 - compound GIs that include other common words either in English or in translation to English.
1. We should not accept absolute protection for such terms in translation. We could only accept protection of these terms on the condition that the use of the words and phrases translated into English is not considered to be "misuse, imitation or evocation" of the GI.
 2. Further this should not require additional regulation but this test would be decided through Competition Law.
 3. I also believe that we could then seek to enshrine the principle of homonymous use and co-existence through terms such as 'Adelaide' (where the European commission will not protect Adelaide on the basis that it is the same as a name) etc.

Procedures for protection of geographical indications and traditional terms in the wine sector

I would also note that the European Union are considering changes to their procedures for the protection of GI and traditional Terms (COMMISSION DELEGATED REGULATION (EU) .../... of 17.10.2018 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation).

The FTA should seek to ensure that the domestic procedures also apply to Australia with a clear procedure established. This would also permit standard and temporary amendments related to the protected designations of origin and geographical indications of third countries should follow the approach provided for Member States, and the approval decision should be taken in accordance with the system in force in the third country in question (Article 19).

I would also note articles 25 and 26 referring to protection of traditional terms and believe that both Australian Grape & Wine and Wine Australia should be authorised under the FTA to apply for the use of such terms to preserve their use. This would also require an accelerated procedure.

Other issues

Product Environmental Footprint – We should seek greater transparency around the intended application of the EUs product Environmental footprint process and intentions for granting equivalence to Australia's existing environmental assurance programs.

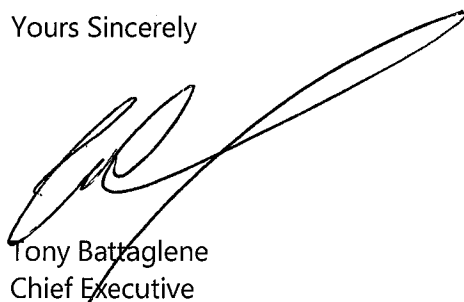
Organics – We would also seek equivalence of our national organic standards for wine.

MRLs –While it may not be something to be dealt with in an FTA, a high priority of our industry is the process for reviewing MRLs within the European Union. As a priority we would like to see a shift in focus from hazard based approach to one which more prominently addresses risk in review of agricultural chemicals and MRLs. This might be an area where we seek future cooperation.

Research Cooperation – Australia's world class agricultural research system provides an ideal opportunity to promote R&D cooperation. This would also promote the best of Australia's cutting edge wine science in a country. The wine sector is in a perfect position to lead a pilot in this area.

I would be delighted to expand on any of these issues.

Yours Sincerely



Tony Battaglione
Chief Executive

6/7/2018