

Submission on the Trans-Pacific Partnership Agreement Submission to DFAT

Prepared by the Winemakers' Federation of Australia
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Background

In November 2008 the Government announced that it would participate in negotiations for a Trans-Pacific Partnership Agreement (TPP). The TPP will expand on the current Trans-Pacific Strategic Economic Partnership Agreement between Brunei Darussalam, Chile, New Zealand and Singapore (which entered into force in 2006) to also include the United States of America and Peru.

We believe that this initiative has great potential for Australia.

Issues

WFA believes that some important lessons can be learnt from the APEC model in the negotiations of the TPP. An important part of building a regional agreement that is attractive for all participants means broadening the Agreement to look more at economic cooperation and trade facilitation as well as the normal FTA planks of market access. However, this does not mean that we should resile from the principle of binding commitments in the Agreement.

We are encouraged by the rhetoric surrounding the TPP which places an emphasis on regulatory coherence. Differing international standards remains one of the biggest cost items to the Australia wine industry.

There are some extensions of the work we are undertaking in APEC that may be useful to raise in the context of the TPP.

For example, at the APEC Sub-Committee on Standards and Conformance (SCSC) Meeting held in Lima, Peru from 25-26 February 2008, the SCSC endorsed the establishment of a Wine Regulatory Forum (WRF) and its Terms of Reference. The Committee noted that there are currently no standards for wine makers developed by CODEX or other internationally recognized bodies. The establishment of the WRF will allow economies which have an interest in better regulation of wine and facilitating trade in wine to work together, exchange information and examine areas where useful and productive capacity building activities could be undertaken. In particular these experts will share experiences and knowledge, in particular in relation to involvement and obligations with the various relevant international forums, including *inter alia*, the Codex Alimentarius Commission, World Trade Organisation (WTO), International Organisation of Wine and the Vine (OIV), and the World Wine Trade Group (WWTG). This consultation would also look at the benefits for APEC Economies and the APEC region, in particular the benefits to consumers by improving consumer protection through better wine regulation.

A key thrust of these consultations will be to provide capacity building in the area of wine regulation. This activity complements the Food Safety Forum. The Food Safety Forum has produced a strategic approach for SPS activities that has four key strands, including one on *Food*

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safety regulatory systems, with a sub-theme: Legal and technical drafting to support the development of food laws and regulations harmonized with international standards. This activity, which links the wine industry engagement with food regulators fits within that strand.

To progress the sentiment of the SCSC, the APEC Wine Regulatory Forum will:

- ❖ Strengthen regulatory cooperation among member economies;
- ❖ Develop capability among regulators in the region; and
- ❖ Enhance the regulatory capacity by sharing information on standards and practices in the region and in major producing and consuming economies.

In our view this activity is a model case study for capacity building with a view to regulatory alignment, where you have an industry that is keen to foster trade, and governments keen to protect consumers, rather than use regulation as a form of protectionism. In accelerating progress towards these outcomes, the goal of the Forum is to:

- examine options to simplify and harmonise wine regulation across the APEC region, reduce technical barriers to trade and protect consumers; and
- share information and build capacity in wine regulation across the APEC region.

With a relatively small government investment, activities like these could give a foothold into regulatory reform in key export markets.

Regulation of oenological practices as a barrier to trade

The regulation of wine around the world has a significant real and potential impact on the trade in wine. The past decade as seen unprecedented growth in the international trade in wine. The biggest drivers of this growth have been Australia, New Zealand, United States, Chile, Argentina and South Africa. The increased competition arising from the increased presence of 'New World' wine in the market place, coupled with aggressive marketing and consumer friendly styles and labelling have left producers in Europe and the United States looking for answers in how to reclaim market share.

The simple response from producers has been to seek increased domestic support and/or impose technical trade barriers. Although the World Trade Organisation prescribes trading rules to minimise the growth in technical trade barriers, the reality is that the rules are imperfect and expensive to enforce.

There are a number of areas of trade barriers that are proliferating at present and appear to be part of a well orchestrated trade policy push from some major world players. These purport to relate to consumer protection / 'fair trade' and principally relate to product integrity systems, additives and processes and labelling.

Technical barriers to trade are a very real risk to trade in wine. Over the last five years there have been a number of regulatory developments internationally that have indicated that inappropriate regulation could become a major political football and consequently barrier to trade in the next decade. Serious impediments to trade arise from differences in regulatory philosophies for wine around the world. The major thrusts of the global regulation of wine concern **oenological practices, certification and labelling**.

For the wine sector, most of the initiatives to reduce non tariff measures have been through other forums such as the World Wine Trade Group (WWTG) and the Australian-European Union Agreement on Wine.

The World Wine Trade Group includes representatives from Argentina; Chile; USA; Canada; Australia; South Africa; and New Zealand. Observers from a number of other economies including Uruguay, Brazil and Mexico also attend meetings. This is an industry - government group that meets twice a year with the objective of enhancing world trade in wine.

In December of 2001, the New World Wine Producers signed the Mutual Acceptance Agreement (MAA) on winemaking practices. In this historic agreement, members agreed to recognize one

another's winemaking practices and the regulatory and enforcement mechanisms of the signatory economies. This binds the 'World Wine Trade Group' of economies² to allow the importation of wines from each other provided the wine has been produced in accordance with practices legitimate in the country of origin, regardless of the legality of those winemaking practices in the country to which the wine is exported.³The introduction of new technologies is far less likely to disrupt trade under this 'mutual acceptance' approach than under the arrangements favored by the EU.

This agreement is intended to encourage free trade in wine, through setting a benchmark standard to ensure consistent quality for wines and guaranteeing consumer health and safety.

A WWTG Labelling Agreement was signed on 23 January 2007 as part of the WWTG Plenary meeting hosted by Australia (in Canberra). The Labelling Agreement requires a 'single field of vision' approach to wine labelling, whereby four key common mandatory items of information (product designation, content volume, percentage alcohol and country of origin) are deemed to comply with domestic labelling requirements if they are presented together in any single field of vision. Australian industry estimate that once in force the Agreement will deliver cost savings of almost \$25 million each year (around one percent of the cost of production), in addition to marketing and distribution benefits. Compliance with the Wine Labelling Agreement will reduce the production, application, warehousing and waste of labels. Efficiencies are gained in actual production of labels, the application of labels and in the reduction in the number of stockkeeping units of finished product.

It was believed that harmonised standards and conformance would facilitate the conduct of international trade, resulting in more rapid trade flows, reduced costs and greater integration of production networks in the region. It would also ensure conformance with international obligations under the WTO by reducing the inadvertent maintenance of trade barriers from disparate labeling regulations and food standards.

The WWTG is currently negotiating an MOU on Certification with a view to eliminating requirements for certification between WWTG countries (apart from those relating to sanitary and phytosanitary measures). Australia is supportive of progressing this initiative and has been instrumental in the development of draft text and progressing discussions on the initiative. Australian industry is not seeking a binding agreement and prefers to view this as more of a 'strategic document'.

These activities could be usefully raised in the context of the TPP.

Maximum Residue Levels (MRLs)

A further issue of interest to the wine sector concerns the use of agrichemicals. Pesticides are used to protect crops before and after harvest from infestation by pests and plant diseases. A possible consequence of their use may be the presence of pesticide residues in food.

Maximum Residue Levels (MRLs) are set to reflect the highest amount of pesticide residue expected in food when pesticides are applied correctly (in accordance with approved conditions of use). MRLs are primarily trading standards, but they also help ensure that residue levels do not pose unacceptable risks for consumers.

Farmers, importers, distributors and retailers are responsible for ensuring marketed food complies with all statutory MRLs set. National authorities are responsible for control and enforcement of the MRLs. Checks entail taking samples, analysing them and identifying the pesticides and respective pesticide levels present.

² Australia, Argentina, Canada, Chile, South Africa, New Zealand and the USA

³ There are exceptions allowed for reasons of human health and safety.

In most cases MRLs for the raw agricultural commodity – grapes are set. Whilst MRLs for wine are not normally set, it is usually assumed that the MRL for grapes applies also to the wine produced from those grapes. Processing studies can be used to support a raw commodity MRL proposal and in some cases the setting of a processed commodity MRL.

MRLs differ between countries both in level and for approved use on commodities which has the potential to be a significant barrier to wine trade. In addition, for unapproved product use such as may occur from spray drift, policies differ on default MRLs. For developing countries due to limited capacity and resources, they are often unable to conduct independent risk assessments and are faced with often widely varying MRLs which cause issues for determining safety and for trade. They will often then use Codex MRLs as a default.

Other default positions include a blanket ban; a tolerance of 0.01 mg/kg or as in the case of China where there are some 136 agri-chemical for which MRLs have been established the food safety law that entered into force in June 2009 - stipulates that importing food for which there is no standard, the importer shall apply to the health agency and provide safety assessment material. Then the health agency will decide whether to permit or not, and develop relevant national food safety standard.

MRLs are also set through the Codex Committee on Pesticide Residues (CCPR).

While it appears a bridge too far to sign a mutual recognition agreement on MRLs within the WWTG, there are a number of initiatives that can usefully be progressed to improve the current situation:

- Create a database of MRLs
- Create a database of analytical methods used for residue tests
- Identify different or absent MRLs
- Identify what mechanisms are available to harmonise these
- Identify default MRLs, the relationship with Codex and mutual recognition.
- Develop as an action item within the APEC Wine Regulatory Forum

We should seek to harmonise MRLs for grapes and seek to negotiate the following policy principles

Imported foods must meet the same MRL standards as domestically produced wine, i.e. the domestic MRLs. If there is no domestic MRL for a particular pesticide and food commodity, there must currently be no quantifiable residue.

In this situation, the corresponding Codex MRL is adopted, or in the absence of a Codex MRL, a default be adopted of 0.01 mg/kg (or the Level of Quantification, 'LOQ', if that is higher). If the default MRL is inappropriate; the domestic importer of produce should be able to apply to set an MRL ('import tolerance') at least on a case by case basis.

Exports: The importing country's MRL takes precedence for exports, because if the produce is not compliant with their MRL, the produce will not be accepted by the importing country, i.e. there will be no export. If the importing country does not have its own MRL, then the Codex MRL should apply (if accepted by the importing country). The LOQ should apply if the importing country has no domestic MRL for a particular pesticide and food commodity and does not accept the Codex MRL. If that is inappropriate, the exporting country's MRL should apply or an MRL be set by inter-government agreement.

For new pesticide chemicals or new uses for existing chemicals, the registrant should apply for a Codex MRL as soon as there is a relevant registration granted anywhere in the world. WWTG Governments should support urgent prioritisation of these new applications in the Codex MRL-setting process.

Best practice principles for bilateral and regional trade agreements

It might be worthwhile considering an approach that Chile has taken in some negotiations (most notably with the United States) where they have built in a MFN clause – that is, if some other economy gains a better deal on market access then those benefits will then automatically be passed on to Australia.

I would also point out that there are considerable benefits in technical cooperation with FTA partners. Under the AANZFTA a chapter on technical cooperation has been built in. This does not fit within the normal Australian 'template' but is a very useful adjunct to improve market access.

Australia has recently signed memorandum of understandings on certification issues with China and Hong Kong. A commitment to negotiate such an MOU with our trading partners would be a significant step forward. Ongoing dialogue is vital to reducing trade barriers, but most existing mechanisms set up under the FTAs do not appear to work well.

Australia also continues to have issues relating to different technical requirements between our trading partners and Australia. Again there would be considerable benefit in establishing a technical forum to discuss such issues through the FTA. We also believe that commitment to cooperate in regional forums such as APEC and in key international bodies such as the Codex Alimentarius Commission would of major benefit.

Intellectual property

Under the P4 agreement there are provisions for the protection of Geographic Indications. The Australian wine industry maintains the position that the agreement should not be TRIPS plus. However, we would seek an exploration of some position that could prevent the signatories exclusively protecting terms that are not GIs or are grape varieties. An obvious suggestion is to include language prohibiting the restriction of wine descriptor adjectives and wine varietal descriptions.

Conclusion

The Winemakers Federation of Australia is very happy to expand on any of these issues.