

AUSTRALIA – INDIA FREE TRADE AGREEMENT WINE SECTOR ISSUES

PURPOSE

This submission is supplied to the Department of Foreign Affairs and Trade (DFAT) on issues of importance to the wine sector in a Free Trade Agreement with India. This submission should be read in conjunction with the submission from the Australian Grape and Wine Authority (AGWA).

INTRODUCTION

The Indian wine market has experienced strong growth year-on-year over the past 10 years from a small base. This has been driven by a fast growing and educated middle class, favourable government policies encouraging the Indian domestic wine industry, higher disposable income and growth in foreign tourism. There are also challenges that exporters encounter including high import duties and state taxes, cultural and religious sensitivities to wine and poor logistics and cold storage facilities.

BACKGROUND

Who we are

The Winemakers' Federation of Australia (WFA) is the national peak body for Australia's winemakers.

Our objectives are:

- to represent the interests of Australian winemakers and grape growers of all sizes on national and international issues affecting the Australian Wine Sector, through a single organisation;
- to actively promote and protect the reputation and success of Australian Wine and the Australian Wine Sector;
- to encourage unanimity of opinion and action amongst Members in all national and international matters pertaining to the Australian Wine Sector;
- to initiate legislative or other regulatory activity, or Government response or action, or otherwise facilitate any outcomes, deemed desirable by the Association for the benefit of the Wine Sector in Australia;
- to provide a medium through which opinions of Members may be ascertained or expressed;
- to provide relevant information to Members;
- to foster co-operation and goodwill between viticultural and oenological research and education bodies and all other bodies relevant to the Australian Wine Sector
- to encourage good practice and standards of winemaking and Wine business management within the Australian Wine Sector;
- to administer funds collected from Members in support of the activities and objects of the Association;
- to protect and enhance community and Government support for the Australian Wine Sector;
- to promote economic, environmental and social responsibility in the production and consumption of wine in Australia; and

- to promote the interests of the Association and to do all such other lawful things as the Association may consider incidental or conducive to the attainment or advancement of the objects of the Association.

Government recognition of WFA as a representative organisation is on the basis WFA represents the entire Australian winemaking sector, including members and non-members. WFA is recognised as a representative organisation under the *Primary Industries and Energy Research and Development Act* and the *Australian Grape and Wine Authority (AGWA) Corporation Act*. WFA is incorporated under the *SA Associations Incorporation Act 1985*.

WFA membership represents around 80% of the national wine grape crush and has over 370 wineries as members.

WFA represents small, medium and large winemakers from across the country's wine-making regions, with each having a voice at the Board level. WFA Board decisions require 80% support so no one sector can dominate the decision-making process. In practice, most decisions are determined by consensus.

WFA works in partnership with the Australian Government and our sister organisation, Wine Grape Growers Australia (WGGA), to develop and implement policy that is in the wine sector's best interests.

WFA's activities are centred on providing leadership, strategy, advocacy and support that serves the Australian wine industry now and into the future.

Challenges in India for Australian Wine

Tariffs in India are very high and we would be seeking elimination of these tariffs on entry into force of any FTA.

Tariffs and Taxes

Tariff lines of interest:

20092100	Grape fruit juice of a Brix value not exceeding 20
20096100	Grape juice, of a Brix value not exceeding 30
20096900	Other juice, (incl. must), unfermented, Brix > 30
22041000	Sparkling wine
22042110	Port & other still red wines (in containers < 2l)
22042120	SHERRY & OTHER STILL WHITE WINES (in containers < 2l)
22042190	OTHER WINE OF FRSH GRAPES INCLUDNG GRAPE MUST (in containers < 2l)
22042910	PORT & OTHER STILL RED WINES (in containers >2l)
22042920	SHERRY & OTHER STILL WHITE WINES (in containers >2l)
22042990	OTHER WINE OF FRSH GRAPES EXCLUDING GRAPE MUST (in containers >2l)
22043000	OTHER GRAPE MUST
22051000	VERMOUTH & OTHR WINE OF FRSH GRAPES FLVRD IN CONTNR HOLDING 2 LTR OR LESS
22059000	OTHER VERMOUTH & OTHR WINE OF FRSH GRAPES FLVRD
22082011	Brandy

Intellectual Property

The European Union has run a very aggressive campaign on Geographical Indication (GI) protection and protection of traditional terms. We would appreciate clarification in the negotiations that common English words can continued to be used to describe or present a wine even if they are similar or identical to a GI or Traditional Term from Europe. We would also seek wording in the IP Chapter to ensure that in the case of an agreement with the European Union, that wine GIs are protected according to the TRIPs obligations of the parties. Specifically, that Australia will be permitted to continue to use our wine GIs if they contain a word or are the same as a European GI and that grape variety names that are the same as a European GI can continue to be used (for example Prosecco).

Non-tariff issues

India is a minor, but increasing wine producing nation as well as a potential growth market. We believe there is the opportunity to establish forums for technical cooperation.

We believe that this could occur on two fronts. First, a "Business to Business" dialogue between the Australian wine industry, represented by the Winemakers Federation of Australia, and the Indian wine industry, (similar to the European forum recently established by the European wine industry and the Chinese wine industry (in November 2013 in Beijing).

Second, a similar forum to the European –China Trade Project (EUCTP) could be established. (EUCTP II is the third major EU-China trade related technical assistance project since 2000. From 2010 to 2015, project activities will support the Chinese government's trade reform and sustainable development agenda by working under the EU-China economic and trade dialogues to promote fair **competition** and value for consumers; facilitate **harmonisation with international standards** and promote **safe products**; improve **food safety** and **quality**; **modernise** customs; encourage a more transparent **legal environment**, and work towards **transparency, good governance** and **sustainable development**).

WFA has previously participated in this project as invited European experts and it provides a very useful opportunity to create dialogue between regulators, to harmonise standards and to develop regulatory coherence.

Support for India to join APEC.

Australia is an active participant in two APEC groups that are working on harmonising MRLs for wine in the APEC region. India was invited to the APEC summit in Beijing in 2014 by the Chinese president, Xi Jinping, but no invitation to join the grouping was made by the Chinese president. India had said then a membership would have to be supported by the US. Australia should support initiatives to bring India into APEC through the FTA negotiations.

Maximum residue limits

Harmonization of pesticide MRLs between India and Australia would have important trade facilitation outcomes. To achieve harmonization of MRL standards, it is proposed that,

where feasible and consistent with domestic law, India and Australia should consider agreeing to and adopting, where practical and appropriate, a set of broad principles as follows:

1. participation in the development of MRLs in Codex Alimentarius (Codex) via the Codex Committee on Pesticide Residues (CCRP) that is hosted by China;
2. adoption of Codex MRLs in domestic legislation and trade;
3. work sharing, or exchanging data to support the establishment of pesticide MRLs by member economies, in cases where there is no domestic equivalent for a member economy; and
4. develop unilateral “recognition”, or “import tolerances” where practical and appropriate, in domestic regulation of specific pesticide/commodity MRLs of trading partners on a case-by-case basis.

A working Group could be established to implement this strategy.

This could include automatic recognition of exporting country MRLs as they apply to wine. This approach of recognising ‘country-of-origin’ MRLs does currently exist in some countries, usually on an informal basis, particularly where their national MRL policies and legislation are still under development or where no default limits have been specified for pesticide/commodity combinations not listed in their legislation¹. More formal examples of this ‘Country-of-Origin’ MRL recognition approach include the Trans-Tasman Mutual Recognition Arrangement (TTMRA) between Australia and New Zealand and the recognition of US MRLs for food exported to Mexico.

We should endeavour to negotiate such an agreement on a bilateral basis with India in the FTA negotiations.

We believe that we should promote adoption of these principles on a bilateral basis with India within the FTA.

Building on the WTO Trade Facilitation Agreement

Another area we need to investigate is how to build on the WTO Trade Facilitation Agreement agreed at the Bali Ministerial Conference in December 2013, as part of a wider “Bali Package”. The final agreement contains provisions for faster and more efficient customs procedures through effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. It also contains provisions

¹ Most national MRL policies adopt a ‘positive list’ approach, where residues are not to be detected (or above a specified default limit – such as 0.01 mg/kg) unless an MRL has been promulgated. However in some countries, while the legislation specifies their permitted MRLs, it is silent on what residue levels are acceptable for other (unlisted) pesticide/commodity combinations.

for technical assistance and capacity building in this area. A newly established Preparatory Committee was mandated to ensure the expeditious entry into force of the agreement and to prepare for its efficient operation.

Certificates of Origin

As part of the FTA negotiations we should seek agreement from India that certificates issued by Wine Australia Corporation (to be renamed the Australian Wine and Grape Authority (AGWA) on 1 July 2014) be accepted by the Indian government and additional certification should not be required.

A specific issue is how we should deal with Certificates of Origins. WFA strongly supports the right of exporters to provide self-certification certificates of origin (COO). The current requirement under certain FTAs that only Chambers of Commerce can provide certificates of origin adds cost and complexity for export.

For certain free trade agreements there is a requirement for exporters to obtain a certificate of origin (COO) from an authorized body to confirm that the goods being exported comply with the relevant ROO requirements. For example, Certificates of Origin are required under Australia's existing Free Trade Agreements with Thailand and Singapore and under the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA). As part of this WFA, we are seeking the designation by the Department of Foreign Affairs and Trade for the Wine Australia Corporation (AGWA) to be an Authorized Body to issue COO under Australia's FTAs.

Specific issues

Although we understand that specific non-tariff measures are rarely dealt with in FTA negotiations, there are a couple of key issues with broader ramifications that relate to compositional aspects of wine.

- 1) Naturally occurring minerals and salts

Regulations on food additives do not recognise naturally occurring minerals and salts. These are found in all fruits and vegetables, including grapes, and levels will vary depending on the soil and other environmental conditions.

This issue has been recognised in other international fora. For example in the protocol to the AGREEMENT between Australia and the European Community on trade in wine, the contracting Parties agree:

- I. 1. Pursuant to Article 5(1) (b) of the Agreement, the Community shall authorise the import and the marketing on its territory of wines originating in Australia that:*

- (a) *have a mineral content which reflects the naturally occurring levels found in Australian agricultural soils and which content arises during production from practices which conform with good oenological practice;*

This article recognises naturally occurring minerals and permits the imposition of article trade barriers. This issue is broader than just wine and should be considered within the context of the FTA. Of course the normal WTO carve-outs for health and safety issues need to be maintained.

It is difficult to predict which similar problems will arise in future and the FTA should contain provisions designed to address any future technical problems. Acceptance by Indian authorities of test reports produced by accredited Australian laboratories, in accordance with internationally recognised test methods, would be one useful outcome of the FTA. Even more useful would be recognition by Indian authorities of the certificate of free sale issued by the relevant Australian statutory authority (AGWA) as an alternative to analytical testing upon receipt of wine consignments in India.

Additives and processing aids

India is in the process of developing a winemaking standard. As it currently stands, the standard does not permit all the additives and processing aids commonly used in winemaking internationally. We believe there would be value in seeking harmonisation for food standards between India and Australia where possible, particularly for those foods with specific standards. I would also note that there are opportunities for collaboration in international for a related to food and wine standards including Codex Alimentarius Commission and the OIV.

Conclusion

The Winemakers Federation of Australia looks forward to working closely with DFAT as the negotiations with India progress. We would be happy to provide further information on any matter raised in this paper.

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2 February 2015