

AUSTRALIA – EUROPEAN COMMUNITY AGREEMENT ON TRADE IN WINE – Update

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Australia and the European Community signed the 'Australia – European Community Agreement on Trade in Wine' on 1 December 2008. The Agreement is expected to come into force in the middle of 2009 once the necessary amendments have been made to Australian domestic laws. From that time, the Agreement will regulate the trade in wine between Australia and the EC. The Agreement replaces the previous wine trading agreement between the parties which came into force in 1994.

The EC is Australia's largest wine export market and the Agreement aims to protect our access to that market. Although still strictly regulated, wine trading will be much simpler under the new Agreement.

Co-operation & Favourable Terms

The Agreement provides that Australia and the EC are to maintain contact on all matters relating to the Agreement whilst the Agreement is in force. Australia is represented by the Department of Agriculture, Fisheries and Forestry and the EC is represented by the Directorate-General for Agriculture and Rural Development of the European Commission.

A Joint Committee consisting of representatives of the EC and Australia is also to be established. Its purpose is to make recommendations to amend the Agreement and ensure its proper functioning. The Joint Committee may also discuss matters of interest in the wine industry and facilitate contacts between wine producers and industry representatives of Australia and the EC.

If a dispute arises between the parties, that dispute must first be considered by the representative bodies or the appointed Joint Committee before more formal dispute resolution procedures are invoked.

The Agreement also aims to ensure consistency between domestic laws and the terms of the Agreement. Each party is prohibited from creating domestic laws that impose conditions on the other party which are less favourable than those provided for in the Agreement. In particular, the conditions which are to be consistent relate to the description, presentation, packaging or composition of wines imported by one party from the other party.

Authorised Winemaking Practices

The Agreement authorises Australian wine producers to use 44 specific winemaking practices. It is now acceptable for oak chips to be used to add flavour to wines destined for the EC market. Reverse osmosis and spinning cone column treatment have also been approved as methods for separating juice or wine fractions.

If either Australia or the EC wishes to authorise a new winemaking technique for use by its wine producers, notice of that technique must first be given to the other party for comment. Further notice must be given within 30 days of the technique receiving authorisation. Wines produced using the technique will be provisionally authorised for import and marketing, with the importing party having 6 months to lodge an objection. The parties are to consult with one another to resolve the issue before proceeding to more formal dispute resolution methods.

Wine Labelling

Rules concerning wine labelling have been relaxed. Australian wine labels can include optional information such as the number of standard drinks in the product, as long as the information complies with rules applicable in Australia.

Geographical Indications

There are now 112 registered GIs in Australia. The EC has agreed to protect these names by taking all necessary measures to prevent their use outside of Australia. Australia must also do what is necessary to protect EC-registered GIs within Australia.

Importantly, the registration of a trade mark for a wine which contains or consists of GI will be refused if the wine does not originate in the GI. Even if domestic legislation permits the trade mark registration, the trade mark will be deemed invalid at the request of an interested party.

A person whose name is the same as a GI is permitted to use their name in the course of business but not in a manner that is likely to mislead consumers.

Traditional Expressions

A 'traditional expression' is a name traditionally used in the EC, referring to the method of production or to the quality, colour or type of a wine for the purpose of describing or presenting that wine.

Australia is prohibited from registering a trade mark which contains or consists of a traditional expression to describe a wine, unless the Agreement permits the use of the particular traditional expression. However, this does not apply to trade marks that were legally registered in good faith in Australia before the Agreement was signed. An Australian wine producer who can establish legitimate and extended use of a trade mark that contains a traditional expression will also be able to continue using that trade mark.

Australia is also prohibited from registering a business name which contains or consists of a traditional expression to describe a wine. The prohibition does not apply to business names legally registered in good faith in Australia before the Agreement was signed.

The entitlement to continue using a registered trade mark or business name does not permit either to be used in a manner that may mislead a consumer.

Quality Wine Terms

Australian wine producers may continue using a number of 'quality' wine terms if the products being described by those terms meet certain criteria. Quality wine terms include 'cream', 'ruby', 'tawny' and 'vintage'.

Use of terms such as 'Burgundy', 'Champagne', 'Moselle', 'Sherry' and 'Port' by Australian wine producers is to be phased out within 12 months after the Agreement comes into force. The name 'Tokay' to describe and present a wine in Australia may be used for a period of 10 years after the Agreement comes into force.

A grant of \$500,000 has been made by the Department of Agriculture, Fisheries and Forestry to assist the process of rebranding and relaunching Australia's fortified wine sector.

The Winemakers' Federation of Australia has established a steering committee to oversee the process and the Muscat of Rutherglen group is responsible for implementing the project. 'Apera' and 'Topaque' are the recommended new names to replace 'Sherry' and 'Tokay'. Applications to register both names as trade marks have been made, although the names will be subject to scrutiny before their use is confirmed. The Winemakers' Federation expects to announce new terms to describe various styles of 'Apera' in the coming months.