



Submission to:

**Inquiry of the Joint Standing Committee on
Foreign Affairs, Defence and Trade,
regarding 'Access to free trade agreements
by small and medium sized enterprises'**

April 2018

wfa Winemakers'
Federation of
Australia

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Winemakers' Federation of Australia

The Winemakers' Federation of Australia (WFA) is the national peak body for Australia's winemakers. Our objective is to represent the interests of Australian wine industry on national and international issues. The Australian wine industry includes 65 regions nationally with over 2500 wine businesses and around 8000 wine grape growers, contributing to growth of regional economies, exports, tourism and jobs.

WFA is recognised by the Australian government as a representative organisation under the *Australian Grape and Wine Authority (AGWA) Corporation Act*. WFA is incorporated under the *SA Associations Incorporation Act 1985*.

WFA voluntary membership represents around 80% of the national wine grape crush. WFA represents small, medium and large winemakers from across the country's winemaking regions, with each having a voice at the Board level. WFA Board decisions require 80% support, so no one category 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, Australian Vignerons (AV), to develop and implement policy that is in the wine industry'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.

We welcome the opportunity to provide the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFAD) with a submission on Access to free trade agreements by small and medium sized enterprises (SMEs) in the wine industry.

Inquiry Terms of Reference

"The Committee shall examine opportunities and challenges facing small and medium Australian export-oriented businesses that seek to leverage free trade agreements for the export of goods and services

The Inquiry will have particular regard to:

- *consideration of what products and services (e.g. inclusion and prioritisation) are negotiated in free trade agreements;*
- *awareness of, and accessibility to, free trade agreements;*
- *lessons learnt from attempts at leveraging free trade agreements, including barriers to implementation and success in fast-tracking export opportunities;*
- *role and effectiveness of support structures and networks in helping leverage free trade agreements;*
- *ongoing capacity building that will assist in creating opportunities and capturing more value from free trade agreements in the future; and*
- *any other related matters."*

Wine Trade and SMEs

The Australian wine industry is made up of small, medium and large businesses. There are five large businesses who produce a large volume of the wine, and then there is an extremely long tail of SMEs which make up the remaining industry of 2500 producers. These smaller businesses are commonly family owned and support regional communities across 65 designated Geographical Indication (GI) wine regions.

International trade is of vital importance to the Australian wine sector. Around 60% of sales are exported, highlighting the industries reliance on exports and the importance of Free Trade Agreements (FTAs). According to the Wine Australia Export Report (December 2017) during 2017 there were 2210 active Australian wine exporters who shipped wine to 126 different overseas destinations. Australian wine exports are currently booming and have been steadily rising in both volume and value since 2014. In 2017 Australian, wine exports increased by 15 per cent to \$2.56 billion in the 12 months ending December 2017.

An undeniable factor in the rise of Australian wine exports has been the industries success in China. Australia has risen to become the second largest importer of wine into China in both volume and value, up 63 percent in value to \$848million in 2017. The export figures for 2017 suggest Australia is well-placed for this trend to continue. The implementation of the China-Australia Free Trade Agreement in 2015 provided the true impetus for the extraordinary growth in this market over the last few years.

Support for SME wine exporters

In 2017 the Australian Government's \$50 million Export and Regional Wine Support Package (the Package) was announced to support the wine industry's capitalise on export and tourism opportunity. The Package has a very strong focus on marketing and promotion in export markets, assisting existing exporters and developing capabilities for new exporters in China and/or other free trade agreement (FTA) markets. This funding will be delivered over 3 years commencing in 2018 and will be vital in assisting industry's SMEs to capitalise on their existing export success or enter the export market.

Interests of wine SME in FTA negotiations

Tariffs

The reduction of tariffs can have an undeniable effect in supporting SMEs as is evidenced by the China market where a 14% tariff will be reduced to zero by 2019. High tariffs can effectively lock SMEs out of markets. For example - India a market with huge future potential is virtually unaccusable to SMEs due to high tariffs of 150 percent on imported wine. For this reason, schedules for tariff reduction or removal should be prioritised in FTA negotiations to improve access for SMEs.

Non-tariff Barriers

Tariffs are a key priority for all exporters, however the non-tariff barriers can very often prove more costly for Australian wine exports than the tariffs, especially for SMEs. Wine regulation is complex and, in particular, differing rules for wine composition and labelling between markets are difficult to navigate for small businesses. Wine production is a highly technical business across the supply chain. It is extremely challenging for these businesses to manage and navigate varying export compliance issue especially for those trading with multiple markets which all have different requirements. For this reason harmonisation of technical requirements is of the greatest importance to wine industry SMEs. If producers can utilise the same technical

Adelaide
National Wine Centre
Botanic Road
Adelaide SA 5000

PO Box 2414
Kent Town SA 5071
T 08 8133 4300
F 08 8133 4366

Canberra
NFF House 14-16 Brisbane Avenue
Barton ACT 2600
T 02 6239 8300

E wfa@wfa.org.au
W wfa.org.au
ABN 38 359 406 467

production methods, have the same labelling, chemicals and additives requirements as on the domestic market trade becomes significantly easier and a less costly experience. The other significant issue for small businesses is complex testing and certification requirements. These can prevent small businesses exporting to some markets. Therefore, addressing technical barriers to trade in FTA negotiations should be a key priority of Australia's trade negotiations to assist SMEs. WFA is a strong advocate for harmonisation of wine technical requirements in support of trade facilitation. This is of particular importance in emerging markets and countries where wine is not traditionally produced. Wine is a highly complex and technical product throughout the supply chain and imposed technical requirements can sometimes result in unnecessary cost or barriers to trade of wine.

Essentially food and agriculture non-tariff barriers fall in four categories:

- Labelling
- Compositional issues – including Maximum residue limits
- Certification
- Analytical and testing requirements

Differing requirements for these cause cost and trade disruptions for exporters. These issues are normally dealt with bilaterally on a case-by-case basis. However, a number of international institutions establish specific guidelines to try and reduce trade barriers in these areas. These include the WTO Agreements (principles based) Codex Alimentarius Commission (Advisory Standards based), APEC (Regulatory coherence) and for wine the World Wine Trade Group (Mutual Acceptance/harmonisation approach).

Failure to deal with these at the systems level leads to expensive and resource intensive approaches with limited success. FTAs need to look at a systems based approach to non-tariff barriers.

Systems based approach to better regulatory coherence.

In the past, Free Trade Agreement negotiations have not dealt with technical issues, preferring to leave these to committees that can address SPS and TBT issues on a case-by-case basis. This approach fails to recognise that by improving regulatory systems and linkages will minimise these issues arising.

The Trans-Pacific Partnership (TPP) negotiations have recognised this approach with the preparation of annexes dealing on commodity specific issues. Future free trade agreement negotiations provide an ideal opportunity to extend this approach to try and develop common systems, rather than a commodity specific approach.

Some good examples of this are to be found within APEC and these concepts could be included in future Free Trade Agreements.

Wine annex addressing technical barriers to trade – the TPP-11 Case study

A key means of addressing these technical barriers to trade in FTA negotiations is the inclusion of technical chapters with specific sector annexes (ie a Wine Annex) which seek to clarify, streamline requirements, and thereby remove technical barriers. For this reason, WFA has been, and will continue to drive the inclusion of technical wine annexes within all relevant Australian trade agreements.

The recently signed TPP-11 was a landmark agreement for the wine industry as it was the first of its kind to include a Wine and Distilled Spirits Annex. Chapter 8 of the TPP-11 "Technical Barriers to Trade" includes a Wine and Distilled Spirits Annex (Annex 8-A), which addresses harmonisation of practices and technical

Adelaide
National Wine Centre
Botanic Road
Adelaide SA 5000

PO Box 2414
Kent Town SA 5071
T 08 8133 4300
F 08 8133 4366

Canberra
NFF House 14-16 Brisbane Avenue
Barton ACT 2600
T 02 6239 8300

E wfa@wfa.org.au
W wfa.org.au
ABN 38 359 406 467

requirements across the member countries. The annex will help remove Technical barriers to trade for Australian wine exporters in regard to:

- Streamlining certification requirements
- Mutual acceptance of Oenological (winemaking) Practices
- Labelling Requirements
- Tractability and fraud

However, the world does not stand still and WFA is working with our negotiators to modify the annex for future agreements to meet our exporter requirements. WFA is working to ensure all relevant future Australian trade agreements include a wine specific annex , or chapter addressing technical barriers to trade, which go further to liberalise trade of wine.

Maximum residue limits

Each economy has developed its own regulatory system aimed at protecting human health, resulting in significant diversity in regulatory policies and approaches towards pesticide Maximum Residue Limit (MRL) setting, compliance and recognition. Trade in food, can be severely disrupted when non-compliance with importing economy standards occurs. Such non-compliance can be due to MRL disparities arising either from differing use patterns or the absence of a MRL in an importing economy. Dealing with such breaches can be problematic, particularly where there may be no public health concerns over potential dietary exposure (food safety).

Harmonization of pesticide MRLs would have important trade facilitation outcomes and result in cost savings in the millions of dollars. APEC is currently running a pilot program through the APEC Food Safety Cooperation Forum. This work has gained agreement on the following broad principles:

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.

To achieve these outcomes, and minimise such discrepancies, while continuing to protect human health from chemical risks and facilitate trade, the APEC Food Safety Cooperation Forum has developed a guidance document on approaches to achieve alignment of MRLs for pesticides within APEC. The primary benefit of the guideline is the development of a convergent regulatory approach, based on agreed principles that would allow economies to balance their regulatory needs with the goal of facilitating trade. Other important benefits include providing communication contacts with relevant APEC economy practitioners and increased opportunities for cooperation, collaboration and work sharing.

Free Trade Agreements could endorse these principles and adopt the guideline developed under APEC. This would greatly enhance the ability to harmonise MRLs and facilitate trade. This approach recognises that there is no single system, but establishes a guideline for each economy to use when a request for an import MRL is

received. Efforts to harmonise MRL requirements could significantly assist SMEs to facilitate trade and reduce costs.

Certification and conformity assessment

Many countries have differing requirements for certification and conformity assessment on the import of wine. These typically include one or more of the following:

- certificate of origin;
- hygiene certificate;
- certificate of free sale;
- certificate of conformity;
- chemical analysis.

Each certificate imposes financial cost on wine exporters and administration cost in the importing country. Bearing in mind the low-risk nature of wine, these costs may be seen as unnecessary in many instances.

Chemical analysis is the most costly form of certification. There is an added risk to exporters with chemical analysis where wines are not analysed by internationally accredited laboratories or do not use recognised methods of analysis which may potentially result in inaccurate or unreliable analyses.

The World Wine Trade Group (WWTG) [Memorandum of Understanding on Certification Requirements](#) provides a template for addressing the issue of certification costs generally.

This MoU lays down the following key principles:

- routine certification of wine composition, certificates of free sale or analytical reports should not be required unless necessary to protect human health and safety;
- where such certification is required it should take into account the Codex Alimentarius Guidelines for Design, Production, Issuance and Use of Generic Official Certificates (CAC/GL 38-2001);
- certification relating to vintage, varietal and regional label claims should not be required unless there is a reasonable and legitimate concern about such claims;
- existing requirements regarding respect to labelling pre-approval, bioterrorism controls or *ad hoc* testing by an importing country are exempted.

Certification requirements and conformity assessment should therefore be a key consideration of FTA negotiations in order to assist with reduction of unnecessary red tape and cost for SMEs

Winemaking practices

Grape wine is a simple product. It is defined in Codex Alimentarius and in the legislation of many economies as the product of the fermentation of fresh grapes or products derived from fresh grapes. In most jurisdictions, colouring and flavour additives are not permitted. Additives consist mainly of preservatives, acidity regulators, stabilising and clarifying agents.

Nevertheless, there are differences in the additives permitted in different economies as well as between the compositional parameters specified for grape wine. These can (and frequently do) present unnecessary barriers to trade.

Within the WWTG, this problem is addressed through the [Mutual Acceptance Agreement on Oenological Practices](#) (MAA). The essential principle of the MAA is that wine exported by one signatory and made according to its own rules will be accepted for import by any other signatory, notwithstanding the rules in the importing signatory. There is an exemption that allows signatories to protect the health and safety of consumers. The MAA provides a useful approach to resolving the trade issues produced by different winemaking rules and compositional parameters within economies.

However, it should be noted that in many non-wine producing economies rules on winemaking practices are not fully developed. Acceptance of the wine making practices recognised in WWTG countries or in the International Vine and Wine Organisation (OIV) or Codex Alimentarius may be a possible approach (bearing in mind that neither the OIV nor Codex currently has a complete list of recognised winemaking practices).

We believe there would be value in seeking harmonisation or mutual acceptance for food standards in Free Trade Agreements where possible, particularly for those foods with specific standards. I would also note that there are opportunities for collaboration in international fora related to food and wine standards including Codex Alimentarius Commission and the OIV.

Labelling

Almost every economy has different labelling requirements and creating separate labels for different markets is a considerable source of cost for wine producers. It is not possible to harmonise wine labels fully across different market since all markets will have market-specific information that they require on the label (e.g. importer details or health advisory information) and this will often need to be in the language of the importing country.

However, it is possible to minimise costs by allowing producers to print one label that is unchanged for all markets leaving the other label to carry all mandatory information. This can be done by adjusting presentation and placement requirements for mandatory or controlled information, as in the [WWTG Agreement on Requirements for Wine Labelling](#) and associated wine labelling [Protocols](#).

A number of these concepts are accepted in the wine and spirit annex of the TPP-11.

Intellectual Property (IP)

IP is another important aspect which needs to be strengthened and considered more closely in order to assist with the protections of industry's SMEs. Smaller businesses don't always have the resource or knowledge to navigate the complexities of protecting their IP across the breadth of export markets. The industry has experienced significant challenges with trademark squatting and adaptation to trademark regulations in export markets. While it is business responsibility to protect their IP, our agreements can assist in this protection more broadly. In order to support this Australia's FTA negotiations should give greater consideration to how IP is addressed in FTA negotiations. Current agreements provide limited protection and could be strengthened to support the needs of SMEs.

Grape variety and Geographical Indication protection

Geographical indications (GIs) are recognised and protected as intellectual property in the WTO Agreement on Trade Related Aspects of Intellectual Property. However, it is possible for geographical indications to become obstacles to trade where their protection exceeds the requirements of TRIPs, for example where:

- geographical indications are protected without a reasonable opportunity for opposition by interested parties;
- geographical indications are given greater rights than prior existing trade marks;
- additional rights are attached to geographical indications, such as the right to use common descriptive terms (sometimes called “traditional terms”) in such a way as to exclude other legitimate users;
- where geographical indications contain or consist of a generic element such as a grape variety name, the generic element is reserved exclusively for the owners of the geographical indication.

These trade barriers are not currently encountered in many economies. They are generally encountered within the European Union (EU). However, the attempts of the EU to export its ‘TRIPs-plus’ approach to geographical indications in the context of free trade agreements means that there is a need to pro-actively ensure that existing IP rights and the ability to use common vocabulary is protected. This is an issue that has been discussed in other fora such as the TPP negotiations.

The EU has run a very aggressive campaign on GI protection and protection of traditional terms. We would appreciate clarification in the negotiations that common English words can continue 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 of FTAs 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).

Protection of grape varieties names and GIs is therefore another significant aspect of Australia’s FTA negotiations for wine. A huge trend amongst wine producers at the moment, in particular the SMEs, is the use of ‘alternate varieties’ which are not as common to the varieties commonly known to consumers such as shiraz or chardonnay. Alternate varieties provide an innovative point of difference for SMEs for which they can typically seek higher price points as they capture niche or exclusive markets. The main issue which affects industry in relation to these varieties is related to countries claiming these alternate varieties as GIs and protecting them across markets in their own FTA negotiations. In recent years, the EU has made significant efforts to protect a range of GIs in their FTA negotiations. The lists of hundreds of GIs for protection are being agreed between the EU and their trading partners and within those lists more and more grape varieties are being included for protection.

Our own FTA negotiations therefore need to support SMEs to produce and export these key valuable varieties by implementing stronger wording which prevents the protection of grape varieties as GIs with our trading partners. Not only this but our own FTA negotiations with the EU should ensure that grape variety names are not traded off as it only seeks to stifle innovation and reduce competitiveness of our industry.

Forums for technical cooperation.

Ensuring high levels of engagement and technical cooperation between Australia and its FTA partners is vital to ensuring the effectiveness of the agreements for SMEs. We believe that improved technical cooperation could occur on the following fronts:

First, a "Business to Business" dialogue between specific sectors e.g. the Australian wine industry, represented by the Winemakers Federation of Australia, and the other wine industries, (similar to the European forum 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 is the third major EU-China trade related technical assistance project since 2000. From 2010 to 2015, project activities have supported 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. This is a similar forum to the APEC Wine Regulators Forum.

Finally, in order to strengthen collaboration and facilitate information exchange, parties to FTAs could be invited to participate in the World Wine Trade Group – this is an annual forum where information exchange and sector specific initiatives are undertaken.

Certificates of Origin

As part of Australia's negotiations we should seek agreement that existing certificates issued by Wine Australia as regulatory compliance authority are accepted and additional certification should not be required.

A specific issue which occurs currently with some FTA partners is how we should deal with Certificates of Origins (COO). WFA strongly supports the right of exporters to provide self-certification certificates of origin. 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 Rules of origin (ROO) requirements. For example, COOs are required under Australia's existing Free Trade Agreements with Thailand and Singapore and under the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA).

In order to streamline the process for SMEs, if there are requirements for COO with Australia's trading partners, WFA, strongly recommend that Wine Australia be the Authorized Body to issue COO under Australia's FTAs.

Adelaide
National Wine Centre
Botanic Road
Adelaide SA 5000

PO Box 2414
Kent Town SA 5071
T 08 8133 4300
F 08 8133 4366

Canberra
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Barton ACT 2600
T 02 6239 8300

E wfa@wfa.org.au
W wfa.org.au
ABN 38 359 406 467

In addition to the COO themselves, Rules of origin requirements need to be flexible enough to allow wine to be sent to a single point and then marketed onwards. Korea–Australia Free Trade Agreement provides a good example of market friendly ROOs.

Compositional issues

There are also some key issues with broader ramifications that relate to compositional aspects of wine. These issues can create barriers to trade for SMEs and result in wines either being rejected or increasing costs.

Naturally occurring minerals and salts

Often, 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:

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 additional trade barriers. This issue is broader than just wine and should be considered within the context of broader FTA negotiations. Of course the normal WTO carve-outs for health and safety issues need to be maintained.

Analytical requirements

It is difficult to predict which analytical problems may arise in future and any FTA should contain provisions designed to address any future technical problems. Acceptance by regulatory authorities of test reports produced by accredited Australian laboratories, in accordance with internationally recognised test methods, would be one useful outcome for inclusion in Australia's FTAs. Even more useful would be recognition 3^d country authorities of the certificate of free sale issued by the relevant Australian statutory authority (Wine Australia) as an alternative to analytical testing upon receipt of wine consignments in country.

Conclusion

Australian wine SMEs are well placed to capitalise on export market opportunities that arise from Australia's FTA negotiation. To support this rise the Australian government need to ensure our FTA negotiations priorities harmonisation of technical requirements, improved protection for SME IP and grape variety use and the removal or reduction of tariffs. The WFA has and will continue to support the Australian Governments aggressive trade negotiation agenda on behalf of the industry's SMEs and broader wine community.

Contact

For further information, please contact:

Tony Battaglone
Chief Executive

14-16 Brisbane Avenue
 Barton, ACT 2600
 PO Box 3891, Manuka, ACT 2605
 Tel +61 2 6239 8304
 Email tony@wfa.org.au

Damien Griffante
Manager, Policy and Market Access

National Wine Centre, Botanic Road,
 Adelaide, SA 5000
 PO Box 2414, Kent Town SA 5071
 Tel: +61 8 8133 4308
 Email: damien@wfa.org.au

Adelaide
 National Wine Centre
 Botanic Road
 Adelaide SA 5000

PO Box 2414
 Kent Town SA 5071
T 08 8133 4300
F 08 8133 4366

Canberra
 NFF House 14-16 Brisbane Avenue
 Barton ACT 2600
T 02 6239 8300

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W wfa.org.au
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