

REGULATION IMPACT STATEMENT 7386

AMENDMENT OF SUB-REGULATION 6A OF THE AUSTRALIAN WINE AND BRANDY CORPORATION REGULATIONS 1981

Background

The Australian Wine and Brandy Corporation (AWBC), an Australian Government Statutory Marketing Authority, has responsibility for regulating the export of Australian wine. These powers are prescribed under the *Australian Wine and Brandy Corporation Regulations (1981)* (the Regulations).

In particular Regulation 6A of the Regulations references the Australia New Zealand Food Standards Code (the Code) as a condition of export. That is the export of grape products must comply with the Code with two exceptions:

- 6A(2) where the grape product is to be exported to a country that imposes requirements for grape products that conflict with the Code - the grape product must comply with the importing country requirements to the extent of any conflict and the Code in all other respects; and
- 6A(3) where the grape product is to be exported to a country that imposes no requirements for grape products - the grape product must still comply with the Code unless the AWBC has approved written standards that differ from the Code. In that event the grape product must meet those standards to the extent that they differ from the Code and must otherwise comply with the Code.

The Explanatory Statement to Regulation 6A notes that it was introduced to provide the AWBC with discretion to approve the export of a grape product not complying with Australian law in circumstances where such non-compliance is necessary either in order to meet the requirements of the importing country or to assist in marketing to another country while not compromising the reputation of Australian wine.

The Winemakers' Federation of Australia (WFA), the winemakers' peak industry body, and the AWBC believe that the current drafting of Regulation 6A does not reflect the intent as noted in the Explanatory Statement and have identified what they believe to be two issues with the present Regulations. As such the AWBC have requested that changes be made to Regulation 6A. The WFA have written in support of the proposed changes.

Issue / problem to be addressed

1. Under the current legislation it is illegal to export wine that does not meet the Code to a country that imposes requirements for grape products that differ from, but do not conflict with, the Code, even though the wine would meet the requirements set by the importing country's regulator.

For example, Australian law requires wine to contain a minimum of 8% alcohol while the minimum alcohol content for wine under US legislation is 7%. An exporter wishing to target a market in the US for wines with a low alcohol content would be at a disadvantage compared to US winemakers as compliance with the Code would also satisfy other US requirements. In this example there is no conflict in the relevant sense as compliance with the Code (ie minimum of 8% alcohol) through the exception of Regulation 6A(2) would ensure compliance with the

requirements of the US law of a minimum of 7% alcohol. However Australian winemakers would have less flexibility in targeting this market than their US counterparts.

This issue was highlighted in consideration of the export of wine found to have very low level traces of an extraneous agricultural chemical. Food Standards Australia New Zealand (FSANZ), which administers the Code, considered that at the levels detected there was absolutely no health and safety risk. However, Australia imposed no maximum residue limit (MRL) for this chemical and under the Code this meant that a default MRL of zero applied. In addition regulators in our two major wine export markets, the European Community and the USA, had established MRLs for this chemical which were well in excess of the traces detected in the wine.

In this situation there was no conflict, as compliance with the Code (ie no detectable trace of the chemical) would ensure compliance with the requirements of the importing countries. Australian wine that contained traces of the chemical could not be exported to either of these markets despite the fact that such wine would meet their standards and would pose no risk to human health and safety.

2. The Australian wine industry has collectively invested millions of dollars in building the reputation of Australian wine under the brand, “Wine Australia”. This brand is internationally recognised and provides the foundation upon which individual Australian wine companies build their international marketing and promotion campaigns. The wine industry has supported the AWBC’s power to regulate Australian wine exports via control measures that include the granting of export licences and a quality assurance process for all wines destined for export. The industry sees this as a desirable mechanism to protect the “Wine Australia” brand.

The current drafting of the Regulation offers a loophole in which the reputation of Australian wine and the protection of the “Wine Australia” brand could be compromised. Under the current legislation where a conflict exists between the Code and an importing country’s requirement, there is an automatic exemption from complying with the Code.

For example, Australian wine is marketed as a natural product, through promotions such as “sunshine in a bottle”. The addition of sugar during the winemaking process is forbidden under the Code but allowed in the EC. There is arguably a conflict between the Code and the EC’s requirements and so wine made with the addition of sugar could be automatically exempt from complying with the Code in this respect. However, the lack of sugar addition is a point of difference promoted by the Australian wine industry and the export of wine made with sugar could compromise the reputation of the “Wine Australia” brand. The WFA would see this as an example of where there should not be an automatic exemption from compliance with the Code. Rather it favours a mechanism where the AWBC Board would have the discretion to approve export of wine that does not comply with the Code.

Objective of the Regulations

The objective of the Regulation is to:

Provide the AWBC with the discretion to approve for export grape product not complying with the Australia New Zealand Food Standards Code in circumstances where such non compliance is necessary in order to meet the requirements of the importing country or will assist in marketing to another country, while not compromising the reputation of Australian wine.

Options

There are 4 options

1. To make no changes to the Regulations and accept that the AWBC Board has no role in approving for export grape product that does not comply with the Australia New Zealand Food Standards Code.
2. To remove any condition of export that grape product needs to comply with the Code.
3. To make changes to the Regulations to give the AWBC Board the discretion to approve the export of grape product to a country that imposes requirements for grape products that differ from the Code. This option retains, in the case of a conflict with the Code, the automatic exemption from complying with the Code.
4. To make changes to the Regulations to give the AWBC Board the discretion to approve the export of grape product to a country that imposes requirements for grape products that differ from, or are in conflict with, the Code

Note, that none of these options impact on the requirement for Australian wine sold on the domestic market. That is wine sold on the domestic market must fully comply with the Code.

Under option 1 we consider that it is very likely that Australian wine could be denied the opportunity to be exported. There is also the possibility of reducing the flexibility for winemakers to respond to changing consumer preferences in traditional markets, or match market specifications in emerging markets such as China.

Option 2 would provide for flexibility in meeting importing country requirements. However such a move in the regulatory framework entails a high risk of damage to the reputation of Australian wine. Under Option 2 the onus is entirely on the importing country to establish appropriate health and safety requirements and at most the AWBC's role would be to approve exports against those requirements. In addition to these real risks it is also possible that importing countries could perceive option 2 as a lessening of standards, and Australia's competitors in the international market could portray Australia as being lax in its requirements for export product.

Option 3 would provide a mechanism for the export of wine that differs from the Code provided it met the requirements of the importing country. It also provides a safeguard to the reputation of Australian wine in international markets as it is not an automatic exemption from the Code but would be at the discretion of an Australian Government Statutory Authority. Option 3 however would raise the anomaly where the export of wine that differs from the Code (but meets the requirements of the importing country) would be at the discretion of the AWBC Board, while wine that conflicts with the Code (but meets the requirements of the importing country) has an automatic exemption from compliance with the Code.

Option 4 is similar to option 3 but addresses the anomaly raised by that option. That is there would not be an automatic exemption from compliance with the Code in those instances where an importing country's requirement conflict with the Code. Option 4 would provide the AWBC Board with discretion to approve non compliance with the Code where a difference or a conflict occurs. This option would provide the wine industry with potential flexibility to meet importing

country's requirements provided it could demonstrate to the AWBC Board that such export would pose little risk to the reputation of the "Wine Australia" brand.

The AWBC Board is made up of a cross section of senior representatives from the Australian wine industry and a Government director. We believe the AWBC is a suitable organisation with the necessary expertise and experience to make sound decisions regarding exempting compliance with the Code as a condition of export. The AWBC also has a range of advisory committees that it can draw on for expertise.

As a Government Statutory Authority it also has credibility with regulatory authorities in other countries.

Impact analysis

The Australian wine industry has become increasingly export orientated with about 60% of its production exported. Some 670 million litres of wine at a value of A\$2.7 billion were exported in 2004-05. We have already indicated that there has been a situation where the opportunity to export to the US and EU markets worth a combined \$1.82 billion was potentially denied, despite there being no health and safety issues.

There are currently 1435 licensed exporters of Australian wine. 1000 of these are winemakers and 435 are intermediary exporters. Both groups must obtain approval to export grape product. In the event of an exporter seeking exemption from compliance with the Code there would, on occasion, be some minor additional administrative requirements. However we believe that these would be insignificant compared to the benefit of having the opportunity to export. In the event where there is a recurring and known need for exemption from compliance with the Code, for example on labelling requirements, the AWBC could extend a blanket exemption that would place no additional administrative requirement on the exporter.

The amendment could benefit all wine exporters by providing them with the ability to respond to individual market requirements. It would give exporters flexibility to export wines that do not meet the requirements of the Code but meet the requirements of an importing country.

Nevertheless, there needs to be an appropriate balance between meeting the needs of the destination market and maintaining Australia's reputation for production of wines of a very high standard. Industry believes this reputation is of considerable value in the highly competitive international market place. This is why the exemption from the requirement(s) of the Food Standards Code would only be granted under certain circumstances and in a controlled manner.

Consultation

The AWBC, as the responsible authority, requested the amendment. The amendment is supported by the Winemakers' Federation of Australia (WFA), the national representative body for winemakers with voluntary membership representing more than 95 per cent of the wine produced in Australia.

There is no national representative body for wine grape growers. However, major regional representative bodies have been consulted and fully support the amendment.

The Australian Government Solicitor (AGS) has provided legal advice on the meaning of Regulation 6A(2).

Conclusion and recommended option

The changes proposed by the AWBC recognise that importing countries set requirements that are appropriate to their circumstances and seek to provide the AWBC with flexibility to approve exports that meet an importing country's requirements but do not meet the Code.

Option 4 is the preferred option as it allows flexibility in the export of wine but still requires exported wines to meet the existing stringent quality control standards.

The proposal to amend the AWBC Regulations to provide for the AWBC to authorise the export of wine where the importing country has different requirements to the Food Standards Code

- has the full support of industry
- has the potential to benefit the industry
- imposes no additional costs on government or industry.

It is therefore recommended.

Implementation and review

The amendment is to be implemented as soon as practicable, depending on the legislative process. The AWBC will advise the Department of Agriculture Fisheries & Forestry of the criteria it will use in determining exemptions and details of any exemptions granted from compliance with the Code. The department will review the regulation on an ongoing basis.

Wine Policy, Food and Agriculture Division

Australian Government Department of Agriculture, Fisheries and Forestry

23 August 2005