

Australian Wine and Brandy Corporation (Exports) Regulations (Amendment) 1993 No. 374

EXPLANATORY STATEMENT

STATUTORY RULES 1993 No. 374

Issued by the Authority of the Minister for Primary Industries and Energy

AUSTRALIAN WINE AND BRANDY CORPORATION ACT 1980

Australian Wine and Brandy Corporation (Exports) Regulations (Amendment)

Section 46 of the Australian Wine and Brandy Corporation Act 1980 (the Act) provides that the Governor-General may make Regulations for the purposes of the Act.

Paragraph 46(1)(c) of the Act provides, in particular, for Regulations prohibiting the export of a grape product from Australia except subject to and in accordance with prescribed conditions, including, in particular, conditions requiring an exporter to be the holder of a licence to export the grape product, and conditions requiring an exporter to obtain the approval of the Australian Wine and Brandy Corporation (the Corporation) for particular exports of the grape product.

Section 8 of the Act, amongst other things, empowers the Corporation to control the export of grape products from Australia.

Subsection 4(1) of the Act provides a definition of grape product to include wine; brandy; grape spirit manufactured in Australia; or a product (being prescribed goods or a product derived in whole or in part from prescribed goods) declared by the regulations to be a grape product for the purposes of the Act. Prescribed goods are defined in subsection 4(1) of the Act and include fresh grapes, dried grapes and grape juice.

The amendments to the Australian Wine and Brandy Corporation (Exports) Regulations are intended to alter the operation of the Corporation and to specify the requirements for wine manufacture in Australia to enable Australia to meet its obligations under the EC/Australia Wine Agreement (the Agreement). Section 40H of the Act allows for regulations to make provisions relating to wine blending, oenological practices and processes, and compositional and other requirements in manufacturing wine. Section 40J allows for regulations defining exemptions from the Act because of the small consignment size or for other reasons.

Regulations relating to each of these provisions have been prepared. Those relating to sections 40H and 40J of the Act reflect the provisions of the Agreement.

The industry fully supports the implementation, at the earliest possible date, of the Agreement through these Regulations.

The remaining changes to the Australian Wine And Brandy Corporation (Exports) Regulations are intended to fine tune the operation of the export licensing system.

Some of the latter changes involve extension of the Corporation's powers where the Corporation has found that the present regulations are insufficient to achieve their original aim. Other changes reflect the Corporation's view that some of the Regulations are unnecessary hindrances to export and that certain requirements should be relaxed or abolished.

The Agreement concerns both the export and domestic trade. As a result, one set of standards and rules for manufacturing and labelling wine has, as far as is possible, been incorporated into

the Regulations. The broadening of the scope of the Regulations has resulted in the citation being amended to no longer refer specifically to exports.

The wine industry has agreed to these changes to the export control powers of the Australian Wine and Brandy Corporation. The Regulations were drafted after industry consultation with the Corporation and the Winemakers' Federation of Australia and are the result of discussions that have been continuing since 1989, but the actual changes have been held over until both could be put through at the same time.

The Regulations are to commence on Gazettal.

Details of the Regulations are given in the Attachment.

ATTACHMENT

Regulation 1 - Amendment

This Regulation states that the Australian Wine and Brandy Corporation (Exports) Regulations are amended.

Regulation 2 - Regulation 1 (Citation)

This Regulation changes the citation of the Regulations to the Australian Wine and Brandy Corporation Regulations to reflect its broader coverage.

Regulation 3 - New Part heading

The amended Regulations have been divided into parts. This Regulation inserts the title for Part 1 (Preliminary).

Regulation 4 - Regulation 3 (Interpretation)

This Regulation adds definitions for "Australian standard", "Food Standards Code", and "vintage" to the previously existing definitions.

Regulation 5 - Regulation 4 (Exemption)

This Regulation replaces the old Regulation 4 with a new Regulation which states that, for the purposes of the Act, any wine-containing product to which an Australian standard applies (such as flavoured wine, low alcohol wine, reduced alcohol wine, dealcoholised wine, fortified wine, vermouth, wine aperitifs, wine cocktails and wine coolers) is declared to be a grape product. As a consequence, these products are also covered by the export licensing system to permit Australia to observe its obligations under the EC/Australia Wine Agreement.

Paragraph 8(2)(a) of the Act permits the Corporation to control the export of 'grape products'. 'Grape product' in section 4(1) of the Act is defined as wine, brandy or grape spirit manufactured in Australia from prescribed goods or a product made in whole or in part from prescribed goods which is declared by the regulations to be a grape product. The Act formerly defined "prescribed goods" as fresh grapes, dried grapes and grape juice, *being grapes or grape juice produced in Australia*. The Australian Wine and Brandy Corporation Amendment Act 1993 has deleted the words in italics so that the Corporation can exercise its powers over blends incorporating imported wine or juice. Subjecting multi-country blends to export controls is consistent with the Agreement.

Regulation 6 - New Part heading

This Regulation inserts the new part heading for Part 2 (General export controls).

Regulation 7 - Regulation 5 (Grant of licences)

Subregulations 7.1 and 7.3 add the word "and" at the end of paragraphs 5(3)(a) and (c) to specify that each criterion is to be considered, rather than being possible alternative considerations.

Subregulation 7.2 repeals paragraph 5(3)(b) of the Regulations, which is an unnecessary barrier to entry to wine exporting. A person who has exported services or has sold wine domestically may have just as much relevant experience as a person who has exported goods and in any case the market will determine whether the person is a capable exporter or not.

Subregulation 7.4 amends paragraph 5(3)(e) to delete the number of licences in force being a consideration in determining whether a licence should be granted.

Subregulation 7.5 adds new paragraphs 5(3)(f) and (g) to make the fact of previous cancellation of a licence a matter to be considered in issuing a new licence.

Regulation 8 - Regulation 6 (Regulation of Export)

Regulation 8 amends and merges the former subregulations 6(1) and 6(2) into a redrafted subregulation 6(1) to set out clearly the conditions of export. This Regulation also inserts a new subregulation 6(2). The new subregulation reflects the provisions of the former Regulation 4, but sets the size of consignments to which Regulation 6 does not apply at less than 100 litres. The former level was 200 litres and the change has been made for consistency with the Agreement.

Regulation 8 also omits the provisions of former paragraph 6(2)(b) as there is no need for the Corporation to approve commercial matters such as the terms of payment or transport of the grape. Paragraph 6(2)(h) is also omitted as its function is now carried out by new Regulation 4.

The Regulation replaces paragraph 6(2)(e) with a new Regulation 6A (Conditions of export - food standards) which requires that the grape product must meet Australian standards and requirements (the P4 standard in State/Territory food law) - with the Corporation having discretion to approve 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 will assist in marketing to another country while not compromising the reputation of Australian wine.

Regulation 9 - Regulation 7 (Certificate of compliance)

Subregulation 9.1 redrafts Regulation 7 for clarity and changes its provisions to require that the Corporation be notified of a proposed export within 10 days, rather than 14 days, before the date of export. The Corporation then has up until 3 days before the scheduled export date to issue an export certificate and to provide for electronic applications, approvals and refusals of permission to export.

It inserts a new subregulation 7(7) which allows the Corporation to revoke an export certificate if the export conditions have not been complied with.

Regulation 10 - Regulation 8 (Powers of Corporation)

Subregulation 10.1 amends paragraph 8(a) to permit the Corporation to determine only minimum prices for export (to implement the EC Reference Price Agreement) rather than to determine all matters relating to price or specific prices.

Subregulation 10.2 amends paragraph 8(b) to refer to the quantities of wine and grape products for which an export certificate is issued, rather than the quantities of grape products for export.

Regulation 11 - Regulation 9 (Suspension and cancellation of licences)

This Regulation amends Regulation 9 so that the Corporation has a more general power to suspend or cancel a licence where a licensee exports grape products in breach of the Act or Regulations or exports or attempts to export grape products which wrongfully purport to be grape products approved by the Corporation.

Regulation 12 - Regulation 10 (Application for review of decision)

This Regulation redrafts Regulation 10 to take account of changes to regulations 7 and 9, with the effect of making decisions made under subregulations 5(1), 7(6), 7(7), 9(2), 9(3), 9(4) and 9(5) reviewable by the Administrative Appeals Tribunal.

Regulation 13 - Regulation 11 (Corporation may require information)

This Regulation amends the penalty provisions of Regulation 11 such that the penalty for providing false or misleading information is changed from \$500 to 10 penalty units. The penalty for providing false or misleading information under subsection 42(1) of the Act is \$5000 or 6 months in gaol and the intent is that the two penalties be brought more closely into line.

Regulation 14 - New Parts 3 and 4 and Schedule

This Regulation adds 2 new parts, their headings and a Schedule.

The Regulation adds Part 3 (Exemption of wines from offence provisions), which deals with exemptions from the offence provisions of the Act, and inserts the title of the Part.

The Regulation inserts a new Regulation 12 (Small quantities of wine). Subsection 40J(1) of the Act provides a definition of 'small quantities' in relation to wine to be quantities as defined in regulations. Subsection 40J(4) allows for the exemption of wine consigned in 'small quantities' under conditions, and in accordance with procedures, prescribed in regulations.

Regulation 12 gives effect to Article 21(b) of the Agreement which provides an exemption from the provisions of the Agreement for small quantities of wine according to conditions set out in the Protocol. These conditions are reproduced in Regulation 12.

Subsection 40J(5) of the Act allows regulations to be made exempting wines from any one or more of the offence provisions of the Act, generally or under certain conditions, in certain circumstances or for certain time periods as permitted under Articles 8 and 11 of the Agreement. The use of registered geographical indications inconsistently with the general terms of the Act is forbidden as of the date of Royal Assent until the end of the relevant transitional period and under any related conditions, as stated in the Agreement.

The new Regulation 13 exempts from the offence provisions in sections 40C and 40E, and from the blending requirements in subsection 40H(1) the use of the terms referred to in Article 8 of the Agreement. These exemptions will finish for geographical indications specified in Part 1 of the new Schedule (Geographical indications, traditional expressions and vine varieties) at the end of 31 December 1993. Those named in Part 2 of the schedule are exempted until the end of 31 December 1997 and those named in Part 3 of the Schedule are exempted until a date yet to be fixed.

In essence, using a term such as "champagne" is permissible on wines not marketed in the EC and does not require that the product be produced from grapes sourced from Champagne in France. Any other material appearing on the label, including non-exempt geographical indications, traditional expressions or vine varieties is, however, still subject to the obligations which normally would apply.

Article 11 of the Agreement provides some exemptions in relation to vine varieties. The Agreement recognises that the word "Hermitage", a geographical indication which will be entered on the register, is also used in Australia as a synonym for the variety "Shiraz". The varieties "Lambrusco" and "Riesling" are used as generic terms (that is, these can refer in Australia to wines not made specifically from the grape varieties of the same name).

The new Regulation 14 (Vine varieties: Hermitage) makes an exemption from sections 40C and 40E of the Act for Australian wines not marketed in the EC which are labelled "Hermitage",

where that term is used as a synonym for the grape variety "Shiraz", although the varietal blending requirements as set out in new Regulation 20 (Blending requirements: grape varieties) still apply.

New Regulation 15 (Vine varieties: Lambrusco) and new Regulation 16 (Vine varieties: Riesling) provide exemptions for wines described and presented as Lambrusco, and Riesling respectively (where this description refers to the style, rather than the varietal make-up of the wine) from the offences in sections 40C and 40E under the conditions set out in Article 11. These two wine styles are also exempted from the blending requirements and the offence at subsection 40H(1) as the names do not refer to grape varieties.

Article 25 of the Agreement allows a marketing phase-out period for wines produced before the end of relevant transitional periods. Subsection 40J(2) of the Act provides a general exemption for wines produced prior to the commencement of that part. However, the Agreement only allows wines described and presented using names prohibited by the Agreement to be marketed by wholesalers for 3 years after the commencement of the Agreement or the end of the transitional period and by retailers until their stocks are exhausted. Wines which are referred to in subregulation 13(3) and Regulations 14, 15 and 16 have had no transitional period negotiated as yet.

It is the intent of the Government to modify the Regulations to provide specific phase-out dates when transitional periods are agreed upon by the Australian and EC Governments.

New Regulation 17 (Marketing periods for the use of geographical indications, registered traditional expressions and protected ancillary expressions) allows the marketing of wines legally produced, and described and presented using a registered geographical indication, at the end of the relevant transitional period under the conditions stated in Article 25 of the Agreement without limiting the action of subsection 40J(2) of the Act.

Subsection 40H (1) of the Act makes provision for the making of regulations concerning blending requirements to apply to the manufacture of wine. The subsection makes it an offence in trade or commerce to "sell, export or import wine to which those blending requirements are applicable if the person knows that the wine was not manufactured in accordance with those requirements".

A new Part 4 (Blending requirements) and its heading are inserted.

New Regulation 18 (Interpretation) defines wine, for the purpose of the part as wine sold in, imported into or exported from Australia. This Regulation is inserted to save constant repetition of this definition in the following regulations.

New Regulation 19 (Blending requirements: grape blends produced in more than one country) requires that, where a blend of wine is produced from products originating in more than one country, the description and presentation of such wine sold, exported or imported, is to specify the variety or blend from each such country with the name of the country in which the largest or, as the case may be, larger portion of the blend was produced mentioned first.

Where wine is offered for sale, imported or exported, its description and presentation may include a reference to a variety or varieties of grapes from which the wine was made, a geographical indication from which any of the grapes used in the manufacture of the wine originated and/or the year(s) in which the variety or varieties of grapes used in the manufacture of the wine were harvested.

New Regulation 20 (Blending requirements: grape varieties) provides that, if a grape variety is used on the label, the description and presentation must include in descending order of proportion the names all varieties of grapes used.

However, a wine may be described or presented as being composed of

- (i) a single variety of grapes if 850ml/L or more of the wine is of that variety;
- (ii) up to three varieties of grapes if the varieties comprise 850ml/L or more of the wine and provided that the minimum for any named variety is 200ml/L;
- (iii) up to five varieties of grapes if the varieties named comprise 1000ml/L of the wine and provided that the minimum for any named variety is 50ml/L. For the purposes of determining this proportion, the varieties, vintages and geographical indications of cultures of microorganisms, not exceeding a maximum of 50ml/L, may be excluded.

For the purposes of this Regulation, if the wine is a fortified wine, the volume of added grape spirit or brandy is excluded from the calculation of the varietal composition.

New Regulation 21 (Blending requirements: geographical indications) provides that, for wines made in Australia or an agreement country, if a registered geographical indication is used on the label, the description and presentation must include in descending order of proportion the names all registered geographical indications of grapes used.

However, a wine may be described or presented as being composed

- (i) of a single registered geographical indication if 850ml/L or more of the wine is from that geographical indication;
- (ii) of up to three registered geographical indications if the registered geographical indications named comprise 950ml/L or more of the wine and provided that the minimum for any named geographical indication is 50ml/L;

The Regulation also provides that for wines which do not originate in Australia or an agreement Country (and which therefore have no registered geographical indications), if a geographical indication is used on the label, the description and presentation must include in descending order of proportion the names all geographical indications of grapes used.

However, such a wine may be described or presented as being composed

- (i) of a single geographical indication if 850ml/L or more of the wine is from that geographical indication;
- (ii) of up to three geographical indications if the geographical indications named comprise 950ml/L or more of the wine and provided that the minimum for any named geographical indication is 50ml/L.

For the purposes of this Regulation if the wine is a fortified wine, the volume of added grape spirit or brandy is excluded from the calculation of the geographical indication.

New Regulation 22 (Blending requirements: vintages) provides that if a vintage is used on the label, the description and presentation must include in descending order of proportion the names all geographical indications of grapes used.

However, a wine may be described or presented as being composed of a specific year or vintage if 850ml/L or more of the wine is of that year or vintage.

For the purposes of this Regulation, if the wine is a fortified wine, the volume of added grape spirit or brandy is excluded from the calculation of the vintage.

The Schedule, with the list of expressions subject to phased introduction of the offence provisions of the Act (as provided for in new Regulation 13) is inserted.