

Wine Market Reform: a Tale of Two Markets and their Legal Interaction

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Abstract

The Australian wine industry is in crisis. More than one sixth of Australian vineyards are non-viable. The wine surplus is now so large that it is causing long term damage to the Australian brand through entrenched discounting. Long term global competitiveness is further constrained by factors such as increasing water costs, unfavourable exchange rates, escalating labour costs and potentially higher costs imposed under a proposed carbon emissions trading plan. Like the EU, the Australian wine industry has been forced to restructure and is exploring options including the grubbing up of vineyards. The industry has also targeted brand segmentation and the promotion of regionality in an effort to improve market demand and to develop a national reputation for fine wine. Brand segmentation and the promotion of regionality require significant collective investment that can be easily undermined by the failure to legally protect the cachet that is intended to be generated. On the other hand, measures that facilitate supply control through the monopolization of production methods to particular regions or brands are neither desirable nor economically rational. Differing levels of legal protection between markets and the differing levels of competitive advantage and/or supply control that are thereby engendered can also potentially act as technical barriers to international wine trade. Institutional measures that support market re-orientation proposed in Australia and elsewhere therefore need to ensure that they do not unduly stymie innovation and trade. However, the incentives for designing sub-optimal levels of protection when profitability is under threat are high.

This paper explores current legal developments in Australia regarding the protection of brand and regionality in light of the revised Australia – EC Wine Trade Agreement and the reform of the EU wine market, as well as proposed reforms designed to achieve greater efficiency and transparency in the auditing of Australian wine provenance. The influence of other trends including the demand for greater accountability and restraint apropos the health impacts of wine, and the demand for proof of sustainability will also be noted insofar as they relate to the protection of brand and regionality.