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To: Office of the United States Trade Representative
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Subject: Federal Register Notice, Vol. 78, No. 62 / Monday, April 1, 2013; Request for Comments Concerning Proposed Transatlantic Trade and Investment Partnership Agreement; Docket number USTR–2013–0019

JBC International submits these comments on behalf of the United States (U.S.) wine industry, ("U.S. industry") comprising Wine Institute, the California Association of Wine Grape Growers (CAWG), and WineAmerica. Wine Institute, the public policy advocacy association of California wineries, brings together the resources of over 1,000 wineries and affiliated businesses to support legislative and regulatory advocacy, international market development, media relations, scientific research, and education programs that benefit the entire California wine industry. California represents more than 90 percent of U.S. wine production and 95 percent of wine exports. CAWG is an advocate for farmers, providing leadership on public policies, research and education programs, sustainable farming practices and trade policy to enhance the California winegrape growing business and our communities. WineAmerica, the National Association of American Wineries, has more than 800 winery members in 48 states supporting initiatives to expand opportunities for U.S. wine producers to export their product worldwide. The U.S. industry appreciates the opportunity to make its views known to the negotiating parties concerning the proposed Transatlantic Trade and Investment Partnership (TTIP).

## Introduction

At the November 28, 2011, European Union (EU)-United States Summit meeting, President Obama, European Commission President Barroso, and European Council President Von Rompuy directed the Transatlantic Economic Council to establish a High Level Working Group on Jobs and Growth (the "Working Group"), led by U.S. Trade Representative Ron Kirk and EU Trade Commissioner Karel De Gucht. The Working Group was asked to identify policies

and measures to increase U.S.-EU trade and investment to support mutually beneficial job creation, economic growth, and international competitiveness. The leaders also asked the Working Group to work closely with public and private sector stakeholder groups and to draw on existing dialogues and mechanisms, as appropriate.

The U.S. industry provided comments to the Working Group that it supports a trade agreement with the EU but that the existing 2006 EU-U.S. Agreement on Trade in Wine (Bilateral Agreement) must stay intact. The Bilateral Agreement is working well for both parties and its provisions must not be altered nor reopened for further negotiation in the context of the entire TTIP. The Bilateral Agreement provides the current platform for and has been beneficial in facilitating more open trade between the parties and reaching resolution on trade issues. The functioning of the Bilateral Agreement has provided significant benefits to improving wine trade for the industries of both parties and should not be compromised or otherwise become linked to other sectors' trade issues.

Examples of the successful implementation of the Bilateral Agreement include the cooperative resolution of issues such as vintage dating of varietal wine for EU wines sold in the U.S. and the continued use of wine varietal descriptors using "white" such as "White Zinfandel" and "White Grenache" on labels of U.S. wine sold in the EU. The Bilateral Agreement also provides for negotiations on open issues between the parties involving trade in wine. One issue still under discussion is the mutual acceptance by each party of winemaking practices that may be adopted by the other party in the future. This has been an objective of the U.S. industry from the beginning and it seems there may be some interest for resolution of the issue. However, the U.S. industry sees no need for that resolution to include the automatic adoption of standards from a reference body such as the World Wine Trade Group (WWTG), CODEX, or OIV. Based upon climate and geographic conditions there should be some flexibility for winemakers in how and what they use to produce wine.

The provisions in the Bilateral Agreement for consultations and mutual recognition of each other's varietal names and Geographic Indications (GIs) are not perfect. The function of those provisions could be improved but that should be done within the scope of the existing agreement. For example, there should be better provisions for advance notification to the public and consultations about each party's intentions to recognize new GIs and varietal names. In addition, issues concerning GIs and varietal names that were settled in the Bilateral Agreement should not be the subject of negotiations over the TTIP. For example, the Bilateral Agreement recognizes that the use in the U.S. of semi-generic terms for wine (such as "Burgundy" and "Champagne") is based on the use in the U.S. of those terms as generic for nearly two centuries. This issue was agreed upon after many years of difficult talks. The U.S.

industry opposes any effort in in the TTIP negotiations that would permit the EU to undo the Bilateral Agreement provisions on the use of these semi-generic terms. The Bilateral Agreement provides a means for resolution of any wine issues that arise between the EU and the U.S. and it should not be compromised or otherwise become linked to other sectors' regulatory issues

The U.S. industry does support the recognition of non-generic names of geographical significance used in designations of wine when appropriate but opposes any attempt to use GIs or to protect traditional terms to monopolize the use of common names that are now a part of the public domain. We believe the approach being taken in the current TPP negotiations would promote a proper approach to protecting legitimate GIs, one which preserves the ability of producers and exporters to use common names and which may serve as a template for the TTIP negotiations.

**Historical EU Market Background**

Wine trade between the EU and the U.S. has had a contentious past. In the 1970s, the EU maintained import quotas, high tariffs and regulatory standards as barriers to U.S. wine imports. During that period, U.S. tariffs were low and there were few regulatory impediments for the import of EU wine. As a result, the trade balance for wine was more than 10 to 1 in favor of EU exports to the U.S. With the passage of the Wine Equity Act in 1984, Congress mandated that the U.S. negotiate better market access for U.S. wine in foreign countries including the EU. The U.S.'s first wine agreement with the EU was completed in 1984 and allowed U.S. wine to be imported without meeting all of the EU regulatory standards in exchange for the U.S. recognizing and protecting hundreds of EU geographic names.

The U.S. kept its part of the bargain in the 1984 agreement by recognizing many EU geographic names. However, in 1990, the EU did not renew that agreement and began granting only temporary derogations for U.S. wine on an annual and later on a six-month basis. The U.S. wine industry needed a more predictable market environment so the more comprehensive Bilateral Agreement was negotiated and finalized in 2006. However, the Bilateral Agreement does not cover tariffs, subsidies or SPS issues.

The EU is the world's major wine producing region in volume terms, with approximately 60 percent of all grape wine production. The EU's wine exports were $12.1 billion in value in 2012 and account for about 65 percent of global exports by volume. In 2012, the EU exported $3.3 billion or 27 percent of its total wine exports to the U.S. In contrast, U.S. producers shipped only $490 million of wine to the EU; an imbalance in trade of approximately 6.7 to one. The U.S. is the largest export market for EU wine, making the U.S. one of the EU's most

important agriculture export markets. With this extremely asymmetrical trade balance, U.S. wine producers are significant stakeholders in any effort to reach a balanced trade agreement that will reduce or eliminate those EU regulations that impede trade.

Based upon this historical trade imbalance, U.S. wine import tariffs and regulations clearly do not unfairly restrict EU wine imports. By comparison, EU wine regulations have significantly restricted U.S. and other wine producing countries' wine imports for many years. In areas not covered by the Bilateral Agreement, there has been too little wine regulatory cooperation. For example, the EU consistently issues new wine reforms that include mandatory regulations covering labeling, standards of quality, additives and maximum residue limits for pesticides and fungicides without adequate notice for the U.S. government or U.S. wine producers to engage in cooperative consultations. The justification given by the EU is that the common organization for wine is a horizontal set of rules, so that by the time all 27 member countries agree to a rule it is virtually impossible to make any changes recommended by third parties.

To gain access to the EU wine market, third country wine producing countries have been required to reach bilateral regulatory trade agreements with the EU. Those agreements provide compensation to the EU in exchange for derogations from EU wine production or composition standards. The EU standards are not changed or aligned with those of the producing countries nor is there regulatory cooperation. In exchange, among other things, the third country parties to those agreements must recognize and provide protection for EU geographic indications and traditional terms. The EU goal is to have other countries either adopt its standards and technical regulatory schemes or pay compensation to obtain exceptions to the EU rules.

In the negotiations over the Bilateral Agreement, as a result of the EU's unwillingness to cooperate on mutual recognition and the threat that the derogations would not be renewed, U.S. wine producers urged USTR and the U.S. Interagency Wine Committee to seek an agreement with the EU. In exchange for a permanent derogation for winemaking practices in existence as of the date of the Bilateral Agreement, the U.S. industry had to provide economic compensation to the EU. This compensation took the form of limiting the U.S. industry's use of long-standing intellectual property rights in semi-generic terms such as "Burgundy" and "Champagne." The Bilateral Agreement prohibits the use of those semi-generic terms on any new brands of wine. U.S. industry brands that used those semi-generic terms in 2006 were "grandfathered" and can continue to use them.

In the Bilateral Agreement, the EU did not agree to mutual acceptance of all winemaking practices that might be adopted after the date of that agreement. Consequently, the EU reserved the right to restrict the import of U.S. wine using any such future winemaking practices. Although this provision is reciprocal, since the implementation of the Bilateral Agreement there have been no new winemaking practices approved for the U.S. but there has been a complete reform of EU winemaking practices. The EU reform has included many new winemaking processes that have not been previously approved by the U.S. for EU wine imported into the U.S. as required by the Bilateral Agreement.

The Bilateral Agreement does provide for regulatory consultation on wine. It contains provisions for advance notice of any regulatory changes and cooperation to resolve regulatory issues as they arise. Since 2006, officials have met at least once each year to discuss issues of mutual concern. While not all issues of mutual concern have been resolved, the Bilateral Agreement does provide a procedure for their resolution.

## General Comments

The U.S. industry appreciates the efforts of U.S. government agencies in reducing the numerous barriers to the sale of U.S. wine throughout the world, particularly those in the EU. The elimination and reduction of the wine barriers is also being addressed in the Trans-Pacific Partnership (TPP). The TPP is being referred to as, "an ambitious, 21st century agreement" and " a model for ambition for other free trade agreements in the future…." The U.S. industry agrees with this sentiment and fully supports the efforts to reach a similarly ambitious agreement with the EU. The U.S. industry requests that the U.S. negotiators for the TTIP avoid any modification or replacement of the Bilateral Agreement and otherwise that they look to the TPP as the template or principles upon which to negotiate this TTIP.

## TTIP Objectives for Wine

The principal objective for the U.S. industry, as stated above, is to retain the Bilateral Agreement as the basic cooperative effort between the U.S. and the EU for wine trade. Nevertheless, there are other objectives of importance to wine that fall outside the scope of the Bilateral Agreement:

1. Protect the continued use of semi-generic terms in the U.S.;
2. Reduction in trade-distorting wine subsidies;
3. Elimination of the requirement for the U.S. Government to certify U.S. wine exported to the EC (VI-1 and VI-II forms). U.S. does not require certification from EU wine producers;

4. Provide for the unrestricted use of what the EC calls "Traditional Terms" on wine labels;
5. Seek cooperation and equivalence of any development of ingredient/food additive definitions and ingredient/nutrition labeling requirements;
6. Retain duty and tax drawback/remission systems for wine;
7. Align or seek equivalence of mandatory label requirements;
8. Provide for early cooperation on health and safety regulations such as allergen labeling and maximum residue limits (MRLs) to minimize market disruption;
9. Provide for early consultations on quality indications such as organic and sustainable winegrowing;
10. Provide protection of "well-known" pre-existing trademarks from invalidation by a GI designation; and,
11. Cooperate on technical assistance to third countries in developing new wine regulations.

**<u>Priority Issues and Explanations for Wine</u>**

GEOGRAPHIC INDICATORS

The WTO TRIPS agreement grandfathered the use of GIs in existence before 1994. The Bilateral Agreement also grandfathered the use of those GIs in existence prior to 2005. Those provisions must remain in place as sacrosanct.

TRADITIONAL TERMS

Even though the EU claims that its "Traditional Terms" regime is not intellectual property, the administration of the system imposes de facto intellectual property protections that provide for the exclusive use of those terms by a limited number of wine producers as if it was intellectual property. These regulations are used to invalidate or prohibit the registration of a valid trademark. There is no international basis in law for a common descriptive term to invalidate a prior right trademark.

In the mid-1970s, the EU introduced labeling regulations as part of its GI policy that provided protections for the use of certain descriptive wine terms ("traditional terms") such as classic, ruby, vintage, cream and many others. The policy allegedly only requires a definition of each of those terms for their use by member state, third country, type of wine, and language. The definitions are arbitrary and vary from member state to member state and from third country to third country. For the use of any of those terms on third country wine imported into the EU, that country or a private wine organization in that country must now make an application for the use of the term. The EU application process is complicated, time consuming,

and costly and provides no apparent value to the consumer. For example, the EU allowed U.S. winemakers to use those traditional terms for more than 20 years on wine imported into the EU.

Under the Bilateral Agreement, the U.S. industry was allowed to continue to use those traditional terms for a period of years. When that time expired, the U.S. industry was not prepared to pay more compensation for continued use of the terms, and the EU withdrew the derogation for the use of those terms. This forced the U.S. industry to apply to the EU for use of the traditional terms and provide definitions for each of them. The U.S. industry did so, in full compliance with EU regulatory requirements and repeated requests for additional information. However, after five years, the EU has only accepted the definitions of two terms, "classic" and "cream." The remaining applications have been returned multiple times as being inconsistent with EU definitions for those terms. (EU application regulations state only that there be a definition for a third country traditional term, not that it must be the same as one of the many EU definitions.) Consequently, the U.S. and EU should work together to eliminate this EU regulation that arbitrarily restricts the use of generic descriptors on wine labels from U.S. producers.

## SUBSIDIES

The EU is the largest producer of wine and, by far, has the world's largest wine subsidy program at both the Commission and member state levels. The Commission subsidy budget for wine for 2012 was $1.4 billion (down from $1.8 billion in 2010) and $66 million for promotion. Member state budgets for wine promotion in France, are Euros 250 million over five years; Austria, Euros 7 million; Italy, Euros 108 million; and Spain and Germany, no numbers provided. In addition, the EU Agriculture budget provides Euros 16.2 million over three years for promotion by wine organizations to use in the internal EU markets as well as North America. There are many other "hidden" subsidies for winemakers, particularly now that the EU Common Market Organization for wine is integrating the wine subsidy funding in the "National Envelopes" with other subsidy programs like environment and food safety.

National Envelopes 2009-2013 percent of budget by measure:

Single Payment Scheme 9.6%
Potable alcohol distillation 5%
Use of grape must 6%
By-product distillation 9.2%
Green harvesting 3b. Ongoing Plans N° 1493/1999 4.0%
Harvest insurance 2.6%
Investments 10.4%

Promotion 15.0%
Restructuring and conversion 34.5%

## SUSTAINABILITY

The U.S. industry's internationally recognized sustainable winegrowing program was developed to address economic and social considerations, as well as environmental concerns in vineyard and winemaking operations. The program was one of the first, and most comprehensive, developed in the global wine industry. The program provides for an assessment process that focuses on measurement and management tools of key sustainable practices and on ensuring a process of continual improvement against the program goals. Monitoring is conducted by an accredited third-party auditor that verifies performance and continual improvement against the more than 200 sustainable winegrowing practices. Innovative solutions to maintaining sustainability should not be restricted by a register of set practices. Mutual recognition of sustainable winegrowing practices should be based upon a set of globally accepted principles that are embedded in a specific program.

## ELIMINATION OF TESTING AND CERTIFICATION

One of the U.S. industry's goals in the TPP negotiations is an enforceable "WTO-Plus" TBT and SPS chapters that strengthens and reinforces the rules and disciplines of the World Trade Organization's *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement) and the *Agreement on Technical Barriers to Trade (TBT)* and underscores the importance of science-based regulation.

Wine is a highly regulated low risk consumer beverage. Registration is required of all U.S. wineries and facilities with the U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB), Food and Drug Administration (FDA) and the State of California and other states. U.S. wine is strictly regulated by TTB including what can what can be called "wine," what specific winemaking practices are allowed and approval of all labels. Wineries are monitored and audited about every 3 years including production records, product integrity (label vs. product), and tax returns. FDA conducts audits as needed.

Wine does not support growth of pathogenic organisms because of its acid and alcohol content. It is stable across large temperature range and over long time periods. It does not become unsafe over time and there is no evidence of consumer safety issues. Even with wine being a low product safety risk, producers maintain a high level of diligence including

traceability and food security that are essential for brand and revenue protection. Some of the measures include:

- GMP—Pest control, Sanitation etc.
- HACCP
    - Microbiological, Physical, Chemical
    - No Microbiological Safety Issues
- Internal Audits
- Implementation of Standardized, 3rd-party Accredited Systems (e.g. FSSC 22000, BRC, IFS, SQF, etc.)

Most of the above require third party audits and are necessary to determine if processes meet globally recognized standards. Food Defense Supply Chain Assessments are required by FDA's Food Safety Modernization Act. All facilities are bonded and secure and transportation is only through authorized channels that include complete records and traceability, including customs documentation requirements and tamper-proof seals using established logistics experts.

The U.S. industry calls to the attention of the negotiators the WWTG Industry Section's *Regulatory Principles* as a reflection of international best practices and urges the adoption of those principles as a goal for the TTIP negotiations. The WWTG is an informal group of government and private sector representatives with a mutual interest in facilitating the international trade in wine and avoiding the application of obstacles to international trade in wine. The WWTG welcomes and encourages participation of any national government or World Trade Organization member interested in furthering these goals. The WWTG's founding members are Argentina, Australia, Canada, Chile, New Zealand, South Africa and the U.S. The Republic of Georgia acceded to the WWTG Agreements in 2010. Brazil, China, Uruguay, Mexico and Japan participate as observers. http://ita.doc.gov/td/ocg/wwtg.htm

These *Regulatory Principles* include:

1. Avoid the establishment of limits that stimulate unnecessary and costly analyses (e.g., Zero salmonella in 25 ml wine even though wine will not support growth of salmonella; Pesticide MRLs for wine in addition to MRLs for grapes):
2. Harmonize or mutually recognize limits where there is no scientific justification for national or regional differences:
3. Give due regard to intergovernmental agreements and work done by other competent authorities when establishing new regulatory limits;
4. Adopt a common system of scientific units for expressing regulatory limits;

5. Express regulatory limits on a "per unit volume of wine" basis, rather than "per unit volume of alcohol" in the wine or any other basis;
6. Adopt a common way of expressing results where this is done in relation to a single wine constituent (e.g. for Total Acidity expressed in terms of one specific acid);
7. Consider the establishment of analytical "de minimis" values (or "action values") for substances or classes of substances in wine – i.e. values below which they will be deemed, to all intents and purposes, not to be present in the wine or not to require enforcement activity;
8. Allow suitable transition arrangements when limits are tightened, provided public health considerations so permit and avoid the requirement for expiration dates on the label;
9. Conduct analyses of wine for compliance purposes in suitably accredited laboratories (or ensure they are overseen by appropriately certified analysts) that perform acceptably for the specific test methods used;
10. Use analytical methods for wine compliance purposes that are validated and/or have a demonstrably appropriate level of performance for wine;
11. Ensure that analyses for wine authenticity are conducted using methods for which the database of authentic sample results (with which test samples will be compared) is sufficiently comprehensive to avoid the mis-categorization of legitimate samples as fraudulent: and

12. Ensure that Laboratories testing for compliance purposes supply measurement uncertainty information with their analytical results, and agree to take this information into account in interpreting analytical data.

In addition, the U.S. industry requests that the following be addressed in the development of the SPS and TBT Chapters in the context of the *Regulatory Principles*:

1. New measures that are developed in the EU without opportunities for interested parties to comment;
2. A reluctance by the EU to implement trade-facilitating policies such as harmonized certificates and the recognition of systems-based production methods; and
3. A potential EU request for recognition of a single international wine standards body, such as the OIV, rather than allowing variation and experimentation in standards to meet local winegrowing and enological needs.

**<u>Additional Responses to Topics in the USTR Notice</u>**

The following are the U.S. industry's responses on specific topics identified in the USTR Notice in the Federal Register that have not been covered in the comments provided above:

(j) relevant electronic commerce and cross-border data flow issues that should be addressed in the negotiations: *The VI-1 Form and winemaking certification should be eliminated or at least become electronic for all EU member states.*

(p) relevant transparency and anticorruption issues that should be addressed in the negotiations: *The lack of participation and transparency of the standards development process in the EU does not allow the U.S. industry to provide comments in a timely manner. When proposed new regulations are finally noticed to the public, in most cases for wine there is no opportunity for change because of the requirement to go back to all 27 member countries and the EU Wine Committee to obtain approval for change.*

(b) economic costs and benefits to U.S. producers and consumers of removal of tariffs and removal or reduction in non-tariff barriers on articles traded with the EU: *It is estimated that the removal of the U.S. import tariff will have minimal economic cost to the U.S. industry and at 6.3 cents per liter (4.7 cents per bottle) will not be a significant benefit to the U.S. consumer. The low U.S. tariff is not a hindrance to import of wine from the EU. Imports were $3.3 billion in 2012. By comparison, with an average EU tariff rate on wine more than 5 times that of the U.S., removal of the EU tariffs would yield a considerable economic benefit to the U.S. industry. Exports to the EU for 2012 were over $490 million. The removal of the other non-tariff barriers will also significantly reduce economic costs for U.S. winemakers. The cost of testing and certification required to complete the EU VI-1 form varies from $150 to $200 per type of wine. Eliminating those costs is estimated to save exporters about $500,000 annually.*

(d) adequacy of existing customs measures to ensure that duty rates under an agreement with the EU apply only to goods eligible to receive such treatment, and appropriate rules of origin for goods entering the United States under the proposed agreement*: Using the rules of origin from other U.S. trade agreements is adequate to ensure the application of the appropriate duty rates.*

(h) opportunities to enhance customs cooperation between the United States and the EU and its member states, ensure transparent, efficient, and predictable conduct of customs operations, and ensure that customs measures are not applied in a manner that creates unwarranted procedural obstacles to trade*: Improving the integrated border management (Single Window) for both parties will benefit the U.S. wine industry. Including electronically all cross border document requirements from all relevant agencies will facilitate and reduce the costs of cross border transactions. Recognizing each other's systems of preferential treatment of low risk economic operators (AEO and C-TPAT) will also significantly reduce costs.*

## Conclusion

The U.S. industry supports a trade agreement with the European Union but requests that the existing Bilateral Agreement for wine stay intact. As discussed in these comments, the U.S. industry has other requests for the TTIP, which should be integrated into the more general chapters of the TTIP such as SPS, TBT, and Customs electronic commerce. Thank you very much for the opportunity to provide these additional comments on improving cooperation in transatlantic trade.