
The Parliament of the Commonwealth of Australia

Report 101

Treaties tabled on 3 February 2009

Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Paris, 20 October 2005)

Agreement between Australia and the European Community on Trade in Wine (Brussels, 1 December 2008)

May 2009
Canberra

© Commonwealth of Australia 2009

ISBN 978-0-642-79172-6 (printed version)

ISBN 978-0-642-79173-3 (HTML version)



Contents

Membership of the Committee	v
Resolution of Appointment	vii
List of abbreviations	viii
List of recommendations	ix
1 Introduction	1
Purpose of the Report	1
Conduct of the Committee's Review	2
2 Convention on the Protection and Promotion of the Diversity of Cultural Expressions	3
Background	3
Obligations	4
Interpretive declarations and reservations	5
Reasons for Australia to take treaty action	8
The Convention and Indigenous affairs	11
Implementation	12
Costs	13
Future treaty action	13
Consultation	14
Conclusions and recommendation	14
3 Agreement between Australia and the European Community on Trade in Wine	15

Background	15
Obligations	16
Reasons for Australia to take treaty action	17
Opposition to the Agreement.....	19
Implementation.....	21
Costs	22
Future treaty action.....	22
Consultation	22
Conclusions and recommendation	23
Appendix A - Submissions.....	25
Appendix B - Exhibits	27
Appendix C - Witnesses	29
Monday, 16 March 2009 - Canberra	29



Membership of the Committee

Chair	Mr Kelvin Thomson MP	
Deputy Chair	Senator Julian McGauran	
Members	Mr Jamie Briggs MP	Senator Simon Birmingham
	Mr John Forrest MP	Senator Michaelia Cash
	Ms Jill Hall MP	Senator Don Farrell
	Mrs Julia Irwin MP (from 5/2/09 until 12/3/09)	Senator Scott Ludlam
	Hon John Murphy MP (from 12/3/09)	Senator Louise Pratt
	Ms Belinda Neal MP	Senator Dana Wortley
	Ms Melissa Parke MP	
	Mr Luke Simpkins MP	
	Ms Maria Vamvakinou MP	

Committee Secretariat

Secretary	Jerome Brown
Inquiry Secretaries	Julia Searle Sonya Fladun
Research Officer	Geoff Wells
Administrative Officers	Heidi Lushtinetz Dorota Cooley



Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and

such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of abbreviations

AG's	Attorney General's
AWBC	Australian Wine and Brandy Corporation
DEWHA	Department of the Environment, Water, Heritage and the Arts
DFAT	Department of Foreign Affairs and Trade
EC	European Community
MCA	Music Council of Australia
MEAA	Media, Entertainment and Arts Alliance
NIA	National Interest Analysis
RIS	Regulatory Impact Statement
UNESCO	United Nations Educational, Scientific and Cultural Organization
WFA	Winemakers' Federation of Australia



List of recommendations

2 Convention on the Protection and Promotion of the Diversity of Cultural Expressions

Recommendation 1

The Committee supports the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* and recommends that binding treaty action be taken.

3 Agreement between Australia and the European Community on Trade in Wine

Recommendation 2

The Committee supports the *Agreement between Australia and the European Community on Trade in Wine* and recommends that binding treaty action be taken.

Introduction

Purpose of the Report

- 1.1 This report contains advice to Parliament on the review by the Joint Standing Committee on Treaties of two treaty actions tabled in Parliament on 3 February 2009. These treaty actions are:
- *Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Paris, 20 October 2005)*¹
 - *Agreement between Australia and the European Community on Trade in Wine (Brussels, 1 December 2008)*²
- 1.2 The Report refers frequently to the National Interest Analysis (NIA) prepared for each proposed treaty action and a Regulatory Impact Statement (RIS) for the *Agreement between Australia and the European Community on Trade in Wine*. These documents were prepared by the Government agencies responsible for the administration of Australia's responsibilities under each treaty. Copies of each NIA and the RIS may be obtained from the Committee Secretariat or accessed through the Committee's website at:
- www.aph.gov.au/house/committee/jsct/3february2009/tor.htm
- 1.3 Copies of each treaty action, the NIAs and the RIS may also be obtained from the Australian Treaties Library maintained on the internet by the Department of Foreign Affairs and Trade. The

1 Australia, House of Representatives 2008-09, *Votes and Proceedings*, No. 70, p. 811; Australia, Senate 2008-09, *Journal*, No. 53, p. 1480.

2 Australia, House of Representatives 2008-09, *Votes and Proceedings*, No. 70, p. 811; Australia, Senate 2008-09, *Journal*, No. 53, p. 1480.

Australian Treaties Library is accessible through the Committee's website or directly at:

www.austlii.edu.au/au/other/dfat/

Conduct of the Committee's Review

- 1.4 The reviews contained in this report were advertised in the national press and on the Committee's website.³ Invitations to lodge submissions were also sent to all State Premiers, Chief Ministers, Presiding Officers of parliaments and to individuals who have expressed an interest in being kept informed of proposed treaty actions. Submissions received and their authors are listed at Appendix A and Exhibits received are listed at Appendix B.
- 1.5 The Committee also received evidence at a public hearing held on 16 March 2009 in Canberra. A list of witnesses who appeared at the public hearing is at Appendix C. Transcripts of evidence from public hearings may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct/3february2009/hearings.htm

3 The Committee's review of the proposed treaty actions was advertised in *The Australian* on 18 February 2009. Members of the public were advised on how to obtain relevant information both in the advertisement and via the Committee's website, and invited to submit their views to the Committee.

Convention on the Protection and Promotion of the Diversity of Cultural Expressions

Background

- 2.1 It is proposed that Australia, as a member of the United Nations Educational, Scientific and Cultural Organization (UNESCO), accede to the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (the Convention).
- 2.2 The Convention identifies the expressions of culture by a country's citizens as tangible entities. The purpose of the Convention is to protect and promote the diverse range of these 'cultural expressions'.¹
- 2.3 The Convention aims to protect and promote cultural expressions by assisting the cultural activities, goods and services which give rise to these cultural expressions. The Convention is particularly concerned with securing cultural expressions that are at risk of extinction or otherwise under threat.
- 2.4 At the time of the Committee's hearing into the Convention there were 96 Parties to the Convention.²

1 National Interest Analysis (NIA), para 4.

2 Dr Stephen Arnott, *Transcript of Evidence*, 16 March 2009, p. 3.

Obligations

- 2.5 The primary obligations of Parties to the Convention are to undertake to assist the creation of cultural expressions, both domestically and abroad, through regulatory, legislative, financial and technical assistance, and to report to the United Nations on these measures. These obligations are not overly prescriptive and are expressed in generalised 'best endeavour' language.³
- 2.6 Articles 6, 7, 10 and 11 of the Convention require Parties to endeavour to encourage the recognition, production and dissemination of diverse cultural expressions. Parties must endeavour to achieve this through providing regulatory and financial support to cultural activities and industries. Parties must also endeavour to conduct educational and public awareness programs to increase the recognition of the diverse cultural contributions made by artists and others involved in creative processes.⁴
- 2.7 Articles 8 and 9 of the Convention outline the reporting and information sharing obligations of Parties. Parties must report every four years to both the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions (established under Article 23 of the Convention), and to UNESCO members as a whole, on measures taken to protect and promote cultural expressions. Parties must also share and exchange with other countries information relating to the protection and promotion of cultural expressions.⁵
- 2.8 Articles 12 through to 19 outline the obligations of Parties to foster cooperation and collaboration among stakeholders both domestically and internationally. Domestically, Parties are required to encourage partnerships among government, civil society, non-governmental organisations and the private sector aimed at protecting and promoting diverse cultural expressions. Internationally, Parties are required to promote inter-governmental cooperation on cultural policy and to facilitate cultural exchanges.⁶
- 2.9 The Convention gives special attention to securing the cultural expressions of citizens in developing nations. Dr Ben Goldsmith, a member of the Steering Committee of the International Network for Cultural Diversity, submitted that the cultural industries of many
-

3 NIA, para 11.

4 NIA, para 11.

5 NIA, para 11.

6 NIA, para 11.

developing nations are not well-established. Dr Goldsmith argued that in today's climate of economic globalisation and open markets, the cultural industries of these nations (and the cultural expressions created by these industries) may be adversely affected by the increased competition from the well-funded cultural industries of developed nations. Therefore, the cultural expressions of developing nations are argued to be less secure than those of developed nations. One of the primary intents of the Convention is to address this issue.⁷

- 2.10 Articles 14, 15 and 17 require developed nations to endeavour to assist developing nations in promoting and protecting their cultural expressions, with special regard to cultural expressions under serious threat, through strengthening the production capacity of cultural industries and their access to world markets. Parties are required to endeavour to provide developing nations with assistance in cultural policy development, private enterprise development, technology and expertise transfer and also to encourage collaboration between nations in areas such as music and film.⁸
- 2.11 Article 18 establishes the International Fund for Cultural Diversity to provide financial support for the protection and promotion of cultural expressions. Parties must endeavour to provide voluntary contributions on a regular basis to the fund.⁹
- 2.12 Article 16 requires developed countries to facilitate cultural exchanges with developing nations by granting preferential treatment to artists and other cultural professionals from developing nations.¹⁰
- 2.13 Article 20 requires Parties to take into account the relevant obligations of the Convention when interpreting and applying obligations under other treaties.¹¹

Interpretive declarations and reservations

- 2.14 The Government proposed to accede to the Convention with an interpretative declaration to Article 16 to clarify that the Convention

7 Dr Ben Goldsmith, *Submission No. 4*, p. 7.

8 NIA, para 11.

9 NIA, para 11.

10 NIA, para 12.

11 NIA, para 13.

will not affect the content or interpretation of Australia's immigration laws, or Australia's discretion under those laws.¹²

- 2.15 Dr Ben Saul, the Director of the Sydney Centre for International Law at the University of Sydney, in his submission to the inquiry noted that Australia's current immigration laws typically require migrants to have high levels of formal 'Western' style training before they are admitted to Australia. The submission argued that these requirements do not recognise the value of the extensive informal training that many cultural practitioners from developing nations may have. Dr Saul therefore asserted that Australia's immigration requirements disadvantage such people, and in turn the cultural industries they represent. The submission therefore asserts that the interpretive declaration to Article 16 reinforces this imbalance and recommends that Australia provide for greater ease of admission for cultural practitioners from developing nations.¹³
- 2.16 A representative from the Department of Immigration and Citizenship informed the Committee that the interpretive declaration to Article 16 was necessary in order to make it clear that the visa regime would continue as it exists currently, and that the Convention would not mandate the creation of new visa regimes.¹⁴
- 2.17 The Government also proposed to accede to the Convention with a reservation to Article 20 to clarify that Australia will interpret and apply the Convention in a manner that does not affect its rights and obligations under other treaties and does not restrict Australia's ability to negotiate future treaty rights and obligations.¹⁵
- 2.18 Dr Goldsmith, in his submission to the inquiry, argued that the reservation to Article 20 effectively negates the rights and obligations created by the treaty and makes the Convention subordinate to other agreements, such as trade agreements, which may impede upon or threaten cultural expressions.¹⁶
- 2.19 Representatives from the Department of Foreign Affairs and Trade (DFAT) and the Attorney-General's (AG's) Department told the Committee that the reservation to Article 20 is needed due to the unusual and ambiguous wording of the Article. Representatives noted that Article 20(1) states:

12 NIA, para 12.

13 Dr Ben Saul, *Submission No. 6*, p. 2.

14 Ms Cassandra Ireland, *Transcript of Evidence*, 16 March 2009, p. 5.

15 NIA, para 13.

16 Dr Ben Goldsmith, *Submission No. 4*, p. 12.

Parties recognize that they shall perform in good faith their obligations under this Convention and all other treaties to which they are parties ... without subordinating this Convention to any other treaty...

Conversely, Article 20(2) states:

Nothing in this Convention shall be interpreted as modifying rights and obligations of the Parties under any other treaties to which they are parties.

Thus, representatives told the Committee that the reservation to Article 20 is necessary in order to clarify the operation of the Convention in relation to Australia's other current, and future, treaties.¹⁷

- 2.20 The AG's Department assured the Committee that reservations are permitted by the Convention and that at least one other signatory has made a similar reservation to Article 20. The Committee was assured that there has been no adverse reaction to the reservation.¹⁸
- 2.21 A representative from Department of the Environment, Water, Heritage and the Arts (DEWHA) informed the Committee that, particularly due to the reservation to Article 20, any free trade aspirations of the Government will not be compromised by accession to the Convention.¹⁹
- 2.22 Dr Ben Saul's submission argued that Article 20 is ambiguous in nature and acknowledged the reasoning for the Government's proposed reservation to the Article. However, Dr Saul further argued that, despite this reservation, the Government must endeavour to ensure that Australia's obligations under the Convention are finely balanced with their obligations under other treaties, including trade agreements, and that the Government must appropriately support cultural industries.²⁰
- 2.23 The Media, Entertainment and Arts Alliance (MEAA) noted that several Parties that have ratified or acceded to the Convention have done so with provisions similar to the above mentioned interpretive declaration and reservation. The MEAA argued that the need to make

17 Ms Sue Robertson and Mr Richard Braddock, *Transcript of Evidence*, 16 March 2009, pp. 4-5.

18 Mr Richard Braddock, *Transcript of Evidence*, 16 March 2009, p. 5.

19 Mr Stephen Richards, *Transcript of Evidence*, 16 March 2009, p. 4.

20 Dr Ben Saul, *Submission No. 6*, p. 3.

such provisions should not prevent Australia's accession to the Convention.²¹

Reasons for Australia to take treaty action

2.24 A representative from DEWHA informed the Committee of the Government's motivations for acceding to the treaty:

The Australian government committed to ratifying and giving effect to the convention in the *New direction for the arts* policy paper in 2007. Accession to the convention would be a positive contribution to the government's efforts to protect and promote Australia's cultural goods, services and activities, both here and overseas.

Adoption of the convention would also encourage Australian artists to participate in cultural exchanges and to have further engagement with international audiences. The convention has the potential to make a wider range of cultural goods, services and activities available to Australian audiences and consumers, fostering a greater recognition of the diversity among Australia's Indigenous and immigrant cultures and cultures from around the world.

Becoming a party to the convention would also give Australia an opportunity for greater international engagement on cultural issues through the UNESCO forum and be an expression of Australia's ongoing commitment to protecting and promoting cultural diversity.²²

2.25 DEWHA also told the Committee that Australia's accession to the Convention may create impetus for cultural organisations and cultural practitioners to promote and develop new cultural activities in line with the aims of the Convention.²³

2.26 The Government submitted to the Committee that, along with the *Convention Concerning the Protection of the World Cultural and Natural Heritage* and the *Convention for the Safeguarding of the Intangible Cultural Heritage*, the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* is one of UNESCO's 'three pillars' which protect and promote cultural diversity. The Government

21 Media, Entertainment and Arts Alliance, *Submission No. 3*, pp. 1-2.

22 Dr Stephen Arnott, *Transcript of Evidence*, 16 March 2009, p. 3.

23 Dr Stephen Arnott, *Transcript of Evidence*, 16 March 2009, p. 6.

considered that accession to the Convention will demonstrate to the international community Australia's commitment to protecting cultural diversity and will expand Australia's active engagement with UNESCO.²⁴

2.27 A submission from the Music Council of Australia (MCA) supported the notion that accession to the Convention would contribute to Australia's good standing with UNESCO.²⁵

2.28 A range of submissions received during the inquiry argued that Australia's accession to the Convention would encourage nations to protect established cultural expressions and promote emerging cultural expressions. These submissions suggested that the Convention would encourage the Government to consider the impact of all policy areas (including education, developmental and financial policy), and the positive effect these policy areas could have, on cultural industries both in Australia and abroad.²⁶

2.29 One submitter noted a global benefit of the Convention:

The Convention has the potential not only to protect cultural diversity *within* nations by supporting cultural policy development and information exchange, but also to strengthen and nurture *global* cultural diversity by ... supporting "the free flow of ideas", and by "constant exchanges and interaction between cultures".²⁷

2.30 The MCA considered that accession to the Convention will better place the Government to protect Australian cultural expressions during the negotiation of free trade agreements. The submission suggested that, despite Australian efforts to the contrary, some free trade agreement negotiations have resulted in arrangements that expose some Australian cultural industries and jeopardise some Australian cultural expressions. The MCA argued that accession to the Convention would better place Australia to resist such concessions when negotiating trade agreements in the future.²⁸

2.31 The MCA further considered that a positive flow-on effect would result from developed nations meeting their obligations to assist

24 NIA, para 8.

25 Music Council of Australia, *Submission No. 5*, p. 12.

26 Dr Ben Goldsmith, *Submission No. 4*, pp. 5-8; Dr Ben Saul, *Submission No. 6*, p. 1; Media, Entertainment and Arts Alliance, *Submission No. 3*, p. 2; Music Council of Australia, *Submission No. 5*, p. 11.

27 Dr Ben Goldsmith, *Submission No. 4*, p. 13.

28 Music Council of Australia, *Submission No. 5*, p. 8.

developing nations under the Convention. The MCA suggested that despite the limited resources of some developing nations, all of these nations have at least one resource which has been highly developed over centuries, namely their cultural expressions. The MCA argued that, under the Convention, developed nations will assist developing nations to build viable industries which utilise these resources. In turn these nations with limited resources will gain valuable export markets and much needed economic prosperity which may lead to a reduction in poverty.²⁹

- 2.32 The MCA argued that through the development of cultural industries in developing nations, other sectors will also benefit. For example, the provision of modern software to capture traditional music would have the additional benefit of providing valuable skills in the use of software which could be employed in other sectors.³⁰
- 2.33 The MCA further argued that the reduction in poverty and increase in education resulting from the building of cultural industries in developing nations may foster social stability where previously the pressures of poor economic performance may have led to social fragmentation. Further, the recognition and promotion of these cultural expressions may foster recognition of a common history and a stronger cultural identity which may in turn help to build social stability in fragmented communities.³¹
- 2.34 The MCA argued that many of Australia's neighbours, particularly in the South Pacific, are in urgent need of such assistance and that Australia can play a major role through acceding to, and meeting its obligations under, the Convention. The MCA suggested that through acceding to the Convention, and aiding the development of these cultural industries, Australia can help to engender economic and social stability in the region, thus improving both regional relations and our regional security. The MCA also argued that Australia, through meeting its obligations under the Convention, will gain access to a wider range of cultural goods and gain a better understanding of its neighbours.³²

29 Music Council of Australia, *Submission No. 5*, pp. 13-16.

30 Music Council of Australia, *Submission No. 5*, p. 15.

31 Music Council of Australia, *Submission No. 5*, p. 17.

32 Music Council of Australia, *Submission No. 5*, pp. 13-14.

The Convention and Indigenous affairs

- 2.35 The MCA submitted that many forms of Indigenous expression in Australia, including forms of Indigenous music, are under threat of extinction. The MCA argued that accession to the Convention would encourage the protection and preservation of these Indigenous cultural expressions.³³
- 2.36 During consultations on the Convention some argued that in order for Australia to meet its obligations to preserve cultural expressions under threat, heritage and land access laws may have to be modified in order to protect lands and territories that are culturally significant to Indigenous Australians.³⁴
- 2.37 A representative from DEWHA stated that Australia already has in place a range of measures to support Indigenous culture and cultural expression. DEWHA was of the view that changes to current legislation are not currently needed.³⁵
- 2.38 During consultations on the Convention further concerns were raised as to the capacity of Australian cultural organisations, including Indigenous organisations, to apply to the Convention's International Fund for Cultural Diversity. It was argued that this capacity would be undermined due to Australia's status as a relatively wealthy developed nation. Some argued that special consideration should be provided to Indigenous communities.³⁶
- 2.39 DEWHA submitted that the Fund will operate on a grants based system where interested parties may apply for an allocation of resources from the Fund for specific projects, programs and activities. The submission stated that the resources of the fund will be allocated by the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions according to the *Guidelines on the use of the resources of the International Fund for Cultural Diversity*. These Guidelines are currently in draft form. The draft Guidelines state that the Intergovernmental Committee will consider requests for resourcing towards specific projects and activities including those identified by representatives of vulnerable groups such as Indigenous people.³⁷ Further, DEWHA informed the

33 Music Council of Australia, *Submission No. 5*, p. 9.

34 NIA, Attachment on Consultation, para 36.

35 Dr Stephen Arnott, *Transcript of Evidence*, 16 March 2009, p. 3.

36 NIA, Attachment on Consultation, paras 37 and 38.

37 Department of Environment, Water, Heritage and the Arts, *Submission No. 9*, pp. 1-2.

Committee that whilst the details of how the fund will operate for Australian cultural organisations are yet to be finalised, there is nothing in the Convention to preclude Australian cultural organisations, including Indigenous organisations, from accessing the fund.³⁸

Implementation

- 2.40 No new Commonwealth or State/Territory legislative measures are required to implement the obligations under the Convention. There will be no change to the existing roles of the Commonwealth and States/Territories as a result of implementing the Convention.
- 2.41 The secretariat for Australia's participation in the Convention will be overseen by the DEWHA in consultation with DFAT.³⁹
- 2.42 Dr Goldsmith's submission to the inquiry noted that whilst many developed nations are Party to the Convention, few have so far contributed to the International Fund for Cultural Diversity. The submission urged the Government to assist in the implementation of the Convention by making a significant contribution to the Fund, thus demonstrating Australia's strong commitment to the Convention.⁴⁰
- 2.43 Dr Goldsmith further argued that civil society organisations can play a major role in implementing Australia's educational and cooperative obligations under the Convention. The submission recommended that the Government recognise and facilitate the role of civil society organisations in implementing the Convention.⁴¹
- 2.44 The MCA urged the Government to implement its obligations under the Convention to assist developing nations by providing funds (including through the International Fund for Cultural Diversity) and technical expertise (including through Government departments and contracted non-government organisations) to cultural industries in developing nations, with a particular focus on its regional neighbours.⁴²

38 Mr Stephen Richards, *Transcript of Evidence*, 16 March 2009, p. 4.

39 NIA, paras 14, 15 and 16.

40 Dr Ben Goldsmith, *Submission No. 4*, p. 14.

41 Dr Ben Goldsmith, *Submission No. 4*, p. 14.

42 Music Council of Australia, *Submission No. 5*, p. 13 & p. 18.

Costs

- 2.45 The Government anticipates that there would be some costs associated with the secretariat for Australia's participation in the proposed Convention. It is anticipated that these costs would be absorbed by DEWHA.⁴³
- 2.46 Costs incurred by other agencies in their participation in the Convention, including international travel to attend meetings, will be borne by those agencies.⁴⁴
- 2.47 There is a high level of expectation that Australia would make voluntary contributions to the International Fund for Cultural Diversity. The level of contribution is yet to be determined, however there is potential for it to be set at one per cent of a party's annual UNESCO contribution. In Australia's case, this would amount to approximately \$70,000 per annum. This cost would be met by DEWHA.⁴⁵

Future treaty action

- 2.48 Future amendments may be voted on if half of the parties reply favourably to the proposed amendment. The amendment must be adopted and ratified by a two-thirds majority of Parties to the Convention.⁴⁶
- 2.49 If a party is a Member of the Intergovernmental Committee for the Convention, amendments shall enter into force for that party at the time they are adopted by the Conference of Parties and are not subject to the normal ratification process.⁴⁷
- 2.50 A Party may withdraw from the Convention twelve months after the receipt of an instrument in writing by the Director-General notifying of their withdrawal. The financial obligations of the relevant party remain unaffected until the date on which the withdrawal takes effect.⁴⁸

43 NIA, para 17.

44 NIA, para 18.

45 NIA, para 19; Dr Stephen Arnott, *Transcript of Evidence*, 16 March 2009, p. 7.

46 NIA, para 21.

47 NIA, para 22.

48 NIA, para 23.

Consultation

- 2.51 Relevant Commonwealth Ministers and agencies and State/Territory Governments were consulted about the Convention and have provided support for accession. During consultations both DFAT and the AG's Department proposed the above-mentioned interpretative declaration and reservation.⁴⁹
- 2.52 DEWHA called for submissions commenting on Australia's accession to the Convention from a range of arts, culture, Indigenous affairs and academic organisations. All submissions received supported accession to the Convention.⁵⁰

Conclusions and recommendation

- 2.53 The Committee is of the view that the Convention will help to develop and maintain cultural industries and protect valuable cultural expressions in Australia and abroad. The Committee considers that accession to the Convention will demonstrate to the international community Australia's commitment to cultural diversity and will expand Australia's active engagement with UNESCO.

Recommendation 1

The Committee supports the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* and recommends that binding treaty action be taken.

49 NIA, Attachment on Consultation, paras 25 to 29.

50 Dr Stephen Arnott, *Transcript of Evidence*, 16 March 2009, p. 3; NIA, Attachment on Consultation, para 34.

Agreement between Australia and the European Community on Trade in Wine

Background

- 3.1 It is proposed that Australia enter into the *Agreement between Australia and the European Community on Trade in Wine* (the Agreement).
- 3.2 The Agreement's purpose is to facilitate and promote trade in wine originating in the European Community (EC) and Australia.
- 3.3 Australia and the EC concluded a similar Agreement in 1994 to facilitate and promote trade in wine. The 1994 Agreement authorised a number of winemaking practices and provided for the protection of the names of wines originating from particular regions in Australia and the EC. However, the 1994 Agreement left unresolved a number of issues relating to the protection of certain EC Geographical Indications¹ and Traditional Expressions². The proposed Agreement aims to resolve these issues and will replace the 1994 Agreement.³
- 3.4 The Agreement will enter into force after the Parties have notified each other in writing that their respective requirements for the entry into force of the Agreement have been complied with. The EC has already completed its requirements to bring the Agreement in to

1 A Geographical Indication is a sign used on goods that have a specific geographical origin and are claimed to possess qualities or a reputation attributable to that place of origin.

2 A Traditional Expression, in relation to wine, means a word or expression used in the description and presentation of the wine to refer to the method of production, or to the quality, colour or type, of the wine.

3 Regulation Impact Statement (RIS), p. 1.

force. For Australia to bring the Agreement into force, amendments will have to be made to the *Australian Wine and Brandy Corporation Act 1980*, the *Australian Wine and Brandy Corporation Regulations 1981* and the *Trade Marks Act 1995*.⁴

Obligations

- 3.5 Article five requires both Parties to authorise the importation and marketing of wine produced using the processes or practices outlined in the Agreement. In particular the EC is required to authorise the importation and marketing of Australian wines produced using 16 additional winemaking techniques which previously lacked authorisation, or were only provisionally authorised, under the 1994 Agreement.⁵
- 3.6 Article 10 sets out that where a dispute arises between the two Parties over recognition of a new production procedure or practice, a process of arbitration shall take place. The determination of this arbitration is binding on both Parties.⁶
- 3.7 Article 12 requires both Parties to prevent the use of certain protected names in the labelling of wines produced in their territories. Australia is required to prevent the use of names listed in Annex II, Part A and Annex III of the Agreement. The EC is required to prevent the use of names listed in Annex III of the Agreement. Both Parties are required to prevent the use of names that refer to the territories of the other Party.⁷
- 3.8 Articles 13 and 16 distinguish between how Geographical Indications and Traditional Expressions are regulated for wine imported from countries outside the Agreement. Article 13 requires that Parties prevent the misuse of Geographical Indications in the labelling of wine produced within their territories and imported from third countries. Article 16 requires that Australia prevent the misuse of EC Traditional Expressions only in the labelling of wine produced within Australia.⁸

4 Mr John-Michael Martinez, *Transcript of Evidence*, 16 March 2009, pp. 13-14; National Interest Analysis (NIA), para 1.

5 NIA, paras 10 & 19.

6 NIA, para 19.

7 NIA, para 20.

8 NIA, para 21.

3.9 The Australian Wine and Brandy Corporation (AWBC) provided the Committee with an example of how these provisions would function:

Were a Californian burgundy – a third country product – using a European Geographical Indication presented on the Australian market, AWBC would be required to prevent the sale of such a wine. But were a Californian spatlese – that is a traditional European expression meaning late harvest – presented on the Australian market, that would be perfectly legitimate because even though, under the agreement, Australian winemakers have agreed not to use those Traditional Expressions, we do not need to prevent third countries from using them.⁹

3.10 Articles 15 and 17 permit Australia to use a range of sensitive names in the labelling of its wine for a limited period following entry into force of the Agreement. Australia may use the names Burgundy, Chablis, Champagne, Graves, Manzanilla, Marsala, Moselle, Port, Sauterne, Sherry, White Burgundy, Amontillado, Auslese, Claret, Fino, Oloroso and Spatlese for 12 months, and may use the term Tokay for 10 years, following entry into force of the Agreement.¹⁰

3.11 Article 23 permits Australia to continue to use a range of names listed in Annex V. These include commercially important terms for the Australian fortified wine industry including ‘cream’, ‘ruby’, ‘tawny’ and ‘vintage’.¹¹

3.12 Article 27 prohibits Parties to the Agreement from introducing more onerous labelling requirements than those that exist when the Agreement enters into force.¹²

Reasons for Australia to take treaty action

3.13 Under the 1994 Agreement, Australia and the EC resolved to agree on dates for the phasing out the use of EC-claimed Geographical Indications and Traditional Expressions in the labelling of Australian wine. The proposed Agreement resolves this issue and makes these dates clear.¹³

9 Mr Stephen Guy, *Transcript of Evidence*, 16 March 2009, p. 14.

10 NIA, para 22.

11 NIA, para 24.

12 NIA, para 25.

13 RIS, pp. 1-2.

- 3.14 The Government stated that negative impacts on the Australian wine industry would be limited, as much of the industry has already shifted away from using European wine styles as a descriptor of Australian wines.¹⁴
- 3.15 However, the Government noted that the requirement that Australia phase out the use of 'Port' and 'Tokay' in the labelling of wine will have a significant impact on Australia's fortified wine industry.¹⁵ Nonetheless, the Agreement permits Australia to continue to use a range of sensitive EC-claimed terms which are of high value to Australia's fortified wine industry including 'ruby', 'tawny', 'vintage' and 'cream'.¹⁶ Australia would not be permitted to use these terms if it did not become a Party to the Agreement.¹⁷
- 3.16 Furthermore, a representative from the Department of Agriculture, Fisheries and Forestry informed the Committee that assistance was provided to the fortified wine industry:
- ... a grant of \$500,000 was provided towards a fortified wine rebranding project which looked at developing alternative names and using this opportunity to reposition the fortified sector. This project is nearing completion and the renaming will see 'sherry' being referred to as 'apera' within a year of the agreement coming into force and 'tokay' will be known as 'topaque' within 10 years of that date.¹⁸
- 3.17 The Government noted that, whilst the Australian wine industry has great potential for further growth, there is only limited growth potential in the Australian domestic market. Thus any future increase in Australian wine production will need to be exported.¹⁹ The Government considered that the Agreement will help to consolidate Australian access to European wine markets and will in turn facilitate growth in the Australian wine industry.²⁰
- 3.18 By requiring that the EC not impose more restrictive labelling requirements in the future, the Agreement will reduce the risk to the Australian wine industry of any difficulties or costs that might arise if the EC was permitted to implement more onerous wine labelling

14 NIA, para 7.

15 NIA, para 15.

16 NIA, para 17.

17 RIS, p. 3.

18 Mr Gregory Williamson, *Transcript of Evidence*, 16 March 2009, p. 10.

19 RIS, p. 1.

20 NIA, para 9.

requirements in the future.²¹ The AWBC informed the Committee of an additional benefit of this provision:

... [this provision] will provide certainty to Australian winemakers going forward ... it will give Australian winemakers confidence to continue to produce wines in the manner in which we do in this country and to present them in the way that we typically do and not be denied access to European markets.²²

- 3.19 Under the 1994 Agreement a range of new winemaking techniques important to Australia were not recognised. Thus these techniques have had to be provisionally authorised every 12 months. The proposed Agreement permanently authorises these new techniques and provides that any new winemaking practices will automatically receive provisional approval. This aspect of the Agreement secures Australia's access to European wine markets.²³
- 3.20 The AWBC argued that the requirements under the 1994 Agreement, and under the proposed Agreement, for Australian winemakers to move away from using EC-claimed names has encouraged Australian winemakers to be innovative in the naming of their product. In turn, the Australian wine industry has benefited through differentiating their product from other wines, and in some cases, establishing these new products as household names.²⁴
- 3.21 The AWBC claimed that small wine producers in particular will benefit from this Agreement. The Agreement requires the EC to protect a range of Australian wine names, which will in turn promote the regional differences of wine and the unique characteristics of wines associated with those regions. Thus, small producers may have a greater capacity to differentiate their wines through labelling and the characteristics associated with that label.²⁵

Opposition to the Agreement

- 3.22 The Committee received a submission from Dr Matthew Rimmer, Associate Director of the Australian Centre for Intellectual Property in Agriculture which operates as a partnership between the University

21 NIA, para 11.

22 Mr Stephen Guy, *Transcript of Evidence*, 16 March 2009, p. 12.

23 Mr Gregory Williamson, *Transcript of Evidence*, 16 March 2009, p. 10; NIA, para 10.

24 Mr Stephen Guy, *Transcript of Evidence*, 16 March 2009, p. 15.

25 Mr Stephen Guy, *Transcript of Evidence*, 16 March 2009, p. 16.

of Queensland, Griffith University and the Australian National University. Dr Rimmer's submission urges the Committee to take into account a range of issues including:

- the potential for Geographical Indication regulations to be used beyond their initial intent;
- the history of Geographical Indications in Australia;
- the potential costs of the proposed Agreement; and
- the Agreement's interaction with current laws.

Dr Rimmer's submission argues that a range of issues pertaining to the Agreement have not been properly considered by the Government.²⁶

- 3.23 The submission argues that previous Agreements that regulate the naming of wines are at risk of being expanded beyond their initial geographical scope. In particular, the submission points to the Champagne region in France which was enlarged in 2008 to facilitate greater production. The submission urges the Committee to be wary of the possibility that the terms of the Agreement could be expanded to assist European winemakers.²⁷
- 3.24 The AWBC noted that whilst some regions have been expanded beyond their initial geographical scope (such as the Champagne region) this issue has little impact on Australian winemakers. It was suggested that, under the terms of the Agreement, Australian winemakers are not permitted to use certain names regardless of the size of the EC region that can use those names. Thus the AWBC considered that Australian winemakers would be unaffected by this issue.²⁸
- 3.25 Dr Rimmer questions whether the benefits to Australia of increased access to European markets truly outweigh the cost of more restrictive labelling requirements and claims that the Government has downplayed the costs of the Agreement to the Australian wine industry. Dr Rimmer argues that the Agreement may have significant economic, legal, social and political impacts on Australia. Dr Rimmer urges the Government to conduct a clear and detailed cost and benefit assessment of the Agreement.²⁹
- 3.26 The Government's Regulatory Impact Statement (RIS) contains a cost and benefit impact analysis. This analysis concludes that, whilst

26 Dr Matthew Rimmer, *Submission No. 7*, pp. 5-6.

27 Dr Matthew Rimmer, *Submission No. 7*, pp. 9-10.

28 Mr Stephen Guy, *Transcript of Evidence*, 16 March 2009, p. 11.

29 Dr Matthew Rimmer, *Submission No. 7*, pp. 11-28.

Australia will be required to prevent the use of a range of wine names, the EC will be required to accept a range of new wine making techniques which are of high value to Australia. Also, due to the standstill provision, Australia will be protected from more onerous labelling requirements in the future. The analysis argues that due to these provisions Australia will gain greater, and more secure, access to foreign wine markets. Thus, based on this analysis, the RIS determines that it is in Australia's national economic interest to enter in to the Agreement.³⁰

Implementation

- 3.27 The AWBC informed the Committee that they are responsible for enforcing Australia's wine labelling requirements under the Agreement.³¹
- 3.28 Articles 29 to 32 establish, and outline the functions of, a Joint Committee consisting of members of the EC and Australia. Parties shall maintain contact through this Joint Committee on issues relating to the implementation of the Agreement.³²
- 3.29 The *Australian Wine and Brandy Corporation Act 1980* will need to be amended in order to accept new winemaking techniques and labelling requirements, resolve issues around exceptions to the false and misleading description and presentation of wine and also to introduce or amend key definitions.³³
- 3.30 The *Australian Wine and Brandy Corporation Regulations 1981* will need to be amended to reflect the use of Australian quality wine terms, provide phase-out dates and transitional periods for the use of certain labelling names and to change wine labelling rules.³⁴
- 3.31 The *Trade Marks Act 1995* will need to be amended to ensure key definitions are consistent with the *Australian Wine and Brandy Act 1980*, and to give power to the Registrar of Trade Marks to amend the Register consistently with the Agreement.³⁵

30 RIS, pp. 2-4.

31 Mr Stephen Guy, *Transcript of Evidence*, 16 March 2009, p. 14.

32 NIA, para 26.

33 NIA, para 32.

34 NIA, para 32.

35 NIA, para 33.

Costs

- 3.32 There will be administrative costs associated with updating the Register of Protected Names by the Australian Wine and Brandy Corporation and amending the *Australian Wine and Brandy Corporation Act 1980* and *Australian Wine and Brandy Corporation Regulations 1981* to enable Australia to comply with its obligations under the proposed Agreement. These will be absorbed within existing budgets.³⁶
- 3.33 The Government is assisting the fortified wine industry to meet the costs of phasing out some terms with a contribution of \$500,000 to assist with determining suitable replacement terms. At the time of the Committee's hearing, \$450,000 of this funding had been used to facilitate the transition including through the development and testing of alternative wine names. A further \$50,000 will be provided to facilitate the launching of these new names in the market place.³⁷

Future treaty action

- 3.34 Article 39 provides that Parties may amend the Agreement by consensus. This consensus may occur through the Joint Committee mentioned above.³⁸
- 3.35 The Government anticipates that technical amendments to the Agreement are likely in order to authorise new or modified wine-making techniques.³⁹
- 3.36 Article 44 provides that Parties may terminate the Agreement one year after a written notice of termination is provided to the other Party.⁴⁰

Consultation

- 3.37 Negotiations for the proposed Agreement have been carried out over the last 13 years in consultation with the Winemakers' Federation of Australia (WFA) which represents more than 90 per cent of Australia's wine production. Wine industry leaders have also been

36 NIA, para 34.

37 Department of Agriculture, Fisheries and Forestry, *Submission No. 8*, p. 1; NIA, para 35.

38 NIA, paras 26 and 38.

39 NIA, para 38.

40 NIA, para 41.

consulted through the AWBC International Trade Advisory Committee. These consultations provided input into the negotiation of the Agreement and supported Australia entering into the Agreement.⁴¹

- 3.38 Relevant Commonwealth Ministers and agencies and State/Territory Governments were consulted about the Agreement and raised no issues with Australia becoming a Party to the Agreement.⁴²

Conclusions and recommendation

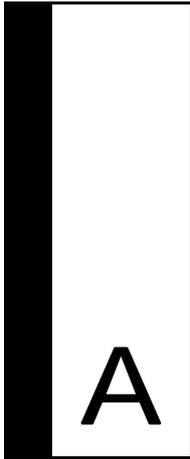
- 3.39 The Committee is of the view that the Agreement will provide Australian winemakers with greater, and more secure, access to European markets. The Committee considers that accession to the Agreement will strengthen trade between Australia and the EC, and will provide an additional forum through which future issues relating to trade in wine can be considered and agreed upon.

Recommendation 2

The Committee supports the *Agreement between Australia and the European Community on Trade in Wine* and recommends that binding treaty action be taken.

41 Mr Gregory Williamson, *Transcript of Evidence*, 16 March 2009, p. 10; NIA, Attachment on Consultation, para 42.

42 NIA, Attachment on Consultation, para 43.



Appendix A - Submissions

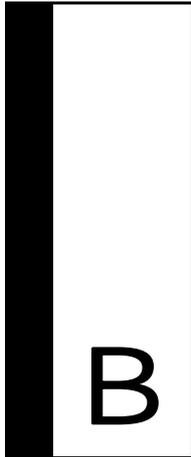
Treaties tabled on 3 February 2009

Convention on the Protection and Promotion of the Diversity of Cultural Expressions

- 1 Australian Patriot Movement
- 3 Media, Entertainment & Arts Alliance
- 4 Dr Ben Goldsmith
- 5 Music Council of Australia
- 6 Dr Ben Saul
- 9 Department of the Environment, Water, Heritage and the Arts

Agreement between Australia and the European Community on Trade in Wine

- 1.1 Australian Patriot Movement
- 7 Dr Matthew Rimmer
- 8 Department of Agriculture, Fisheries and Forestry
- 10 Government of Western Australia



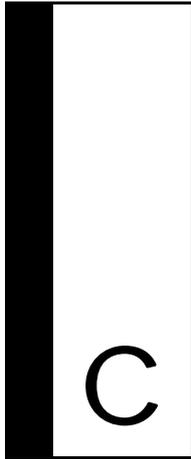
Appendix B - Exhibits

Treaties tabled on 3 February 2008

Agreement between Australia and the European Community on Trade in Wine

- 1 Dr Matthew Rimmer
The Grapes of Wrath: the Coonawarra Dispute, Geographical Indications and International Trade (Related to submission No. 7)
- 2 Dr Matthew Rimmer
Australia's Interests Under TRIPS Dispute Settlement Trade Negotiations by Other Means Multilateral Defence of Domestic Policy Choice, or Safeguarding Market Access (Related to Submission No. 7)
- 3 Dr Matthew Rimmer
Thinking Locally, Acting Globally: How Trade Negotiations Over Geographical Indications Improvise "Fair Trade" Rules (Related to Submission No. 7)
- 4 Dr Matthew Rimmer
Protection or Privatisation of Culture? The Cultural Dimension of the International Intellectual Property Debate on Geographical Indications of Origin (Related to Submission No. 7)
- 5 Dr Matthew Rimmer
The Impact of European Geographical Indications on National Rights in Member States (Related to Submission No. 7)
- 6 Dr Matthew Rimmer
The WTO Geographical Indications Dispute (Related to Submission No. 7)

- 7 Dr Matthew Rimmer
The EU's Geographical Indications Agenda and its Potential Impact on Australia (Related to Submission No. 7)
- 8 Dr Matthew Rimmer
Registered GIs: Intellectual Property, Agricultural Policy and International Trade (Related to Submission No. 7)



Appendix C - Witnesses

Monday, 16 March 2009 - Canberra

Australian Wine and Brandy Corporation

Mr Stephen Guy, General Manager, Compliance and Trade

Attorney-General's Department

Mr Richard Braddock, Principal Legal Officer, Office of International Law

Department of Agriculture, Fisheries and Forestry

Mr John-Michael Martinez, Assistant Manager, Wine Policy Section

Mr Gregory Williamson, Acting Executive Manager, Agricultural Productivity Division

Department of Immigration and Citizenship

Ms Cassandra Ireland, Director and Principal Legal Officer, Legal Policy Section

Department of Environment, Water, Heritage and the Arts

Dr Stephen Arnott, Assistant Secretary, Film and Creative Industries

Ms Jane Carter, Policy Officer, Film Incentives and International

Mr Stephen Richards, Director, Film Incentives and International

Department of Foreign Affairs and Trade

Mr David Mason, Executive Director, Treaties Secretariat, International Legal Branch

Ms Sue Robertson, Acting Director, International Law Section

