

# **A Brief History of the International Regulation of Wine Production**

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## A Brief History of the International Regulation of Wine Production

Abstract: Regulations regarding wine production have a profound effect on the character of the wine produced. Such regulations can be found on the local, national, and international levels, but each level must be considered with the others in mind. This Paper documents the growth of wine regulation throughout the world, focusing primarily on the national and international levels. The regulations of France, Italy, Germany, Spain, the United States, Australia, and New Zealand are examined in the context of the European Community and United Nations. Particular attention is given to the diverse ways in which each country has developed its laws and compromised between tradition and internationalism.

### I. Introduction

No two vineyards, regions, or countries produce wine that is indistinguishable from one another. For the most part, this distinction is due to the unique characteristics imparted on wine by the geographic conditions, the growing methods, and the winemaking process. However, behind these natural and man-made factors exists an intricate web of regulations that fundamentally influences the character of the final product.

Wine regulations have existed for much of the history of the touted beverage and are currently in place at all levels of national and international governance. In order to fully understand any single regulation, it is necessary to consider the regulation within the context of those around it. This Paper attempts to chronicle the history of such regulations at both levels, set out the current state of the law, and clarify how they all work together.

Part II presents a concise history of winemaking, from its ancient origins up until the end of the 19th Century. Particular attention is paid to the regulations set out over time and the considerations that led to the need for such laws. Many of these same considerations are determining factors in the modern regulatory state, making it necessary to lay a solid historical foundation before exploring where wine regulation stands today.

Part III focuses on the growth of regulation in Europe, where winemaking thrived for centuries before being introduced to the rest of the world. Regulation of wine in Europe exists on two interwoven levels - nationally and as a united community – that must be presented together in order to obtain a complete understanding. To achieve this understanding, Part III begins by laying out the history of the great winemaking traditions of France and Italy from the early 20th Century to the creation of the European Economic Community (EEC).<sup>1</sup> The creation of the EEC is then examined and its regulations traced up to today. Finally, the regulations of France, Italy, Germany, and Spain are explored to see how they have adapted over time and currently fit into the EU vision. These countries are chosen because they represent the four largest wine producers in Europe.<sup>2</sup>

Part IV moves beyond Europe to the rest of the world, where most countries only have wine traditions as a result of European settlers. Ironically, most of these wine traditions are a stark contrast to those in Europe. The United States (U.S.), Australia, and New Zealand are selected as examples of countries that have developed laws quite distinct from European laws. The U.S. and Australia are examples of large international producers, while New Zealand provides the contrast of a much smaller player in the international market.<sup>3</sup>

Part V then takes a quick look at how the countries of the world have begun to work together on an international level. Recent cooperation has ranged from bilateral agreements to large-scale international organizations such as the United Nations. The U.S.'s participation in these international agreements is used

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<sup>1</sup>The EEC became the European Community (EC) in 1967 and later the European Union (EU) in 1992. Each acronym will be used for discussions of history during the time in which it was in effect.

<sup>2</sup>According to 1999 statistics, the world's largest wine-producing countries are France (roughly 1.59 billion gallons), Italy (1.53 billion), Spain (863 million), United States (534 million), Argentina (420 million), Germany (325 million), and Australia (225 million), which together account for approximately 74% of the world total. *Key Facts: World Wine Production by Country*, at [http://www.wineinstitute.org/communications/statistics/keyfacts\\_worldwineproduction99.htm](http://www.wineinstitute.org/communications/statistics/keyfacts_worldwineproduction99.htm) (last visited Feb. 25, 2002).

<sup>3</sup>New Zealand was the thirty-second largest wine-producing nation in 1999, producing only 15.9 million gallons of wine. *Id.*

as an example.

Finally, Part VI concludes with brief analysis of the state of affairs of wine production laws. France's strict regulatory system is critiqued for hindering its wine sales as other countries begin to develop their own winemaking traditions and become stronger competitors in the global market.

## II. History

The majority of modern wine is made using a particular species of grape vines known as *Vitis vinifera*.<sup>4</sup> Prior to our current understanding of botany and evolution, it was believed that all grape vines suitable for wine evolved from this one species, which was native to Asia and had been imported to Europe during prehistoric times. This notion grew out of the Semitic traditions of Paradise and the Greek myth of the wine god Dionysus' migration from India to Hellas in Greece. Once in Greece, *Vitis vinifera* was thought to have been transported to Italy and then spread throughout France, Germany, and the rest of the region along with historic colonization.<sup>5</sup> However, centuries of botanical research have led to the conclusion that many species within the genus *Vitis* were indigenous to Europe and the rest of the world and evolved separately from the species previously thought to be the originator.<sup>6</sup>

Archeological evidence suggests that grape vines existed as far back as the Paleocene and Eocene epochs of the Tertiary period, thirty-eight to sixty-five million years ago. By the end of the Tertiary period (1.8 million years ago), numerous species within the genus *Vitis* were distributed throughout North America and Eurasia.<sup>7</sup>

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<sup>4</sup>PIERRE SPAHNI, THE INTERNATIONAL WINE TRADE 1 (1995) [hereinafter INTERNATIONAL WINE TRADE]. *Vitis vinifera* has become widespread due to its ability to adapt to different environments better than other species. The types of grapes that are commonly seen on wine labels (i.e. Chardonnay, Cabernet Sauvignon) are all varieties of this species. *Vitis vinifera* has also been genetically engineered to produce vines that are more resistant to viruses and provide higher yields. Other species within the genus *Vitis* are found throughout the world and are capable of producing wine, but such species have their own drawbacks and are often not as ideal as *vinifera*. *Id* at 2.

<sup>5</sup>J.L.W. THUDICHUM & AUGUST DUPRÉ, A TREATISE ON THE ORIGIN, NATURE, AND VARIETIES OF WINE 1 (1872).

<sup>6</sup>*Id* at 11.

<sup>7</sup>TIM UNWIN, WINE AND THE VINE: AN HISTORICAL GEOGRAPHY OF VITICULTURE AND THE WINE TRADE 29 (1991). *Vitis vinifera* is native to Eurasia. *See id*.

The exact date when the cultivation of grape vines and winemaking began has been highly debated due to the lack of historical evidence. Some historians suggest that the first domestication came around 8000 BC in Asia Minor and Transcaucasia, but this suggestion has been thrown into doubt for evolutionary reasons.<sup>8</sup> More evidence supports the theory that winemaking began at some point between 6000 and 4000 BC in the mountainous region between the Black and Caspian Sea, near the borders of the modern states of Turkey, Iraq, and Iran.<sup>9</sup> By around 2750 BC, cuneiform texts on clay tablets excavated from the city of Ur in Mesopotamia mentioned the growth of grapes and wine,<sup>10</sup> although it seems that the main source of alcohol at the time was barley and dates, not wine.<sup>11</sup> Archeological evidence also points to the development of viticulture<sup>12</sup> in southeast Spain and the western Mediterranean by 2500 to 2000 BC, and on mainland Greece by 1500 BC.<sup>13</sup>

Definitive evidence of wine production was left by the civilizations of the late Bronze Age<sup>14</sup> in the form of vessels for holding wine, wine presses, and cellars.<sup>15</sup> During this time, beer was the most common alcoholic beverage, while wine was reserved for the ruling elite who controlled production and trade networks.<sup>16</sup> The Code of Hammurabi from the Sumerian empire around 1700 BC made it clear that beer was the most important drink, but indicated that wine was consumed by the ruling elite and was essential for religious ceremonies. Paintings, statues, and papyri also illustrate the social and religious functions that wine played during Egyptian times (2000 to 1000 BC), even though beer was still more popular. The Assyrian empire then left its mark in the form of carved reliefs depicting wine and tablets from 800 BC that provided a list of those who were entitled to a daily ration of wine due to their employment in the king's service.<sup>17</sup>

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<sup>8</sup>*Id* at 59.

<sup>9</sup>*Id* at 63.

<sup>10</sup>OXFORD COMPANION TO WINE 446 (Jancis Robinson ed., 2nd ed. 1999).

<sup>11</sup>UNWIN, *supra* note 7, at 64.

<sup>12</sup>Viticulture is the cultivation of grapes for winemaking.

<sup>13</sup>UNWIN, *supra* note 7, at 59, 85.

<sup>14</sup>The Bronze Age stretched from 3000 to 1500 BC.

<sup>15</sup>ANTONIO NIEDERBACHER, WINE IN THE EUROPEAN COMMUNITY 5 (1983).

<sup>16</sup>UNWIN, *supra* note 7, at 93.

<sup>17</sup>*Id* at 64, 66.

It was not until the rise of the Greek and Roman empires in the early centuries AD that wine became more of a beverage for the mass population.<sup>18</sup> Wine also became highly valued for its medicinal qualities, especially its ability to disinfect wounds.<sup>19</sup> Its growing importance was illustrated by the fact that three of the books that made up Pliny the Elder's (23-79 AD) *Natural History* focused directly on wine.<sup>20</sup> Pliny noted that seawater could be added "to enliven the wine's smoothness," snow could be added to cool the wine, or that spices and herbs could be added to mask the fact that the wine had turned to vinegar.<sup>21</sup> In fact, drinking wine straight was considered to be barbaric. Wine was usually heavily diluted with water, which served the dual purpose of allowing it to be more thirst quenching and allowing the alcohol to make the water safer to drink.<sup>22</sup>

Coinciding with what little is known about many of the ancient civilizations, the Roman Empire also regulated wine. Although the exact substance is debated, an edict by the Emperor Domitian in 92 AD placed restrictions on the production of wine. The main objective of the edict was to significantly reduce the amount of wine being made in the provinces and to turn the attention to grain production. Domitian felt that too much effort was being placed on wine production, leading to the neglect of corn and grain necessary for citizens and the army. The problem had been exacerbated by the eruption of Mount Vesuvius in 79 AD, which destroyed many vines, but led to a massive rebuilding effort that soon created an even greater overproduction of wine.<sup>23</sup> The Romans also brought viticulture with them as they moved north into Gaul (modern day France). However, Roman authorities restricted winemaking in certain areas of Gaul in order

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<sup>18</sup>*Id* at 93.

<sup>19</sup>*Uncorking the Past*, THE ECONOMIST, Dec. 22, 2001, at 29, 30.

<sup>20</sup>All of Book 14 is about wine, Book 17 provides information regarding techniques of viticulture, and the beginning of Book 23 is on the medicinal properties of wine. OXFORD COMPANION TO WINE, *supra* note 10, at 537.

<sup>21</sup>See *Uncorking the Past*, *supra* note 19, at 30. Items of commerce during this time were often mixed with adulterants for economic reasons. Cato (234-149 BC), in his treatise *On Agriculture*, even suggested adding boiled-down must, salt, marble dust, and resin to wine, although he additionally wrote about methods for determining "whether wine has been watered." By the early centuries AD, many academics were campaigning to halt the adulteration of food. See Peter Barton Hutt, *Government Regulation of the Integrity of the Food Supply*, 4 ANN. REV. NUTRITION 1 (1984), reprinted in PETER BARTON HUTT & RICHARD A. MERRILL, FOOD AND DRUG LAW CASES AND MATERIALS 1 (2d ed. 1991).

<sup>22</sup>*Uncorking the Past*, *supra* note 19, at 30.

<sup>23</sup>UNWIN, *supra* note 7, at 115.

to prevent competition with local Roman growers.<sup>24</sup> In addition, Romans attempted to authenticate wine and prevent fraud by labeling the amphorae with series of numbers, letters, codes, logos, and drawings.<sup>25</sup> Roman wine was categorized according to a hierarchical system that is quite reminiscent of today's classification systems. Wine from the Falernian region near Naples was considered to be the best and was organized into three classifications based on where it was grown. Falernian was grown on the lower slopes of Mount Falernus, Faustian Falernian came from the middle slopes, and the best wine, Caucinian Falernian, was grown on the highest slopes of the mountain.<sup>26</sup> In general, white wine was most prized and was picked later in the season so that it was heavy and sweet. This methodology allowed for wines to be aged for decades, and sometimes even up to two hundred years. Roman wines likely tasted quite different from what we are accustomed to today since the wine contained resin from the earthen pots and was often allowed to maderise, causing it to turn amber or brown.<sup>27</sup>

Viticulture declined rapidly after the fall of the Roman Empire and was not revived until Charlemagne came to power in 800AD.<sup>28</sup> Much of the reason for this revival was the spread of Christianity throughout Europe. The Church required a daily supply of wine in order to celebrate the Eucharist and monasteries needed wine for the monks and their guests. These needs also led to two levels of wine being produced, one for daily consumption and a superior version to impress prestigious guests.<sup>29</sup>

During the Medieval period in England, the wine trade became highly regulated. Parliament recognized the tendency of producers to focus on profits and, in 1266, prohibited the sale of any "corrupted wine."<sup>30</sup> Adulteration was considered a serious offense, as many tried to get away with it in order to make the wine last longer or to hide the taste once it became sour. The assize courts also regulated the price of wine

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<sup>24</sup>*Id.* at 118.

<sup>25</sup>Michael Maher, Comment, *On Vino Veritas? Clarifying the Use of Geographic References on American Wine Labels*, 89 CAL. L. REV. 1881, 1884 (2001).

<sup>26</sup>*Uncorking the Past*, *supra* note 19, at 30.

<sup>27</sup>*Id.* When wine maderises, it becomes old and oxidized.

<sup>28</sup>NIEDERBACHER, *supra* note 15, at 10.

<sup>29</sup>OXFORD COMPANION TO WINE, *supra* note 10, at 157.

<sup>30</sup>Hutt, *supra* note 21, at 2.

depending on its scarcity or abundance.<sup>31</sup>

As previously mentioned, vines of the genus *Vitis* suitable for winemaking were indigenous to locations all over the world. It seems, however, that viticulture only grew out of the civilizations discussed thus far and no known cultures in the Americas or other regions of the world. This fact has led scholars to posit that winemaking developed for reasons related to the unique social, economic, and ideological structures of these civilizations.<sup>32</sup> As a result, it was not until Europeans arrived in the Americas that viticulture made the jump over the Atlantic Ocean. The first wine introduced by Columbus in the 1490s was “sack” from Spain, a precursor to modern sherry.<sup>33</sup> *Vitis vinifera* was later introduced to Latin America during future exploratory voyages by Spain and Portugal during the 16th Century, and it quickly spread amongst the civilizations.<sup>34</sup> Viticulture was introduced to the U.S. on two fronts, by European colonists on the East Coast as early as 1619, and by Franciscan missionaries on the West Coast in 1700.<sup>35</sup> The English then brought the art of winemaking to Australia in 1788 when they first arrived to set up a penal colony, and later to New Zealand in 1819.<sup>36</sup>

Back in France, wine was often anonymous, defined only by the area of origin, and mainly sold out of casks. It was not until 1650 that the glass bottle was “reinvented” and the process of corking perfected, allowing for the rise of individual estates and the distinction between qualities of wine.<sup>37</sup> The growth in demand of wine during the 1700s led to a flood of corruption and falsification. The demand for inexpensive wine gave producers the incentive to stretch their supplies with cheap additives and dilutants, while wines that were

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<sup>31</sup>UNWIN, *supra* note 7, at 196.

<sup>32</sup>*See id.* at 59.

<sup>33</sup>*Uncorking the Past*, *supra* note 19, at 31.

<sup>34</sup>UNWIN, *supra* note 7, at 214.

<sup>35</sup>*Id.* at 301.

<sup>36</sup>*Id.* at 297, 300. Slightly more in depth histories of the growth of viticulture in each of these countries can be found in the individual sections discussing their national wine regulations.

<sup>37</sup>CLIVE COATES, AN ENCYCLOPEDIA OF THE WINES AND DOMAINS OF FRANCE 14 (2000). The widespread sale of bottles did not begin until around 1869 when a glue was developed that was strong enough to adhere labels to glass bottles. Prior to this, bottles were sold unlabeled and in bins. All commercially circulated wine now has at least one label, and many bottlers are beginning to use a back label to convey even more background information to the consumer. OXFORD COMPANION TO WINE, *supra* note 10, at 390.



shipped overseas were often in need of “reviving.”<sup>38</sup>

This distrustful state of affairs led to the need to protect consumers against fraudulent geographical indications and guarantee the origin of wine. As early as 1716, Medici Grand Duke Cosimo II of Florence created geographic boundaries for Tuscan wine growing regions, including Chianti and Carmignano. Along with setting boundaries, merchants were forbidden to use these geographical names unless their wine was made within the delimited area.<sup>39</sup> Marquis de Pombal also carried out vineyard demarcation in 1756 in the Upper Douro valley of Portugal as part of the reorganization of the port wine trade. Higher prices were to be paid to producers in the Upper Douro based on quality. While this demarcation was intended to improve the quality of wine, it was also designed to enhance the profits of some producers at the expense of others.<sup>40</sup> Today, all major wine-producing nations have some sort of regulatory regime that sets out geographic limits on regions.<sup>41</sup>

Wine classifications in Bordeaux and Burgundy also grew out of the desire of wealthy landowners to ensure continued profits.<sup>42</sup> Many in France had begun to informally classify the country’s wines, but in 1855, the Chamber of Commerce of Bordeaux charged the *syndicat des courtiers* with creating an official classification of the wine of the Gironde. The wines were divided into five crus for reds and three crus for whites, with a cru simply being a classification with no grounding in the law.<sup>43</sup> Only one slight alteration has been made to the list since its creation, in that a vineyard was elevated to premier cru in 1973.<sup>44</sup> This classification essentially created a barrier for the growth of new wine estates and guaranteed high prices for those at the top of the list. Along with the many other informal classifications of other regions, these lists became even more important as transportation increased and wines became more readily available.<sup>45</sup>

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<sup>38</sup>UNWIN, *supra* note 7, at 276-77.

<sup>39</sup>Maher, *supra* note 25, at 1884.

<sup>40</sup>UNWIN, *supra* note 7, at 278.

<sup>41</sup>Maher, *supra* note 25, at 1885.

<sup>42</sup>UNWIN, *supra* note 7, at 278.

<sup>43</sup>Cru is the French word for “growth,” so the wines were classified as “first growth,” “second growth,” etc.

<sup>44</sup>*Id.* at 280.

<sup>45</sup>*Id.* at 282.

By the late 1800s, wine producers began to face the recurring problem of overproduction that still plagues the industry today. Weather fluctuations led to variable annual grape harvests, and eventually to short-term price collapses in years of overproduction. Luckily, the increasing demand for wine allowed for quick recoveries from these unpredictable conditions. Today, many wine regulations are aimed directly at reducing this variability.<sup>46</sup>

Many of the same influences that guided the general history of wine are still being faced today. Fraud and overproduction are not solely considerations of the past, but are also guiding forces behind all modern regulations. The following parts will look specifically at the growth of modern wine regulation at the level of both individual countries and international organizations. Unfortunately, national regulations are inextricably woven with those of their international counterparts, making it difficult to look at one small piece without considering the whole.

### III. Europe

The European wine tradition is by far the most rich and extensive throughout the world. The modern history of this tradition began with the rise of wine on a national level, with little regard for neighboring countries. This self-interest ended abruptly, however, with the formation of the EEC and the integration of European markets. A unified wine policy soon sprang to life that forced many countries to alter their regulation of the industry. This Part proceeds by tracking the regulation of wine in France and Italy, the world's two largest producers, up until the formation of the EEC. Then, the common regulation of wine under the EEC is examined from its creation to the present day. Finally, this Part tracks the national

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<sup>46</sup>*Id.* at 310-11. The three main ways that regulations combat overproduction are the demarcation of wine regions to guarantee origin and quality, the vertical integration of production and retailing, and technical advances that allow greater consistency between years. *See id.*

regulation of wine since the creation of the EEC in four countries – France, Italy, Germany, and Spain.

## A. National Regulation Prior to the Creation of the EEC

### 1. France

Wine production around the world was dealt a sharp blow in the 1870s and 1880s at the hands of phylloxera, a root-infesting pest that destroys grape vines. *Vitis vinifera* was especially susceptible to this form of plant lice, leaving Europe’s vineyards in complete ruin.<sup>47</sup> With the high demand for wine in France, replanting was hasty and disorganized, but still could not prevent prices from skyrocketing due to the low supply. As had been seen during similar times in history, opportunism ran rampant, leading producers to use artificial substitutes and push the boundaries of what they called “wine.” This opportunism led the government to issue its first legal definition of wine in 1889, which was followed by numerous other decrees over the next two decades to attempt to clamp down on fraud.<sup>48</sup>

Around the turn of the century, French producers began using hybrid vines derived from breeding *Vitis vinifera* with the rootstock of certain American species that were more resistant to pests, especially phylloxera. The hybrids allowed for higher yields, but created wine of poor quality and with a low alcoholic content. As a result, producers often began to mix their wines with Algerian wines that were higher in alcohol content.<sup>49</sup> Supply eventually rebounded due to the flood of wine from hybrid and Algerian vines, but quickly led to bouts of overproduction and sharp price drops. To make matters worse, producers began

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<sup>47</sup>PIERRE SPAHNI, THE COMMON WINE POLICY AND PRICE STABILIZATION 11 (1988) [hereinafter COMMON WINE POLICY].

<sup>48</sup>*Id.*

<sup>49</sup>Algeria was considered to be “part” of France at the time, which allowed Algerian products to move freely within France. *Id.* at 12.

to combat the sharp price drops by reintroducing fraudulent and artificial wines.<sup>50</sup>

The French government finally stepped in with strong regulations in 1907 designed to counter such overproduction and fraud. To combat the former, one law implemented grape harvest reporting requirements.<sup>51</sup>

In an attempt to regain control of what was being sold as wine, the same law defined wine as a beverage made exclusively from the fermentation of fresh grapes or the juice of fresh grapes, with the ingredients being water (85% to 90%), alcohol, and dry extracts.<sup>52</sup> Owners of the major estates listed on the 1855 classification also came together to fight fraud by forming the Syndicate of Defense in 1910. The Syndicate became quite successful at tracking down and prosecuting those found to be selling wine that was fraudulent in one manner or another.<sup>53</sup>

After the turn of the century, growers in certain regions began to form associations in an attempt to guarantee the authenticity of their products. These efforts were rewarded in 1905 by a law that set out appellations of origin that applied not only to wine, but also to mustard from Dijon, cheese from Roquefort, cider, beer and more.<sup>54</sup> Between 1908 and 1912, the French government began delimiting certain areas as the source of specific wine, including Champagne (where it was first applied), Cognac, Armagnac, and Bordeaux. Only wines from these areas and made according to local usage could bear that region's name on the label. New regions were slowly set out over time, and each region began to pass its own laws regulating growing areas, grape varieties, pruning methods, alcohol content, production yield, irrigation, etc.<sup>55</sup> Expectedly, many were angered by the boundaries of these appellations, especially those who had previously used the name and had been left out of the delimited area. Tensions were felt in many of the newly minted regions, but violent riots actually erupted in Champagne in 1911.<sup>56</sup>

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<sup>50</sup>*Id.*

<sup>51</sup>*Id.*

<sup>52</sup>LEO A. LOUBÈRE, THE WINE REVOLUTION IN FRANCE 104 (1990). This definition has been adopted by the Office International de la Vigne et du Vin as well. *Id.*

<sup>53</sup>*Id.* at 110. Between 1934 and 1954, 565 falsifiers were prosecuted, with some going to jail and all paying fines. *Id.*

<sup>54</sup>*Id.* at 114.

<sup>55</sup>UNWIN, *supra* note 7, at 314-15.

<sup>56</sup>LOUBÈRE, *supra* note 52, at 114-15.

National legislation was eventually enacted to address issues that the government felt should be standardized. In 1927, France forbade the use of hybrid vines and began regulating the types of grapes that were required for a wine to be included within a specific appellation.<sup>57</sup> A 1929 law later allowed chaptalization<sup>58</sup> in all of the vineyards of France except for those of the deep south and southwest. This distinction was drawn based on weather conditions and the sugar content of the grapes at harvest – grapes of the warmer southern climates were able to develop higher levels of natural sugar. Many southern vineyards argued that they were being discriminated against because the government feared that they would overproduce. As a result, many vineyards that could not reach the required alcohol content and were not allowed to add sugar were forced to secretly blend Algerian wine into their own. Recognizing this trend, the government eventually softened its stance and began granting frequent exemptions to southern vineyards, even in years of good sugar content.<sup>59</sup> France was already well ahead of its wine producing counterparts in terms of regulating the industry when it faced a slump in the wine economy from 1931 to 1935. This prompted the government to pass another series of bills to address all aspects of the industry, collectively known as the Statut du Vin (Wine Statute).<sup>60</sup> The Wine Statute had three main objectives: 1) to avoid surpluses by cutting back the size of vineyards producing vin de consommation courante (ordinary table wine), 2) to stabilize the market by controlling supply, and 3) to provide growers with a price that would bring in enough profit to allow families to remain on the land.<sup>61</sup> As the objectives reflect, these bills were mainly the product of politicians who favored small plots of land over large ones.<sup>62</sup> A powerful wine lobby had also formed, which saw the need to organize itself

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<sup>57</sup>UNWIN, *supra* note 7, at 316.

<sup>58</sup>Chaptalization is the addition of sugar to must in order to attain a higher alcohol content. Yeast convert sugar to alcohol during the fermentation process, meaning that adding more sugar will allow fermentation to carry on longer and will leave behind more alcohol as a result. The alcohol content is capped at the point at which the yeast become inhibited by the alcohol (around 15%).

<sup>59</sup>LOUBÈRE, *supra* note 52, at 83-84. France had to once again ban chaptalization in the deep south when it signed a 1979 law that brought it into accord with new EC regulations regarding the enrichment of must. *Id.* at 84.

<sup>60</sup>COMMON WINE POLICY, *supra* note 47, at 14.

<sup>61</sup>LOUBÈRE, *supra* note 52, at 129.

<sup>62</sup>*Id.* at 128. Edouard Barthe is the politician often credited with orchestrating these bills. Barthe had a socialist stance toward property, defending small family properties and condemning large capitalist estates as perpetrators of fraud. *Id.*

and protect its income by controlling supply. These measures eventually came to form the backbone of the modern regulatory scheme, and, surprisingly, are mostly still in effect today.<sup>63</sup>

Many of the supply-controlling measures began by estimating market demand at the end of each harvest. Each producer was then allocated the quantities of wine that could be released to the market over the course of the year, protecting them from seasonal variations in price and wholesaler speculation. Any wine above this level was considered surplus and could be held at the winery, but anything above what could be stored would be compulsorily distilled below market price.<sup>64</sup> Extra taxes were also commonly levied against producers with excessively large harvests or yields. Another measure prohibited new plantings on vineyards that were over ten hectares and were located in major viticultural regions, and yet another provided for a complex system of subsidies for voluntary uprooting.<sup>65</sup>

The hallmark of the Wine Statute was the law of July 30, 1935 that formally created the system of Appellations d'Origine Contrôlées (AOC) that distinguished quality wine from ordinary table wine.<sup>66</sup> This system specifically set out the areas of production, choice of grape varieties, minimum alcohol levels, growing methods, and winemaking techniques required for regions and their wines to carry the honored AOC designation.<sup>67</sup> The Comité National des Appellations d'Origine (CNAO)<sup>68</sup> was also chartered and charged with the job of demarking the vineyards and appellations. Its mission was to study the soil, climate, topography, history, and grapes of any syndicates applying for AOC status and to supervise the practices of those

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<sup>63</sup>COMMON WINE POLICY, *supra* note 47, at 14.

<sup>64</sup>*Id.* Governments usually pay about 60% of guide price when purchasing surplus for storage or distillation. ROGER VOSS, THE EUROPEAN WINE INDUSTRY: PRODUCTION, EXPORTS, CONSUMPTION AND THE EC REGIME 70 (1984). Distilled wine can be used for a number of purposes, including vinegar and ethyl alcohol for industrial uses. COMMON WINE POLICY, *supra* note 47, at 3.

<sup>65</sup>LOUBÈRE, *supra* note 52, at 129.

<sup>66</sup>COMMON WINE POLICY, *supra* note 47, at 14.

<sup>67</sup>UNWIN, *supra* note 7, at 316.

<sup>68</sup>The CNAO changed its name to the Institut National des Appellations d'Origine (INAO) in 1947. The CNAO was initially a private organization, but has taken on more of a public role since the 1950s due to subsidies that it receives from the agriculture ministry that are necessary for it to pursue its goals. LOUBÈRE, *supra* note 52, at 123. The INAO is currently in charge of over four hundred different wines and spirits, thirty-five cheeses, and a range of other food. OXFORD COMPANION TO WINE, *supra* note 10, at 359.

already recognized. The founding members of the CNAO were presidents of syndicates of AOC regions that were at least ten years old and delegates from the agriculture, finance, and justice ministries, all of whom were knowledgeable about viticulture.<sup>69</sup> The classification process was initially slow, such that by 1950 only 10% of French wine was labeled as AOC. A huge expansion later took place in the 1960s that has led to more than 40% of today's French wine being classified under the AOC system.<sup>70</sup>

Production across France fell off in 1940 and remained depressed throughout the early 1940s and World War II. Most of the Wine Statute provisions focusing on controlling surplus and supply were repealed in 1942 in an attempt to spur production.<sup>71</sup> The AOC system and its limitations were left intact, however. Later, in 1949, the government launched a new appellation known as Vins Délimité de Qualité Supérieure (VDQS). VDQS wine was subject to less strict conditions than AOC wine, but was still classified as quality wine that sat above ordinary table wine. Whether to classify a wine as either AOC or VDQS depended on the laws of the specific region and the producer's practices.<sup>72</sup>

After WWII ended and vineyards had a chance to rebuild, another overproduction crisis emerged in the early 1950s that led to the readoption of the Wine Statute. Because AOC wines were already under strict limitations, the majority of overproduction was by producers of ordinary table wine. A law passed in 1953 reinstituted surplus storage, compulsory distillation, penalties for high yields, and subsidized uprooting of vines. A Viticultural Land Register was also created to keep track of vineyards and the types of grapes being used to make wine on each.<sup>73</sup> The oversight and institution of these policies was to be provided by a newly created technical body known as the Institut des Vins de Consommation Courante (IVCC).<sup>74</sup> The

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<sup>69</sup>LOUBÈRE, *supra* note 52, at 122. One of the hopes for the AOC system was that quality wine makers would be able to police themselves. The inclusion of the presidents of AOC syndicates in the CNAO was a step in this direction. *See id.*

<sup>70</sup>UNWIN, *supra* note 7, at 316.

<sup>71</sup>CHARLES K. WARNER, THE WINEGROWERS OF FRANCE AND THE GOVERNMENT SINCE 1875 158, 161 (1960).

<sup>72</sup>COMMON WINE POLICY, *supra* note 47, at 16.

<sup>73</sup>*Id.* at 16-17.

<sup>74</sup>The IVCC was abolished in 1976 and replaced by the Office National Interprofessionnel des Vins de Table (ONIVIT). This

IVCC had essentially the same function as the INAO, but its focus was ordinary table wine.<sup>75</sup> One of the IVCC's main accomplishments was preparing a classification of grapes in hopes of raising the quality of table wines. Four classifications were set out: recommended (best), authorized (all right), tolerated (acceptable, but needing to be replaced in a given number of years), and prohibited (mainly hybrids).<sup>76</sup>

In the mid-1950s, France was hit by a devastating frost that caused prices to explode – a huge swing in price from the times of overproduction only a few years before. The government stepped in in 1957 and attempted to reduce price variability by creating a price bracket with a minimum and maximum price within which prices were allowed to fluctuate.<sup>77</sup> For the next seven years, these pricing policies were repealed and readopted a number of times in response to farmer uproars, inflation, and market instabilities.<sup>78</sup> Finally, in 1964, as France worked to bring its laws into compliance with EEC regulations, it began to turn away from pricing policy and focus instead on strengthening production. Rules on market intervention were eased and producers were given more freedom to plant and irrigate their vineyards.<sup>79</sup>

## 2. Italy

In comparison to France's expansive history of regulating wine production, Italy's wine regulations were still in their infancy when the EEC proposed to integrate European markets. This is not to say that Italy did not have a long history of winemaking, it simply suggests that up until then, the Italian government did not see the need to place restrictions on the industry. It was not even until after World War I, when Italy began to modernize and enjoy more economic growth, that wine began to transform from a daily beverage and a

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also marked a change in referring to ordinary wine as “wine of current consumption” to “table wine,” both of which refer to dry wines intended to be consumed with meals. LOUBÈRE, *supra* note 52, at 135.

<sup>75</sup>COMMON WINE POLICY, *supra* note 47, at 17.

<sup>76</sup>LOUBÈRE, *supra* note 52, at 132.

<sup>77</sup>COMMON WINE POLICY, *supra* note 47, at 17.

<sup>78</sup>*Id* at 23.

<sup>79</sup>*Id* at 41.



source of calories to a source of pleasure based upon the concept of quality.<sup>80</sup> A large percentage of Italy's land was already under cultivation at the time, due mainly to the fact that much of the country was covered by slopes that were more suitable for grape vines than for other agricultural products.<sup>81</sup> During the 1950s, Italy wanted to allow the wine industry to expand in order to meet increasing demand.<sup>82</sup> However, by the early 1960s, vineyards were still rather small and underspecialized, creating marketability problems due to the lack of standardization. This led the government to adopt a policy of further developing viticulture through improvements in production and marketing, while also attempting to boost consumption to equal French levels. One focus of the policy was to urge farms to specialize in grape production, instead of having grapes be one of many products grown on the land.<sup>83</sup> Driven by this policy, the Italian wine industry experienced sustained growth throughout the 1960s, with prices rising sharply even though supply also increased.<sup>84</sup>

## B. Creation of the EEC and its Regulation to the Present

For much of their histories, European countries developed their winemaking traditions on a national level with few worries about interference from neighbors. Problems began to arise, however, once international trade in wine became more prominent in the mid-20th Century. Opportunism again served as a backdrop, as

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<sup>80</sup>OXFORD COMPANION TO WINE, *supra* note 10, at 374.

<sup>81</sup>BURTON ANDERSON, THE SIMON & SCHUSTER GUIDE TO THE WINES OF ITALY 18 (1992). A 1961 census revealed that 13% of the total utilized agricultural area in Italy was covered by vineyards. COMMON WINE POLICY, *supra* note 47, at 36. Italy's vineyards were also generally smaller and more scattered than those found in France. *Id* at 5. Still, the size of the French vineyard varied depending on the region. Burgundy consisted of many small domains and tiny holdings as a result of family farms being split up by inheritance. Bordeaux, on the other hand, had much greater estates run by absentee landlords. SIMON LOFTUS, ANATOMY OF THE WINE TRADE 14 (1985).

<sup>82</sup>COMMON WINE POLICY, *supra* note 47, at 32.

<sup>83</sup>*Id* at 36. In 1950, 75% of vineyards grew other crops at the same time. This figure had fallen to around 66% by 1964. *Id* at 37.

<sup>84</sup>*Id* at 38. Most of the demand was coming from within the country. Only 5% of production was exported at the time. *Id* at 39.

wines supposedly coming from one place contained wine from another, lesser wines were passed off as more prestigious, and producers from other countries began to use famous regions to describe their own wines. The fraudulent use of regional names was especially widespread, as producers saw that wine from certain demarcated regions demanded a significant premium, even though the inputs were quite similar to their own wines.<sup>85</sup>

Those producers that were angered by such fraudulence eventually began airing their complaints in the courts of offending countries. For instance, in 1958, French authorities brought an action in the British criminal courts to prevent a British importer from importing wine from Spain labeled “Spanish Champagne.” The defendants were found not guilty, however, because the British government did not recognize the French AOC system at the time.<sup>86</sup> Only a year later, a group of French champagne companies issued a writ against the same British importer in the Chancery Division of the High Court. This time, the judge recognized the plaintiff’s right to the protection of the “champagne” name and the possibility of consumer deception, and granted an injunction against the importer from selling any products using the term “champagne.”<sup>87</sup> This case established a strong precedent and sent waves through the international markets.<sup>88</sup>

The biggest change for wine production in Europe came with the signing of the Treaty of Rome in 1957 and the creation of the EEC.<sup>89</sup> The Treaty of Rome was an attempt to tear down trade barriers and to create an international market where one had previously not existed.<sup>90</sup> In fact, at the time, many European countries

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<sup>85</sup>UNWIN, *supra* note 7, at 311, 313.

<sup>86</sup>*Id* at 319. The lawsuit was brought under the Merchandise Marks Act of 1887 by the INAO and the Comité Interprofessionel du Vin de Champagne. The defendant was the Costa Brava Wine Co. Ltd. *Id*.

<sup>87</sup>*Id*. The difference in this case was likely that the wine in question was not labeled with a qualifier like “Spanish,” although the holding was broad enough to bar the use of qualifiers as well. *Id* at 320.

<sup>88</sup>Producers in the United State are still allowed to use the term “champagne” on their labels as long as it is coupled with a geographic term that qualifies it as “semi-generic.” *See* Part IV, A.

<sup>89</sup>Treaty Establishing the European Economic Community, March 25, 1957, 298 U.N.T.S. 11 [hereinafter Treaty of Rome].

<sup>90</sup>The preamble stated:

Resolved to ensure the economic and social progress of their countries by common action to eliminate the barriers which divide Europe... Recognising that the removal of existing obstacles calls for concerted action in order to guarantee steady expansion, balanced trade and fair competition, Anxious to strengthen the unity of their economies and to ensure their harmonious development by reducing the differences... Desiring to contribute, by means of a common commercial policy, to the progressive abolition of restrictions on international trade....  
Treaty of Rome, *supra* note 89, preamble.

severely restricted or prohibited imports, while still attempting to export. Some bilateral agreements were in effect, but these were constantly hindered by customs duties, quotas, and excise taxes.<sup>91</sup> Article 39 of the Treaty of Rome was of particular importance because it set out the Common Agricultural Policy, which applied to a wide range of products, including wine. Article 39 stated:

The objectives of the common agricultural policy shall be:

- (a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;
- (b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agricultural;
- (c) to stabilise markets;
- (d) to assure the availability of supplies;
- (e) to ensure that supplies reach consumers at reasonable prices.<sup>92</sup>

The initial members of the EEC were Belgium, France, Germany, Italy, Luxembourg, and the Netherlands.<sup>93</sup> However, the main conflict that had to be resolved in bringing together these countries was the integration of the French and Italian wine industries. Although France and Italy were the two biggest wine producing countries, the ways in which they were organized were polar opposites.<sup>94</sup> France had a detailed register of vineyards, while Italy's ordinary land register was out of date; France already had a prohibition on planting new vines, while Italy was giving subsidies to plant new vines; France had a classification system based on quality and strict rules for vineyards, while there were no such standards or rules in Italy; France had AOC, VDQS, and vins de consommation courante, Italy had no specific regulations on names or levels of qualities, only a general prohibition on inaccurate names; France had a set total amount of wine to be released to

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<sup>91</sup>NIEDERBACHER, *supra* note 15, at 33.

<sup>93</sup>There are now 15 member countries in the EU. Denmark, Ireland, and the United Kingdom joined in 1973, Greece joined in 1981, Spain and Portugal joined in 1986, and Austria, Finland, and Sweden joined in 1995. *See generally The ABC of the European Union*, at <http://europa.eu.int/abc-en.htm> (last visited Feb. 11, 2002).

<sup>94</sup>*See* UNWIN, *supra* note 7, at 321.

market and spread it over time, while Italy had no such restrictions; France allowed wine to be made with the addition of sugar, while Italy had severe penalties for doing so; and France occasionally intervened to support prices by way of storage or distillation, while Italy had little means for dealing with surpluses.<sup>95</sup> Thus, the fear was that the imbalance in supply and demand would lead Italian wine to flood the French market and cause French prices to plummet. The French also feared that the value of their vineyards would be harmed since the value of their land was much higher than that of their Italian counterparts.<sup>96</sup>

As soon as 1959, the EEC began the process of unifying the wine industry by passing the Common Custom Tariff. The act was aimed directly at reducing outside competition by placing customs duties on imported wines based on the type of wine, alcohol content, and sugar content.<sup>97</sup> Three years later, Regulation 24/62 laid the foundation for the common market in wine. The preamble noted the “appreciable divergencies in the wine-growing policies pursued by different Member States at a national level,”<sup>98</sup> and then set out four main provisions: 1) Each country was to establish a vineyard register, 2) A central authority was to keep track of annual production levels, 3) Strict rules were to be established regarding quality wines produced in specified regions, and 4) Future estimates of resources and requirements were to be compiled annually.<sup>99</sup>

In response to Regulation 24/62, Italy instituted its own system of granting quality wines Denominazione di Origine Controllata (DOC) status based on the region of origin.<sup>100</sup> In addition, many of the protectionist measures that were previously in place began to be lifted. Italy and France, however, elected to retain their quotas for table wine, but not for quality wine, since cheap table wine was considered more of an economic threat than quality wines that had production limitations. By 1970, quotas had essentially disappeared, although discriminatory taxation remained an issue until long after.<sup>101</sup>

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<sup>95</sup>NIEDERBACHER, *supra* note 15, at 34.

<sup>96</sup>See UNWIN, *supra* note 7, at 321.

<sup>97</sup>NIEDERBACHER, *supra* note 15, at 36.

<sup>98</sup>Council Regulation 24/62, 1962 O.J. (30) 989.

<sup>99</sup>UNWIN, *supra* note 7, at 321-22.

<sup>100</sup>*Id.* at 322. A full discussion of the DOC system can be found in Part III, C, 2.

<sup>101</sup>COMMON WINE POLICY, *supra* note 47, at 31-32.

Although the foundation had been set in 1962, the true organization of the wine market did not come until 1970 with the passage of the Common Wine Policy (CWP) in Regulations 816/70 and 817/70. Regulation 816/70 contained the basic provisions to implement the common organization of the wine market, while Regulation 817/70 contained provisions specifically aimed at quality wines.<sup>102</sup> The underlying motivations of the CWP were protectionist in nature and similar to those found in other statutes: to reduce wide annual fluctuations, to protect the livelihood of wine producers by restricting quantity, and to raise the quality of wine.<sup>103</sup> Most importantly, the EC was to be seen as a single market, within which wine was to travel without restraint.<sup>104</sup>

Regulation 816/70's broad scope set out market regimes for both intervention and trade, and regulations to control the production, transformation, and marketing of wine.<sup>105</sup> In doing so, however, the CWT seemed to favor the more liberal Italian system than the interventionist ways of the French – for instance, new planting was only subject to rules regard quality, not quantity as France had in place.<sup>106</sup> Nonetheless, the intervention regime included price guides, threshold prices, and obligatory distillation, as well as a system that could be activated if price support was necessary.<sup>107</sup> Trade with non-EC countries was to be monitored, while a prohibition on qualitative restrictions, duties, and charges was to allow free movement within the EC.<sup>108</sup> In addition, Regulation 816/70 set out many of the definitional boundaries for the wine industry, including that “table wine” was to contain between 8.5% and 15% alcohol<sup>109</sup> and could not be fortified.<sup>110</sup> The EC was also latitudinally stratified into five zones, within which regulations regarding alcohol and chaptalization

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<sup>102</sup>Council Regulation 816/70, 1970 O.J. (L 99) 1; Council Regulation 817/70, 1970 O.J. (L 99) 20; *see generally* UNWIN, *supra* note 7, at 322.

<sup>103</sup>UNWIN, *supra* note 7, at 323.

<sup>104</sup>COMMON WINE POLICY, *supra* note 47, at 3.

<sup>105</sup>*Id.*

<sup>106</sup>NIEDERBACHER, *supra* note 15, at 39.

<sup>107</sup>Council Regulation 816/70, *supra* note 102, Title I.

<sup>108</sup>*Id.* at arts. 8, 31.

<sup>109</sup>*Id.* at Annex II. The lower limit was later raised to 9%, except in the most northern areas of France and Germany. NIEDERBACHER, *supra* note 15, at 42.

<sup>110</sup>Council Regulation 816/70, *supra* note 102, art. 25.

varied. From north to south, restrictions on minimum natural alcoholic strength increased from 5% to 8.5%, while maximum sugaring decreased from 5% to 2%.<sup>111</sup>

Regulation 817/70's objective, on the other hand, was to encourage the production of quality wines (referred to as quality wines produced in specified regions or quality wines p.s.r.) while taking into account the traditional methods of production used by each of the Member States.<sup>112</sup> Instead of having the EC oversee the entire system, each country was to "draw up a list of vine varieties for producing each of the quality wines produced in its territories."<sup>113</sup> The Member States were also left in charge of defining the methods to be used during production and were encouraged to pass legislation that was more stringent than EC regulations.<sup>114</sup> In addition, all quality wines were to be made from *Vitis vinifera* and had to undergo analytical and organoleptic tests.<sup>115</sup>

As a supplement to the CWP, Regulation 1338/70 set out the general rules for the classification of vine varieties. Vines were classified into three levels of quality – recommended, authorized, and provisionally authorized – based on their suitability for growing in particular regions and the characteristics of the vine's products.<sup>116</sup> Recommended vine varieties had to be *Vitis vinifera* and included grapes that usually produced wines of recognized good quality. Authorized vines were those that, although they were sound and marketable, produced grapes of a quality slightly less than recommended. Lastly, provisionally authorized vines were those that had shortcomings of some sort, but were still productive and had some economic importance

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<sup>111</sup>*Id* at art. 18. The Zones were labeled, from north to south, A, B, CI, CII, and CII and geographically defined in Annex III. A consisted of parts of Germany and Luxembourg, B of parts of Germany and France, CI of parts of France, and CII and CIII of parts of France and Italy.

<sup>112</sup>Council Regulation 817/70, *supra* note 102, preamble. Quality wine p.s.r is sometimes referred to by its French term, Vin de Qualité Produit dans des Régions Déterminées (VQPRD). At the time Regulation 817/70 was passed, quality wine systems were in place in France (AOC and VDQS), Italy (DOC), Germany (Qualitätsweine and Qualitätsweine mit Prädikat), and Luxembourg (marque nationale du vin luxembourgeois). France, Italy, and Germany's systems are discussed in more depth in Part III, C.

<sup>113</sup>*Id* at art. 3.

<sup>114</sup>*Id* at arts. 4, 7, 15.

<sup>115</sup>*Id* at arts. 3, 11.

<sup>116</sup>COMMISSION OF THE EUROPEAN COMMUNITIES, CLASSIFICATION OF VINE VARIETIES IN THE EUROPEAN COMMUNITY AND COMMON ORGANIZATION OF THE MARKET IN WINE 4 (1993).

to a specific area.<sup>117</sup> Vines that were specifically used to make quality wine had to be listed in either the recommended or authorized categories,<sup>118</sup> while any wine made from vines not in any of these three classifications was to be excluded from trade and distilled.<sup>119</sup> Certain grapes that might have been recommended in one region might have only been authorized in another due to soil and climate differences. Procedures were also in place for changing the classification of varieties, either through upgrading/downgrading or adding/eliminating.<sup>120</sup> Regulation 2005/70 completed the classification process by categorizing all the recommended and authorized vines for each region of the EC.<sup>121</sup>

Soon after these hallmark regulations were enacted, the EC faced massive overproduction. Among the causes were that consumption fell in both France and Italy and did not increase in other EC countries, the productivity of vineyards increased, imports from non-EC countries rose, and the quality of table wine did not rise to meet the growing demand for quality wines.<sup>122</sup> As a result, cheap Italian wine began to flood the French market, causing the French to counter by imposing an import tax on Italian wine – a violation of the general agreement on the free circulation of wine. In addition, French producers blockaded the port of Sète where much of the wine was imported.<sup>123</sup>

In an attempt to address the overproduction, the EC passed Regulations 1162/76 and 1163/76. Regulation 1162/76 placed a ban on all new vine plantings for table wine, but allowed replanting as long as the vines were from the recommended or authorized categories. These limitations were an attempt to further raise the quality standards of table wine.<sup>124</sup> Regulation 1163/76 then set out a system of subsidies for producers to

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<sup>117</sup>Council Regulation 1338/70, art. 6, 1970 O.J. (L 155) 5.

<sup>118</sup>Council Regulation 817/70, *supra* note 102, art. 3.

<sup>119</sup>Council Regulation 816/70, *supra* note 102, Title I.

<sup>120</sup>COMMISSION OF THE EUROPEAN COMMUNITIES, *supra* note 116, at 4, 7.

<sup>121</sup>Council Regulation 2005/70, 1970 O.J. (L 224) 1. This Regulation has been amended numerous times as changes have been made to the list.

<sup>122</sup>VOSS, *supra* note 64, at 71.

<sup>123</sup>UNWIN, *supra* note 7, at 322.

<sup>124</sup>Council Regulation 1162/76, arts. 2-3, 1976 O.J. (L 135) 32; *see also* COMMISSION OF THE EUROPEAN COMMUNITIES, *supra* note 116, at 13.

either abandon their vineyards for six years or to rip up the vineyards and replace them with other crops.<sup>125</sup> Also at the heart of the EC's structural improvement plan was the dual classification of both vine varieties and vineyards. A classification system for vine varieties had already been established under Regulation 1338/70, and was followed by a classification of land within winegrowing areas under Regulation 454/80. Three categories were set out depending on the winegrowing potential and merit of the land: Category 1 included hilly winegrowing areas or areas that would allow maximum suitability for quality wine production, Category 2 included the southern non-alluvial plains where growing might be suitable due to fertile soil, low rainfall, or high temperatures throughout the growing season, and Category 3 included any areas that were not suitable, like southern alluvial plains, northern plains, and low valley areas.<sup>126</sup> Regulation 456/80 then used these categories as a basis for providing new subsidies for the temporary or permanent abandonment of vineyards, with the main goal being to slow the production of low quality wines. In line with this goal, all varieties in Category 3 and those vines in Category 2 that were provisionally authorized were eligible for the subsidies. No vines in Category 1 could receive the subsidies. The amount of the subsidy depended on the use of the grapes and the average yield of the area torn up.<sup>127</sup>

Even with these incentives in place, massive harvests in 1979 and 1980 spawned more protest from French producers. This time, violence erupted as the French attacked boats attempting to import Italian wine into the port of Sète.<sup>128</sup> Distillation had only been used in exceptional circumstance up to this point, but, starting in 1982, distillation was instituted as a basic means of regulating the market and eliminating surpluses.<sup>129</sup> These measures were followed by the Dublin Summit in 1984 that sought to combat the persistent production surpluses. Out of the Summit grew calls for further compensation for digging up vineyards, replanting

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<sup>125</sup>Council Regulation 1163/76, 1976 O.J. (L 135) 34.

<sup>126</sup>Council Regulation 454/80, 1980 O.J. (L 57) 7; *see also* COMMISSION OF THE EUROPEAN COMMUNITIES, *supra* note 116, at 1.

<sup>127</sup>Council Regulation 456/80, 1980 O.J. (L 57) 16.

<sup>128</sup>UNWIN, *supra* note 7, at 322.

<sup>129</sup>*Id.*



restrictions, and compulsory distillation.<sup>130</sup>

After years of patchwork regulations since the adoption of the CWP, this dissatisfaction finally culminated in the revamping of the wine policy with the passage of Regulations 822/87 and 823/87. As with past policies, these regulations were based on a combination of economic and qualitative rules<sup>131</sup> and recognized the need “to stabilize markets and ensure a fair standard of living for the agricultural community concerned.”<sup>132</sup> Regulation 822/87 included many provisions similar to those seen in the past, but attempted to strengthen them in order to push yields down and quality up. The interventionist measures applicable to table wines continued to include price supports, temporary storage of surpluses, and compulsory distillation.<sup>133</sup> In addition, new planting of table wine vines was prohibited for a period of three years and replanting was strictly limited.<sup>134</sup> All vine varieties that were listed as temporarily authorized were also to be eliminated over time.<sup>135</sup>

Regulation 823/87 focused specifically on quality wines and contained many of the same provisions as Regulation 817/70. Member Countries were charged with setting out the criteria for quality wines, including the demarcation of areas of production, vine varieties, cultivation methods, winemaking methods, minimum natural alcoholic strength, yield per hectare, analysis, and organoleptic assessment.<sup>136</sup> Similarly, each country had to draw up a list of vine varieties appropriate for each quality wine, which had to be *Vitis vinifera* and be listed as recommended or authorized. All vines not listed had to be removed from land being used to produce quality wine.<sup>137</sup> Finally, Member Countries were given the freedom to determine their own pro-

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<sup>130</sup>COMMISSION OF THE EUROPEAN COMMUNITIES, *supra* note 116, at 15.

<sup>131</sup>See Antoine Vialard, *Regulating Quality Wines in European and French Laws*, 19 N. ILL. U. L. REV. 235, 237 (1999). This is different than in France, where regulations regarding table wine are mainly based on economic rules and regulations regarding quality wine are based on qualitative rules. *Id.*

<sup>132</sup>Council Regulation 822/87, preamble, 1987 O.J. (L 84) 1.

<sup>133</sup>*Id.* at Title III.

<sup>134</sup>*Id.* at arts. 6-7.

<sup>135</sup>*Id.* at art. 13.

<sup>136</sup>Council Regulation 823/87, art. 2, 1987 O.J. (L 84) 59.

<sup>137</sup>*Id.* at art. 4.

duction conditions and characteristics as long as they met or exceeded the minimum requirements.<sup>138</sup>

Regulations 822/87 and 823/87 continued to form the backbone of the wine industry until recently when legislators decided to overhaul the system as part of Agenda 2000. The EU sought to keep their producers competitive with the expanding international wine market, while also maintaining the delicate balance between supply and demand.<sup>139</sup> The first step in doing so was the passage of Regulation 1493/99, which repealed and replaced the major wine policy regulations of the past. Regulation 1493/99 attempted to both take into account the changing situation in the wine market and to consolidate the numerous patchwork amendments that had been passed. Reasons cited for the overhaul included less frequent structural surpluses, the reduced effectiveness of interventionist measures due to the Uruguay Round agreements, and slow adaptation to competitive changes.<sup>140</sup>

Regulation 1493/99 begins by prohibiting new vine plantings of both table and quality wine vines until 2010, unless a specific exemption can be obtained. One such exemption is if production of a particular vine from a geographical indication is well below market demand.<sup>141</sup> National and regional reserves can also be used to stockpile planting rights in order to control future production potential.<sup>142</sup> Premiums for grubbing up and conversion have been maintained,<sup>143</sup> but storage and distillation measures, although still in place, have been made more flexible.<sup>144</sup> Regulation 1493/99 also reiterates the quality wine regulations of 823/87 in charging Member Countries with the task of establishing their own criteria for the demarcated areas of production.<sup>145</sup>

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<sup>138</sup>*Id* at art. 18. Thus far, France is the only country to have more rigorous standards than required.

<sup>139</sup>OXFORD COMPANION TO WINE, *supra* note 10, at 265.

<sup>140</sup>Council Regulation 1493/99, preamble, 1999 O.J. (L 179) 1. To view a complete listing of all EU regulations related to wine that are currently in force, visit EUR-Lex at [http://europa.eu.int/eur-lex/en/lif/reg/en\\_register\\_036055.html](http://europa.eu.int/eur-lex/en/lif/reg/en_register_036055.html)

<sup>141</sup>*Id* at art. 2. Replanting was allowed with only a few limitations. *Id* at art. 4.

<sup>142</sup>*Id* at art. 5.

<sup>143</sup>*Id* at arts. 8, 11.

<sup>144</sup>*Id* at Title III.

<sup>145</sup>*Id* at art. 55.

Finally, minimum winemaking limitations and conditions are set out that Member Countries are required to meet or exceed.<sup>146</sup>

In addition to regulating the winemaking process, Regulation 1493/99 sets out minimum guidelines for the labeling of wine. The information required to appear on each label is a sales description, the volume of the container, the alcoholic strength, the bottler, and a lot number. If the wine is a table wine, it must be labeled as such and contain the name of the country of origin.<sup>147</sup> Quality wine labels must additionally contain the specific designation of origin, from which 100% of the grapes must originate. The guidelines also allow for other optional information to be placed on the label. For table wines, this optional information includes the color of the wine, and for quality wines, the vintage, the vine variety, the specific production method, and the vineyard of production.<sup>148</sup> If a vintage or a variety is listed, at least 85% of the grapes must be from the listed vintage or variety.<sup>149</sup> After setting out what can be listed on a label, Regulation 1493/99 then adds a final caveat that labels may not contain any information that might be confusing to consumers. The most significant effect of this restriction is that no producer within the EU may use any designation of origin for which it is not expressly qualified and approved.<sup>150</sup>

Any wine imported into the EU must comply with these labeling requirements, as well as with any specific regulations of the country in which it is to be sold. The label on foreign wine is required to at least bear the word “wine” due to the fact that many countries outside of the EU do not have the same elaborate classification system.<sup>151</sup> The EU also bans imports that were made using unapproved processes, such as the ion exchange process and artificial acidification. Many regulations at the national level additionally focus on

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<sup>146</sup>*Id.* at Annexes IV-VI.

<sup>147</sup>Wine that is made from grapes from multiple EU countries must contain a disclaimer stating “mixture of wines from different countries of the European Union.” *Id.* at Annex VII.

<sup>148</sup>*Id.*

<sup>149</sup>OXFORD COMPANION TO WINE, *supra* note 10, at 390.

<sup>150</sup>Council Regulation 1493/99, *supra* note 140, at Annex VII. The use of EU denominations of origin to describe wines produced outside the EU has been widespread in the past. This practice is slowly being phased out, however, through the negotiation of bilateral agreements between the EU and offending countries. *See* INTERNATIONAL WINE TRADE, *supra* note 4, at 98-99.

<sup>151</sup>OXFORD COMPANION TO WINE, *supra* note 10, at 390.

health and environmental concerns, including what substances may be artificially added and what warnings the label must contain.<sup>152</sup>

Now, more than ever, the goal of the EU is to continually raise the quality of wine in the face of expanding international competition. This is becoming even more essential as consumers drink less table wine and prefer wines with a designation of origin.<sup>153</sup> As it stands, the EU heavily regulates table wines, while quality wines are left mainly to the interpretation of Member Countries. One theory behind this distinction is that quality wines are not a threat in the commercial sphere because their quality assures sufficient markets.<sup>154</sup> In other words, production restrictions maintain the quality of the wine, while also restricting supply and keeping prices high.<sup>155</sup> Table wines, on the other hand, lack production and regional limitations and therefore need common policies to maintain the stability of the market.<sup>156</sup> Even though acreage is capped, policies must be in place to deter producers from using vines that are more productive, but yield wine of a lower quality.<sup>157</sup> Member Countries have interpreted their obligation to regulate quality wines quite differently. Many have also attempted to recategorize as many of their wines as possible as quality wine in order to escape the stricter economic measures that the EU places on table wines.<sup>158</sup> Understanding the framework that the EU has set out for both table and quality wines, it is important to next see how individual Member Countries have responded in constructing their own systems. The structures of France, Italy, Spain, and Germany – the four largest producing countries of the EU – will provide a good illustration of the range of approaches that have been adopted.<sup>159</sup>

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<sup>152</sup>See INTERNATIONAL WINE TRADE, *supra* note 4, at 98-99. Many countries require health warnings on bottles of wine. For instance, the U.S. requires that the wine mention that there is a health risk to pregnant women and that consumption impairs the ability to operate heavy machinery. Several countries, including the U.S., also require that the wine warn that it “contains sulfites,” which almost all wine does since sulphur dioxide is commonly used as a preservative and disinfectant. Australia additionally mandates the listing of all additives. OXFORD COMPANION TO WINE, *supra* note 10, at 390.

<sup>153</sup>COMMISSION OF THE EUROPEAN COMMUNITIES, *supra* note 116, at 1.

<sup>154</sup>See Vialard, *supra* note 131, at 237.

<sup>155</sup>UNWIN, *supra* note 7, at 313.

<sup>156</sup>See Vialard, *supra* note 131, at 237.

<sup>157</sup>COMMON WINE POLICY, *supra* note 47, at 5.

<sup>158</sup>Vialard, *supra* note 131, at 238.

<sup>159</sup>See *supra* note 2.

## C. National Regulation After the Creation of the EEC

### 1. France

As previously discussed, France had established an elaborate quality wine system well before the creation of the EC. As a result, few changes had to be made to the AOC and VDQS regulations when the EC set out its own qualitative requirements. France did, however, feel the need to react to the EC's economic-based policies regarding table wine. Producers began to shift their focus from quantity to quality in an attempt to combat the increased competition created by the opening of EC markets.<sup>160</sup>

In 1973, the French government responded by creating a superior form of table wine known as vins de pays. The vins de pays system carried geographical designations and mirrored many of the principals of the AOC structure. Approved wines could be labeled on one of three geographic levels: regional (for large wine-growing areas), departmental (for wines from a single department), or zonal (for small districts or single communes).<sup>161</sup> Vins de pays were not allowed to be blended, had to be produced in limited quantities, had to be from specific grapes, had to contain a minimum alcoholic level, and had to be submitted to a tasting panel.<sup>162</sup> Although still limited, these restrictions were looser than those placed on quality wine and allowed for more choice in the production process.<sup>163</sup> Nonetheless, these limitations were quite different from those controlling ordinary table wine, which placed no constraint on yield and allowed blending. As with the distinction between AOC and VDSQ wines, the choice of whether a producer made vins de pays or ordinary

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<sup>160</sup>See LOUBÈRE, *supra* note 52, at 267.

<sup>161</sup>COATES, *supra* note 37, at 39.

<sup>162</sup>OXFORD COMPANION TO WINE, *supra* note 10, at 744.

<sup>163</sup>See COATES, *supra* note 37, at 39.

table wine depended on local regulations and the producer's practices.<sup>164</sup>

In terms of quality wine, France is the only country to have more rigorous standards than required by the EU. This is a result of the fact that French laws grew out of conditions existing for centuries – the French did not have to bring their laws into compliance when the EU set out its own regulations.<sup>165</sup> Under French law, if a wine is labeled as a particular variety and is to be sold in France, 100% of the grapes must be from that variety. Exporters are able to get around this requirement, however, since the EU and its other member countries only require that 85% of the wine be from the listed variety.<sup>166</sup> Restrictions concerning the EU mandated criteria of area of production, vine varieties, density of vine, growing and winemaking practices, ripeness of fruit, yield, and tasting and chemical analysis are also exceedingly strict for AOC and VDSQ wines. Each year, local grower's syndicates propose revised annual yields to the INAO that take into account the climactic conditions during the growing season.<sup>167</sup> France additionally places restrictions on such processes as the minimum age of wine before it can be sold and irrigation, which is only allowed in the south.<sup>168</sup>

In 1990, France even discussed the possibility of eventually removing all vine varieties from its labels. The premise was that wine should express the total character of the process, or *terroir*, not just the fruit flavor. *Terroir* is a French word with no true translation, but represents the total natural environment of the site – including the soil, topography, climactic interactions, temperature, sunlight, and hydrology – which gives the wine its distinctive characteristics. Although much support has been garnered, this initiative has not been formalized as of yet.<sup>169</sup>

Under the French Code de la Consommation, an AOC is defined as the designation of a country, of a region,

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<sup>164</sup>OXFORD COMPANION TO WINE, *supra* note 10, at 744.

<sup>165</sup>Kevin H. Josel, Note, *New Wine in Old Bottles: The Protection of France's Wine Classification System Beyond Its Borders*, 12 B.U. INT'L L.J. 471, 473 (1994).

<sup>166</sup>See LOUBÈRE, *supra* note 52, at 108.

<sup>167</sup>COATES, *supra* note 37, at 40.

<sup>168</sup>*Id.*; OXFORD COMPANION TO WINE, *supra* note 10, at 28.

<sup>169</sup>OXFORD COMPANION TO WINE, *supra* note 10, at 369, 700. Those that sell varietal wines are often despised in France. *Id.*

or of a locality that serves to indicate that a product originates from that place and owes its quality or characteristics to its geographic surroundings.<sup>170</sup> Most AOC designations are geographic regions or towns (Medoc or Bordeaux), but a small number are traditional and not named after geography (Muscadet or Graves).<sup>171</sup> An AOC designation can also refer to such natural factors as locality, microclimate, or soil, and such human factors as winemaking procedure, pruning methods, or maturation.<sup>172</sup>

The INAO is in charge of reviewing all applications for new AOC designations. Each application submitted must consist of a reason for the request, proof of traditional use of the proposed appellation name, a description of the environmental conditions and how they affect production, and economic details regarding markets, sales, prices, and comparative competition.<sup>173</sup> Once the production area is set out, only certain plots of land may be deemed worthy to meet the requirements of the new AOC. As a result, some communes may only be allowed to use specific plots for the AOC wine, while the rest of the land must be devoted to vins de pays or table wine.<sup>174</sup>

The right to use an AOC name is strictly controlled by the French government, which assures both the use of the designation and its protection. Such exclusivity is necessary to prevent overuse, allow for clarity of presentation, and prevent consumer confusion.<sup>175</sup> Under the Code de la Consommation, [e]very person who claims that an appellation of origin is applied... contrary to the origin of [a] product so as to cause direct or indirect prejudice to the claimant's rights may request an injunction against the offender.<sup>176</sup> In addition to giving producers a private right to recourse in the courts, the INAO is charged with pursuing violators

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<sup>170</sup>Code consom. art. L. 115-1. A French law from 1966 defined an AOC more in terms of a trade name. The law stated that an AOC label constitutes a trade name from specified origin: the name of a country, region or locality used by a product that originates from it. The product's quality or character is determined by its geographic origins, either because of natural or human factors." Vialard, *supra* note 131, at 241.

<sup>171</sup>Vialard, *supra* note 131, at 242.

<sup>172</sup>Josel, *supra* note 165, at 472. Some AOC wines also earn the right to be labeled "Supérieur." The regulation states that a wine must have a higher minimum alcohol strength (usually by a half a percent) in order to earn this designation. OXFORD COMPANION TO WINE, *supra* note 10, at 676.

<sup>173</sup>OXFORD COMPANION TO WINE, *supra* note 10, at 369.

<sup>174</sup>*Id* at 28.

<sup>175</sup>Vialard, *supra* note 131, at 241.

<sup>176</sup>Code consom. art. L. 115-8. *See also* Jim Chen, *A Sober Second Look at Appellations of Origin: How the United States Will Crash France's Wine and Cheese Party*, 5 MINN. J. GLOBAL TRADE 29, 37 (1996).

both nationally and internationally. Between fifty and sixty violators of the AOC designation system are prosecuted in France each year. The INAO also seeks bilateral and multilateral trade agreements to prevent infringement around the world. If a foreign violation is identified, the INAO may attempt to bring an action in that country or lobby for a change of that country's laws.<sup>177</sup>

Wine producers in France enjoy many benefits as a result of these controls. As mentioned, they gain the use of the AOC label in production and marketing, as well as the right to recourse against misappropriators. Producers are also able to challenge any AOC grants that do not seem to be in accordance with previously used geographic criteria. AOC wines are additionally given immunity from ever being devoted to the public as a generic label.<sup>178</sup> One of the main criticisms of the AOC laws, however, is that these protections focus too much on defending the producer and not the consumer.<sup>179</sup>

One of the main goals of the AOC system when it was created was to crack down on fraud and adulteration. Still, it is estimated that close to one-third of all wine sold since 1920 was fraudulent due to illegal additives or alteration of some sort. This fraud is rarely ever noticed, however, due to the underhanded methods of producers.<sup>180</sup> While it may not be possible to fully eliminate fraud, the system does seem to have succeeded in creating the control, supervision, and investigation necessary to stop false labeling.<sup>181</sup>

AOC wines from one of the 390 recognized appellations now make up over 40% of the total French wine production. VDSQ wines have sixty-five denominations of their own, but only make up 0.9% of total production. The reason for this discrepancy is that many VDSQ wines are driven to raise their standards in

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<sup>177</sup>Josel, *supra* note 165, at 472. The INAO is also in charge of enforcing the production standards that it sets for each AOC region.

<sup>178</sup>Chen, *supra* note 176, at 37-38.

<sup>179</sup>COATES, *supra* note 37, at 41.

<sup>180</sup>LOUBÈRE, *supra* note 52, at 105. Producers from the areas of restricted production are the worst offenders. *Id.*

<sup>181</sup>*Id.* at 122.



order to receive the honored AOC designation. Vins de pays make up another 27% of production and consist of 141 denominations, four of which are regional, forty-two are departmental, and ninety-one are zonal.<sup>182</sup>

## 2. Italy

Italy created its DOC system to separate quality wine from table wine (*vino da tavola*) soon after the EEC stated its intention to integrate the European markets. For each new denomination, regulations were set out regarding specified grape varieties, maximum yields, conversion ratios of grapes to wine, alcohol content, and ageing requirements. Initially, tasting panels were not required, but they have since become mandatory. Many of these restrictions were not as strict as those required by the French, including higher permitted yields and the fact that wines from a named denomination could contain up to 15% of wine from other regions.<sup>183</sup> On the other hand, the Italian laws were more severe than other countries in some respects. If a producer exceeded the limitation on yield, it was assumed that the overall quality of the grapes was diluted and the entire crop (not just the excess) would be declassified. This was rarely done, however, since the limits were usually rather permissive. In addition, adding sugar to raise the alcohol content was forbidden.<sup>184</sup> While the DOC label provided a guarantee of authenticity, it did not necessarily guarantee quality. The reason for this was that producers from the same region produced quite dissimilar wines due to wide variations in relief, soil, and microclimates.<sup>185</sup> DOC zones varied from large regions to only a few plots of land surrounding an isolated village. When applying for a new DOC, producers from each zone would determine the general characteristics for the zone, taking into account such geographic disparities. Each proposal would also be guided by the national DOC committee and then had to be confirmed by presidential decree.<sup>186</sup>

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<sup>182</sup> See OXFORD COMPANION TO WINE, *supra* note 10, at 39.

<sup>183</sup> UNWIN, *supra* note 7, at 324.

<sup>184</sup> VICTOR HAZAN, ITALIAN WINE 241 (1982).

<sup>185</sup> UNWIN, *supra* note 7, at 324.

<sup>186</sup> ANDERSON, *supra* note 81, at 9, 17.

In the late 1970s, Italy introduced an even higher level of quality wine known as Denominazione di Origine Controllata e Garantita (DOCG). To reach this level of particular esteem, wines had to meet stricter production regulations and undergo extensive analytical and taste tests. Once again, however, many questioned whether the DOCG system guaranteed quality, as wines that met the basic requirements were given the elevated status regardless of their relief or microclimate.<sup>187</sup>

Although modeled after France's successful AOC system, the DOC and DOCG classifications were thought to have only a superficial resemblance. The higher standards were considered pointless since they did not necessarily guarantee quality. This led many producers to work outside the denomination system to produce wine of a similarly high quality that could achieve high prices and good sales figures based on individual reputation alone. Although only labeled as vino da tavola, these producers were less restricted and able to produce wine of a quality that was often higher than those carrying a DOC label. Consumers were also disenchanted with the higher price and inconsistency of DOC wine and were quite eager to embrace reputable vino da tavola.<sup>188</sup> Producers of vino da tavola were required to build their reputation on their brand name alone, as they were not permitted to specify a variety, vintage, or place of origin on the label.<sup>189</sup>

A new law was finally passed in 1992 that attempted to bring credibility to the organization of wine in Italy. DOCs were territorially subdivided so that they were broken down into subzones, townships, estates, and vineyards. Each subunit was then assigned new production limits and criteria depending on its unique geography. DOCs were allowed to overlap so that producers could choose which one they preferred to be in based on the production restrictions.<sup>190</sup> The law also created the Indicazione Geografica Tipica (IGT) to be equivalent to the French vins de pays. This category of wine, referred to as vino tipico, was still a step below DOC wine, but included many of the most renown and highest quality vino da tavola that chose

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<sup>187</sup>UNWIN, *supra* note 7, at 324.

<sup>188</sup>See OXFORD COMPANION TO WINE, *supra* note 10, at 235; VOSS, *supra* note 64, at 24; UNWIN, *supra* note 7, at 324.

<sup>189</sup>ANDERSON, *supra* note 81, at 16.

<sup>190</sup>OXFORD COMPANION TO WINE, *supra* note 10, at 236.

not to get DOC recognition. *Vino tipico* had to be made from approved grapes in designated areas, but, in general, the controls were much more elastic than the DOC system. *Vino tipico* could then be labeled with the geographic indication, vine variety, or vintage.<sup>191</sup> Still, even with these reforms, nothing was done to limit the generously excessive yields that tended to lower the quality of wine.<sup>192</sup>

Ironically, Italian wine was sold in bulk until well after World War II, and it was not until then that the industry began to focus on bottles and labels.<sup>193</sup> Today, Italian label laws are rather strict and limit the labels to pertinent information and even font size in some instances. The standard information that the label must contain includes the wine name and category, the producer or bottler's name and the commune of bottling, the volume of the bottle, and the amount of alcohol. A vintage is required on all DOCG and most DOC wines, but is not allowed for ordinary *vino da tavola*. DOC and DOCG wines may additionally list the number of bottles produced. DOCG wines must have an official strip seal, while all wines can carry a trademark, coat of arms, or consortium seal. A back label may be used to provide additional information, but cannot contain words that require special certification.<sup>194</sup> Finally, any wine to be exported must state "Product of Italy" and meet the standards of the importing country.<sup>195</sup>

DOC and DOCG wines currently only make up around 15% of Italian wine production. This low figure, as compared to the 40% market share for French quality wines, is primarily due to the ability of *vinos da tavola* to gain their own reputations for quality outside of the restrictive DOC system.<sup>196</sup> There are now approximately 300 DOC denominations, while 21 wines from nine different regions have been awarded DOCG status. IGT wines represent 40% of Italy's table wine production (approximately 34% of total production)

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<sup>191</sup>*Id*; HAZAN, *supra* note 184, at 244; ANDERSON, *supra* note 81, at 16.

<sup>192</sup>OXFORD COMPANION TO WINE, *supra* note 10, at 236.

<sup>193</sup>*Id* at 369.

<sup>194</sup>ANDERSON, *supra* note 81, at 16. For instance, wines may be labeled as "Superiore" if they are deemed superior because they have a higher minimum alcoholic strength (usually .5% to 1%) and a longer period of aging before commercial release. *Id* at 676.

<sup>195</sup>*Id* at 16.

<sup>196</sup>OXFORD COMPANION TO WINE, *supra* note 10, at 235.

and consist of close to 100 denominations.<sup>197</sup>

### 3. Germany

In sharp contrast to France and Italy's focus on quality and regionalism, the main problem that German wine laws have had to address is the addition of sugar to the winemaking process in order to raise the alcohol content. Such widespread chaptalization is often a necessity due to the cooler climate and shorter growing season of northern vineyards that prevent grapes from fully ripening. While the French value grapes of the highest quality, the Germans place great importance on grapes that are resistant to frost, are early croppers, and produce high sugar levels.<sup>198</sup>

Germany first passed a formal wine law in 1879. During the early 1900s, a number of small legislative decrees were handed down that controlled such items as the addition of sugar, grape juice, and foreign wines.<sup>199</sup> In order to correct any lingering deficiencies, Germany then passed a more comprehensive wine law in 1930. Among the most notable provisions were definitions for what constituted natural and sweetened wine and a requirement that vineyards register themselves within each community. The law also placed a ban on the use of hybrids unless specific European vine varieties were grafted onto American rootstocks, and forbade the blending of white and red wines, and German and foreign wines.<sup>200</sup> Soon after, over 30,000 vineyards were registered, but fraud and corruption related to chaptalization was still rampant.

A new wine law was finally passed in 1969, but was amended in 1971 to satisfy the newly introduced EC regulations concerning table and quality wines. Instead of following suit and organizing its classifications based on region, Germany decided to base its system on whether the final product was naturally sweet or

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<sup>197</sup> *CastelloBanfi – Italian Wine Laws*, at <http://www.castellobanfi.com/features/winelaws.html> (last visited Feb. 28, 2002).

<sup>198</sup> VOSS, *supra* note 64, at 10, 13.

<sup>199</sup> UNWIN, *supra* note 7, at 316.

<sup>200</sup> *Id.*; OXFORD COMPANION TO WINE, *supra* note 10, at 312.

artificially sweetened.<sup>201</sup>

In order to provide a basis for the classification, the law had to first divide the country into a series of site specifications that, unlike France, bore no relation to quality. Although regional monopolies were not awarded, producers were still able to describe their wines by such places of origin in order to garner any demand premium for the region's reputation. On the broadest level, Germany was divided into eleven *anbaugebiete* (specified regions), with two or more *bereiche* (districts) in each.<sup>202</sup> Wine marketed under the name of a *bereich* usually consisted of an everyday blend of wine from throughout the district.<sup>203</sup> The next subdivision consisted of *grosslagen*, or collections of vineyards that had similar climactic and geological conditions.<sup>204</sup> Using a *grosslagen* name allowed bottlers to offer larger quantities of wine of similar quality and style under the same name.<sup>205</sup> Finally, *einzellagen* were officially registered and precisely defined vineyards that had to be more than five hectares, reducing the number of qualifying vineyards from a high of 30,000 under the 1930 wine law to 2,600.<sup>206</sup>

As mandated by the EC, Germany set out two main categories of wine, *tafelwein* (table wine) and *qualitätswein* (quality wine). *Tafelwein* was further subdivided into basic *tafelwein*, which consisted of table wine partially or totally from other EC countries, and *deutscher tafelwein*, which had to be made from grapes from one of four *tafelwein* regions within Germany. Sugar could be added to both varieties in order to raise the alcohol content. In 1982, Germany authorized *landwein* to be a higher quality form of *tafelwein* equivalent to French

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<sup>201</sup>UNWIN, *supra* note 7, at 316-17.

<sup>202</sup>*Id.* at 316-17.

<sup>203</sup>IAN JAMIESON, THE SIMON & SCHUSTER GUIDE TO THE WINES OF GERMANY 16 (1992).

<sup>204</sup>UNWIN, *supra* note 7, at 317. There were 130 *grosslagen*. *Id.*

<sup>205</sup>JAMIESON, *supra* note 203, at 16.

<sup>206</sup>UNWIN, *supra* note 7, at 317. Some *einzellagen* are as large as 250 hectares. Only QbA and QmP wines may carry the name of an *einzellagen*. JAMIESON, *supra* note 203, at 16.

vins de pays and Italian vino tipico. Landwein had to originate from one of nineteen specified districts and had certain residual sugar requirements.<sup>207</sup>

Qualitätswein was also divided into two subcategories, Qualitätswein bestimmter Anbaugebiete (QbA) and Qualitätswein mit Prädikat (QmP). QbA (quality wine from a specified region) wines consisted of lower-level quality wines that were permitted to add sugar for extra alcohol content and were labeled according to the regional structure.<sup>208</sup> A QbA designation was not awarded for yield or geographic designation, but rather for sugar content.<sup>209</sup> In 1994, Qualitätswein garantierten Ursprungs (QgU) was created as a special type of QbA of guaranteed origin. QgU wine had to come from a specific district, village, or vineyard and have a taste profile associated with the particular location. Such wine also had to undergo more stringent analytical and taste tests.<sup>210</sup>

QmP (quality wine with distinction) wines, on the other hand, were considered premier quality wines and were not permitted to add sugar.<sup>211</sup> This superior designation was granted only to those wines that had a high enough natural sugar content to allow for acceptable alcohol levels and enough residual sugar to provide the required sweetness.<sup>212</sup> QmP wines were further subdivided according to vintage and natural sugar content. From the lowest to the highest natural sugar content were: Kabinett (made from ripe grapes), Spätlese (made from grapes picked at least seven days after the normal harvest), Auslese (sweeter wine made from select grapes), Beerenauslese (rich desert wine made from grapes affected by noble rot, a

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<sup>207</sup>JAMIESON, *supra* note 203, at 12; UNWIN, *supra* note 7, at 318.

<sup>208</sup>UNWIN, *supra* note 7, at 318.

<sup>209</sup>VOSS, *supra* note 64, at 10.

<sup>210</sup>*Germany, Wine, German Wine, Wine Institute, Information, Wine Regions, Vinters, Recipes*, at [http://www.deutscheweine.de/englisch/wissen/wiss4\\_4.htm](http://www.deutscheweine.de/englisch/wissen/wiss4_4.htm) (last visited Mar. 2, 2002).

<sup>211</sup>UNWIN, *supra* note 7, at 318.

<sup>212</sup>VOSS, *supra* note 64, at 10.

fungus), Trockenbeerenauslese (made from specific dried up grapes), and Eiswein (made from specific frozen grapes).<sup>213</sup>

Qualitätswein was allowed to even out annual variations and guarantee quality by following the 85% rule that the EC and most of its Member Countries supported. If a wine listed a vintage, 85% of the grapes had to be from that year; if a wine was labeled as a certain variety, 85% of the grapes had to be from that variety; and if a wine was from a certain village, only 15% of the grapes could be from another part of the same region.<sup>214</sup> In addition, every bottle of quality wine had to be analyzed, tasted, and granted a control AP (Amtliche Prüfungsnummer) number before it could be granted the qualitätswein designation. The panel of judges consisted of fellow wine makers who conducted blind taste tests and checked for faults in the wine.<sup>215</sup> Under its 1971 law, Germany deviated from other EC countries in classifying grape varieties based on their sugar content rather than yield. It was not until 1989, however, that Germany felt the pressure from the EC and began limiting yields, although still rather leniently. Finally, in 1993, Germany further strengthened its yield requirements and set out maximum permitted yields for all of its wines and vineyards. For QbA wine this limit was the average production for the previous ten years.<sup>216</sup>

Today, close to 95% of all wine produced in Germany is classified as qualitätswein.<sup>217</sup> The fact that tafelwein makes up such a small portion of the market in comparison to other Member Countries suggests that Germany might simply be more blatant in its attempt to avoid the economic restrictions placed on table wine by the EU.

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<sup>213</sup>UNWIN, *supra* note 7, at 318.

<sup>214</sup>*Id.*

<sup>215</sup>OXFORD COMPANION TO WINE, *supra* note 10, at 27. The pass rate is around 90%. *Id.*

<sup>216</sup>*Id.* at 312.

<sup>217</sup>JAMIESON, *supra* note 203, at 26.

#### 4. Spain

Although it did not join the EC until 1986, Spain has a long history of winemaking. In fact, Spain has more land cultivated with vines than France and Italy, but its production is significantly less due to low yields. Such low yields are caused by the barren soil, old vines in need of replacement, and vineyards split amongst small landholders who have few resources and little technical expertise.<sup>218</sup>

Spain recognized its first denominations as early as the 1920s and 1930s, protecting the regions of Rioja, Jerez, and Málaga. A regulatory body, known as a Consejo Regulador, was appointed for each denomination and consisted of delegates appointed by the Ministry of Agriculture and representatives of growers, makers, and shippers. Each Consejo Regulador was charged with issuing detailed provisions with which all wines bearing that denomination had to comply.<sup>219</sup> Nationwide procedures and standards were later set out when the Estatuto de la Viña, del Vino y de los Alcoholes (Statute of the Vine, Wine, and Alcohol) was first promulgated in 1970. This statute addressed all aspects of wine production, including allowable methods, chemical composition, distribution, and sale.<sup>220</sup>

In anticipation of joining the EC, Spain set up its own system of quality wine in 1982 known as Denominaciones de Origen (DO). The DO classification was intended to be the equivalent of a French VDQS or AOC, an Italian DOC, or a German qualitätswein. In 1991, the government also recognized a classification for superior quality wines known as Denominación de Origen Calificada (DOCa), which was similar to Italian DOCG wine.<sup>221</sup> There are currently 55 DOs that cover around three-quarters of all Spanish vineyard area.

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<sup>218</sup>JAN READ, THE SIMON & SCHUSTER GUIDE TO THE WINES OF SPAIN 13 (1992).

<sup>219</sup>*Id* at 15-16. The Instituto Nacional de Denominaciones de Origen (INDO) was created in 1972 to oversee all the Consejos Reguladores. *Id* at 16.

<sup>220</sup>*Id* at 16.

<sup>221</sup>*Id* at 15; *Region Guide: Spain*, at [http://www.aboutwines.com/show/xmlsite/xml-producers2.xml/xsl-regions\\_country.xml/country-cnkpfhlepelcnnkpgkphamkibfegofnoadmgnfge/](http://www.aboutwines.com/show/xmlsite/xml-producers2.xml/xsl-regions_country.xml/country-cnkpfhlepelcnnkpgkphamkibfegofnoadmgnfge/) (last visited Mar. 2, 2002).



Rioja is the only region that has been granted DOCa status thus far.<sup>222</sup>

The standard Spanish table wine was labeled vino de mesa and consisted of grapes that were blended or grown in unclassified vineyards. Vino de mesa could not indicate the origin, year, or grape variety. Some vino de mesa was instead labeled vino comarcal and allowed to specify its origin if it was grown outside a recognized DO. Finally, vino de la tierra was a better form of vino de mesa equivalent to vins de pays, vino tipico, or landwein. Vino de la tierra was often local wine from a defined area that fell short of achieving DO status.<sup>223</sup>

For each recognized DO, the Consejo Regulador had to define the geographical area for the zone, the permitted varieties, the density of growth, and the allowable yield. Further regulations touched on pruning, maturation, alcohol content, acidity, and sugar content. DO wine also had to undergo inspection at controlled laboratories even before labels could be printed. Each bottle was then given a stamp of guarantee from the Consejo Regulador.<sup>224</sup>

When Spain created the DO system, its underlying motivation seemed more to comply with EC regulations and regularize existing patterns than to improve overall quality.<sup>225</sup> The unreliability of DO status is reflected in the fact that some regions produce wine that is nowhere near comparable to French standards and expectations for quality wine. In fact, many grants of DO status have been given with future potential in mind or on the strength of a single producer, rather than based on the region as a whole.<sup>226</sup> As a result, many of the most prestigious and expensive wines from Spain are mere vino de mesa that have avoided the

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<sup>222</sup>OXFORD COMPANION TO WINE, *supra* note 10, at 659.

<sup>223</sup>READ, *supra* note 218, at 15; *Region Guide: Spain*, *supra* note 221.

<sup>224</sup>READ, *supra* note 218, at 16.

<sup>225</sup>VOSS, *supra* note 64, at 41.

<sup>226</sup>READ, *supra* note 218, at 18.

DO system and built a reputation on their own independent quality. The legalization of irrigation in 1996 will hopefully also have a positive effect on raising yields and overall quality in the near future.<sup>227</sup>

#### IV. Rest of the World

Although the European winemaking tradition has existed for thousands of years, the traditions of most other countries have only been around for a few hundred years. As mentioned, indigenous vines of the genus *Vitis* have been found throughout out the world, yet only the civilizations of Eurasia seem to have determined how to make wine from the grapes.<sup>228</sup> As a result, winemaking traditions only began in other countries once Europeans began exploring the world and settling foreign lands. The U.S. and Australia are presented as examples of countries that have developed distinct regulatory systems in this short period of time. The regulations of New Zealand are also examined as an illustration of how a smaller nation has adapted to the globalization of the wine industry.

##### A. United States

British settlers first attempted to plant *Vitis vinifera* in the U.S. in 1619, but were faced with difficult conditions and low yields. The poor growing climate of the east coast even prevented accomplished European growers brought over by the colonists from establishing any sort of sustainable venture. It was not until 1818 in York, Pennsylvania, that Thomas Eichelberger was able to become the first commercially successful grower. Still, production was rather small and wine drinkers had to rely mainly on European imports.<sup>229</sup> The

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<sup>227</sup>OXFORD COMPANION TO WINE, *supra* note 10, at 659-60.

<sup>228</sup>See *supra* text accompanying note 32.

<sup>229</sup>RICHARD MCGOWAN, GOVERNMENT REGULATION OF THE ALCOHOL INDUSTRY 37 (1997).

first permanent and extensive wine production came later in the 1830s with the establishment of Nicholas Longworth near Cincinnati, Ohio.<sup>230</sup>

At the same time, unbeknownst to the isolated east coast, a separate wine industry began to take root in the west. Jesuits from Spain moved north from Mexico around 1700 and began setting up missions throughout California. Father Juniper Serra set up twenty-one such missions, all of which had vineyards. Wine served a sacramental purpose for the missionaries, but had little outside use at the time. Thus, when the missions began to diminish in importance later in the century, the vineyards also fell into disrepair without any interested parties to care for them.<sup>231</sup>

The California wine industry remained on the fringe until the influx of settlers from the Gold Rush arrived in the mid-1800s. Finding mainly missionary grapes, the settlers called for something better. In 1860, Hungarian immigrant Agoston Haraszthy helped create the Viticultural Commission to oversee the development of the wine industry in California. Haraszthy brought back many vines from his travels in Europe and distributed them throughout California. When phylloxera swept through the world in the late 1800s, it was discovered that indigenous vines from the eastern U.S. were not susceptible to the disease. This led producers around the world to begin grafting western and European vines onto the roots of the eastern vines in hopes of preventing future outbreaks. Slowly producers and consumers alike began pushing for higher standards of quality, which led to the creation of the Board of Viticultural Commissioners and the State Agricultural Experiment Station to control the artistic, scientific, and business aspects of the industry.<sup>232</sup>

Disaster struck the U.S. wine industry when the 18th Amendment was ratified in 1919 instituting Prohibition. Many vineyards were either abandoned or forced to survive on government permits to produce small amounts of medicinal, sacramental, or cooking wine.<sup>233</sup> Other vineyards were torn up and planted

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<sup>230</sup>OXFORD COMPANION TO WINE, *supra* note 10, at 726.

<sup>231</sup>MCGOWAN, *supra* note 229, at 37. California now accounts for 90% of U.S. wine production. *Id* at 99.

<sup>232</sup>*Id* at 43-44.

<sup>233</sup>*Id* at 49.

with inferior grapes that were used for unfermented juices, jams, and jellies. Some wine production did go underground, however. Such homemade wines were often heavier and were fortified to have higher alcohol contents. In fact, after Prohibition ended, two-thirds of wine produced was over 20% alcohol.<sup>234</sup>

When Prohibition came to an end in 1933, the industry was in shambles. An estimated 1000 commercial wineries had been reduced to 150, many of those only having survived as a result of the government permits. Producers also refused to replace the inferior vines that they had planted during Prohibition, claiming that replanting was too expensive and that their products had been selling adequately before.<sup>235</sup>

In 1935, the Wine Institute was created to oversee, stabilize, and monitor the regrowth of the industry.<sup>236</sup> The Wine Institute also served as a government lobby and a publicity board for the fragmented industry, although it failed in its campaign to make Americans realize that wine should be drunk with food and not merely for intoxicating purposes. In fact, consumer preference for a higher alcohol content remained through World War II, when 75% of wine made in the U.S. was fortified. It was also around the time of World War II that the wine industry finally started to rebound.<sup>237</sup>

The 1940s marked a period of consolidation as large distillers began to buy up vineyards. Four companies - Schenley, Hiram Walker, Seagram, and National – owned almost half the industry at the time. Consolidation also allowed for vast improvements in consistency and quality. By the 1970s, the rise of wine had begun, as many discovered table wine as an alternative to fortified wines. Finally, the 1980s marked another resurgence where wine became viewed as part of a healthy, civilized lifestyle, rather than a source of inebriation.<sup>238</sup>

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<sup>234</sup>PAUL LUKACS, AMERICAN VINTAGE: THE RISE OF AMERICAN WINE 100-02 (2000). The average bottle of table wine is around 12%.

<sup>235</sup>*Id* at 103-04.

<sup>236</sup>MCGOWAN, *supra* note 229, at 49.

<sup>237</sup>LUKACS, *supra* note 234, at 103, 108.

<sup>238</sup>*Id* at 110, 128, 188. Ironically, per capita wine consumption in the U.S. peaked at 2.43 gallons in 1985. The current level is around 2.0 gallons. *Id* at 188.

The U.S.'s first attempt at setting out a regulatory scheme for the manufacture, marketing, and labeling of wine was the Federal Alcohol Administration Act (FAA Act) of 1935.<sup>239</sup> Under the FAA Act, the Bureau of Alcohol, Tobacco, and Firearms (BATF) was granted the power to issue regulations consistent with the Act's goals. Such regulations were "intended to prevent deception of the consumer, to provide the consumer with adequate information as to the identity and quality of the product, and to prohibit false or misleading statements."<sup>240</sup>

In 1978, the BATF laid the groundwork for the U.S.'s current classification system by defining American Viticultural Areas (AVA) as the basic geographical division for certifying the authenticity of wine. Such AVAs were to serve simply as appellations of origin and not to guarantee quality in any way.<sup>241</sup> The BATF also made no attempt to differentiate between quality wine and table wine, as all EC countries were required to do. In fact, any wine made in the U.S. with an alcohol content below 14% was called table wine, and any wine above was dessert (fortified) wine.<sup>242</sup>

In order to be labeled with a particular AVA, 85% of the grapes had to come from the region. On the other hand, if a wine simply wanted to use the name of a county or state on its label, only 75% of the grapes had to comply.<sup>243</sup> To be labeled with a particular varietal name, a particular AVA, county, or state also had to be listed, but only 51% of the grapes had to be of that variety and from the particular designation. This figure was later raised to 75% in 1983.<sup>244</sup> These regulations were to take effect in 1983, but lawsuits tied them up for another three years. When the final rule was eventually promulgated, a few compromises had been made, most notably concerning grandfathering, which allowed some old producers to avoid having to follow the new requirements as strictly. In addition, geographic names could be used in brand names as long

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<sup>239</sup>27 USC §§ 201-219a

<sup>240</sup>Labeling and Advertising Regulations Under the Federal Alcohol Administration Act, 49 Fed. Reg. 31,667, 31,668 (Aug. 8, 1984). *See* Maher, *supra* note 25, at 1888.

<sup>241</sup>LUKACS, *supra* note 234, at 346-47.

<sup>242</sup>27 C.F.R. §4.21(a)(2) (2000).

<sup>243</sup>Maher, *supra* note 25, at 1892.

<sup>244</sup>LUKACS, *supra* note 234, at 222.

as the required percentages of grapes were from that location. The designation of origin still could not be confusing to consumers, however.<sup>245</sup>

The 1978 regulations also established criteria and procedures for creating new AVAs. The main components of the petition were 1) a showing that the area was locally and/or nationally recognized by the proposed name, 2) boundary specifications, and 3) a listing of the geographic features, such as soil, climate, and elevation, that distinguished the area.<sup>246</sup> Approval would be granted based on a finding that the area was distinct from, but not necessarily better than, surrounding areas.<sup>247</sup> In fact, there were no restrictions on vine varieties, soil type, mineral content, or even production yields. There was also no required quality control testing – producers just had to show that the wine was fit for human consumption.<sup>248</sup> Quite often the AVA boundaries were drawn more politically than geographically, and have proven to be flexible when disputed.<sup>249</sup> There are currently 145 AVAs of varying size, some of which are fully contained within others.<sup>250</sup> The AVA system has received much criticism in comparison to the European systems that place more of a focus on quality. Such production restrictions are likely not practical in the U.S., however, due to the short history of winemaking. Europe's wine tradition stretches back centuries, while relatively little is yet known about the best practices and grapes for winemaking in the diverse regions of the U.S.<sup>251</sup> As a result, AVAs must build their own reputation for particular wines and cannot rely on a specific governmental mandate of quality.<sup>252</sup>

As the wine industry has grown throughout the world, one of the biggest sources of international controversy

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<sup>245</sup>Maher, *supra* note 25, at 1894. In order for a label to bear a geographic name as part of the name of a vineyard, 95% of the grapes must come from the stated vineyard. *Id* at 1899.

<sup>246</sup>27 C.F.R. §4.25a(e)(2)(i) (2000).

<sup>247</sup>LUKACS, *supra* note 234, at 347.

<sup>248</sup>Josel, *supra* note 165, at 474.

<sup>249</sup>LUKACS, *supra* note 234, at 347.

<sup>250</sup>Maher, *supra* note 25, at 1895.

<sup>251</sup>In a way this ignorance is advantageous, as it allows for exploration and attempts to grow into areas that have not been tried before. The result may be a lot of disappointment, but mixed in should be the occasional success story. *See* LUKACS, *supra* note 234, at 348.

<sup>252</sup>*Id* at 347.

has been the use of geographical names. U.S. regulations are relatively lax compared to the highly protective and coveted position that denomination names receive in Europe. In a sense this grows out of the fact that U.S. agricultural law have always been geared toward the dissemination of knowledge into the public domain. France, on the other hand, subscribes more to the theory of moral rights and perpetual protection.<sup>253</sup>

In order to deal with the use of national and international references, the BATF has grouped wine terms into four categories: non-generic and distinctive, non-generic and not distinctive, semi-generic, and generic.<sup>254</sup> Non-generic and distinctive terms include such well-known foreign designations as Graves and Medoc, while non-generic and not distinctive terms include broader designations such as California and France.<sup>255</sup> No terms from either of these categories can be used on a label unless the wine actually originates from that location.<sup>256</sup>

Semi-generic names are those that contain some sort of geographic significance because the term describes a type of wine. The BATF set out 16 such terms, including Burgundy, Chablis, and Champagne. Under U.S. law, producers are allowed to use semi-generic names as long as they are used in conjunction with the appellation of origin where the wine is produced, supposedly so that consumers are not misled.<sup>257</sup> For instance, a wine labeled “California Champagne” does not have to contain grapes from the Champagne region of France or be bottled there, but 75% of the grapes do have to be grown in California.<sup>258</sup> Finally, generic names can be used as long as the geographic reference has lost all significance and only describes a type of wine. Vermouth and sake are examples of generic names.<sup>259</sup>

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<sup>253</sup>Chen, *supra* note 176, at 58-60.

<sup>254</sup>24 C.F.R. §4.24 (2002). The BATF’s authority is not preempted by the Lanham Act. The Lanham Act is simply an additional regulatory authority. Maher, *supra* note 25, at 1898. For a more thorough discussion of trademark issues that are beyond the scope of this paper, *see generally* Maher, *supra* note 25.

<sup>255</sup>24 C.F.R. §4.24 (2002).

<sup>256</sup>Josel, *supra* note 165, at 476.

<sup>257</sup>Maher, *supra* note 25, at 1899.

<sup>258</sup>Chen, *supra* note 176, at 50. California Champagne also has to be made using the *methode champenoise*.

<sup>259</sup>Maher, *supra* note 25, at 1898.

## B. Australia

Vines were introduced to Australia in 1788 by Captain Arthur Phillip as part of the first British colony at Sydney. After slow commercial growth through much of the 19th Century, it was not until the 1950s that the modern industry really took shape. One reason for this delay was the need to develop irrigation systems to combat the lack of summer rainfall. As a result, much of Australia's wine production became concentrated in the southeast corner of the country where the land and climate was more amenable to grape growing.<sup>260</sup> Until the late 1980s, the job of regulating wine production fell into the hands of individual state health authorities.<sup>261</sup> The rough components of an appellation system had been set out as early as 1963, but these regulations were considered nothing more than a "paper tiger" without teeth. After extensive lobbying by the wine industry for an overhaul of the system, producers were rewarded with the federalization of wine law in 1987.<sup>262</sup>

The hallmark of the new legislation was the Label Integrity Program (LIP), which was to be implemented by the Australian Wine and Brandy Corporation (AWBP). Initially under the LIP, if either a variety or region was named, 80% of the wine has to comply, while 95% of the wine had to comply if a particular vintage was stated.<sup>263</sup> These figures were all later changed to 85%.<sup>264</sup> The AWBP was in charge of keeping records and auditing any such claims. As an illustration of the recording system's thoroughness, records were checked at four different points: at the winery where grapes were bought and sold, at the cellar where the grapes were made into wine, at the time when inter-company sales and purchases were made, and at the wholesale desk

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<sup>260</sup>OXFORD COMPANION TO WINE, *supra* note 10, at 47, 482.

<sup>261</sup>JOHN BEESTON, A CONCISE HISTORY OF AUSTRALIAN WINE 262 (1994).

<sup>262</sup>OXFORD COMPANION TO WINE, *supra* note 10, at 49.

<sup>263</sup>BEESTON, *supra* note 261, at 262.

<sup>264</sup>*Id.*



when the wine left the cellar in bulk with the label.<sup>265</sup>

In 1994, Australia signed a treaty with the EU to allay many of the fears the EU had regarding Australia's relative newness into the field of wine regulation.<sup>266</sup> The agreement prompted the creation of Geographic Indications made up of zones, regions and subregions. By 1996, each state had been divided in zones, albeit with no consideration of geographic or climactic particularities. The splitting of each zone into regions has proven to be more troublesome, however, due to the required specificity and fighting amongst interested parties. In order to qualify, a region must be to some degree discrete and homogenous in its growing attributes. Each region must also produce at least 500 tonnes of grapes a year and contain at least five differently owned vineyards of at least five hectares each. Regardless, this classification is not intended to provide the guarantee of quality that the EU would ideally like.<sup>267</sup>

More importantly, under the treaty, Australia agreed to phase out the use of generic names like burgundy, champagne, and sherry. Such names had previously not been allowed on labels for export, but had been used rather freely for wines shipped within the country.<sup>268</sup>

### C. New Zealand

The first reported planting of grape vines in New Zealand was in 1819 by Samuel Marsden, an Anglican missionary from Australia.<sup>269</sup> Marsden never made wine, however. That distinction went to James Busby,

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<sup>265</sup>BEESTON, *supra* note 261, at 262.

<sup>266</sup>Agreement between Australia and the European Community on Trade in Wine, and Protocol, Mar. 1, 1994, Austl.-EU, 1994 Austl. T.S. No. 6.

<sup>267</sup>OXFORD COMPANION TO WINE, *supra* note 10, at 49.

<sup>268</sup>*Id.* at 50.

<sup>269</sup>MICHAEL COOPER, THE WINES AND VINEYARDS OF NEW ZEALAND 8 (1993).

the first British Resident in New Zealand, who set up a vineyard in 1836 and began selling wine to British troops.<sup>270</sup> As with Australia, the modern era of winemaking in New Zealand did not begin until the 1950s. The industry experienced great growth during the 1960s, but did so at the expense of quality.<sup>271</sup>

In 1975, New Zealand created the Wine Institute to act as a single, united organization representing all vineyards. One of the main problems that had to be faced was wine watering, as producers tried to stretch their wine production to meet the growing demand. After ineffective attempts to place limits on watering, the practice was officially outlawed in 1983.<sup>272</sup> Shortages were soon replaced with huge surpluses in the mid-1980s, leading the government to sponsor programs that compensated growers for pulling up their vines. Close to one quarter of the country's vines were dug up under the Vine Pull Scheme of 1986.<sup>273</sup>

As New Zealand wines began to enter the international wine market, the industry felt the need to ensure international confidence in the labeling of its wine. At the urging of the world, and with some inspiration from Australia, New Zealand instituted its own Certified Origin system in the mid-1990s. The system was designed to achieve honesty and integrity in labeling and to guarantee the origin of the grapes used in the wine. The only goal, however, was to provide authenticity, not a judgment of quality. The first step was to create a hierarchy of geographical denominations, with the broadest being New Zealand, followed by either North or South Island, followed by one of sixteen regions, followed by localities (identifiable localized areas), and finally the name of the vineyard. As in other countries, 85% of the grapes in each wine had to comply with any claims made regarding geographic area, vintage, or vine variety. Wineries were also required to keep detailed records so that auditors could trace and enforce the origin of the grapes.<sup>274</sup>

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<sup>270</sup>OXFORD COMPANION TO WINE, *supra* note 10, at 485-86.

<sup>271</sup>COOPER, *supra* note 269, at 8, 13.

<sup>272</sup>*Id.* at 17-18.

<sup>273</sup>*Id.* at 20; OXFORD COMPANION TO WINE, *supra* note 10, at 486.

<sup>274</sup>COOPER, *supra* note 269, at 23.

## V. Internationalism

With the expansion of wine production around the world, the days of wine only being consumed in the producing country are long gone. A global wine market has developed that allows for Australian wines to be found in France, and German wines to be purchased in New Zealand. As a result, nations have come to recognize the need to work together to protect their own interests as well as those of the ultimate consumer on the other side of the world.

One such instance of international cooperation was the signing of the Final Act of the Uruguay Round of negotiations by 111 countries in April 1994. Arguably the most significant agreement from the discussions is the Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS), which, among other things, accords specific protections to geographical indications as a form of intellectual property.<sup>275</sup> The essence of these TRIPS provisions is that “Members shall provide the legal means for interested parties” to protect geographical indications.<sup>276</sup> A geographical indication is then defined as that “which identif[ies] a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.”<sup>277</sup> Many feel that this definition somewhat weakens the underpinnings of the AOC system because it focuses solely on geographic factors and not the additional human factors that France takes into account.<sup>278</sup>

Signatories to TRIPS are required to ban “the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner that misleads the public as to the geographical origin of the good.”<sup>279</sup> Parties

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<sup>275</sup>Dec. 15, 1993, arts. 22-24, 33 I.L.M. 81 [hereinafter TRIPS Agreement]. Geographical indications are particularly a trademark right.

<sup>276</sup>*Id.* at art. 22.2.

<sup>277</sup>*Id.* at art. 22.1.

<sup>278</sup>Chen, *supra* note 176, at 55-56.

<sup>279</sup>TRIPS Agreement, *supra* note 275, at art. 22.2(a).

also have to “refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.”<sup>280</sup> In addition, geographic indications are to be protected “even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as ‘kind,’ ‘type,’ ‘style,’ ‘imitation’ or the like.”<sup>281</sup>

Initially, producers thought that these TRIPS provisions would put an end to many of their common labeling practices, including semi-generics.<sup>282</sup> However, TRIPS also contains three notable exceptions that take much of the heart from the agreement. Geographical indications that might otherwise be banned can continue to be used if 1) they have been in continuous use since April 15, 1984, 2) a trademark was secured in good faith prior to the effectiveness of the agreement, or 3) the indication is the customary name of a grape variety grown in that country.<sup>283</sup> With much of the offending usage falling into one of these exceptions, TRIPS seems to fall short of its goal of fully educating the consumer about the true origin and background of wine.<sup>284</sup>

Semi-generics are presumed to be exempt from TRIPS under either the continuous use or the customary name exception.<sup>285</sup> In the U.S., the BATF was originally given the authority to add or delete names from the authorized semi-generic list, but in 1997, the power to remove names from the list was revoked.<sup>286</sup> This revocation, however, may fly in the face of the TRIPS requirement that parties be subject to “negotiations

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<sup>280</sup>*Id.* at art. 22.3. Much confusion surrounds the interaction of trademark law and international designation. This discussion is beyond the scope of this paper. For a summary of these issues, *see generally* Chen, *supra* note 176.

<sup>281</sup>TRIPS Agreement, *supra* note 275, at art. 23.1.

<sup>282</sup>Chen, *supra* note 176, at 56.

<sup>283</sup>TRIPS Agreement, *supra* note 275, at arts. 24.4-.6.

<sup>284</sup>Chen, *supra* note 176, at 57.

<sup>285</sup>Peter M. Brody, “*Semi-Generic*” *Geographical Wine Designations: Did Congress Trip Over TRIPS?* 89 TRADEMARK REP. 979, 983 (1999).

<sup>286</sup>I.R.C. §5388.

aimed at increasing the protection of individual geographical indications.”<sup>287</sup> Commentators have suggested that there may be a conflict here in that if the U.S. does ever partake in negotiations, its hands will be tied because it will be unable to remove semi-generic names from use. Furthermore, this change is thought to have been a deliberate move to protect the use of semi-generics in light of TRIPS.<sup>288</sup>

As an alternative to TRIPS, bilateral agreements are thought to be an effective means to bring countries together and to protect themselves from stepping on each other’s interests. Such a compromise was illustrated by the agreement between Australia and the EU. Smaller agreements have also taken place over the years, including a 1971 accord with France whereby the U.S. promised not to use the AOC designations of Cognac and Armagnac in exchange for France giving reciprocal treatment to Bourbon and Bourbon Whiskey.<sup>289</sup>

## VI. Conclusion

The traditions underlying the great wine-producing nations of the world are as distinct as the wines they produce. What was once a series of isolated countries making wine as they saw fit has slowly become an integrated system of international agreements designed to strengthen the wine industry as a whole. Although the EU is still the strongest of the alliances, the integration of the world’s markets has brought the rest of the world to the negotiating table to protect the diversity of traditions.

The global integration of the wine industry has not led to standardized regulations, however. For instance, France’s strict regulation of its producers, in comparison to the rather lax stance taken by the U.S. and Australia, has begun to have serious effects on France’s ability to compete in the international market. Since 1998 alone, the market share of French wines in the U.S. has fallen from 7% to 5%, while the Australian share has tripled to 3%.<sup>290</sup>

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<sup>287</sup>TRIPS Agreement, *supra* note 275, at arts. 24.1.

<sup>288</sup>Brody, *supra* note 285, at 984.

<sup>289</sup>Chen, *supra* note 176, at 54.

<sup>290</sup>William Echikson et al., *Wine War*, BUSINESS WEEK, Sept. 3, 2001, at 54. Annual French consumption has also fallen

France's shortfall stems from a number of sources. First, France's regulatory system imposes strict limitations on all aspects of wine production, leading to limited quantities and higher prices. The majority of wine consumers are no longer willing to pay the higher prices, especially as many international wines rival French wines in quality and are significantly less expensive. French regulations also discourage innovation by preventing such practices as irrigation (in most of the country) and the use of steel barrels with oak chips for fermentation, instead requiring more expensive oak barrels. This strictness additionally prevents producers from adequately reacting to the unpredictable French weather that causes vintages to vary greatly. U.S. and Australian wines already have an automatic advantage due to their more consistent climates and growing seasons.<sup>291</sup>

Second, France's industry involves too many players. Whereas 80% of Australia's wine comes from three producers, Bordeaux alone has 20,000 producers. Third, many of France's producers are paid by how much wine they deliver to the local cooperative, forcing producers to sacrifice quality in order to make enough quantity to earn a living. Fourth, France's system of small, family-owned vineyards prevents producers from expending great deals of money to market their wines. U.S. and Australian conglomerates, on the other hand, are able to spend millions to make their wines known throughout the world. Finally, French bottles are confusing to the average consumer because they do not contain the most recognizable information. Most other countries do not actively discourage the listing of the vine variety, which is the information most valued by consumers looking to satisfy a particular craving.<sup>292</sup>

In order for countries to remain competitive in the international wine market, they must be willing to adapt. Because each country has distinct traditions and considerations, the answer is certainly not to create legal uniformity. What is necessary is the ability to compromise between the tradition of quality and the

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from 26.5 gallons in 1960 to 14.5 gallons currently – consumption has doubled in the U.S. during the same time period. *Id.* at 56.

<sup>291</sup> *Id.* at 57.

<sup>292</sup> *Id.* at 56-57.

marketability of wine on both the national and the (increasingly important) international levels.