Submission — Implementation of the Australia–EU FTA: Options for Protecting Wine Geographical Indications

Keep wine GIs in the Wine Act, and borrow two ideas from Option A

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Who Is Writing

I make wine in the Adelaide Hills. Ochre Nation grows, buys, makes, bottles and exports wine under the Unico Zelo label and holds a Wine Australia export licence. I have made a corresponding submission to the independent review of the Wine Australia Regulations 2018, which makes proposals about the wine GI system that I have not repeated here; a copy is attached.

The Answer in One Paragraph

Option B. Wine GIs should stay in the Wine Australia Act, and the new system should not accept applications for them. This is not attachment to the status quo. The wine GI register is not a stand-alone list: it is wired into the Label Integrity Program, export approval and the offence provisions, so that a GI on a label can be traced to tonnes in a winery and stopped at the border if it is false. The Discussion Paper's own account of Option A leaves the Label Integrity Program, the rules on use and export approval with Wine Australia, and moves the register and the false-use provisions to IP Australia — which means Option A would not move the wine GI system so much as cut it in half: the register and its offences in one agency, the records and the border in another. And the one feature of Option A that would genuinely matter for wine — conditions of use attached to a GI — is already in the Wine Act (s 40T) and has simply never been used for an Australian GI. What the wine system needs is not a new address but two repairs, both of which can be made inside the Wine Act: replace the minimum-size rule with an evidence standard, and give each GI a responsible body and a way to retire dormant names. The second is the idea worth taking from Option A. **Option B adds no obligation to any producer or region; Option A adds fees and renewals to every region.**

Summary

R1	Adopt Option B. Provide that wine GIs may be protected only under the Wine Australia Act; the new system should not accept wine GI applications. *(Q1)*
R2	Remove the size thresholds in reg 57(1)(a)–(b) — 500 tonnes and 5 hectares per vineyard — keeping the requirement for five separately owned vineyards, and replace them with an evidence standard. *(Q5)*
R3	Borrow from Option A a responsible body for each wine GI and a mechanism to retire dormant GIs. Do not borrow fees or fixed-term renewal. *(Q1, Q2, Q6)*
R4	Retain the Geographical Indications Committee as the decision-maker, and wine-specific criteria, whichever option is adopted. *(Q2, Q3, Q4)*
R5	Keep boundaries fixed and conditions of use adjustable on a timetable; require a non-wine product using a wine GI name to come from the same area; keep wine-derived products that use a wine GI name under the wine rules. *(Q6, Q7)*

Q1 — Preferred Option, and Why

Option B, for four reasons.

The register and its enforcement are one system. Under the Wine Act a GI claim on a label is a Label Integrity Program record, an export approval condition and, if false, an offence. The Discussion Paper's Table 1 divides that system in two. The Label Integrity Program, the reg 26 rules on use, export controls and the Register of traditional expressions and other terms stay with Wine Australia; the register of GIs, the false-and-misleading-use provisions and the investigation of complaints move to the new system. Two agencies would then share one instrument — IP Australia deciding what a GI is and acting on its misuse, Wine Australia verifying the tonnes behind the claim and approving the export. That is a seam, and seams are where enforcement fails.

The feature Option A is praised for already exists. A "responsible person who may establish the conditions of use" is the model the fine wine world runs on: Rioja, Priorat, Germany and Austria have each built conditioned quality tiers on top of their origin systems in the last decade. But the Wine Act already provides for it. Section 40T requires the Committee, in determining a GI, to identify its boundaries, determine the indication and *determine any conditions of use*; s 40ZD provides for those conditions to be entered in Part 1 of the Register; reg 92 imposes the same duty for foreign GIs. So far as I can determine, no Australian GI carries a registered condition of use. The power is dormant, not absent. Australia does not need a trade-mark-style system to get conditions of use; it needs the Committee to use the section it has, and I have put that proposal to the Regulations review, where it belongs.

The strongest argument for Option A is the one this invites: the Wine Act has had the power for thirty years and has not used it, so why would it start? That is true, and it is why the independent review of the Regulations, running in parallel to this consultation, matters — it is the instrument that can direct the Committee to use the power. Moving wine GIs to IP Australia would not make conditions of use more likely, only less expert.

Option A's costs fall on the people least able to bear them. Trade-mark-scale fees and ten-year renewals would land on the regional bodies responsible for each name — many of them a single part-time executive officer — for names that were determined once, on the understanding that they were permanent. A wine GI is not a trade mark; it is a fact about land. It should not lapse because a volunteer committee missed a renewal date.

Wine-specific judgement is the point. The reg 57 criteria — uniformity and distinctness of climate, geology, elevation, harvest timing, history — are viticultural questions, decided today by an independent three-member Committee constituted from the sector. The Discussion Paper itself anticipates that under Option A "wine-specific rules" are "likely to be different to what is required for cheeses." If wine needs its own rules, its own criteria and its own committee inside Option A, then Option A is Option B with a fee schedule and a change of address. That is also the lesson of the jurisdictions Australia is usually compared with:

Jurisdiction	Who determines wine GIs	Sector-specific substance
European Union	The Commission; since 2024 one procedural regulation for wine, spirits and food (Reg 2024/1143)	Wine's substantive rules stay in the wine regulation (Reg 1308/2013)
New Zealand	IPONZ — the IP office — under the Geographical Indications (Wine and Spirits) Registration Act 2006	A wine-and-spirits-only register by statute
United States	TTB, the federal alcohol regulator, not the trade mark office	AVAs: boundaries only, no conditions
Australia today	Geographical Indications Committee — independent, constituted from the sector	Sui generis; wine-specific criteria; conditions-of-use power unused

The Discussion Paper's concern about forum shopping under Option B is real and easily met: provide that a wine GI may be protected only under the Wine Act and that the new system will not accept an application for one. Certification trade marks coexist with wine GIs today without confusion because they protect a mark, not a name as a GI; the same line should be drawn for the new system.

Q2 — If Option A Were Preferred

I do not prefer it. If Government adopts it nonetheless, five features of the wine system must survive the move: the Geographical Indications Committee (or a wine committee with equivalent powers) as the decision-maker on wine GIs; the wine-specific criteria in reg 57; the conditions-of-use power; no application fee for existing GIs and no fixed-term renewal for any wine GI; and a statutory link between the new register and the Label Integrity Program, so that a GI claim remains traceable to tonnes.

Q3 — A Wine Committee Under a Single System

Yes — and it should decide, not advise. The Geographical Indications Committee exists, is independent of Wine Australia, has thirty years of determinations behind it, and is constituted from the sector: a presiding member and two members nominated by Australian Grape & Wine. Under either option it should remain the body that determines wine GIs and their conditions of use.

Q4 — Wine-Specific Criteria

Yes. The reg 57 criteria on uniformity and distinctness — climate, geology, elevation, harvest timing, history — are viticultural questions with no analogue in cheese or ham, and they should be retained in full under either option. One addition is needed whichever option is adopted: the criteria should address homonymy with non-wine GIs (Q7).

Q5 — The Minimum Size

No. Reg 57(1)(a) and (b) are drafted as considerations but, as the Discussion Paper accurately says, operate as a minimum size. Any tonnage test is a volume gate: it says a place cannot be recognised until it is a volume producer. In thirty years Australia has determined 65 regions and 14 subregions and nothing below subregion, while Rioja, Priorat, Germany and Austria have each built a hierarchy that reaches the single vineyard. An area of five separately owned two-hectare vineyards cropped at one to two tonnes a hectare on old vines — the kind of place a fine wine system exists to protect — cannot be delimited, because it is not big enough. The two size thresholds should be removed — keeping the requirement for five vineyards in separate ownership, which is what makes a GI a collective right — and replaced with an evidence standard: documented history, as reg 57(1)(e) already contemplates, and a geological and pedological survey to a published standard, lodged under an open licence. The existing application fee ($27,500) and the survey together answer the concern about a proliferation of names: only applicants prepared to fund a survey to standard will apply, and each successful application adds to the sector's knowledge of its own ground.

Q6 — Amendment of Wine GIs

Boundaries and conditions should be treated differently. **Boundaries** should stay as they are: not amendable except by a fresh determination on the full process. A GI's value is that it does not move; producers plant against it on thirty-year horizons. What the current system lacks is a way to retire names that have gone dormant, and here Option A's renewal idea can be borrowed without its fees: the Committee should be able to omit a GI on its own motion after ten years without use, on notice to the responsible body. **Conditions of use** should be amendable, on a timetable: reviewable five years after they are first set, then after ten, then fifteen, and thereafter only on application demonstrating exceptional circumstances. That lets a region correct an early mistake without letting the rules move every vintage.

Q7 — Non-Wine Domestic GIs and Wine GIs

I accept that wine GIs should not have a veto over non-wine names. Three things follow. First, a non-wine GI that uses the name of a wine GI should have to come from substantially the same area: the reputation of "Barossa" was built by grape growers over a century and a half, and a product that borrows the name should at least share the ground. Second — and I would press this hardest — the Discussion Paper contemplates the new system registering "a wine related product such as a wine spritz using an established wine GI name." Wine-derived products that carry a wine GI name — spritzes, wine cocktails, de-alcoholised wine — should be governed by the wine rules for that name, including any conditions of use, or not carry it. Reg 5 of the Wine Australia Regulations already treats a product that includes wine and is covered by a food standard as a grape product, so many such drinks are within the wine rules today; the new system should not create a route around them. Otherwise a name whose meaning a region has spent decades building, and which may carry conditions of use, can be put on a product that meets none of them, through a different door. Third, the new system should be required to consult the Geographical Indications Committee before registering any name identical to, or containing, a registered wine GI, so that homonyms are identified before publication for objection rather than after.

I would welcome the opportunity to discuss any of this with the Department.

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