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Joseph Patrick Carroll

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Exporting Wine Through the Barricades of Fortress Europe

Joseph Patrick Carroll*

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* J.D., McGeorge School of Law, University of the Pacific, to be conferred 1999; B.A., Politics, University of San Francisco, 1995; Year Abroad, Oxford University, 1993-1994. First of all, I thank God for the many blessings. Next, I would like to thank Dad, Mom, Krisie, Sean and Chris for all their prayers, support, understanding and belief in me. I am also grateful to the 1997-1998 editors on *The Transnational Lawyer*, especially Tracy Work, Scott Cross and David Boyers for all their great advice and aid for this Comment. Furthermore, I would like to give special thanks to Professor Claude D. Rohwer and Professor Kojo Yelapaala. This Comment is dedicated to my two wonderful nephews, Connor and Colin.

I. INTRODUCTION

The United States (U.S.) wine industry has become one of the most important, lucrative, and rapidly growing industries for U.S. agriculture.¹ The United States is the world's fourth largest producer, the fifth largest importer, and seventh largest exporter of wine.² In California alone, the wine industry is estimated to be worth US\$9 billion.³ In 1996, the value of U.S. wine exports increased by an impressive thirty-five percent from 1995, totaling over US\$326 million. Furthermore, the volume of exports increased by twenty-two percent over the same period.⁴

The European Union⁵ (EU), is the largest wine consuming community in the world, and has been the biggest market for U.S. wine exports.⁶ In 1996, the total value of U.S. wine exports into the EU increased by an incredible fifty-four percent.⁷ Likewise, the volume of exports increased by thirty-three percent from the previous year.⁸ Additionally, the Member States of the EU purchased forty-six percent of all U.S. wine exported in 1996.⁹ The extraordinary sales of U.S. wine within the UK, and the incredible growth rates of sales to wine producing countries such as Germany and France, demonstrates an appreciation for U.S. wines within the EU.¹⁰ The burgeoning success of U.S. wine makers exporting their products into the EU indicates this market may continue to provide lucrative opportunities in the future for U.S. wine companies.¹¹

1. See *Economic Research Service: Agricultural Income and Finance*, M2 PRESSWIRE, Nov. 13, 1997, available in 1997 WL 15143562.

2. See L. Pierce Carson, *California Wine Tasting Takes On International Flavor*, NAPA VALLEY REGISTER, Oct. 3, 1993; see also *The Wine World In Review*, WINES & VINES, (July 1, 1997), available in 1997 WL 10177594 [hereinafter *Wine World In Review*].

3. See *State to Seek Reciprocal Shipping For Wine, Liquor*, LA. TIMES, BUS. & TECH., Nov. 21, 1997 (visited Nov. 23, 1997) <http://www.latimes.com:80/CNS_DAYS/971121/t000105422.html>.

4. See James B. Clawson, et al., *Wine Institute International Trade Barriers Report*, at 1 (1997) [hereinafter *Wine Inst.*]. (This is a study prepared and paid for by the Wine Institute. The Wine Institute is the trade association that represents the interests of the California and the U.S. wine industry.)

5. See PHILIP RAWORTH, FOREIGN TRADE LAW OF THE EUROPEAN UNION 1-2 (1995) (noting that the European Union was established under the Maastricht Treaty on January 1, 1993, creating a single market for European Community Member States, which include Ireland, Great Britain, Germany, Italy, France, Spain, Netherlands, Denmark, Belgium, Luxemburg, Portugal, and Greece, plus subsequent to 1993, Finland, Sweden and Austria became Member States); see also Maura K. McKelvey, Comment, *Cheap Beer Or Economic Harmony: With The Dissolution Of Import Barriers, Should Excise Duties In The EU Be "Harmonized" Also?*, 18 B.C. INT'L & COMP. L. REV. 457 (1995) (describing that on Jan. 1, 1993, the EU was established and created a single market).

6. See *Wine World In Review*, *supra* note 2.

7. See *id.*

8. See *id.*

9. See *id.*; see also Larry Walker, *U.S. Wines Gained Again In 1996*, WINES & VINES (July 1, 1997) (explaining that this was an increase of nearly six percent over the previous year).

10. See *Wine World in Review*, *supra* note 2; see also Walker, *supra* note 9 (providing that Germany, France and the United Kingdom were some of the leading markets for U.S. wine exports in the EU).

11. See Walker, *supra* note 9 (describing that sales for U.S. wine exports had increased during the years of 1994-1996, with 1997 becoming another strong year equating that this trend would continue in the future for U.S. wines).

Although the EU has been a highly advantageous market for U.S. wine makers exporting their products, this process has not been without its difficulties.¹² The EU has a complex and multiple set of regulations outlining the marketing, exporting, and selling of wine in the EU. United States wine exporters need to be aware of the existing practices, regulations and laws which operate as trade barriers,¹³ making it more difficult for U.S. wine companies to compete in the European market.

According to the Wine Institute,¹⁴ the U.S. wine industry has three major areas of concern regarding the process of exporting to the European Union.¹⁵ First, the EU has a discriminatory system of tariffs, internal taxes, and governmental subsidies that impede the sales of wine imports.¹⁶ Second, the EU through licensing requirements, labeling restrictions, marketing regulations, oenological¹⁷ practices and certification regulations¹⁸ inhibits the free circulation of wine for marketing and sales of imports in the EU. Third, EU restrictions on the use of geographic names¹⁹ of imported wines constitute barriers to trade.²⁰ It is estimated that if these three areas of trade barriers were reduced or eliminated, the potential increase in sales of U.S. wine exports could amount to an additional US\$100-US\$150 million.²¹

The purpose of this Comment is to provide a basic framework of important regulations, restrictions, and agreements a U.S. wine exporter should be aware of in exporting their wine products to the EU.²² This Comment is divided into four major parts. Part II describes and discusses the EU's unequal treatment of U.S. wines through high tariffs, internal taxes, and government subsidies.²³ Part III discusses the

12. See *infra* notes 31-253 and accompanying text.

13. Trade barriers or barriers to trade will be utilized in this Comment to denote any market impediment to a wine company marketing, distributing or selling its wine products within a particular market.

14. See *Wine Inst.*, *supra* note 4.

15. See *Wine Inst.*, *supra* note 4, at 27-37 (listing these three categories as principles that are important issues for the European and U.S. wine industries). Although this report lists four principles which are the free circulation of goods, equal treatment, mutual recognition, or geographic indications and administrative collaboration, this Comment will only address these first three principles as separate areas. However, this Comment will include the principle of administrative collaboration within these three sections. This report provides a good overview and starting point of the EU trade barriers affecting U.S. wines. *Id.*

16. See *id.* at 31.

17. See WEBSTER'S DICTIONARY 754 (3d ed. 1986) (defining "oenology" as the study of wines and wine making).

18. See *Wine Inst.*, *supra* note 4, at 27, 30.

19. See Jim Chen, *A Sober Look At Appellations of Origin: How The United States Will Crash France's Wine and Cheese Party*, 5 MINN. J. GLOBAL TRADE 29, 31 (1997) (providing the definition for geographic names or "Appellations of Origin," that are defined by the French government as the designation of a country, of a region, 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).

20. See *Wine Inst.*, *supra* note 4, at 34 (listing geographic indications as a trade barrier); see also Chen, *supra* note 19, at 29 (proposing that only those wines produced according to these rules regarding Appellations of Origin may be legally marketed under the geographically significant appellation of origin); see also *infra* notes 223-53 and accompanying text.

21. See *Wine Inst.*, *supra* note 4, at 27.

22. Although this Comment does not purport to be a complete guide to EU regulations, laws, restrictions, and trade barriers with regard to exporting wine into the EU, it should provide a starting point and overview of EU laws regarding exporting and marketing wine within the EU.

23. See *infra* notes 28-106 and accompanying text.

various administrative and technical regulations considered by the industry as barriers to the free circulation of wine products.²⁴ Part IV examines the geographic name restrictions imposed on wines imported into the EU that constitute barriers to trade.²⁵ Part V addresses the two alternative means to reduce trade barriers of wines exported into the EU.²⁶ Finally, Part VI concludes that although the EU will remain a lucrative market for U.S. wine, the United States should actively seek increased access and fairer treatment for U.S. wine makers exporting to the EU.²⁷

II. TARIFFS, INTERNAL TAXES AND GOVERNMENT SUBSIDIES IN THE EUROPEAN UNION

EU wine makers seeking to export wine into the United States will find a relatively open market.²⁸ The United States provides a more open market than the EU by imposing fewer trade restrictions and barriers on wine imports.²⁹ In stark contrast, U.S. wine companies exporting to the EU will discover that the EU is more protective than the United States of its wine industry, imposing barriers to wine imports through higher tariffs, internal taxes, and governmental subsidies.³⁰

A. Tariffs

The EU possesses a Common Customs Tariff (CCT) system³¹ which is comprised of all the tariff measures that affect imports into the EU.³² Under the CCT, rates are determined by the alcohol strength of the wine, container size, and wine type.³³ The EU maintains tariff rates on imported wine that are significantly higher than the United States.³⁴ European Union tariffs on imported wine range from 15.7

24. See *infra* notes 107-222 and accompanying text.

25. See *infra* notes 223-53 and accompanying text.

26. See *infra* notes 254-317 and accompanying text.

27. See *infra* notes 318-21 and accompanying text.

28. See *infra* notes 31-43 & 126-69 and accompanying text (examining that the United States imposes fewer tariffs and fewer restrictions on the labeling and marketing of imported wine than does the EU).

29. See *infra* notes 28-222 and accompanying text (discussing that the United States imposes lower tariff rates and provides less subsidies to its wine industry than the EU).

30. See *infra* notes 28-222 and accompanying text.

31. See Raworth, *supra* note 5, at 5 (1995) (defining the Common Customs Tariff as all "the tariff measures affecting imports into the EU at any particular time").

32. See *id.*

33. See Jennie E. Wilson, *U.S. Wine Exporters Cheer Expanding U.K. Market*, AGExporter, U.S. Department of Agriculture, Aug. 1, 1997, available in 1997 WL 10881333 (basing these rates on 1997 figures).

34. See *id.*; see also *Harmonized Tariff Schedule, HTS 2204.21.20- 2204.21.80*, USITC Trade Database (visited Feb. 7, 1998) <<http://205.197.120.17/scripts/listtd.asp>> (listing the U.S. Harmonized Tariff Schedule for the wine items of 2204.21.20-2204.21.80); see also *Economic Research Service, International Agriculture and Trade*, M2 PRESSWIRE, Jan. 8, 1998, available in LEXIS, Intlaw Library, Ecnews File (claiming that EU imports include specialty products such as alcoholic beverages that are subject to high tariffs); see also Commission Regulation 2086/97, ch. 22, 1997 O.J. (L 312) (providing the tariff rate for wine subheadings 2204.21.10-2204.21.80).

cents per liter to 50.8 cents per liter, while U.S. tariffs only range from a mere 9.9 cents per liter to 30.9 cents per liter.³⁵

The United States has committed itself to a thirty-six percent reduction of its wine tariffs over six years by signing and ratifying the trade agreements concluded in the Uruguay Round of Multilateral Negotiations of the General Agreement on Tariffs and Trade (GATT).³⁶ The EU maintains that it will also reduce its tariffs on imported wine by thirty-six percent in accordance with the Uruguay Round GATT.³⁷

The EU has complied with the Uruguay Round of GATT by enacting policies to reduce the EU's Common Customs Tariff of imported wines from third countries.³⁸ However, even with these reductions, an enormous disparity in tariff rates between the United States and the EU remains.³⁹ EU tariff rates are a colossal fifty-eight percent to sixty-three percent higher than U.S. tariff rates.⁴⁰ Maintaining higher tariff rates within the EU places U.S. wine companies at a disadvantage against EU wine companies competing for international market share.

The EU is complying with the present conditions under the Uruguay Agreements, so the United States has no valid case against the EU under the World Trade Organization (WTO).⁴¹ Furthermore, the U.S.'s only option to level the playing field with the EU and its tariff policy is to obtain further tariff reduction rates through bilateral agreements.⁴² This should be one of the items the United States should address in a trade agreement with the EU.⁴³

35. 'Cents' refers to U.S. currency. See Harmonized Tariff Schedule, *supra* note 34. See also Wilson, *supra* note 33; see also Commission Regulation 2086/97, ch. 22, 1997 O.J. (L 312) (wine subheadings 2204.21.10-2204.21.80).

36. See 19 U.S.C. § 3511 (1997) (approving and entering into force the Uruguay Round Agreements); see also *Agreement On Agriculture*, art. 1(f), Final Texts Office of the United States Trade Representative, Executive Office of the President, Final Texts of the GATT Uruguay Round Agreements Act, Apr. 15, 1994, reprinted in FRANK W. SWACKER, ET AL., MULTILATERAL TRADE AGREEMENTS SUBJECT TO THE DISPUTE SETTLEMENT UNDERSTANDING 33-59 (1996) [hereinafter *Agreement On Agriculture*] (explaining that the agreements of the Uruguay Round GATT are to take effect, commencing in 1995 for each contracting party of the agreement); *id.* (recognizing that these tariff reductions are to be instituted by the contracting parties of the Uruguay Round GATT agreements during the six year period of 1995-2000); see also *Wine Inst.*, *supra* note 4, at 27; see also RALPH H. FOLSOM & MICHAEL W. GORDON, INTERNATIONAL BUSINESS TRANSACTIONS, §8.10 (1st ed. 1995).

37. See generally Body of Council Regulation 3290/94, 1994 O.J. (L 349) (providing the EU rates of customs duty applicable to agricultural products will be instituted in accordance with the Uruguay Round of GATT for products such as wine); see also *Agreement on Agriculture*, *supra* note 36; see also *Wine Inst.*, *supra* note 4, at 31.

38. See Commission Regulation 1482/95, 1995 O.J. (L 145); see also Council Regulation 3290/94, 1994 O.J. (L 349); see also *Agreement on Agriculture*, *supra* note 36.

39. See *supra* notes 34-35 and accompanying text.

40. See *supra* notes 34-35 and accompanying text. As stated previously in the text, EU tariffs range from 15.7 cents per liter to 50.8 cents per liter, while U.S. tariffs only range from a mere 9.9 cents per liter to 30.9 cents per liter. See also Harmonized Tariff Schedule, *supra* note 34. See also Wilson, *supra* note 33; see also Commission Regulation 2086/97, ch. 22, 1997 O.J. (L 312) (wine subheadings 2204.21.10- 2204.21.80). When one calculates these numbers, one will find that the EU tariff rates are 58% to 63% higher than U.S. tariff rates.

41. See *infra* note 255 and accompanying text (discussing the World Trade Organization); see also *Agreement of Agriculture*, *supra* note 36.

42. See *infra* note 255 and accompanying text; see also *Agreement of Agriculture*, *supra* note 36.

43. See *infra* note 255 and accompanying text; see also *Agreement of Agriculture*, *supra* note 36.

B. Internal Taxes

Internal taxes function as a trade barrier to wine importers within the EU.⁴⁴ Internal taxes consist of an individual Member State's⁴⁵ excise and Value Added Taxes (VAT).⁴⁶ On January 1, 1993, the European Commission of the European Economic Community⁴⁷ established minimum excise duty rates for alcoholic beverages, including wine.⁴⁸ Prior to the enactment of this legislation, each Member State levied excise duties based on the weight or volume of wine with no minimum excise duty rates.⁴⁹ The Economic and Finance Council for the EU adopted Directive 92/84 on October 19, 1992, which deals specifically with the excise duty rates levied on alcoholic beverages and the alcohol contained in other products.⁵⁰ According to this directive, the excise duties in the Member States for wine must exceed the minimum level required, unless a Member State is given an express exception by subsequent EU legislation.⁵¹

However, these directives only established minimum excise duties on wine.⁵² Each individual country within the EU also imposes taxes on wine through VATs as well as the mandated minimum excise taxes.⁵³ Moreover, the tax systems of the Member States within the EU are still fairly diverse.⁵⁴ Even though the European Union is currently in the process of creating a more uniform system of excise and VATs for each individual state, these taxes make it more expensive to import wine

44. See Julia Irvine, *UK: The Drinks Are On The Chancellor-Alcoholic Duties*, REUTER TEXTLINE ACCOUNTANCY, Apr. 30, 1994, available in LEXIS, Intlaw Library, ECNews File.

45. See Raworth, *supra* note 5, at 2. Individual Member State refers to a member of the European Union. *Id.*

46. See Irvine, *supra* note 44.

47. See Raworth, *supra* note 5, at 1-2 (providing the European Economic Community was the predecessor of the European Union). The European Economic Community was also called the European Community. *Id.* Today, the EU is referred to as the EC too. *Id.* Legislation that was enacted under the EEC or EC is carried over and is applicable to the EU. *Id.*

48. See McKelvey, *supra* note 5, at 457; see also COOPERS & LYBRAND, *EC Commentaries, Excise Duties and Other Indirect Taxes*, Section 2 (Mar. 14, 1994); see also Council Directive 92/83, 1992 O.J. (L 316); see also Council Directive 92/84, 1992 O.J. (L 316).

49. See McKelvey, *supra* note 5, at 460; see also COOPERS & LYBRAND, *supra* note 48, §1.

50. See McKelvey, *supra* note 5, at 461; see also Council Directive 92/84, 1992 O.J. (L 316) (providing the approximation of the rates of the excise duty on alcohol and alcoholic beverages).

51. See McKelvey, *supra* note 5, at 461; see also Council Directive 92/84, 1992 O.J. (L 316).

52. See McKelvey, *supra* note 5, at 461; see also Council Directive 92/84, 1992 O.J. (L 316).

53. See McKelvey, *supra* note 5, at 461; see also Council Directive 92/84, 1992 O.J. (L 316); see also Irvine, *supra* note 44. For example the excise duty rate for table wine in the UK is \$1.69, or 1.01 pound sterling per standard bottle, Denmark's excise duty rate for table wine is \$0.85 or .051p, and Ireland's excise duty rate for table wine is \$2.72 or 1.63 pound sterling per standard bottle. *Id.*; see also *Your Guide To The Latest Exchange Rates*, Online Design NetTrack, On-Line Scotland, (visited Jan. 19, 1998) <<http://www.pcug.co.uk/~esc/gen/eneral1.html>> (providing the currency exchange rate on January 17, 1998).

54. See Irvine, *supra* note 44; see also *Your Guide To The Latest Exchange Rates*, Online Design NetTrack, On-Line Scotland, (visited Jan. 19, 1998) <<http://www.pcug.co.uk/~esc/gen/eneral1.html>> (providing the currency exchange rate on January 17, 1998). See also McKelvey, *supra* note 5, at 462.

into many countries of the EU.⁵⁵ The diversity of these taxes among EU Member States distorts the potential for sales among individual Member States within the EU.⁵⁶ The more money a bottle of wine commands in a particular Member State, the less chance a consumer there has to purchase that bottle because of its internal tax.⁵⁷ This, in turn, inhibits the wine company's ability to market its product in the EU.⁵⁸ Therefore, these differences in internal taxes convolute sales among several EU countries.⁵⁹ The more uniform these taxes, the greater the opportunity a seller has to maximize sales in all the EU countries equally.⁶⁰

Internal taxes imposed by the individual Member States appear to impose the least amount of trade barriers to importers. These duties apply equally to all wine products, including EU wines.⁶¹ Furthermore, these internal taxes, although a trade burden to U.S. wines, are equally burdensome on EU wines.

The United States can attempt through international negotiations to have these rates lowered. However, lower rates may be pragmatically difficult to realize, because individual countries have the right to set their internal tax rate as long as they are in compliance with the directives on minimum excise duty rates.⁶² The EU is in the process of making these internal taxes more uniform within the EU, but some members of the EU Commission hold the opinion that a uniform system cannot be established before the adoption of the single EU currency.⁶³ The various concerns and issues among the interested EU Member States is why the harmonization of

55. See Irvine, *supra* note 44 (asserting that when alcohol excise duties are lowered, it makes it less expensive for a consumer to buy alcohol products, which in fact, increases the sales of the alcohol products). This supports the proposition that the higher the excise duties are, the more expensive products are because of the tax. *Id.* Thus, if the product is more expensive to buy, this affects all sellers as well as importers. *Id.*

56. See COOPERS & LYBRAND, *supra* note 48, §1; see also McKelvey, *supra* note 5, at 457 (asserting that the Individual Member States still maintain their own internal systems of taxation, causing distortions in production costs and prices, and ultimately in the conditions of competition).

57. See Irvine, *supra* note 44 (discussing that the higher the excise taxes are, the more expensive the products are which decrease the demand for these products). Therefore, higher excise taxes make it more difficult for a company, including a wine company, to sell their products within the market of the country that imposes higher taxes on products. *See id.*

58. *See id.*

59. *See supra* note 56 and accompanying text.

60. *See generally* McKelvey, *supra* note 5, at 464-65 (describing how consumers in the EU cross the various member state borders for the reason of purchasing alcoholic products at less expensive rates than their country of origin because of the disparity of excise tax rates among the Member States). The Member States with the lower excise taxes attract foreign consumers from other Member States to buy particular beer and wine products in the Member States with lower excise taxes. *Id.* It follows from these trends that if these excise taxes were more uniform, then each member state would have the equal ability to sell the beer or wine to their native consumers without their citizens desiring to travel to another member state to obtain the product. *Id.* at 470.

61. *See generally* Irvine, *supra* note 44 (discussing and listing the duty rates of the various EU countries, which applies to all wines, and not just imported wines).

62. *See* Council Directive 92/84, 1992 O.J. (L 316).

63. *See VAT/Excise Duties: Uncertainty And Impatience Over Commission Proposals*, EUR. INFO. SERV., EUR. RPT., Nov. 11, 1995, available in LEXIS, Intlaw Library, Ecnnews File (stating that insiders within the EU Commission on Taxes are convinced that the definitive regime cannot be established before the introduction of the single currency, if then).

excise duties is taking such a long time to enact.⁶⁴ Therefore, U.S. wine companies can only do the undesirable act of waiting for the EU to adopt a uniform system of internal taxes, then attempt to establish a bilateral agreement with the EU regarding these rates to reduce the prices of wine within the EU.⁶⁵

C. Government Subsidies

Government subsidies for the wine industry has been a highly disputed issue between the EU and United States.⁶⁶ Unlike the United States, the EU provides massive outlays of government subsidies to its wine industry.⁶⁷ In 1996, the EU commission allocated US\$1.8 billion to subsidize its wine industry.⁶⁸ These subsidies consist of funding support for exporting costs, and for production and non-production⁶⁹ of wine.⁷⁰ In addition, the EU provides internal support to the wine sector including distillation intervention,⁷¹ storage aids,⁷² and vineyard restructuring support.⁷³ Finally, promotional funding is available through the individual wine producing states.⁷⁴

64. See *id.* (stating that harmonization of excise duties dates back only to 1993 and the necessary compromise was obtained only with great difficulty, therefore the Commission decided not to aim for overly ambitious and unrealistic goals, but to concentrate on the problems created by this harmonization, and by all interested parties regarding their specific needs).

65. See *supra* notes 62-64 and accompanying text (addressing the fact that the process of the EU developing a uniform system of excise duties may be lengthy). Thus, it can be inferred that it would be wiser for the United States to wait for the adoption of a uniform system of excise taxes within the EU before seeking reductions, because the United States first has to have knowledge of what these excise tax rates will be before they can seek an agreement with the EU to reduce them.

66. See *Agricultural Outlook*, M2 PRESSWIRE, July 25, 1997, available in 1997 WL 19940879 [hereinafter *Agricultural Outlook*] (asserting that the U.S. wine industry is concerned about foreign markets, notably the EU, continuing to use barriers, including subsidies against trade).

67. See *Wine Inst.*, *supra* note 4, at 31; see also *Agricultural Outlook*, *supra* note 66; see also *Sour Grapes*, *ECONOMIST*, June 25, 1994, available in 1994 WL 12756105.

68. See *Wine Inst.*, *supra* note 4, at 31; see also *Agricultural Outlook*, *supra* note 66; see also *Sour Grapes*, *supra* note 67.

69. See JOHN A. USHER, *THE EUROPEAN COMMUNITY'S COMMERCIAL POLICY AFTER 1992: THE LEGAL DIMENSION* 144 (Marc Maresceau, ed., Martinus Nijhoff Publishers, 1993) (providing that the EU Member States provide subsidies to its wine companies from limiting or not producing wine as the United States does for its farmers).

70. See *Wine Inst.*, *supra* note 4, at 32; see also *Agricultural Outlook*, *supra* note 66.

71. See *THE OXFORD COMPANION TO WINE* 327 (Jancis Robinson, ed., 1994) [hereinafter *OXFORD COMPANION*] (providing that distillation intervention is support for distillation which is the separation of the constituents of a liquid mixture but partial vaporation of the mixture and the separate recovery of the vapor and the residue).

72. See *OXFORD COMPANION*, *supra* note 71, at 925 (stating that a Storage aid is assistance from the EU to various wine makers in the storage of wine which consists of consigning the bottles to professional storage or to establish some form of private cellar).

73. See *Spain: Annual Wine Report*, U.S. Dept. of Agric. Rpts., American Embassy, Madrid, Spain, Nov. 19, 1996, available in 1996 WL 15980545 (maintaining that vineyard restructuring support is government assistance for the growing and harvesting of wine).

74. See *Wine Inst.*, *supra* note 4, at 32; see also *Agricultural Outlook*, *supra* note 66 (providing that the Italian government provided \$12.3 million for the promotion of Italian wine exports, and the French government provided \$7.5 million for the promotion of French wine exports).

Countries generally justify the use of subsidies and other government support for its agricultural products to maintain a system of self-sufficiency in food and beverages.⁷⁵ The EU asserts that self-sufficiency, by a system of government support, provides an EU country with a national independence of food security.⁷⁶ A country with food security has independence and does not have to rely on other countries, thereby giving it international political power.⁷⁷

Wine is protected as an agricultural product under the justification of national self-sufficiency and food security.⁷⁸ However, the EU is being disingenuous by classifying wine as a food or beverage product for food security.⁷⁹ Thus, it may be true that EU government support for wine provides the EU self-sufficiency for the product itself, however, the product of wine itself is not a food or beverage item that is necessary to a nation's survival such as the product of milk or bread.⁸⁰ Moreover, wine is actually a luxury and not an essential agricultural product for food security of a country.⁸¹

EU support for its wine industry goes beyond a desire for self-sufficiency and security.⁸² The EU, especially France, is immensely protective of its wine industry

75. See Jeffrey J. Steinle, Comment, *The Problem Child of World Trade: Reform School for Agriculture*, 4 MINN. J. GLOBAL TRADE 333, 335 (1995) (stating that "many countries aim to achieve self-sufficiency in agricultural products").

76. See *id.* at 335-36 (discussing the idea that in order to preserve national independence, governments subsidize agriculture beyond the level necessary to meet food needs and encourage growth in the agricultural base, resulting in food security and independence); see also *Economic Research Service, International Agriculture and Trade*, *supra* note 34 (providing that products such as bread, milk, meat, and eggs provide a nation with food security).

77. See Steinle, *supra* note 75, at 335 (arguing that subsidies and other government support of agriculture are necessary because the ability to withhold food from a dependent country can create a significant political advantage). A food embargo, for example can detrimentally affect a country during war. *Id.* Even outside of war, economic sanctions, including those that restrict food supplies, have been used to address human rights abuses and dissuade countries from pursuing military goals. *Id.*

78. Wine is universally classified as an agricultural product. See *Agriculture: EU Has Done Well Out Of GATT Agreement*, Says Steichen, EUR. INFO. SERV., EUR. RPT., Nov. 30, 1994, available in LEXIS, Intlaw Library, Ecnnews File [hereinafter *EU Has Done Well*]; see also France: Annual Situation Report, U.S. Department of Agriculture Reports, American Embassy, Paris, Oct. 3, 1997, available in 1997 WL 12492120 (listing wine as an agricultural product). Thus, wine as an agricultural product is protected by the EU under the justification of national self-sufficiency and food security. Steinle, *supra* note 75, at 335.

79. See *infra* notes 80-81 and accompanying text (addressing the disingenuousness of the EU maintaining enormous amounts of subsidies and governmental support under the justification of self-sufficiency and food security, when wine is actually considered a luxury item).

80. See THE WORLD BOOK ENCYCLOPEDIA, Vol. 7, at 461, Vol. 10, at 503, Vol. 18, at 738 (Dale W. Jacobs et al. eds., 1996) (notwithstanding any uses for religious purposes, the major wine producing and consuming nations of France, Italy and Spain are primarily Roman Catholic); see also JOHN A. HARDON, S.J., THE CATHOLIC CATECHISM 462 (1981) (stating that wine is an essential part of a Catholic Mass because Catholics believe that the wine is transubstantiated into the Blood of Christ, which Catholics then drink during the mass).

81. See THE WORLD BOOK ENCYCLOPEDIA, Vol. 21, at 338 (Dale W. Jacobs et al. eds., 1996) (providing that wine is viewed as a product to enhance meals or the dining-out process).

82. See *infra* notes 83-86 and accompanying text (deducing that the EU provides excessive support for its wine industry to protect the esteemed and successful product of wine, rather than maintaining self-sufficiency for a product that is necessary to a nation's food security).

through subsidies and other internal support, for cultural and political reasons.⁸³ Wine is a highly popular and commonly consumed beverage within the EU.⁸⁴ The long history and success of EU wines in the world market provide an incentive for EU wine producing countries, notably France, to maintain the success for this highly revered and prestigious industry.⁸⁵ Accordingly, the EU attempts to preserve the success of its wine industry through subsidies and other government support.⁸⁶

The U.S. government does not provide subsidies for its wine industry.⁸⁷ United States government support for its wine industry consists of funding for promotional programs.⁸⁸ These U.S. government promotional subsidies constituted US\$4.5 million, a mere two percent of the subsidies provided by the EU to its wine makers.⁸⁹ The United States has not provided an abundant amount of internal support for its wine industry because wine is not a culturally revered product as it is in Europe.⁹⁰ Consequently, the United States provides less internal support for its wine industry than does the EU.

Wine originates from the vintification of grapes, therefore, wine is universally categorized as an agricultural product.⁹¹ Many nations, such as the United States, were concerned with the consequence that agricultural subsidies were a burden to global trade.⁹² Therefore, agriculture received great attention and focus at the Uruguay Round of GATT.⁹³ Hence, the Agreement of Agriculture was written and adopted to reduce internal support and export subsidies for agriculture.⁹⁴ The EU, under the Agreement of Agriculture, will cut internal support for wine by twenty

83. See William Drozdiak, *Where Napa's A Dirty Word France Is Bottleneck for California Wines*, WASH. POST, July 5, 1995 (addressing the issue that France becomes silent during the general discussions about the need to break down trade barriers and open up the global marketplace when it comes to the most chauvinistic of beverages-wine). As French vineyards struggle with ballooning labor costs and heavy property taxes, the high quality and low cost of foreign wine from the United States and other countries threaten to overwhelm a sector that has served as a pillar of French civilization. *Id.*, see also French Winegrowers Protest Against New Farm Deal, FOOD & DRINK DAILY, Dec. 13, 1993, available in 1993 WL 2791089 (discussing the 5000 French winegrowers who demonstrated against a reworked Agreement of Agriculture at the Uruguay Round of GATT manifests political support for government wine programs).

84. See *Wine World In Review*, supra note 2.

85. See Drozdiak, supra note 83.

86. See *id.*

87. See supra note 68 and accompanying text.

88. See *id.*

89. See *id.*

90. See *Agricultural Outlook*, supra note 66 (proposing that U.S. consumers only began drinking wine in mass in the early 1990's because of news about the health benefits of moderate consumption, and because a strong U.S. economy supported increased spending on wine at home and in restaurants).

91. See *EU Has Done Well*, supra note 78; see also *France: Annual Situation Report*, supra note 78 (listing wine as an agricultural product).

92. See *Agricultural Outlook*, supra note 66; see also SUMMARY OF PROVISIONS, AGREEMENT ON AGRICULTURE, OFFICE OF THE U.S. REPRESENTATIVE, EXECUTIVE OFFICE OF THE PRESIDENT, THE URUGUAY ROUND AGREEMENTS ACT, STATEMENT OF ADMINISTRATIVE ACTION, Sept. 27, 1994, available in 1994 WL 761603 [hereinafter AGRICULTURE STATEMENT] (stating that subsidies and other market-distorting practices limit U.S. agricultural exports to markets around the world); see also *Agreement on Agriculture*, supra note 36.

93. See *Agreement on Agriculture*, supra note 36.

94. See *id.*; see also supra note 36.

percent and export subsidies by thirty-six percent.⁹⁵ On the surface, it appears that the United States has gained some major ground in reducing EU trade barriers.⁹⁶

Unfortunately, after these reductions, there will still be a tremendous gap between the amount that the EU allocates for its wine sector and what the United States allocates for the same.⁹⁷ This disparity between the United States and the European Union in providing government subsidies for wine makes it extremely difficult for U.S. wine companies to compete with the EU wine makers in the European market.⁹⁸ EU support for its wine companies creates an advantage by enabling the companies to save on costs and sell their products at lower prices due to the internal support and subsidies.⁹⁹

Based on the above-mentioned figures of government subsidies and internal support, it appears that the EU is not providing an equal playing field for imported wine from the United States. The government support issue poses a unique and challenging dilemma for the United States¹⁰⁰ The Agreement of Agriculture was established to lower these support programs for all the applicable agricultural products, and not just wine.¹⁰¹ When analyzing the U.S. agriculture section as a whole, the United States provides massive support for this economic sector as does the EU.¹⁰² Hence, when the Agreement of Agriculture was made, both the EU and the United States were bargaining for a reduction in support for the entire agricultural section as a whole.¹⁰³ Even though the Agreement of Agriculture is beneficial to agriculture in general, the enormous differences between EU and U.S. support

95. See *EU Has Done Well*, *supra* note 78; see also *Agreement On Agriculture*, *supra* note 36.

96. See *Agreement on Agriculture*, *supra* note 36 (meaning that the Agreement on Agriculture will reduce the subsidies and other market-distorting practices). It also strengthens multilateral rules for trade in agricultural products and requires WTO members to reduce protection against trade distorting domestic support programs, and export subsidies. See *id.*

97. There will remain a tremendous gap between the amount that the United States will allocate to its wine industry and what the EU will allocate for the same based on the fact that the U.S. will reduce its internal support for wine of US\$4.5 billion by 20-36%, while the EU will reduce its internal support for wine 20%-36% from US\$1.8 billion. See *Wine Inst.*, *supra* note 4, at 31; see also *Agricultural Outlook*, *supra* note 66; see also *Sour Grapes*, *ECONOMIST*, June 25, 1994, available in 1994 WL 12756105; see also *Agreement on Agriculture*, *supra* note 36. Therefore, there will remain a huge disparity between the amount that the EU will continue to support its wine industry versus the contrasting smaller amount that the United States will provide for its wine sector. See *id.*

98. See *Wine Inst.*, *supra* note 4, at 31; see also *Agricultural Outlook*, *supra* note 66; see also *Sour Grapes*, *ECONOMIST*, June 25, 1994, available in 1994 WL 12756105; see also *Spain: Annual Wine Report*, *supra* note 73; see also Steinle, *supra* note 75, at 338.

99. See *Spain: Annual Wine Report*, *supra* note 73; see also Steinle, *supra* note 75, at 338 (emphasizing that if a country is able to maintain more of its protectionist policies than other nations, then it stands to gain dramatically through increased exports and can raise or lower prices accordingly).

100. See *infra* notes 101-104 and accompanying text (discussing that the government support issue poses a challenge to the United States because the Agreement of Agriculture did not have much of an effect of equalizing the amounts of government support for the wine industry itself as between the EU and the U.S.).

101. See *Agreement on Agriculture*, *supra* note 36, art. 21, annex 1.

102. See Steinle, *supra* note 75, at 340 (citing BUDGET OF THE U.S. GOVT, HISTORICAL TABLES 40-42 (1995)). This comment asserts that the U.S. averaged US\$20 billion in expenditures per year for the previous ten year period on agricultural programs. *Id.* The EEC spent \$36 billion for agricultural products. *Id.* at 340, n.38.

103. See *EU Has Done Well*, *supra* note 78; see also *Agreement On Agriculture*, *supra* note 36.

programs for the wine industry have created an enormous windfall for the EU wine companies.¹⁰⁴

The United States, as with the tariff issue, should actively pursue the reduction of these trade barriers through future bilateral agreements with the EU regarding wine itself.¹⁰⁵ Alternatively, the United States could enter into a separate bilateral agreement concerning wine with the EU in order to decrease the unequal support programs for the EU wine companies.¹⁰⁶

III. FREE CIRCULATION OF GOODS

In addition to tariffs, internal taxes, and subsidies, the European Union imposes various administrative and technical regulations considered by the industry as barriers to the free circulation of goods.¹⁰⁷ These barriers include: (1) licensing regulations,¹⁰⁸ (2) labeling restrictions,¹⁰⁹ (3) marketing regulations,¹¹⁰ (4) regulations on oenological practices,¹¹¹ and (5) certification regulations.¹¹²

A. Licensing Regulations

The EU, through Commission Regulation (EEC) No. 3388/81 of November 27, 1981, established detailed rules with respect to import licenses in the wine sector.¹¹³ Article 1 of 3388/81 requires all wine imports into the Community shall be subject to the production of an import license.¹¹⁴ This regulation requires all wine importers obtain a license before their wine can be imported into the EU.¹¹⁵ Among other things,¹¹⁶ the following information is required for the license: the country of origin

104. A windfall has been created for EU wine companies because there will still be an enormous gap between EU and U.S. expenditures of government support for wine with the Agreement of Agriculture. *See Wine Inst.*, *supra* note 4, at 31; *see also Agricultural Outlook*, *supra* note 66; *see also Sour Grapes*, *supra* note 67; *see also Spain: Annual Wine Report*, *supra* note 73; *see also Steinle*, *supra* note 75, at 338; *see also Agreement on Agriculture*, *supra* note 36.

105. *See infra* notes 297-306 and accompanying text.

106. *See infra* notes 297-306 and accompanying text.

107. *See infra* notes 108-222 and accompanying text (describing licensing regulations, labeling restrictions, marketing regulations, regulations on oenological practices and certification regulations as trade barriers to the free flow of wine within the EU for importers).

108. *See infra* notes 113-25 and accompanying text.

109. *See infra* notes 126-42 and accompanying text.

110. *See infra* notes 143-69 and accompanying text.

111. *See infra* notes 170-204 and accompanying text.

112. *See infra* notes 205-22 and accompanying text.

113. *See* Commission Regulation 3388/81, 1981 O.J. (L 341).

114. *See id.*

115. *See id.*

116. *See generally id.* (listing other requirements such as the country of destination, the type of wine for special wines, concentrated grape juice amounts, etc.).

of the wine producer, color of wine, tariff subheadings,¹¹⁷ and product descriptions.¹¹⁸ Finally, licenses shall be valid from the date of issue until the end of the fourth month following the day of issue.¹¹⁹

Nations participating in the Uruguay Round of GATT recognized that the flow of international trade could be impeded by the inappropriate use of import licensing procedures.¹²⁰ To counter this trade barrier, the participating members of the Uruguay Round of GATT adopted the Agreement On Import Licensing Procedures.¹²¹ The Agreement restricts nations from facilitating unreasonable licensing requirements.¹²² The EU has enacted policies to comply with the Agreement.¹²³

Even though this regulation appears to be a “de minimis” burden on a wine company exporting to the EU market, it nevertheless is a trade barrier.¹²⁴ A wine company may not export its wine product until the company has been issued a license by the EU.¹²⁵ Therefore, a wine maker should be prepared to comply with the EU licensing requirements before exporting to the EU.

B. Labeling Regulations

The labeling requirements that the EU imposes on imported wine has been a contentious issue between the U.S. and the EU.¹²⁶ The EU imposes strict labeling requirements and the U.S. has not been successful in harmonizing labeling regulations with the EU.¹²⁷ The United States Trade Representative¹²⁸ listed these regulations imposed on imported wines as trade barriers to the free flow of goods

117. *See id.* (requiring the subheadings for the tariff items of products made from concentrated grape juice and grape must, unconcentrated grape juice and grape must, and wine of fresh grapes).

118. *See id.*

119. *See id.*

120. *See* Introduction of the Agreement on Import Licensing Procedures, Office of the United States Trade Representative, Executive Office of the President, FINAL TEXTS OF THE URUGUAY ROUND AGREEMENTS, Apr. 15, 1994, reprinted in FRANK W. SWACKER, ET AL., 231-238 (1996).

121. *See id.*

122. *See id.* at Art. 1(3) (mandating that the rules for import licensing procedures be neutral in application and administered in a fair and equitable manner).

123. *See* Commission Regulation 1351/97, 1997 O.J. (L 186) (mentioning that the EU is ensuring better administration of the license scheme imposed by the GATT agreements).

124. With the Agreement of Import Licensing Procedures, which regulates that import licensing procedures be neutral in application and administered fairly, an import license which is a standard item for compliance for all importers makes import licensing procedures a “de minimis” burden. *See* Agreement on Import Licensing Procedures, *supra* note 120.

125. *See* Wilson, *supra* note 33.

126. *See infra* notes 127-42 and accompanying text (addressing the issue of EU labeling regulations and that these regulations are listed as barriers to trade).

127. *See* Council Regulation 2392/89, 1989 O.J. (L 232); *see also* Commission Regulation 3201/90, 1990 O.J. (L 309) (stating wine must conform in description and presentation according to EU regulations); *see also* EU: EU/United States-Barrier of American Goods, REUTER TEXTLINE AGENCE EUR., Apr. 19, 1997, available in LEXIS, Intlaw Library, Ecnws File [hereinafter *Barrier of American Goods*] (discussing labeling as a trade barrier that the U.S. Trade Representative lists as a remaining area of difficulty for U.S. exporters).

128. The USTR is the person who has “primary responsibility for developing, and coordinating the implementation of U.S. international trade policy.” 19 U.S.C. § 2171 (1998).

within the EU.¹²⁹ The labeling requirements the EU imposes on wine are found in Council Regulations 2392/89,¹³⁰ 3201/90,¹³¹ and the numerous amendments to these regulations.

Articles 25, 26, and 27 of Council Regulation 2392/89 provide the permissible and required labeling requirements for imported wines.¹³² This regulation draws a distinction in its treatment of what information is required and limited on wine labeling between imported wines described by reference to a geographic area and imported wines that are not described by reference to a geographic area.¹³³ Under Council Regulation 2392/89, all wine imports for retail sale must carry the labels in the language of importing country and provide the following information: bottler's name and address; name of the region where the grapes were grown; quality category, such as table wine, quality wine or quality wine with special attributes such as Cabernet; quality control number which has been previously issued by the state grading agency; and, alcohol content and net volume in metric units.¹³⁴

In addition to the regulations and restrictions imposed by Council Regulation 2392/89, the EU enacted more regulations and restrictions through Commission Regulation 3201/90, which provides the detailed rules for the description and presentation of wines.¹³⁵ Moreover, a wine importer must also be aware of, and comply with, all the regulations and restrictions imposed by the amendments to these Council regulations.¹³⁶ This process can be very time consuming for a wine company to have to read through in order to comply with EU requirements.¹³⁷

There are hundreds of pages of regulations applicable to the wine trade imposed on U.S. wine companies by the EU, while the U.S. labeling regulations by contrast, equal only eleven pages in length.¹³⁸ In addition, the EU's regulations are composed

129. See *Barrier of American Goods*, *supra* note 127 (asserting the different labeling procedures used by EU Member States serve as barriers to the free movement of products within the EU and can cause lengthy delays in sales).

130. See generally Council Regulation 2392/89, 1989 O.J. (L 232) (laying down the general rules for the description and presentation of wines and grape musts in the EU).

131. See generally Commission Regulation 3201/90, 1990 O.J. (L 309) (providing and laying down the detailed rules for the description and presentation of wines and grape musts in the EU).

132. See generally Council Regulation 2392/89, arts. 25, 26 & 27, 1989 O.J. (L 232) (mandating the only information allowed on labels of non-EU wines).

133. See Council Regulation 2392/89, 1989 O.J. (L 232).

134. See *id.*; see also *Germany Samples the Pleasure of U.S. Wines*, AGEXPORTER, U.S. DEPT. OF AGRIC., Aug. 1, 1997, available in 1997 WL 10881334 (listing these six general requirements for labels to qualify for importation into the EU).

135. See Council Regulation 2392/89, 1989 O.J. (L 232). See also generally Commission Regulation 3201/90, 1990 O.J. (L 309) (providing detailed rules such as the size of the smallest letters of outer packaging being no more than 3 mm high, if the nominal volume of the container is less than 20 cl; no more than 5 mm high, if the nominal volume of the container is 20 cl or more but not more than 100 cl; or no more than 6 mm high, if the nominal volume of the container is more than 100 cl).

136. See also Council Regulation 1472/97, 1997 O.J. (L 200) (amending Commission Regulation 3201/90).

137. See *Barrier of American Goods*, *supra* note 127.

138. See generally Council Regulation 2392/89, 1989 O.J. (L 232); see also generally Commission Regulation 3201/90, 1990 O.J. (L 309); see also Council Regulation 1472/97, 1997 O.J. (L 200) (amending Commission Regulation 3201/90 and providing that certain terms used for geographic descriptions used to designate wine imported from a third country such as "wines originating in the Republic of Hungary," must in particular be shown

in a manner where every item regarding requirements of wine labels is detailed.¹³⁹ In contrast, the United States only provides in its regulations of wine labels, items that are either prohibited or mandatory.¹⁴⁰ Furthermore, although these regulations are uniform within the individual EU states, local customs officials have the ability to interpret and enforce these regulations.¹⁴¹ This method utilized by the EU of interpreting and enforcing the regulations, makes it cumbersome and expensive for U.S. wine companies to conform to the local customs officials interpretations.¹⁴² Therefore, these heavy labeling regulations burden wine imports to the EU.

C. Marketing Regulations

The EU also imposes marketing restrictions on imported wine.¹⁴³ For example, the EU has prevented the terms "table wine" and "reserve" from appearing on non-EU wine.¹⁴⁴ The term "table wine" in Europe is known by ordinary wine drinkers as a type that is consumed with everyday meals.¹⁴⁵ This restriction makes it extremely difficult for U.S. wine producers to market their wine as "dinner wine." Incidentally, dinner wine is the largest selling type of wine in Europe.¹⁴⁶ These types of trade barriers by the EU on imported wines are excessive and extremely burdensome for U.S. wine makers.¹⁴⁷

Another term prohibited from appearing on wine labels of non-EU wine is "reserve."¹⁴⁸ The EU itself does not have any specific regulations against importers using the term "reserve."¹⁴⁹ However, the EU follows and implements the restrictions

on the label of the imported wine in such a way that they are clearly distinguishable from the other information); see also Labeling Requirements For Wine, 27 C.F.R. §§ 4.30-4.39 (1998).

139. See Council Regulation 2392/89, 1989 O.J. (L 232); see also Commission Regulation 3201/90, 1990 O.J. (L 309).

140. See Labeling Requirements For Wine, 27 C.F.R. § 4.30-4.39 (1998).

141. See Council Regulation 2392/89, 1989 O.J. (L 232); see also Commission Regulation 3201/90, 1990 O.J. (L 309). See also *Wine Inst.*, supra note 4, at 28 (explaining although the labeling requirements are the same for all EU member countries, local customs officials interpret and enforce these requirements subjectively making labeling requirements quite expensive for U.S. producers wishing to export to the EU).

142. See Council Regulation 2392/89, 1989 O.J. L. 232; see also Commission Regulation 3201/90, 1990 O.J. (L 309); see also *Wine Inst.*, supra note 4, at 28.

143. See Council Regulation 2392/89, art. 2, 1989 O.J. (L 232); see also Commission Regulation 3201/90, 1990 O.J. (L 309).

144. See Council Regulation 2392/89, art. 2, 1989 O.J. (L 232) (providing that the words "table wine" may be used on EU labels); see also *id.* art. 25 (failing to list the term "table wine" as a permitted description of an imported wine); see also generally Commission Regulation 3201/90, 1990 O.J. (L 309) (permitting only EU nations to use the term *reserve* on wine labels).

145. See *Wine Inst.*, supra note 4, at 28 (addressing the issue of the EU prohibiting the term "table wine" on non-EU wine making it difficult for U.S. wine producers to market their wine as dinner wine, the largest consumption category for wine); see also Council Regulation 2392/89, 1989 O.J. (L 232).

146. See *Wine Inst.*, supra note 4, at 28; see also Council Regulation 2392/89, 1989 O.J. (L 232).

147. See *Wine Inst.*, supra note 4, at 28 (asserting that marketing restrictions on imported wines imposed by the EU are excessively burdensome to U.S. wine companies).

148. See Commission Regulation 3201/90, 1990 O.J. (L 309); see also *Wine Inst.*, supra note 4, at 28.

149. See Commission Regulation 3201/90, 1990 O.J. (L 309); see also *Wine Inst.*, supra note 4, at 28 (providing for only EU Member States to use the term "reserve" on their labels).

of individual Member States in using the term for the labeling on non-EU wine.¹⁵⁰ The term “reserve” is recognized by the EU as either fitting within the French definition of a wine of superior quality or the Spanish interpretation of reserve as a wine from barrel aging.¹⁵¹ The European Union requires that non-EU countries that use these marketing terms on wine exported to the EU be required to establish and utilize their own terms.¹⁵² These regulations effectively bar U.S. wine companies from using terms like “reserve,” on their wines that are shipped to be sold in the EU.¹⁵³ This has proven to be detrimental to U.S. wine companies because the use of the term “reserve” is an extremely valuable marketing tool for selling wine products.¹⁵⁴

In the United States, marketing restrictions are regulated by the Bureau of Alcohol, Tobacco, and Firearms (ATF).¹⁵⁵ The ATF regulations do not provide a definition for quality terms such as “reserve” for wine labels, either for wines that are imported or produced within the United States.¹⁵⁶ The ATF defines table wine as grape wine with an alcohol content not exceeding fourteen percent by volume.¹⁵⁷ United States regulations on the use of quality terms on wine sold in the United States are less burdensome than the regulations imposed by the EU for non-European wines sold in the EU.¹⁵⁸

Moreover, the EU also imposes other marketing regulations on imported wines. First, all wines bottled for importation into the European Union must carry a “lot mark”¹⁵⁹ so the EU can determine how to classify the wine.¹⁶⁰ The package can possess any coding system except bar codes for use as a lot mark, as long as the mark

150. See *Wine Inst.*, *supra* note 4, at 28; see also Commission Regulation 3201/90, 1990 O.J. (L 309) (stating for example, for the purposes of imported wines no expression of certain terms concerning superior quality as referred to in Article 26 (2) of Council Regulation 2392/89, may be translated into German).

151. See Commission Regulation 3201/90, 1990 O.J. (L 309); see also *Wine Inst.*, *supra* note 4, at 28 (addressing the fact that currently, the EU definition of *reserve* either denotes the French interpretation of superior quality or the Spanish definition of barrel aging). Barrel aging is the storage of wine in barrels for aging. See BOOK OF CALIFORNIA WINE 186 (Doris Muscatine, Maynard A. Amerine & Bob Thompson eds. 1984) [hereinafter BOOK OF CALIFORNIA WINE].

152. See Commission Regulation 3201/90, 1990 O.J. (L 309); see also *Wine Inst.*, *supra* note 4, at 28.

153. See Commission Regulation 3201/90, 1990 O.J. (L 309); see also *Wine Inst.*, *supra* note 4, at 28.

154. See BOOK OF CALIFORNIA WINE, *supra* note 151, at 328 (explaining that terms such as *reserve* and *private reserve* have value because they are utilized by some wineries to distinguish a particular type of wine). Thus, if a valuable marketing tool is restricted or prohibited, then there is a detriment to a wine seller.

155. See 27 U.S.C. § 205(e) (1997) (labeling); see also 27 U.S.C. § 205(f) (1997) (advertising); see also Labeling Requirements for Wine, 27 C.F.R. § 4.30 (1998); see also *Agricultural Outlook*, *supra* note 66.

156. See 27 U.S.C. § 205(e) (1997) (labeling); see also 27 U.S.C. § 205(f) (1997) (advertising); see also Labeling Requirements for Wine, 27 C.F.R. § 4.30 (1998); see also *Agricultural Outlook*, *supra* note 66; see also *Wine Inst.*, *supra* note 4, at 28.

157. See 27 U.S.C. § 205(e) (1997) (labeling); see also 27 U.S.C. § 205(f) (1997) (advertising); see also Labeling Requirements for Wine, 27 C.F.R. § 4.30 (1998); see also *Agricultural Outlook*, *supra* note 66; see also *Wine Inst.*, *supra* note 4, at 28.

158. See *supra* notes 144-57 and accompanying text (examining how EU regulations on wine labels are more burdensome than U.S. regulations on wine labels).

159. See *Wine Inst.*, *supra* note 4, at 28 (defining a “lot mark” as a mark used for the purposes of determining the lot or batch of wine to which the bottle belongs).

160. See *id.*; see also Council Regulation 2392/89, art. 26, 1989 O.J. (L 232).

is preceded by an ostensible and distinct capital "L."¹⁶¹ This imposes an added burden on U.S. wine companies because U.S. law does not require the mark.¹⁶²

Second, the EU has imposed unfair marketing regulations on the treatment of awards on wine labels.¹⁶³ The EU only allows a wine bottle to display awards received in a competition officially recognized in the EU.¹⁶⁴ Ironically, the EU only recognizes its own competitions, which provides a disadvantage to U.S. wines in marketing.¹⁶⁵

Finally, the EU and the U.S. have imposed different standards for print size for displaying the percentage of alcohol and the net contents.¹⁶⁶ The EU has set the minimum character sizes for alcohol percentage at 2-5mm, while the range for displaying net contents is 3-6mm, according to the volume of the bottle.¹⁶⁷ This creates a difficulty for U.S. wines, because the United States has set the character size of alcohol content at a maximum size of 3mm.¹⁶⁸ It is expensive for U.S. wine companies to comply with these unnecessarily burdensome regulations.¹⁶⁹

D. Regulations on Oenological Practices

Wine, as an agricultural product, is subject to health and safety regulations for the protection of consumers.¹⁷⁰ Nations attempt to protect the health and safety of wine consumers through the regulation of oenological practices.¹⁷¹ Oenological practices are the specific methods used by wine companies for the harvesting, production, and preservation of wine.¹⁷² Thus, the EU and the U.S. both regulate the oenological practices of wines grown and produced for human consumption within their respective markets.¹⁷³

161. See Council Regulation 2392/89, art. 26, 1989 O.J. (L 232); see also *Wine Inst.*, *supra* note 4, at 28.

162. Compare Council Regulations 2392/89, 1989 O.J. (L 232), and 3201/90, 1990 O.J. (L 309), with Labeling Requirements for Wine, 27 C.F.R. § 4.30 (1998).

163. See Council Regulation 2392/89, art. 26, 1989 O.J. (L 232); see also *Wine Inst.*, *supra* note 4, at 28.

164. See Council Regulation 2392/89, art. 26, 1989 O.J. (L 232) (providing that a description on the labeling of wines may be supplemented by an award granted to the wine in question by an official body or body officially recognized); see also *Wine Inst.*, *supra* note 4, at 28.

165. See Council Regulation 2392/89, art. 26, 1989 O.J. (L 232); see also *Wine Inst.*, *supra* note 4, at 28.

166. See Council Regulation 2392/89, 1989 O.J. (L 232); see also Commission Regulation 3201/90, 1990 O.J. (L 309); see also Labeling Requirements for Wine, 27 C.F.R. § 4.30 (1998).

167. See Council Regulation 2392/89, 1989 O.J. (L 232); see also Commission Regulation 3201/90, 1990 O.J. (L 309).

168. See Labeling Requirements for Wine, 27 C.F.R. § 4.30 (1998).

169. See Wilson, *supra* note 33.

170. See generally Annex VI of Council Regulation 822/87, 1987 O.J. (L 84) (setting forth the basic oenological practices and processes that are allowed by the EU); see also generally Production of Wine, 27 C.F.R. §§ 24.175-254 (1998) (providing the U.S. accepted oenological methods).

171. See Annex VI of Council Regulation 822/87, 1987 O.J. (L 84); see also generally Production of Wine, 27 C.F.R. §§ 24.175-254 (1998).

172. See WEBSTER'S DICTIONARY 754 (3d ed. 1986) (defining "oenology" as the study of wines and wine-making); see also BOOK OF CALIFORNIA WINE, *supra* note 151, at 176-94 (discussing the various oenological processes).

173. See Annex VI of Council Regulation 822/87, 1987 O.J. (L 84); see also generally Production of Wine, 27 C.F.R. §§ 24.175-254 (1998).

Nevertheless, the specific restrictions and regulations of oenological practices that the EU imposes on imported wine are still considered trade barriers.¹⁷⁴ The EU, through Council Regulation 822/87 provided common rules for defining the authorized oenological practices and processes for wine products to be marketed and sold in the EU.¹⁷⁵ The wine products that fail to conform with the authorized oenological practices and processes may not be legally marketed or sold within the EU.¹⁷⁶ For the most part, the EU rejects oenological practices which do not specifically comport with intrinsic EU methods and standards.¹⁷⁷ This is the general policy of the EU.¹⁷⁸

The EU methods and standards are provided in various EU Council Regulations and the subsequent amendments to these regulations.¹⁷⁹ For example, the EU restricts the importation of wines that do not maintain a standard minimum and maximum alcohol content.¹⁸⁰ Another example is the EU mandates that oenological processes and practices for wine intended for direct human consumption must conform to such items as the use of heat treatment,¹⁸¹ aeration,¹⁸² or bubbling using nitrogen,¹⁸³ plus many other similar requirements.¹⁸⁴

The EU maintains that it regulates oenological practices for health, safety and quality reasons.¹⁸⁵ Nonetheless, these regulations amount to trade barriers because not all countries, including the United States, utilize the same oenological practices

174. See 1996 National Trade Estimate, European Union, USTR government reports, Netscape, 1996, (visited Jan. 31, 1998) <<http://www.ustr.gov/reports/nte/1996/eu.html>> [hereinafter 1996 NTE].

175. See generally Council Regulation 822/87, 1987 O.J. (L 84) (replacing 337/79 as the regulation on the common organization of the market in wine).

176. See *id.* (stating that it is advisable to draw up common rules defining at Community level the oenological practices and processes which are the only ones authorized for most wine products).

177. See generally *id.*; see also 1996 NTE, *supra* note 174 (providing that current EU regulations require imported wines to be produced with only those oenological practices which are authorized for the production of EU wine).

178. See generally Council Regulation 822/87, 1987 O.J. (L 84); see also 1996 NTE, *supra* note 174.

179. See Annex VI of Council Regulation 822/87, 1987 O.J. (L 84) (setting forth the basic oenological practices and processes that are allowed by the EU). For an example of an amendment to Council Regulation 822/87, see Council Regulation 1544/95, 1995 O.J. (L 148); see also Council Regulation 1108/82, 1982 O.J. (L 133) (providing for the determination of Community methods for the analysis of wines); see also generally Council Regulation 3220/90, 1990 O.J. (L 308) (laying down conditions for the use of certain oenological practices). For an example of an amendment to Council Regulation 3220/90, see Council Regulation 2053/97, 1997 O.J. (L 287).

180. See generally Council Regulation 822/87, 1987 O.J. (L 84) (stating that it appears necessary to provide that certain import wines intended for direct human consumption must have a minimum actual alcoholic strength corresponding to that of table wines).

181. See OXFORD COMPANION, *supra* note 71, at 488 (providing that heat treatment is when the wine has gone through a process of thermotherapy).

182. See OXFORD COMPANION, *supra* note 71, at 7 (explaining that aeration is the deliberate and controlled exposure to a substance of air, and particularly to its reactive component oxygen).

183. See OXFORD COMPANION, *supra* note 71, at 677 (defining the process of bubbling or boiling of nitrogen, as a mineral element and inert colorless, odorless and tasteless gas that is extremely useful to both grape-growing and wine-making).

184. See Annex VI of Council Regulation 822/87, 1987 O.J. (L 84).

185. See Introductory Body of Council Regulation 822/87, 1987 O.J. (L 84) (setting forth that these oenological restrictions are imposed in order to guarantee a certain quality level, proper vinification and preservation of wine products).

and processes as does the EU.¹⁸⁶ Many wine producing nations possess their own unique system of oenological processes and practices.¹⁸⁷ A safe and effective oenological method takes time to develop and perfect.¹⁸⁸ These EU mandated standards effectively act as a trade barrier to importers, because an importer must conform to these extremely technical requirements of oenological methods.¹⁸⁹

However, the United States has obtained some temporary concessions from the EU in this area.¹⁹⁰ Since the mid-1980's, the EU has permitted use of some methods of U.S. oenological practices by allowing extensions to temporary EU regulatory exemptions.¹⁹¹ The EU has provided a derogation to the policy of U.S. wine companies having to strictly conform to EU methods in order to have the ability to market and sell their products within the EU.¹⁹² The EU provided the derogations to their policy for the purpose of fostering harmonious development of trade in wine products between the EU and the U.S.¹⁹³ The EU allows U.S. practices in the realm of scientific knowledge, which have proven to be equivalent to oenological processes permitted within the Community.¹⁹⁴ The EU asserted that the United States has an effective control system in force.¹⁹⁵ In particular, the EU declared that the U.S. is in compliance with provisions governing the production, marketing and disposal of wine¹⁹⁶ for direct human consumption.¹⁹⁷

186. See 1996 NTE, *supra* note 174 (asserting that not all U.S. oenological practices are authorized in the EU, which implies that the U.S. is not utilizing all the same oenological practices as the EU).

187. See BOOK OF CALIFORNIA WINE, *supra* note 151, at 185 (describing some differences between California wines and French wines of experimenting with malolactic fermentation in Chardonnays). "Malolactic fermentation is the conversion by malolactic bacteria of wine's malic acid to the weaker acid, lactic acid." *Id.*

188. See Introductory Body of Council Regulation 1873/84, 1984 O.J. (L 176) (recognizing the extent to which the United States has spent time for compliance with provisions governing the production and marketing of wine, and the wine imports have undergone certain oenological processes which have been developed to be identical or equivalent to oenological processes permitted in the Community); see also BOOK OF CALIFORNIA WINE, *supra* note 151, at 160-161 (presenting the fact that winemaking is a complex process).

189. See 1996 NTE, *supra* note 174.

190. See 1996 NTE, *supra* note 174; see also Council Regulation 1873/84, 1984 O.J. (L 176), last amended by Council Regulation 2612/97, 1997 O.J. (L 354) (extending the period of the exemption to December 31, 1998).

191. See 1996 NTE, *supra* note 174; See Council Regulation 1873/84, 1984 O.J. (L 176), last amended by Council Regulation 2612/97, 1997 O.J. (L 353).

192. See 1996 NTE, *supra* note 174; see also art. 1, Council Regulation 1873/84, 1984 O.J. (L 176) (asserting by way of derogation of EU oenological regulations, it shall be permitted for a wine company to offer or dispose of wine products for direct human consumption that are derived from grapes harvested and vinified in the territory of the United States for which certain processes authorized may have been used during manufacturing or storage operations).

193. See Introductory Body of Council Regulation 1873/84, 1984 O.J. (L 176). However, at the time of this regulation's enactment, the U.S. wine industry did not possess a strong foothold in the European market, and Europe dominated the U.S. market at the time. See also Walker, *supra* note 9 (providing the significant fact that in 1986, the total value of U.S. wine exports were only US\$61 million, less than the US\$84 million gain in 1996). In 1986, the countries of the present EU were the world leaders in the production and sales of wine. See *id.* Therefore, it can be implied that the EU had more to gain by allowing this derogation in order to keep U.S. restrictions of their products at a minimum. See *id.*

194. See Introductory Body of Council Regulation 1873/84, 1984 O.J. (L 176).

195. See *id.*

196. Production, marketing and disposal of wine refers to oenological practices here.

197. See Introductory Body of Council Regulation 1873/84, 1984 O.J. (L 176).

The EU's derogations granted to U.S. wine companies, have only been a series of extensions to EU regulatory exemptions which are merely temporary.¹⁹⁸ Without these temporary exemptions, the majority of U.S. wines would be immediately prohibited from entering the EU.¹⁹⁹ Additionally, not all of the U.S.'s oenological practices are authorized in the EU.²⁰⁰ In order for an importer to have its wine making practices approved by the EU, it must apply to the European Union Commission and provide numerous technical studies which may take many years.²⁰¹ This presents a real problem for U.S. wine companies who have gained some market share in the EU to both maintain their current market share and to expand their sales and market share in the future.²⁰²

The EU has only granted temporary acceptance for some U.S. oenological practices, practices which have been previously acknowledged as satisfactory by the EU by implication of its temporary exemptions of U.S. practices.²⁰³ Thus, it appears the EU is not regulating U.S. oenological practices for the protection of health and safety of the EU consumers, but is illegitimately restricting the U.S. by impeding U.S. imports.²⁰⁴ Therefore, the United States should seek long-term EU acceptance of the oenological practices of U.S. wine companies which are now temporarily accepted, and obtain further acceptance of other U.S. oenological practices.

E. Certification Regulations

The certification regulations administered by the EU are closely related to the labeling, marketing, and oenological regulations.²⁰⁵ Certification regulation is the process that wine importers must go through to obtain approval and become qualified to import.²⁰⁶ The certification process is the process which actually determines whether an importer is in compliance with the labeling and oenological regu-

198. See 1996 NTE, *supra* note 174; see also Council Regulation 1873/84, 1984 O.J. (L 176).

199. See 1996 NTE, *supra* note 174; see also Council Regulation 1873/84, 1984 O.J. (L 176).

200. See 1996 NTE, *supra* note 174; see also Council Regulation 1873/84, 1984 O.J. (L 176); see also Annex VI of Council Regulation 822/87, 1987 O.J. (L 84) (listing certain authorized oenological practices and processes within the EU).

201. See *Wine Inst.*, *supra* note 4, at 29.

202. See 1996 NTE, *supra* note 174.

203. See 1996 NTE, *supra* note 174; see also Council Regulation 1873/84, 1984 O.J. (L 176), last amended by Council Regulation 2612/97, 1997 O.J. (L 353).

204. See *Wine Inst.*, *supra* note 4, at 30 (proclaiming that because the EU gave special concessions to Australian oenological methods in its 1992 Wine Agreement, which was a display of leniency, this conveys that the EU's true motive behind its strict oenological and labeling standards is protectionism); see *generally Agreement Between the European Community and Australia on Trade in Wine*, 1994 O.J. (L 86) (expounding on EU concessions to Australia). See also *infra* notes 257-71 and accompanying text (discussing the possibility that the United States may have a valid claim against the EU in the World Trade Organization for its restrictive policies of U.S. oenological practices).

205. See *Barrier of American Goods*, *supra* note 127.

206. See Introductory Body of Council Regulation 2390/89, 1989 O.J. (L 232); see also *Barrier of American Goods*, *supra* note 127; see also Council Regulation 822/87, art. 70, 1987 O.J. (L 84).

lations.²⁰⁷ This is the official procedure where U.S. wine making practices are approved and certified.²⁰⁸ The European Union requires that imported wines meet compositional limits according to European Union standards.²⁰⁹ More specifically, Council Regulation 2390/89 provides that the imported products covered by Council Regulation 822/87²¹⁰ must be accompanied by a certificate and an analysis report issued by a body or service designated by an importer of the product's origin which meets the conditions regulated by Council Regulation 822/87.²¹¹ In order for an exporter to demonstrate these standards have been met, a laboratory analysis is required.²¹² This laboratory analysis has to be completed either by an EU laboratory, or by a laboratory officially recognized by the country in which the wine originated.²¹³ The analysis requires information such as total alcohol strength by volume, actual alcoholic strength by volume, total dry extract,²¹⁴ total acidity,²¹⁵ volatile acid content,²¹⁶ citric acid content,²¹⁷ and the total sulphur dioxide content.²¹⁸

Compliance with this certification regulation is time-consuming and adds costs to the wine producer.²¹⁹ According to the Office of the United States Trade Representative, this procedure is a barrier to the free movement of these products within

207. See Introductory Body of Council Regulation 2390/89, 1989 O.J. (L 232); see also *Barrier of American Goods*, *supra* note 127; see also Council Regulation 822/87, art. 70, 1987 O.J. (L 84).

208. See Council Regulation 2390/89, 1989 O.J. (L 232); see also *Barrier of American Goods*, *supra* note 127; see also Council Regulation 822/87, art. 70, 1987 O.J. (L 84).

209. See Commission Regulation 2390/89, 1989 O.J. (L 232); see also *Barrier of American Goods*, *supra* note 127.

210. See generally Council Regulation 822/87, 1987 O.J. (L 84) (providing for the establishment of rules governing production and control of the development of wine-growing potential, rules governing oenological practices and processes, a price system, and rules governing intervention and other measures to improve market conditions, arrangement for trade with third countries, and rules governing circulation and release to the market).

211. See Council Regulation 2390/89, 1989 O.J. (L 232); see also *Barrier of American Goods*, *supra* note 127; see also Council Regulation 822/87, 1987 O.J. (L 84) art. 70 (providing that imported wines must complete a laboratory analysis).

212. See Council Regulation 2390/89, 1989 O.J. (L 232); see also *Barrier of American Goods*, *supra* note 127; see also Council Regulation 822/87, art. 70, 1987 O.J. (L 84).

213. See Council Regulation 2390/89, 1989 O.J. (L 232) art. 1.

214. See OXFORD COMPANION, *supra* note 71, at 376 (explaining that dry extract is the sum of the non-volatile solids of a wine: the sugars, non-volatile acids, minerals, phenolics, glycerol, glycols, and traces of other substances such as proteins, pectins and gums).

215. See OXFORD COMPANION, *supra* note 71, at 4 (defining acidity as the fresh, tart, or sour taste produced by the natural organic acids present in a liquid).

216. See OXFORD COMPANION, *supra* note 71, at 1052 (adding that volatile acidity of a wine is its total concentration of those naturally occurring organic acids of wines that happen to be separable by distillation).

217. See OXFORD COMPANION, *supra* note 71, at 240 (stating that citric acid is a common plant acid, abundant in some fresh fruits such as lemons, but rare in grapes). It is also one of the acids used in wine-making for the purposes of acidification. *Id.*

218. See OXFORD COMPANION, *supra* note 71, at 929 ([providing sulphur dioxide is formed when elemental sulphur is burned in air, it is the chemical compound most widely used by the wine-maker, principally as a preservative and a disinfectant). Sulphur dioxide, as fumes from burning sulphur, has been used since antiquity to preserve and disinfect during the production and storage of foods. *Id.*

219. See *Barrier of American Goods*, *supra* note 127 (mentioning that certification procedures may serve as barriers to the free movement of products within the EU and can cause lengthy delays in sales due to the need to have products tested and certified to account for differing national requirements); see also *Wine Inst.*, *supra* note 4, at 31 (estimating that this process costs US\$80 - US\$100 for each type of wine).

the EU and can cause lengthy delays in sales due to the need to have products tested and certified to account for differing national requirements.²²⁰

One possible solution to eliminate this barrier is for the United States to obtain a bilateral agreement with the EU for a mutual recognition of testing methods and certification measures.²²¹ In addition, the United States needs to obtain concessions for the harmonization of standards linked to the evolving EU-wide legislative standards.²²² The United States could limit the cost to its wine makers by harmonizing standard and testing methods with the EU and therefore reducing the effect these methods have as barriers to trade.

IV. RESTRICTIONS ON GEOGRAPHIC NAMES

The issue of geographic names on the wine bottles continues to be a pugnacious issue in negotiation between the U.S. and the EU.²²³ The EU has continued to restrict the use of protected geographical names (such as Champagne, Burgundy and Chablis) to grapes produced in those regions.²²⁴ The European Union does not allow certain wines with names that the EU classifies as a European Appellation of Origin²²⁵ to be sold within the EU.²²⁶

The reason for this restriction by the EU is that European wines have sustained a long tradition of labeling and selling wines based on the region of origin of the type of grape utilized in making the wine.²²⁷ Each region's distinct quality is regulated by strict guidelines with respect to variety,²²⁸ yields,²²⁹ irrigation,²³⁰ and other production practices.²³¹ These regional practices provide the unique characteristics and quality of the wine that is grown and produced.²³² For example, even though Burgundy is a

220. See *Barrier of American Goods*, *supra* note 127.

221. See *id.*

222. See *id.*

223. See *Agricultural Outlook*, *supra* note 66; see also Chen, *supra* note 19, at 29 (discussing the differences of how the EU and the U.S. recognize the extent of geographic names which equals friction); see also *BOOK OF CALIFORNIA WINE*, *supra* note 154, at 440-43 (describing the controversy between Europe and the United States over U.S. winemakers continued use of semi-generic names).

224. See Commission Regulation 3201/90, 1990 O.J. (L 309); see also *Agricultural Outlook*, *supra* note 66.

225. As stated in the introduction of this Comment, the EU defines a geographic indication or an appellation of origin as the designation of a country, a region, or a locality which serves to indicate that a product originates from that place and owes its quality or characteristics to its geographical surroundings. See Commission Regulation 3201/90, 1990 O.J. (L 309); see also *Agricultural Outlook*, *supra* note 66; see also Chen, *supra* note 19, at 29.

226. See Commission Regulation 3201/90, 1990 O.J. (L 309); see also *Agricultural Outlook*, *supra* note 66; see also Chen, *supra* note 19, at 29.

227. See Commission Regulation 3201/90, 1990 O.J. (L 309); see also *Agricultural Outlook*, *supra* note 66; see also Chen, *supra* note 19, at 29.

228. See *OXFORD COMPANION*, *supra* note 71, at 1048 (discussing vine varieties are "distinct types of vine within one species of vine genus *vitis*").

229. See *OXFORD COMPANION*, *supra* note 71, at 1061 (discussing a yield as "an important statistic in wine production, which measures how much a vineyard produces").

230. See *WEBSTER'S DICTIONARY* 1196 (3d ed. 1986) (stating irrigation is the process of watering the vineyards).

231. See *Agricultural Outlook*, *supra* note 66.

232. See *id.*

well known-region in France that produces quality red wines with pinot noir grapes, pinot noir seldom appears as a geographic indication on Burgundy labels.²³³ Moreover, France's Bordeaux wines seldom mention the name of cabernet sauvignon, and Champagnes rarely mention the name of chardonnay, though these are the dominant grapes used in these regions.²³⁴ Thus, the reason why certain EU wines are labeled with the name of Burgundy is because these wines originate and are produced within the specific region of Burgundy, France.²³⁵

In contrast, the name Burgundy is utilized by U.S. wine companies to denote a specific type of vine and grape; not to identify the region where the wine originated.²³⁶ Moreover, U.S. wine makers consider terms such as Burgundy, Champagne and Chablis as semi-generic labels.²³⁷ The U.S. wine companies deem these terms as semi-generic labels because they have not had the long history of utilizing the appellations of origin as a distinguishing attractive marketing tool compared with the EU wine companies.²³⁸ The United States within its domestic wine market, does not impose many restrictions on geographic names.²³⁹ As previously stated in this Comment, the ATF only imposes regulations on items such as alcohol content.²⁴⁰ Therefore, the EU and the U.S. have two competing views on the use of certain geographic names on wines, which make tensions over this issue high.

233. *See id.*

234. *See id.*

235. *See* ALEXIS LICHINE, ALEXIS LICHINE'S NEW ENCYCLOPEDIA OF WINES AND SPIRITS 128-31 (4th ed. 1985) (providing Burgundy is an appellation of origin from the central eastern region of France known as Burgundy).

236. *See id.*; *see* BOOK OF CALIFORNIA WINE, *supra* note 151, at 440-41 (explaining that semi-generic names are considered by the United States as specific wine types).

237. *See* BOOK OF CALIFORNIA WINE, *supra* note 151, at 440-41; *see also* LICHINE, *supra* note 235 at 128-31; *Agricultural Outlook*, *supra* note 66; *see* Chen, *supra* note 19, at 52 (asserting that by virtue of their own success, the French wines most familiar to the American public—*Burgundy*, *Chablis*, *Champagne* are the likeliest to be observed as generic designations); *see also* 27 C.F.R. § 4.24 (1997) (providing that semi-generic designations may be used to designate wines of an origin other than that indicated by such name only if there appears in direct conjunction therewith an appropriate appellation of origin disclosing the true place of origin of the wine, and if the wine so designated conforms to the standard of identity, and if no standard, to the trade understanding of such class or type). Examples of semi-generic names recognized by the ATF are *Chablis*, *Claret*, *Champagne* and *Chianti*. *See id.*

238. *See* BOOK OF CALIFORNIA WINE, *supra* note 151, at 440-43 (describing the controversy between the United States and France in utilizing geographic names on wine labels). However, the United States does recognize some U.S. appellation of origins to describe areas such as the Napa Valley where a particular wine originates. *See id.* at 443-44; 27 C.F.R. §§ 4.25, 9.23 (1997). These U.S. appellations of origins are used to denote a wine where at least 75 percent of the wine is derived from the fruit or agricultural product in the specific viticultural area indicated. *See* BOOK OF CALIFORNIA WINE, *supra* note 151, at 443-44; *see also* 27 C.F.R. §§ 4.25, 9.23 (1997). Moreover, these U.S. appellations of origin such as the Napa Valley, are used to denote where the wine originated, not as a name for the wine such as Chablis. *See* BOOK OF CALIFORNIA WINE, *supra* note 151, at 443-44. Therefore, the United States and the EU place a different value on the use of geographic names. *See id.*

239. *See* 27 C.F.R. § 4.21 (1997).

240. *See id.*

When U.S. companies export wine to the EU, they must comport with the EU restrictions and regulations on names of origin.²⁴¹ This adds costs to the marketing and labeling of wine because the U.S. wine companies must develop different labels and names for their wine products destined for the EU.²⁴² These additional costs amount to trade barriers within the EU.²⁴³

Although EU restrictions on geographic names are trade barriers to U.S. importers, these restrictions do have some redeeming value. The EU and the United States assess the value and purpose of geographical names from two completely different viewpoints.²⁴⁴ United States wine companies generally view a geographic name as a property right, such as a trademark.²⁴⁵ Additionally, U.S. wine makers utilize geographical names as a marketing tool, and not to identify the wine product with a particular area of the country.²⁴⁶ On the other hand, the EU views a geographic name as a manifestation and guarantee that the wine product comes from a specific wine growing area, which conforms to a certain tradition.²⁴⁷ The EU possesses the opinion that the specific origin of the wine itself has an inherent value because EU consumers believe that no place outside the region of the geographic indication can produce the same product that the consumer expects.²⁴⁸ Furthermore, EU consumers believe that the geographic name manifests a particular type of wine with unique characteristics and qualities, that is endemic to the specific geographic area where the wine originates.²⁴⁹ The EU's basis for protecting a geographic name is the inherent value to a wine of identifying the product by its origin, this is a legitimate concern and desire of the EU.²⁵⁰ With the U.S. and the EU viewing the value and purpose of

241. See Commission Regulation 3201/90, 1990 O.J. (L 309); see also Council Regulation 2392/89, 1989 O.J. (L 232).

242. See Wilson, *supra* note 33.

243. See BOOK OF CALIFORNIA WINE, *supra* note 151, at 428 (noting that European prohibition of wine sales for California wines that used a semi-generic name has been as trade barrier since the Madrid Convention of 1891, which forbid trade in wines that utilized European geographic names).

244. See Louis Lorvellec, *You've Got To Fight For Your Right To Party: A Response To Professor Jim Chen*, 5 MINN. J. GLOBAL TRADE 65, 68-71 (1996) (discussing the difference between Professor Chen, who wrote from the American viewpoint that a geographic name is valued by its property right, and the French view that a geographic name derives its value from the characteristics and qualities of the region of origin of the wine itself).

245. See Chen, *supra* note 19, at 50 (stating the ultimate question of exclusive rights to the geographic terms such as *Chablis* or *Champagne* depend on federal and state trademark law).

246. See Chen, *supra* note 19, at 50-51; 27 C.F.R. § 4.24 (1997). For example Chianti, is not recognized as a Appellation of Origin in the U.S. See *id.*

247. See Lorvellec, *supra* note 244, at 67.

248. See Lorvellec, *supra* note 244, at 67, 70 (asserting that for the information to be accurate on an AOC label of wine, no place outside of the AOC region can produce the exact same product that the consumer expects). "In some regions, one could find the same geographic conditions (the nature), but not the human (culture)." See *id.* "In others the human factors may be the same, but the geology or climate does not produce those characteristics expected by the consumer." See *id.* "It is a matter of ensuring the product conforms to the quality that the consumer expects." See *id.*

249. See Lorvellec, *supra* note 244, at 70.

250. See *id.* at 65, 70 (citing Harvard University as an example of something that has a distinct meaning, both geographically and qualitatively, which has an inherent value to it, just as a distinct geographic indication has in identifying a wine to its origin).

a geographic name from completely different standpoints, tension between the two sides over regulation and protection persists.²⁵¹

The U.S.'s position is that its wine companies will continue to utilize previously accepted terms for the U.S. market, and at the same time, continue to make changes in using the terms to qualify for selling their wine in the EU.²⁵² Therefore, geographic names will remain a hotly debated issue between the EU and the United States until some type of compromise through a bilateral agreement, can be reached, or in the alternative, the WTO adjudicates the matter in a suit filed either by the EU or the United States.²⁵³

V. TWO ALTERNATIVE MEANS TO REDUCE TRADE BARRIERS

United States wine exporters have two alternative means to reduce trade barriers. The first possible means of reducing trade barriers is to seek legal recourse for some of these barriers through the World Trade Organization (WTO).²⁵⁴ The second possibility is the establishment of bilateral agreements between the United States and the EU. This portion of this Comment is neither a call to arms for U.S. wine companies, nor is it an advocacy of a certain position, or a course of action. The purpose of this part is to list and discuss the two primary routes the United States and EU may take to settle these disputes on trade barriers of imported wines into the EU.

251. See *Agricultural Outlook*, *supra* note 66; see also Chen, *supra* note 19, at 50-51 (recognizing that U.S. winemakers utilize geographic indications as a property right or marketing tool); see also Lorvellec, *supra* note 244, at 70 (asserting that the purpose of a geographic name is to manifest that a particular wine actually possesses the qualities and characteristics which are due to the geographic location of its origin, and to impart to the product a certain quality and specific character of a nature which distinguishes them).

252. See Chen, *supra* note 19; see also *Agricultural Outlook*, *supra* note 66.

253. See *infra* notes 272-96 and accompanying text (discussing the possibility of WTO action based on a dispute over geographical names).

254. The World Trade Organization (WTO) is the international dispute settlement body to settle trade disputes for members of the WTO. See PIERRE PESCATORE, WILLIAM J. DAVEY & ANDRES F. LOWENFELD, HANDBOOK OF WTO/GATT DISPUTE SETTLEMENT, Vol. 1 & 2, at 9, 12 (1991, revised 1996) [hereinafter HANDBOOK].

A. *Ramifications of the Uruguay Round of Multilateral Trade Negotiations of the General Agreement of Tariffs & Trade and the World Trade Organization*

The WTO²⁵⁵ is one avenue for the United States to utilize for settlement of the increasingly contentious issues of geographic names and oenological regulations. The Uruguay Round of GATT's Agreement on the Application of Sanitary and Phytosanitary Measures (ASPM) and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) are the specific trade agreements that could determine these two issues.²⁵⁶

255. On January 1, 1995, participating nations, including the United States and the EU, at the Uruguay Round of Multilateral Trade Negotiations of the General Agreement of Tariffs and Trade (GATT), created the World Trade Organization (WTO) to provide adjudication for trade disputes between nations. *See Agreement Establishing The World Trade Organization*, Office of the United States Trade Representative, Executive Office of the President, Final Act Embodying the Results of the Uruguay Round Agreements Act, Apr. 15, 1994, reprinted in FRANK W. SWACKER, ET AL., 1-13 (1996). With the establishment of the WTO, there are new opportunities to seek recourse against nations that continue to restrict wine imports. *See HANDBOOK, supra* note 254. (Note: some commentators debate the actual effectiveness of the WTO in practice to settle international trade disputes. However, this subject is outside the scope of this Comment, which will instead provide how the WTO should work according to its purpose and articles.) According to Article III of the WTO, the "WTO shall facilitate the implementation, administration and operation, and further the objectives of this Agreement and of the Multilateral Trade Agreements." *Id.* art. III. "The WTO shall also provide the forum for negotiations among its Members concerning their multilateral trade regulations in matters dealt with under this Agreement." *Id.* Additionally, the "WTO may provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference." *Id.* This multilateral GATT agreement, giving life to the WTO, establishes a dispute settlement system which mandates contracting members comply with the Uruguay Round agreements and the WTO or else face penalties by the complaining party imposing unilateral trade sanctions. *See HANDBOOK, supra* note 254. Signatory nations of the WTO may file a claim as a Member to the Dispute Settlement Body (DSB) of the WTO. *See* Ramon R. Gupta, Comment, *Appellate Body Interpretation Of The WTO Agreement: A Critique In Light Of Japan-Taxes On Alcoholic Beverages*, 6 PAC. RIM. L. & POL'Y J. 683, 692 (1997). To initiate proceedings against another Member, the complaining party must first participate in a consultation session with the party to whom the complaining party is aggrieved. *See id.* at 692. If no settlement is made between the two opposing parties, the complaining party may request the DSB establish a panel to adjudicate the matter. *See id.* The WTO may prove important in the future for U.S. wine companies attempting to be in the process of marketing and exporting their products in the EU. *See HANDBOOK, supra* note 254. If any of the Uruguay Round Agreements, or any other unilateral trade agreement in regards to wine are violated, the United States can have legal recourse through the WTO by filing a claim. *See id.* Before the WTO was established, the United States had to resort to the threat of a trade war, with another nation or trading partner, over a trade dispute about market access. *See* Tom Incantalupo, *U.S. Slaps Big Tariffs on Europe*, NEWSDAY, Nov. 6, 1992, at 8 (stating as an example, in 1992, the United States almost entered into a trade war with the EU by imposing a 200% punitive duty on EU white wine over the stalemate in talks over European government price supports for oilseeds). Since the WTO has been established, a forum is provided where disputing parties may file claims for GATT violations and may argue their case and allow the WTO to decide the proper relief. *See HANDBOOK, supra* note 254. Therefore, this way to settle disputes is favorable because it provides an alternative to a mutually damaging trade war.

256. *See Agreement on the Application of Sanitary and Phytosanitary Measures*, Office of the United States Trade Representative, Executive Office of the President, Final Texts of the GATT Uruguay Round Agreements, Apr. 15, 1994, reprinted in FRANK W. SWACKER, ET AL., 61-75 (1996) [hereinafter ASPM Final Texts]; *see also Agreement on Trade Related Aspects of Intellectual Property Rights*, Office of the United States Trade Representative, Executive Office of the President, Final Texts of the Uruguay Round Agreements, Apr. 15, 1994, reprinted in FRANK W. SWACKER, ET AL., 331-66 (1996) [hereinafter TRIPs Final Texts].

1. Possible U.S. Claim Against the EU for the EU's Oenological Restrictions

The United States may find it prudent to bring a claim before the WTO for the EU's restrictions on U.S. oenological practices.²⁵⁷ As stated previously, these EU oenological restrictions impede the free flow of U.S. wines into the EU.²⁵⁸ If the United States decides to bring a claim against the EU for these oenological restrictions, the United States will probably claim the EU violated the ASPM agreement.²⁵⁹

The ASPM agreement was enacted to ensure import restrictions placed on phytosanitary and sanitary²⁶⁰ measures which were based on legitimate health and safety reasons rather than serving as disguised trade barriers.²⁶¹ Although the ASPM agreement does not establish or deal with any particular sanitary or phytosanitary measure such as an oenological regulation, the agreement does establish a number of general requirements and procedures to ensure that a measure is intended to protect against the stated risk, and not to serve as a covert trade barrier.²⁶² Since the EU regulates oenological practices for health, safety and quality reasons, the EU oenological regulations of imported wines are phytosanitary and sanitary measures subject to the ASPM agreement.²⁶³

The United States continues its attempt to obtain permanent recognition from the EU for many of their oenological practices.²⁶⁴ The EU mandates that wine imports comply with both the EU practices and regulations, and those of the wine exporter's country.²⁶⁵ One of the requirements of the ASPM agreement is import restrictions must have a proven scientific basis to restrict access to consumers.²⁶⁶ Although the EU is unable to demonstrate any health risks from any current U.S. wine making

257. See *infra* notes 259-71 and accompanying text (discussing that the United States may have a valid claim to the WTO for possible EU violations of the ASPM agreement).

258. See *supra* notes 126-69 and accompanying text.

259. See *Wine Inst.*, *supra* note 4, at 30; 1996 NTE, *supra* note 174; *Overview of the Agreement On The Application Of Sanitary And Phytosanitary Measures*, Office of the United States Trade Representative, Executive Office of the President, The Uruguay Round Agreements Act, Statement of Administrative Action, Sep. 27, 1994, available in 1994 WL 761638 (GATT) [hereinafter *Overview of ASPM Statement*].

260. See *Overview of ASPM Statement*, *supra* note 259 (defining phytosanitary and sanitary measures as measures that "generally deal with protecting human, animal, and plant life and health from risks of plant or animal-borne pests or diseases, or additives, contaminants, toxins or disease-causing organisms in foods, beverages, or feedstuffs").

261. See *id.* (explaining that the purpose of the Agreement was to ensure these measures are "in fact intended to protect against the risk asserted, rather than to serve as a disguised trade barrier").

262. See *id.*

263. See Council Regulation 822/87, 1987 O.J. (L 84) (setting forth that these oenological restrictions are imposed in order to guarantee a certain quality level, proper vinification and preservation of wine products); see also *Overview of ASPM Statement*, *supra* note 259.

264. See 1996 NTE, *supra* note 174.

265. See Council Regulation 822/87, 1987 O.J. (L 84); see also Council Regulation 1873/84, 1984 O.J. (L 176).

266. See *Overview of ASPM Statement*, *supra* note 259 (stating that the Sanitary and Phytosanitary Agreement relies on whether the measure has a basis in science and is based on a risk assessment).

practices, the EU still reserves the right to refuse access to those U.S. wines it deems to have undergone unacceptable changes in composition, or do not meet EU standards.²⁶⁷ The U.S.'s view is that the EU restrictions on U.S. oenological practices are not based on scientific reasons, but instead arbitrary restrictions on market access which constitute trade barriers to the free flow of wine within the EU.²⁶⁸ The EU's restrictions on U.S. oenological practices are barriers the United States is presently attempting to reduce or eliminate.²⁶⁹ If the United States cannot obtain these reductions through a bilateral agreement with the EU, the U.S. may decide to file a claim with the WTO against the EU for violating the ASPM agreement.²⁷⁰ Likewise, if the United States can prove certain EU restrictions do not have a scientific basis, then the United States has a valid claim against the EU in the WTO.²⁷¹

2. Possible Dispute in the WTO Over Geographical Names

The use of geographic names on wines is another dispute between the U.S. and the EU that may be determined by the WTO. United States wine companies desire the ability to continue utilizing geographic names considered by U.S. wine companies as semi-generic indications on wines sold within the U.S. market as well as wines exported to the EU.²⁷² On the other hand, the EU wants to prohibit the U.S.

267. *See id.*

268. *See id.*; *see also Wine Inst.*, *supra* note 4, at 30. This type of argument by the EU of restricting a product based on stated but questionable health and safety concerns has not been exclusive to wine. *See* GATT Dispute Panel Report on United States Complaint on EC Measures Concerning Meat and Meat Products, *republished in LAW AND PRACTICE OF THE WORLD TRADE ORGANIZATION*, Case Booklet X, at 18-20 (Aug. 18 1997). The United States brought suit against the EU in the WTO for violating the ASPM Agreement for EU's ban on the importation and sale of animals, that had been administered from some of the hormones at issue for growth promotion purposes. *See id.* The United States claimed that this ban was inconsistent with the ASPM agreement because this ban was not based on a legitimate scientific purpose, but was instead an unjustifiable protectionist measure for the purpose of keeping U.S. beef products out the EU market. *See id.* The EU asserted that this ban was not inconsistent with the ASPM agreement because it was based on scientific principles based on a risk study that called for regulatory action. *See id.* However, the WTO panel concluded that the EU had in fact violated the ASPM agreement with this ban. *See id.* at 269. The panel held that the EU, "by adopting arbitrary or unjustifiable distinctions in the levels of sanitary protections it considers to be appropriate in different situations which result in discrimination or disguised restriction on international trade, has acted inconsistently with the requirements contained in the Agreement of Sanitary and Phytosanitary Measures." *Id.* The United States might be able to utilize this decision and argue by analogy that the EU is restricting U.S. oenological practices under a disguised restriction of international trade. As previously discussed in this Comment, the EU has given temporary derogations to U.S. oenological processes. *See 1996 NTE*, *supra* note 174; *see also* Council Regulation 1873/84, 1984 O.J. (L 176), last amended by Council Regulation 2612/97, 1997 O.J. (L 353). Therefore, it appears, that since the EU has been consistently allowing some of the U.S. oenological practices, although temporarily, that U.S. practices are safe, and the EU might be restricting U.S. oenological processes as a disguised trade barrier. *See Wine Inst.*, *supra* note 4, at 30.

269. *See 1996 NTE*, *supra* note 174.

270. *See id.*; *see also* ASPM Final Texts, *supra* note 256; *see also infra* notes 297-317 and accompanying text (discussing possible reduction of trade barriers between the U.S. and the EU through bilateral or multilateral agreements).

271. Because the regulation of oenological practices and processes is an extremely complex and technical area, the determination of whether the U.S. has any merit to their claims, or the probability of the U.S. obtaining a favorable ruling is beyond the scope of this Comment.

272. *See Chen*, *supra* note 19; *See also Agricultural Outlook*, *supra* note 66.

wine makers from using EU protected geographical names within the United States, as well as the EU market.²⁷³ The TRIPs agreement is the relevant GATT agreement for a possible claim filed to the WTO on the issue of U.S. wine makers' use of geographic names on wines.²⁷⁴

Articles 22 through 24 of the TRIPs agreement provide for the protection of geographic indications.²⁷⁵ First, the TRIPs agreement compels signing nations to provide an interested party the ability to prohibit the use of geographic indications that misinform consumers regarding the geographic origin of a product.²⁷⁶ Second, a country must either invalidate or refuse the registration of a trademark containing a spurious representation of a product's geographical origin that tends to mislead consumers.²⁷⁷ Third, the TRIPs agreement forbids the use of a geographic name which falsely conveys to consumers that the product originates in another area, even though it in fact states the correct origin of the product.²⁷⁸ Fourth, Article 23 of the TRIPs agreement provides specific protections for the geographic names of wines.²⁷⁹ Here, under the TRIPs agreement, a geographic indication of a wine not originating in its stated location may not be utilized or registered, although the actual geographic origin is provided on the label.²⁸⁰ Furthermore, Articles 23 and 24 require signatory nations to the TRIPs agreement to enter into further negotiations on the issue of geographic names.²⁸¹

273. See BOOK OF CALIFORNIA WINE, *supra* note 151, at 440-43.

274. See generally TRIPs Final Texts, *supra* note 256 (setting forth standards concerning the availability, scope and use of geographic names).

275. See generally TRIPs Final Texts, *supra* note 256; see also Summary of Provisions, Agreement on Trade Related Aspects Of Intellectual Property Rights, Office of the United States Trade Representative, Executive Office of the President, The Uruguay Round Agreements Act, Statement of Administrative Action, Sept. 27, 1994, available in 1994 WL 761796 [hereinafter TRIPs Statement].

276. See TRIPs Final Texts, *supra* note 256, art. 22 (providing "Members shall provide the legal means for interested parties to prevent: the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in geographical area other than the true place of origin of the good"); see also, TRIPs Statement, *supra* note 275, at Summary of Provisions.

277. See TRIPs Final Texts, *supra* note 256, at art. 22; see also TRIPs Statement, *supra* note 275, at Summary of Provisions.

278. See TRIPs Final Texts, *supra* note 256, at art. 22; see also TRIPs Statement, *supra* note 275, at Summary of Provisions.

279. See TRIPs Final Texts, *supra* note 256, at art. 23 (stating that each "Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines from wines not originating in the place indicated by the geographical indication in question, 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"); see also Summary of Provisions, TRIPs Statement, *supra* note 275.

280. See TRIPs Final Texts, *supra* note 256, at art. 23; see also TRIPs Statement, *supra* note 275, Summary of Provisions.

281. See TRIPs Final Texts, *supra* note 256, at arts. 23, 24 (providing "in order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPs concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system"); see also generally, TRIPs Statement, *supra* note 275, at Summary of Provisions.

There are some exceptions to these provisions.²⁸² The prohibition in Article 23 is inapplicable if a geographic name has been used on a particular product for ten years before April 15, 1994.²⁸³ Secondly, a nation does not have to prohibit the continued use of a geographic indication that is used on a product where the geographic name has been registered or its rights have been acquired through good faith use.²⁸⁴ Finally, an exception applies to a geographic name obtained before the TRIPs agreement was enacted, or before the country of origin instituted protections for the geographic name.²⁸⁵ The WTO decided on September 19, 1997, to begin compiling what it terms a factual note on the use of geographic names on wines in relation to the TRIPs agreement.²⁸⁶

The EU may possibly bring a claim against the United States in the WTO for violating the TRIPs agreement by U.S. practices of using semi-generic names on their wine labels.²⁸⁷ The EU may assert the United States is violating the TRIPs agreement because the uses of these semi-generic names might be false representations misleading a consumer as to a wine's origin.²⁸⁸ The United States may be able to counter this argument by asserting that an exception under Article 24 of the TRIPs agreement applies to most of the U.S.'s uses of semi-generic labels. The United States has been allegedly using these semi-generic names for at least ten years prior to the TRIPs agreement.²⁸⁹

The EU may also argue that the U.S. is violating the TRIPs agreement by failing to reach an agreement on U.S. uses of semi-generic geographical names such as Beaujolais or Burgundy.²⁹⁰ The EU interprets the provision requiring signatory nations to enter into further negotiations on the issue of geographic indications, as mandating negotiations for U.S. wine companies to phase out the use of semi-generic

282. See TRIPs Final Texts, *supra* note 256, at art. 24 (proclaiming inter alia, "nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (a) for at least 10 years preceding 15 April 1994 or (b) in good faith preceding that date"); see also TRIPs Statement, *supra* note 275, at Summary of Provisions.

283. See TRIPs Final Texts, *supra* note 256, at art. 24; see also TRIPs Statement, *supra* note 275, at Summary of Provisions.

284. See TRIPs Final Texts, *supra* note 256, at art. 24; see also TRIPs Statement, *supra* note 275, at Summary of Provisions.

285. See TRIPs Final Texts, *supra* note 256, at art. 24 (providing where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either: (a) before the date of application of these provisions in that Member as defined in Part VI, or (b) before the geographical indication is protected in its country of origin).

286. See *WTO To Begin Examination Of Geographical Wine Descriptions*, INT'L TRADE RPTR., WORLD NEWS, Sept. 24, 1997, available in 1997 WL 14 ITR 1611.

287. See *infra* note 288 and accompanying text.

288. See TRIPs Final Texts, *supra* note 256, at arts. 23, 24; see also TRIPs Statement, *supra* note 275, at Summary of Provisions.

289. See TRIPs Final Texts, *supra* note 256, at art. 23, 24; see also TRIPs Statement, *supra* note 275, at Summary of Provisions; see also *Wine Inst.*, *supra* note 4, at 34.

290. See *WTO To Begin Examination Of Geographical Wine Descriptions*, *supra* note 286.

names.²⁹¹ Conversely, the U.S. interprets this provision as an obligation to discuss, but not necessarily to reach an agreement on U.S. wine companies' use of semi-generic geographic names.²⁹² The EU may assert this failure by the United States to reach an agreement with the EU on this issue is a violation of the TRIPs agreement.²⁹³ Both sides appear to have merits to their arguments, therefore this issue will probably have to be settled by the WTO.²⁹⁴ However, the use of widely used terms such as Champagne and Chablis will probably not have to be phased-out because these terms have become so generically used outside of the EU, that the intrinsic identification value of these names have significantly diminished.²⁹⁵ Alternatively, the WTO may issue a ruling for U.S. wine makers to phase-out only some of the semi-generic terms they use, while simultaneously requiring the EU to allow U.S. wine companies to use the semi-generic geographical names such as Champagne and Chablis that have lost their place of origin.²⁹⁶

B. Reduction of EU Trade Barriers Through Bilateral Agreements

Another possible means of reducing EU trade barriers to imported wine is through bilateral agreements between the U.S. and the EU.²⁹⁷ The EU market is less open and imposes more burdens on U.S. wines than the United States imposes on EU wine imported into the United States.²⁹⁸ However, except for the issues of geographic names and oenological practices, the current trade barriers and restrictions imposed by the EU toward imported wine do not appear to violate any international agreement.²⁹⁹ Therefore, the best strategy for the United States to take to reduce these EU trade barriers is to enter into bilateral or multilateral agreements with the EU.³⁰⁰

In light of the trade gap, the U.S. should seek reductions of EU wine subsidies and internal support programs.³⁰¹ In order to level the playing field, the United States has to obtain agreements with the EU to reduce the EU's level of support, because

291. *See id.*; *see also Wine Inst.*, *supra* note 4, at 34.

292. *See WTO To Begin Examination Of Geographical Wine Descriptions*, *supra* note 286; *see also Wine Inst.*, *supra* note 4, at 34.

293. *See WTO To Begin Examination Of Geographical Wine Descriptions*, *supra* note 286; *see also Wine Inst.*, *supra* note 4, at 34.

294. If the EU can win its argument that the US's failure to reach an agreement with the EU on this issue is a violation of the TRIPs agreement, the WTO could possibly set the basis for protections of EU geographical names by mandating that the U.S. reach an agreement with the EU for phasing out the use of some of the semi-generic labels by U.S. wine companies. *See TRIPs Final Texts*, *supra* note 256, at arts. 23, 24; *see also TRIPs Statement*, *supra* note 275, at Summary of Provisions.

295. *See Chen*, *supra* note 19, at 62.

296. *See WTO To Begin Examination Of Geographical Wine Descriptions*, *supra* note 286.

297. *See infra* notes 298-316 and accompanying text.

298. *See supra* notes 31-222 and accompanying text.

299. *See supra* notes 31-222 and accompanying text.

300. Since the EU trade barriers of tariffs, internal taxes, government subsidies and internal support, license regulations, labeling regulations, marketing regulations and certification regulations do not appear to be violating any international agreement, the only option left to the U.S. is to enter into bilateral or multilateral agreements with the EU.

301. *See Wine Inst.*, *supra* note 4, at 32; *see also Agricultural Outlook*, *supra* note 66.

the U.S. public will not permit the United States to subsidize to the extent of the EU.³⁰² With public concerns over the huge national debt, it is highly unlikely the American people would be in favor of utilizing enormous amounts of public expenditures to subsidize the wine industry so that U.S. wine companies could compete on a more level playing field with the EU wine companies.³⁰³

The United States should seek further reductions on EU wine tariffs through bilateral agreements. Compared with other nations, the United States is a high consumption society.³⁰⁴ Consequently, American consumers want the ability to buy the products they desire.³⁰⁵ The U.S. government, in response to this public sentiment, maintains a policy of keeping tariffs on imported goods into the United States at low levels, and advocates a global market with low tariffs.³⁰⁶ In light of these views, it is more prudent for the U.S. to seek tariff reductions for wines imported into the EU, rather than to raise tariffs in the United States to match EU tariff rates on wine.

The U.S. imposes fewer regulations and restrictions upon labeling, marketing, and certification of imported wines than does the EU.³⁰⁷ The United States should seek more access to the EU market by bilateral agreements that would reduce or eliminate some of these labeling, marketing and certification regulations which impede the free circulation of imported wine within the EU.³⁰⁸

302. See Steven Moore & Dean Stansel, *How Corporate Welfare Won: Clinton and Congress Retreat from Cutting Business Subsidies*, CATO POL'Y ANALYSIS No. 254, May 15, 1996, (visited Feb. 8, 1998) <<http://www.cato.org/pubs/pas/pa-254.html>>; see also Anne-Marie Rosato, *Corporate Welfare: Helping the Greedy, Not the Needy*, 1996, (visited Feb. 8, 1998) <<http://www.nashville.net/~coa/preface.htm>>; see also *National Debt Reduction*, FAMILY OF EAGLES LTD. (visited Feb. 8, 1998) <<http://famofeagles.com/debt.html>>. These articles manifest the unpopularity from the public of existing subsidies and internal support of U.S. companies, and with the public concern over the national debt, increased subsidies and internal support for another industry notably the wine industry is politically impossible in the United States.

303. See Moore & Stansel, *supra* note 302; see also Rosato, *supra* note 302; see also *National Debt Reduction*, *supra* note 302.

304. See WILLIAM DIETRICH, *IN THE SHADOW OF THE RISING SUN* 204 (1991) (providing that since World War II, the attention has been creating and stimulating demand sufficient to absorb the cornucopia of goods pouring out from our unparalleled productive capabilities). Tax policies during this period were directly linked to consumption and to questions of demand management. See *id.* Demand stimulus has tended to channel spending toward increased consumption and less investment. See *id.*

305. See *id.*

306. See *id.*

307. To compare the amount of regulations the EU imposes on imported wines with the amount of regulations the U.S. places on imported wines, see Council Regulation 2392/89, 1989 O.J. (L 232) (general rules for labeling and marketing wine); see also Commission Regulation 3201/90, 1990 O.J. (L 309) (detailed rules for labeling and marketing wine); see also Council Regulation 822/87, 1987 O.J. (L 84) (provides for general rules for certification of wine); see also Council Regulation 2390/89, 1989 O.J. (L 232) (provides for detailed rules for certification of wine); see also Council Regulation 3887/89, 1989 O.J. (L 378) (amending Council Regulation 2390/89 by extending the trial period from Dec. 31, 1989 to July 31, 1990); see also generally 27 U.S.C. § 205(e) (1997) (labeling); see also 27 U.S.C. § 205(f) (1997) (advertising); see also generally Labeling and Advertising of Wine, 27 C.F.R. § 4 (1998).

308. See *supra* note 300 and accompanying text; see also *Barrier of American Goods*, *supra* note 127 (stating that the USTR is attempting, through multilateral negotiations, to reduce EU restrictions affecting U.S. exports).

Additionally, the issues of internal taxes and licensing requirements are *de minimis* barriers to U.S. wine exporters.³⁰⁹ However, these types of barriers are implemented by most nations and are generally not as unfair or discriminatory as the other trade barriers.³¹⁰ Unless the EU increases its licensing regulations on imported wines, there appears no reason to press the EU on this matter.³¹¹ Additionally, the EU is in the process of harmonizing its system of internal taxes. Therefore, the United States must be patient and allow the EU to harmonize its system of internal taxes before forming a policy to reduce EU's internal taxes, if it desires to form such policy at all.³¹²

The United States has a fair chance, through bilateral agreements, to reduce some of these EU trade barriers to imported wine.³¹³ It is in the best interests of both the United States and the EU to settle these issues of trade barriers through a bilateral or multilateral agreement rather than force the United States to initiate a trade war.³¹⁴ Since the U.S. imports more wine from the EU than the EU imports from the U.S., the U.S. should have some bargaining power to obtain concessions from the EU. This is because it is not in the EU's interest, which has a net surplus in wine, to leave the U.S. with no other choice than to enact sanctions against EU wine imported into the U.S.³¹⁵ The U.S. has had some past success in obtaining trade concessions from the EU to reduce trade barriers to imported wines.³¹⁶ Therefore, because of the United State's past success in reaching some agreements with the EU, the U.S. should be successful in obtaining future bilateral agreements for the reduction of trade barriers of wine imported in the EU.³¹⁷

VI. CONCLUSION

There are massive differences and discrepancies between the EU and the U.S. in their regulation of imported wine. The EU imposes more burdens on imported wines than does the U.S.. Although these trade barriers appear to be inconsistent with the Uruguay Round of GATT's spirit of reducing trade barriers to liberalize and

309. See *supra* notes 44-65 & 113-25 and accompanying text.

310. See McKelvey, *supra* note 5, at 465; see also Commission Regulation 3388/81, 1981 O.J. (L 341).

311. See McKelvey, *supra* note 5, at 465; see also Commission Regulation 3388/81, 1981 O.J. (L 341).

312. See McKelvey, *supra* note 5, at 465.

313. See *infra* notes 314-17 and accompanying text.

314. See Incantalupo, *supra* note 255 (where a trade war almost occurred between the U.S. and the EU in 1992 over the issue of EU restrictions on U.S. soybean products, and the U.S. was going to slap a punitive tariff on EU white wines).

315. See *Wine World In Review*, *supra* note 2; see also *French Wine in U.S. Export Boom*, AGENCE FRANCE-PRESSE, Oct. 1, 1997 (presenting figures that the exports of French table wine outside of Europe grew by 57 percent last year, chiefly because of a boom in sales to the U.S.). This data manifests that the U.S. market is an important market for EU wines, as conveyed by the fact that the U.S. market provided most of the huge increase to French wine makers, who compose the EU's largest wine producing nation.

316. See Council Regulation 1873/84, 1984 O.J. (L 176) (recognizing certain U.S. oenological practices based on an agreement with the U.S.).

317. See *id.*

expand free trade among nations,³¹⁸ these regulations do not violate GATT or any other international agreement. Except for the issues of the EU's oenological and geographic indications regulations, the United States currently does not have any legal recourse through the WTO from current trade restrictions and barriers. The issues of EU regulations on oenological practices and geographic names might end up before the WTO for adjudication. However, for the other trade barriers the United States will have to seek additional trade agreements with the EU for increased and fairer market access for the U.S. wine industry in the EU.³¹⁹

Wine appears to be one of the most lucrative and fastest growing agricultural products that the United States now has to offer. Some of the U.S. wine companies who have succeeded in the EU can resoundingly claim the Latin saying, "In Vino Veritas,"³²⁰ because wine provides an enormous potential for wealth and opportunities for a wine maker. The United States should support the growth of this industry by a vigorous strategy of opening up restrictive markets. Despite the trade barriers the EU imposes on imported wine, the EU will remain one of the most advantageous markets for U.S. wines.³²¹ Therefore, the United States should support the U.S. wine industry by "leveling the playing field" with the EU for the international trading of wines. The United States can only accomplish this task through an active and aggressive policy of reducing EU trade barriers on imported wines.

318. See *Agreement On Agriculture*, *supra* note 36.

319. See *supra* notes 28-222 and accompanying text (stating that other barriers are tariffs, internal taxes, government subsidies and internal support, licensing, labeling, marketing and certification regulations).

320. "In Vino Veritas," is Latin for, "In Wine there is Truth."

321. See *Wine World In Review*, *supra* note 2.