October 17, 2024

Ms. Laura Buffo
Chair of the Trade Policy Staff Committee
Policy Staff Committee
Office of the United States Trade Representative
Submitted via regulations.gov

Re: Significant Foreign Trade Barriers for the 2025 National Trade Estimate Report, Docket Number USTR- 2024-0015

Dear Ms. Buffo:

Wine Institute submits the following comments on behalf of the California wine industry in response to the Federal Register Notice requesting public comments on foreign trade barriers affecting the export of U.S. wine.

Wine Institute is the premier organization representing California wineries in the U.S. and around the world. With over 1,000 winery and affiliated business members, the majority of which are small and medium sized family-owned businesses, the organization initiates and advocates public policy that enhances the ability to responsibly produce, promote, and enjoy wine. We currently manage wine export promotion programs in 41 markets.

California represents more than 80 percent of U.S. wine production and over 95 percent of U.S. wine exports. The state of California is the fourth largest wine producing region in the world after France, Italy, and Spain. In 2022, California wine contributed more than $170 billion annually to the national economy and supported 1.1 million jobs.

The U.S. is the world's largest wine market and in 2023, U.S. wine imports topped $7.1 billion, 84% of which came from France, Italy, New Zealand, Spain, and Australia. The 2023 trade imbalance in wine was $5.870 billion, 76% of which came from the European Union. U.S. wine exports totaled $1.230 billion, representing only 3% of global wine exports. U.S. wines were exported to 133 countries in 2023, and the top five wine export markets were Canada, the European Union, the United Kingdom, Japan, and South Korea.

We believe there are significant growth opportunities for California wine in emerging markets, but U.S. wines are at a significant competitive disadvantage to producers in the EU, Australia, Chile, and New Zealand who receive preferential import tariffs from Free Trade Agreements (FTA).

We urge the Administration to undertake targeted efforts to reduce tariff barriers and put U.S. wine on a level playing field. As a longtime cooperator in USDA's Market Access Program (MAP), we were pleased to receive significant additional export promotion funding through the Regional Agricultural Promotion Program (RAPP) which will be invested in developing markets included in this report such as India and Vietnam.

This report reviews key trade barriers that U.S. wine exporters face in foreign markets at the time of the submission. Some items from last year's report have been removed, not because they have been resolved, but because they have been overtaken by more important issues. The value of the removal of these barriers in the short term is difficult to quantify because exporters face both tariff and non-tariff barriers, and it is impossible to separate the impact of the layered effect of multiple obstacles.

Wine is a branded product, not a commodity, and it can take years to develop retail channels and gain market share. In many of the countries discussed in this report, our trading partners are establishing a foothold thanks to preferential market access granted via free trade agreements. We can, however, look to the impact of the U.S. Japan FTA as a guide to the potential of wine export sales when tariffs are removed. Between 2020 and 2022, U.S. wine exports increased 36% due in large part to the tariff reductions included in that agreement.

Wine Institute continues to engage with the U.S. Congress to highlight the need to grow agricultural exports. We also have representatives on several Trade Advisory Committees. We greatly appreciate the ongoing leadership and diligent efforts of the U.S. Congress, U.S. Trade Representative, Alcohol and Tobacco Tax and Trade Bureau, Department of Agriculture's Foreign Agriculture Service, Department of Commerce, Environmental Protection Agency, Food and Drug Administration, Department of State, and other U.S. officials involved in reducing the numerous barriers to U.S. wine exports worldwide.

Thank you for this opportunity to provide comments on the above-referenced Federal Register Notice.

Please contact us if you have any questions.

Respectfully Submitted,

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ATTACHMENT

NATIONAL TRADE ESTIMATE REPORT

WINE INSTITUTE 2025 SUBMISSON

EUROPEAN UNION (EU)

Tariff Barrier: 32 Euro per Hectoliter
Technical Barrier to Trade: Fragmentation of the EU single market: lack of a harmonized labeling scheme for the QR code required for off-label presentation of mandatory nutrition and ingredient information in accordance with G/TBT/N/EU/952 and Regulation (EU) No. 2021/2117.

California wineries printed nearly 20 million labels in advance of the measure's entry into force based on reasonable expectations, shared by the EU wine sector, that when choosing to label mandatory ingredient information by electronic means, they could use a QR code designated with the (i) symbol. Those companies faced a costly and time intensive process for changing labels when the European Commission's DG AGRI November 24, 2023, guidance document was released indicating that small (i) was not sufficient and that the term "ingredients," in one EU language, was required.

Our members, large and small, started printing fully compliant back labels and strip labels for the 2024 vintage with the term "ingredients" next to the QR code in April of this year, consistent with the DG AGRI official guidance.

As of the submission of this report, we are aware that the DG AGRI guidance is not being adhered to and that additional text may be required in France, Germany, and Sweden and that Finland requires the QR code to be labelled in both Swedish and Finnish. Importer interpretations of the requirements vary and some of our members have been told that Member State customs authorities require that the QR code be labelled with the terms "nutrition and ingredients" or "nutrition declaration and ingredient values," and in some cases, the phrase "Scan QR Code for ingredients & nutritional information".

Wineries need at least six months to a year to make label changes. U.S. exporters have long relied on the use of one label for the sale of wine in all EU Member States. Last minute requests for unique QR code labelling is costly and disrupts the ability to distribute wine with one label to multiple Member States.

Early adopters of the EU nutrition and ingredient labelling requirements for wine have already changed their labels twice for the EU market, first using the (i) and then the single term ingredients. The current demands on our companies for additional labelling of the QR code will be the third time U.S. companies are told to change their labels in a short time period. If a clearly defined and communicated harmonized EU-wide solution is not secured soon, it will result in a significant trade barrier for U.S. exporters.

We request that the U.S. government urge the European Commission to secure a single harmonized approach for the identification of the QR-code for the sale of wine in all EU Member States and that until a unified approach is secured and clearly communicated, ensure that EU Member States take a flexible approach to enforcement and allow wine labelled with the single term "ingredients", in one language, to continue to be sold across the Single Market.

How the EU resolves this issue will impact how QR codes are used in the future. Our goal is to preserve the ability to use a single QR code for multiple purposes. Italy is already using one QR code for nutrition, ingredients, and recycling information and there is an expectation that QR codes will replace bar codes in the future at the retail level. There is also ongoing work at Codex Alimentarius and the International Organization for Vine and Wine (OIV) that seeks to establish good regulatory practices for the off-label provision of information to consumers using this technology including proposals to identify the QR code with a symbol, rather than words.

Transparency on Methods of Analysis
U.S. wine is often subject to testing by individual Member States upon import to the EU and we are already seeing an increase in such testing despite the fact that the 2006 U.S.-EU Wine Bilateral Agreement only requires testing for alcohol content.

Regulation (EU) No. 1169/2011 notes that typical values may be used to report mandatory ingredient and nutritional information. However, Article 31(3) of the FIC Regulation states that the energy value and the amounts of nutrients "shall be those of the food as sold, considering also the tolerances referred to in the previous question".

We are concerned that some Member States may test wine upon importation to confirm the accuracy of the stated nutritional values. To minimize this risk, we need to know what methods of analysis will be used by EU Member State enforcement authorities.

Technical Barrier to Trade: Fragmentation of the EU Single Market due to EU Member States implementing different recycling labeling requirements before harmonized rules are implemented under the Packaging and Packaging Waste Regulation (PPWR): G/TBT/N/EU/953.

We are aware that in the absence of a harmonisation legal framework which is expected under the PPWR, Member States may take action to regulate. Italy has requirements which can be satisfied by including recycling information inside the QR code. We understand that Spain plans to introduce new environmental labelling obligations that would include a color-coded bar on the back of the label indicating in which recycling bin consumers should place wine containers. It is our understanding that Spain will not permit this information to be included in the QR code and that it must be indicated on the label. We are concerned that Member State specific requirements will continue to proliferate and request that the U.S. government encourage the European Commission to expedite the harmonized rules and to encourage Member States to allow unique recycling information to be presented inside the QR code.

Sanitary and Phytosanitary Barrier: Crop Protection Substances

Wine Institute monitors EU SPS and TBT notifications lowering maximum residue limits (MRLs) for crop protection materials for wine grapes. We have concerns with the elimination of MRLs that restrict U.S. wine grape growers' ability to use certain substances while at the same time, derogations are given to farmers in EU Member States allowing the continued use of the same substance.

We ask that the U.S. government continue to raise concerns with the EU's hazard approach to the restriction of crop protection substances and that it oppose all efforts by the EU to use MRLs to influence environmental policy beyond EU borders, as evidenced by its July 6, 2022 notification G/TBT/N/EU/908 seeking to address the global concern of the reduction in pollinators.

Technical Barrier to Trade: Intellectual Property Protection Restrictions on Common Wine Names

Previous Wine Institute NTE submissions have elaborated on the EU's restrictions on traditional terms and the long-standing efforts to address the European Commission's failure to act upon U.S. wine industry applications for the approval of the use of certain traditional terms. This barrier remains in the EU and is growing in third markets as the EU gains protection of semi- generics and the exclusive use of traditional terms in FTAs.

We are closely monitoring EU efforts to protect generic plant variety names. For example, montepulciano is a wine grape varietal name which is recognized by the U.S. Alcohol and Tobacco Tax and Trade Bureau. Montepulciano d'Abruzzo, an Italian wine GI, translated into English is "Montepulciano from Abruzzo". Our position is that any country negotiating an or Geographical Indication (GI) agreement should indicate which part of a compound GI is generic. Unfortunately, the EU-China GI agreement could potentially restrict any wine made with the montepulciano grape. "Vino nobile di Montepulciano" is protected in the agreement with a footnote stating, "The protection of the term 'vino nobile di' is not sought." Thus designating Montepulciano the singular protected term. Further evidence of European producers trying to confiscate grape varietal names happened in 2023 when Italian producers managed to gain rights to the vermentino grape in the EU, thus preventing other wine-growing regions, including France, from using the plant name. Due to the agreement with the EU, U.S. producers can still call the grape by its original name.

We are monitoring developments in the OIV to catalog grape varietals by both national and international names. As the U.S. is not a member of the OIV, we are concerned how U.S. grape varietals will be reflected and how this work may lead to more restrictions on common wine varietal names in the future.

Wine Institute works closely with the Consortium for Common Food Names to preserve the legitimate right of producers and consumers worldwide to use common names, to protect the value of internationally recognized brands, and to prevent new barriers to trade. We are also supportive of the Safeguarding American Value-Added Exports (SAVE) Act. The legislation would amend the Agriculture Trade Act of 1978 to include and define a list of common names for agricultural commodities, food products, and terms used in marketing and packaging of products. The bill would also direct the Secretary of Agriculture and the U.S. Trade Representative to negotiate with our foreign trading partners to defend the right to use common names for agricultural commodities.

CANADA

Provencial Technical Barriers to Trade: Preferential access given to Ontario VQA wines in the recent Ontario retail expansion and unique French labeling requirements for Quebec under Bill 96.

<u>Ontario</u>
On December 14, 2023, the government of Ontario announced a plan to allow sales of beer, wine, cider and low-alcohol ready-to-drink beverages in all Ontario convenience, grocery and big box stores. On May 24, 2024 Ontario announced that the phase-in of this plan would be completed by October 31, 2024. The expansion adds alcohol sales to thousands of small retailers and some of the largest food

and beverage retailers in Ontario. Wine Institute members seek non-discriminatory access for their full product range to this promising market segment.

Ontario law gives the Liquor Control Board of Ontario (LCBO) a monopoly on wholesaling of wine imports and monopoly control of wine sales to these new outlets. LCBO designates desirable premium wines as "Vintage Essentials" and has a policy of not supplying imported "Vintage Essentials" wines to the new retail outlets – denying access to this important commercial opportunity. Ontario VQA Vintage Essentials wines have both access to the new outlets and preferential shelf space.

Quebec

The Act respecting French as the official and common language of Quebec, otherwise known as Bill 96, resulted in changes to the regulation on the language of commerce and business in the province of Quebec. These regulatory amendments were published on June 26, 2024, and the Office québécois de la langue française (Quebec Office of the French Language) has since provided additional guidance on the implementation of these changes and obligations on businesses operating in the province of Quebec. The regulation will come into force on June 1, 2025. Wine Institute remains concerned about how this measure could impact generic and descriptive terms contained within a registered trademark, appellations of origin, and wine varietal names.

CHINA

Tariff Barrier: 54 percent

U.S. wine exports continue to be harmed by disputes between the Chinese and U.S. governments that are unrelated to wine. On April 2, 2018, China increased the tariff on U.S. wine imports from 14% to 54% in retaliation for U.S. government trade actions on Chinese consumer goods, steel, and aluminum. Wines from the EU pay 14% and wines from Australia, Chile, and New Zealand pay 0% tariff. These damaging tariffs have caused severe harm to California wineries that have invested decades in the Chinese market.

We note that a 2023 WTO panel ruled that China's 2018 15% tariff on U.S. wine and other products, imposed to retaliate for US §232 actions, violate WTO rules. However, China appealed that decision, and the absence of a functioning WTO Dispute Settlement Mechanism means we expect the tariffs to remain in place for some time.

UNITED KINGDOM

Tariff Barrier: 26 GBP per Hectoliter
Other Barrier: Excise Taxes applied in a manner that increase the administrative burden on importers and will lead to fewer U.S. wine exports

The UK revised its domestic excise tax policy on alcoholic beverages effective August 1, 2023. Not only do the rates vary among types of alcoholic beverages, but it sets out a complicated scheme for wine replacing a volume-based duty calculation with one based on strength (per litre of pure alcohol). The rate is to be calculated according to labelled strength (which can be listed to 0.1% Alcohol by Volume (ABV). There is a transition period from August 1st, 2023, to January 31st, 2025, during which a temporary fixed rate for all wines with an ABV between 11.5% and 14.5% will apply – the rate applied is pegged to the rate payable on a 12.5% abv wine, £2.67 per 75cl bottle - while wines on either side of those ABVs will be subject to taxation according to labelled ABV calculated against the reference rate of £28.50 per litre of pure alcohol.

In wine producing regions around the world (including the U.S. and UK) the production of table wine from fresh grapes is heavily regulated and winemakers are limited in the winemaking practices that may be used during and after fermentation. These comprehensive regulations significantly limit the ability of winemakers to influence the final alcohol content of their wines. Producers of other categories of alcohol beverages do not face the same level of restrictions.

Wine labeling rules in countries around the world (including the U.S.) require that wines are clearly labeled with their alcohol content expressed as a percentage of ABV. These rules provide wine producers with a labeling tolerance that can range from 0.5% up to 1.0% ABV or even more in some cases. The existence of these labeling tolerances is a clear recognition of the fact that there is an unavoidable degree of uncertainty in measuring a wine's alcohol content. There are several different analytical methods frequently used to measure alcohol in wine, but the measurement uncertainty of these methods can vary by significant amounts relative to the size of the proposed tax rate bands.

Such a tax regime, where labeling tolerance and variation in common testing methodology accuracy for alcohol content (up to 1.0 % ABV) may exceed actual tax rate bands (0.5% ABV), will lead to significant confusion and unavoidable error in determining tax rates. The burden and cost of compliance will invariably lead to fewer U.S. wines being offered for sale in the UK.

The UK is a significant market for U.S. wine. According to the UK Wine and Spirits Trade Association (WSTA), one out of every ten bottles of wine sold in the UK is from the U.S. and 34% of UK households purchase U.S. wine. This equates to more than 110 million bottles of U.S. wine sold in the UK annually. In 2023, U.S. wine exports to the UK were valued at $144 million and encompassed more than 420 wine brands. These wine brands are imported by more than 50 locally based UK wine importers who work with thousands of local retailers to reach UK consumers. The overwhelming majority of these wine producers, importers and retailers are SMEs.

INDIA

Tariff Barrier: 150 percent
Technical Barrier to Trade: State-level labeling, licensing, and regulatory requirements

India is rapidly growing market where U.S. wine is at a competitive disadvantage in terms of tariff rates. While U.S. wines are subject to a 150 percent tariff, Australian wines pay a 75 percent tariff which will be reduced to 25 percent in the future thanks to a recently concluded FTA. Similar benefits may be given to key competitors in the EU following conclusion of the EU-India FTA.

The complex layered and costly regulatory processes that India imposes on wine imports are a huge barrier to trade. The following are just a few examples of the hurdles wine exporters face in this market: individual state-level licensing requirements, differing state-level labeling requirements, restrictions on stickering upon importation, and a requirement for imported wines to be stored in government controlled bonded warehouses before being released to distributors, many of which don't include cold storage necessary for wines.

BRAZIL

Tariff Barrier: 16 percent
Technical Barrier to Trade: Export Certification: G/TBT/N/BRA/613/Add.3

Brazil requires a certificate of analysis (COA) for U.S. exports that costs $525 per sample and tests for nine analytes. Imported wines are tested again once they reach Brazil, as public authorities demand samples of products. The requirement for multiple laboratory analysis is expensive and burdensome to obtain and does not ensure the safety or quality of the imported wine but rather seems designed to limit imports. The list of analyses as well as the standards implemented in terms of, for instance, sugar content, do not align with major wine producing countries and are inconsistently interpreted by customs authorities. This regularly produces major complexities in import operations and has resulted in numerous U.S. wine exporters abandoning the Brazilian market entirely due to the cost and difficulty of obtaining the analyses.

VIETNAM

Tariff Barrier: 50 percent

Vietnam is another emerging market of interest for U.S. wine exporters where our biggest competitors receive preferential tariff treatment. Under the EU-Vietnam FTA, which entered into force on August 1, 2020, tariff rates will phase to 0 after seven years. Australia, Canada, Chile, and New Zealand receive preferential tariff rates of 22% which will phase to 0% in 2028 thanks to their membership in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

TURKEY

Tariff Barrier: 70 percent
Technical Barrier to Trade: Deposit Return Scheme: G/TBT/N/TUR/207

On 8 August 2023, the Turkish Environment Agency notified G/TBT/N/TUR/207, its draft technical regulation for Procedures and Principles Regarding Mandatory Deposit Management System Application. The regulation focused on beverage containers and packaging, establishes six classes of beverage containers and four product groups of which wine is classified in class four of annex 2. The regulation proposes a step approach with class one beverage containers expected to be registered as of 1/1/2024. The notification states that the timeline for application to the wine industry will take place later and the details will be published by the Turkish Environment Agency. As of the submission of this report, it is unclear when wine will be subject to the measure or if the Turkish Environment Agency will notify that timeline to the WTO TBT Committee.

OTHER KEY MARKETS

Sanitary and Phytosanitary Barrier: Winemaking Additives in Codex Alimentarius

Many emerging markets including the Central American Customs Union, Belize, Malaysia, Indonesia, India, and others, have incorporated the Codex General Standard for Food Additives (GSFA) in their national regulations.

As currently drafted, the GSFA excludes several additives that are critical in the winemaking process and are approved for use in many winemaking countries, including the United States. U.S. wines produced using additives allowed in the U.S. but not included in the GSFA, cannot be exported to countries that adopt the Codex standard.

We are encouraged by recent efforts to introduce new additives in the GSFA, but more additions are necessary to ensure that adoption of the GSFA does not create barriers to U.S. wine exports.

Wine Institute appreciates the continuing work of the U.S. government in the Codex Committee on Food Additives (CCFA) to revise the GSFA to include all additives that are generally approved for use in major winemaking countries, including the United States.

Technical Barriers to Trade: Export Certification and Certificates of Analysis

Many countries including Brazil, EU, Indonesia, and Uruguay require one or multiple certificates for imported wine from the U.S. even when those wines conform to both U.S. and the importing country's standards.

Often these certificates must be an original document issued by U.S. government officials, chambers of commerce, or an officially accredited organization located in the country of importation. Some countries require Apostille confirmation after an official signature, and/or translation into the local language, adding to the administrative burden.

The U.S. government and industry have worked for decades to reduce export certificates. The World Wine Trade Group's Mutual Acceptance Agreement eliminated certification requirements to winemaking practices between the nine-member countries and the MOU on Certification Requirements eliminated routine certification of wine composition, certificates of free sale, or analytical reports, unless necessary to protect human health and safety.

Work undertaken in the Asian Pacific Economic Cooperation (APEC) Wine Regulatory Forum (WRF), led by Wine Institute and the U.S. government, resulted in the APEC Model Wine Export Certificate, which consolidated multiple certificates into one document.

Wine Institute and the U.S. government collaborate on other important initiatives to reduce regulatory burdens that unnecessarily restrict exports while at the same time respecting each country's right to regulate. This includes the work of the World Wine Trade Group and especially its Regulatory Principles for Wine. The principles are non-binding good regulatory practices endorsed by WWTG members covering topics including testing, standards, analytical methods, measurement uncertainty, limits of detection, expiration date labeling, and the presence of naturally occurring substances.