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Australian Customs Service

AUSTRALIAN CUSTOMS SERVICE
Customs Act 1901 - Part XVB

TRADE MEASURES BRANCH
STATEMENT OF ESSENTIAL FACTS NO.117

CERTAIN BRANDY

exported from

FRANCE

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ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
ADA	Australian Anti-Dumping Authority
Angoves	Angove's Pty Ltd
CEO	Chief Executive Officer of Customs
CTMS	cost to make and sell
Customs	Australian Customs Service
EC	The Commission of the European Communities
EC Delegation	Delegation of the European Commission to Australia and New Zealand
EU	European Union
FOB	free on board
Fosters	Fosters Group Limited
France	Republic of France
Hardys	Hardy Wine Company Limited
Maxxium	Maxxium Australia Pty Ltd
Minister	Minister for Justice and Customs
SCM	Agreement on Subsidies and Countervailing Measures
SEF	Statement of essential facts
Tarac	Tarac Technologies Pty Ltd
the applicant	Angove's Pty Ltd
the goods	the goods the subject of the application
USP	unsuppressed selling price
WFA	Winemakers' Federation of Australia

1 INTRODUCTION

Purpose of this Statement

This statement follows an application for countervailing duties lodged by Angove's Pty Ltd (Angoves) and the initiation of an investigation by the Australian Customs Service (Customs) on 12 July 2006.

Under the *Customs Act 1901*¹, Customs is required to place on the public record within 110 days of the initiation of an investigation, a statement of the essential facts on which it proposes to base its final recommendations concerning the application to the Minister for Justice and Customs (Minister). Interested parties are given 20 days to respond to this statement.

This statement is made in relation to the countervailing investigation into certain brandy exported from the Republic of France (France).

In instances in the statement Customs makes conclusions. It is important to note that the statement does not represent Customs' final views in this regard. The statement is an important transitory stage in the investigation process and provides the platform for interested parties to be appraised of the facts established at this stage and importantly to correct any misconceptions and to provide submissions that attend to their respective interests.

Responding to the statement

Responses to this statement should be made by 20 November 2006.

Submission should be sent to:

Director Operations 2
Trade Measures Branch
Australian Customs Service
5 Constitution Avenue
CANBERRA ACT 2601
AUSTRALIA

Under legislation Customs is not obliged to have regard to any submissions made in response to this statement received after 20 November 2006 if to do so would, in the opinion of the Chief Executive Officer of Customs (CEO), prevent the timely preparation of the report to the Minister.

Interested parties intending to respond to the statement must include a non-confidential version of their submission for placement on the public record. Submissions provided in confidence must be clearly marked "*In-Confidence*".

¹ All references to legislation in this report, unless otherwise expressly indicated, refer to provisions of the *Customs Act 1901*.

As well as non-confidential submissions already received by interested parties, and the Statement of Essential Facts (SEF), the public record also contains non-confidential versions of Customs' visit reports. Customs' visit reports cover important issues such as subsidies and material injury. The public record also contains other publicly available documents such as Customs' initiation report, an issues paper relating to the Australian industry, notices and other information. The statement of essential facts should be read in conjunction with these documents.

Any party wishing to examine the public record before lodging a submission in response to this statement should contact Trade Measures Office Management staff on (02) 6275 6547.

All Customs countervailing public notices are available on the internet at the Customs home page <http://www.customs.gov.au> (follow prompts for "Anti-dumping").

2 BACKGROUND TO THE INVESTIGATION

History of the measures on brandy

There has been countervailing activity against brandy (both bottled and bulk) from France over a considerable number of years. The following provides a brief outline of that activity.

1984 - Price Undertaking - Brandy in bulk

In July 1984, the Minister accepted price undertakings by exporters of bulk brandy from France following an inquiry by Customs. This inquiry established that subsidies had been paid and that imports of subsidised bulk brandy from France had been causing material injury to Australian brandy producers.

The undertakings lapsed on 1 March 1989 under the 'sunset' provisions of the Customs Tariff (Anti-Dumping) Act 1975.

1990 - Countervailing Duty – Brandy in bulk

In June 1989, the Winemakers' Federation of Australia (WFA) representing the Australian industry producing brandy lodged an application alleging that imports of bulk brandy from France, at subsidised prices, were threatening material injury to the Australian brandy producers.

The Anti-Dumping Authority (ADA), in its final report (**ADA Report No 17**), concluded that bulk brandy imported from France had been subsidised and had threatened to cause material injury to the Australian industry. In February 1990, the Minister accepted the ADA recommendation to impose a countervailing duty on imports of bulk brandy from France. The measure was due to expire on 27 February 1995.

1995 - Continuation of Countervailing Duty – Brandy in bulk

In August 1994, the ADA undertook a continuation inquiry following an application by the WFA. In February 1995, the Minister accepted the ADA recommendation to continue the countervailing measure applying to bulk brandy (**ADA report No 141**). The measure was due to expire on 27 February 2000.

1999 - Continuation of Countervailing Duty – Brandy in bulk

In August 1999, Customs undertook a continuation inquiry following an application by the WFA. In February 2000, the Minister accepted Customs' recommendation to continue the countervailing measures applying to bulk brandy (**TM Report No 14**). The measure was due to expire on 27 February 2005.

2000 – Review of Countervailing Duty – Brandy in bulk

In August 2000, the Minister accepted Customs' recommendation to revise the previously ascertained non-injurious free-on-board (NIFOB) price and countervailable subsidy amount for bulk brandy imported from France (**TM Report No 25**).

2001 – Countervailing Duty – Brandy in bottles

In June 2001, following Customs investigation of an application by the WFA, the Minister signed instruments imposing countervailing measures on bottled brandy from France. All imports at or below A\$13 FOB were subject to an interim countervailing duty of €1.751 per lal ('litres of absolute alcohol'). The measures expired on 27 June 2006 (**TM Report No 40**).

2004 – Continuation of Measures – Brandy in bulk

The WFA applied for a continuation of measures on bulk brandy from France. Following an investigation, the Minister accepted Customs' recommendations that the measures and countervailing duties expire on 27 February 2005 (**TM Report No 85**).

The current inquiry

On 22 June 2006, Angoves lodged an application under 269TB(1) requesting that the Minister publish a countervailing duty notice in respect of certain brandy (brandy) exported to Australia from France. Angoves (the applicant) is a winemaker and distiller that produces brandy sold under the '*St. Agnes*' label.

Angoves advised that they did not lodge an application for the continuation of the countervailing duty on bottled brandy² as the restricted coverage to imports from France (for only those imports at or below A\$13 per lal) has resulted in a continuation of pre-measures injury from subsidised imports. Following the earlier expiration of measures on bulk brandy imports³, Angoves decided to lodge a single application for imported brandy, whether imported in bulk or bottles.

The applicant claimed that the Australian industry for brandy consists of four members being:

- the applicant;
- Tarac Technologies Pty Ltd (Tarac);
- Hardy Wine Company Limited (Hardys); and

² These measures expired on 27 June 2006. See above.

³ These measures expired on 27 February 2005. See above.

- Southcorp Wines Pty Ltd (Southcorp) part of Fosters Group Limited (Fosters).

The applicant claimed material injury was being suffered in the form of:

- price undercutting;
- price suppression; and
- reduced profit and profitability.

The applicant claimed that brandy produced in France is subject to subsidisation through three European Commission (EC) subsidy schemes:

- **primary aid** via Article 29 of EC Regulation No 1493/1999 and Article 64 of EC Regulation No 1623/2000;
- **secondary aid** via Article 29 of EC Regulation No 1493/1999 and Article 64 of EC Regulation No 1623/2000; and
- **crisis distillation measure** via Article 30 of EC Regulation No 1493/1999.

The applicant claimed that the continued government assistance provided to French producers of brandy and the ineffectiveness and expiration of previous countervailing measures has directly resulted in the price undercutting of the Australian industry's prices, which has led to price suppression and a reduction in profits and profitability.

The investigation period is 1 June 2005 to 31 May 2006. Customs has examined exports to Australia of the goods during that period to determine whether subsidisation has occurred. Customs has examined details of the Australian market from July 2001 (the injury analysis period) for injury analysis.

Government consultations

On 6 July 2006 (prior to initiation), following an invitation from Customs, consultations were held with officials from the Delegation of the European Commission to Australia and New Zealand (the EC Delegation) and the French Trade Office. During these consultations the Commission of the European Communities (EC) and French officials expressed concerns about the benefit conferred by the nominated subsidies to the exported goods, the sufficiency of evidence available regarding certain aspects of the lodged application and particularly in respect of material injury, the causal link and the scope of the application.

Following initiation, Customs received a number of submissions from the EC, which included:

- submission on initial comments on investigation – September 2006

- response to questions – October 2006

Customs also received a questionnaire response from the Government of France in October 2006.

Customs had further consultations with the EC on 25 October 2006.

Submissions to the inquiry

In addition to its application for countervailing duties, Angoves made additional submissions, which are available on the public file.

Customs sent questionnaires to all known importers and bottlers of brandy from France. The following parties completed a questionnaire and were visited by Customs:

- Blue Pyrenees Estate Australia Pty Ltd;
- Continental Spirits Company Pty Ltd (Continental) part of the Fosters Group; and
- Woolworths Limited;

Customs received submissions from the following parties:

- Coles Myer;
- Fine Wine Partners;
- Fosters Group Limited;
- Halloran Manton Pty Ltd;
- Maxxium Australia Pty Ltd (Maxxium);
- Pernod Ricard Pacific Pty Ltd; and
- Taylor Ferguson & Co. Pty Ltd trading as Alepat Taylor.

Customs also sent questionnaires to all known exporters of brandy from France but did not receive any completed (or even partially completed) responses. Most parties contacted also declined to provide any other information to the inquiry. The exporter Camus Cognac and the Federation Francaise Des Brandies provided some information and this was placed on the public file.

Customs placed non-confidential versions of all the above submissions and visit reports on the public record. These versions are available to interested parties.

3 THE GOODS

The goods under consideration

The goods the subject of the application are certain brandy⁴ distilled wholly from grape wine exported from France in bottles or other containers and in bulk.

The application states that cognac and armagnac are excluded from the application as they relate to the brandy produced in specific regions in France. Customs understands that only certain quality brandy from France is entitled to the appellations “*Cognac*” and “*Armagnac*”; that these appellations are tightly regulated within France; and that these brandies are separate and distinguishable when sold in the Australian market and also at the time of importation.

Brandy is imported into Australia in either:

- containers equal to or greater than 5 litres with an alcoholic strength by volume exceeding 57% (ie in bulk form), and in
- containers less than 5 litres with an alcoholic strength by volume less than 57% (usually bottled).

The standard industry unit of measurement of the volume of alcohol is a litre of absolute alcohol (lal) representing an equivalent alcoholic strength by volume of 100 percent. Imported bulk brandy is bottled in a licensed warehouse and enters the Australian market in that bottled form.

⁴ Prior to July 2006, the *Excise Tariff Act 1921* and the *Spirits Act 1906* defined ‘brandy’ as follows:
“Brandy means a spirit distilled from wine in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to brandy, being a spirit that contains not less than 25% of spirit distilled at a strength of not more than 83% by volume of alcohol”.

Prior to its repeal the *Distillation Act 1901* defined “Australian brandy” to mean “brandy the produce of Australia”

A fuel tax reform and other measures package of amending legislation was introduced in 2006, which among other things, repealed both the *Distillation Act 1901* and the *Spirits Act 1906* and made certain changes to such legislation as the *Excise Tariff Act 1921*, *Excise Act 1901* and the *Customs Act 1901*. Since July 2006, the term ‘brandy’ has been defined in the same way in *Excise Tariff Act 1921*, *Excise Act 1901* and the *Customs Act 1901* as follows:

“Brandy means a spirit distilled from grape wine in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to brandy.”

The *Customs Act 1901* further prescribes that:

“Brandy, whisky or rum imported into Australia must not be delivered from the control of the Customs unless a Collector is satisfied that it has been matured by storage in wood for at least 2 years.”

The goods are classified to the following tariff subheading of the *Customs Tariff Act 1995* and statistical codes:

- 2208.20.10/75 - brandy made wholly from grape wine packaged in bond in containers less than 5 Litres
- 2208.20.10/76 - brandy made wholly from grape wine packaged overseas in containers less than 5 Litres
- 2208.20.10/77 - other

The goods the subject of the application attracted a duty rate of 5% plus \$58.48 per lal during the investigation period. The current rate (which was applicable from August 2006) is 5% plus \$59.94 per lal.

Sources of exports to Australia

The percentage volume of exports by country is shown below.

Country	2001/02	2002/03	2003/04	2004/05	2005/06
France	95%	96%	96%	96%	96%
Greece	1%	1%	1%	1%	1%
New Zealand	1%	1%	1%		
Italy		1%	1%		
All other countries	3%	1%	1%	3%	3%
TOTAL	100%	100%	100%	100%	100%

4 LIKE GOODS AND AUSTRALIAN INDUSTRY

Introduction

Countervailing measures may be imposed to remove the injury caused by subsidised imports to the Australian industry producing like goods.

Like goods

s. 269T(1) defines 'like goods' as follows:

"like goods", in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

Interested parties expressed differing opinions over the quality differences between French and Australian brandy. One industry member suggested that within the relevant price bands only discerning brandy drinkers would note any differences in quality. This was said to be the case even though Australian brandy is increasingly being made from wine by-product whereas French brandy is mainly made from wine. Another industry member told Customs that its brandy was superior in quality to its French market competitors.

In assessing like goods Customs uses an administrative framework, which identifies different ways of examining likeness. It uses the following considerations as a basis for assessment:

- a. Physical likeness
- b. Commercial likeness
- c. Functional likeness
- d. Content or production likeness

The considerations may carry different weights depending on the circumstances of a particular case. However, physical likeness is emphasised.

Physical Likeness

Customs noted that the physical characteristics of the Australian produced brandy and the goods the subject of the application are very similar and in reality only an expert or a highly discernible consumer could identify any physical differences as the goods entering the Australian market. With the exception of the alcoholic strength of the imported bulk brandy (which is only

transitory) all other characteristics such as appearance, taste, age, size, weight suggest a strong physical likeness correlation.

The goods are classified to matching tariff classifications.

Commercial likeness

Commercial likeness refers to attributes identifiable from market behaviour. In this instance the goods are directly competitive in the Australian market. It is usual to see both French and Australian brandy together on the shelves of retail outlets and it is usual that they are marketed within the same or similar price ranges.

While brand loyalty has an effect, Customs found that all interested parties readily identified the market as one that is very price sensitive. The more price sensitive the market the greater the suggestion of commercial interchangeability.

Customs noted that the distribution channels to the Australian market for the brandy from France and Australian produced brandy are essentially the same. Packaging of the retail product is very similar.

All of these factors would suggest a high degree of commercial likeness.

Functional likeness

Functional likeness refers to end-use. End-use will not of itself establish like goods, but may provide support to the assessment of physical and commercial likeness.

While end use of itself is self-evident in this instance, matters of quality or more accurately quality perceptions were canvassed throughout the course of the investigation. Customs concluded that the quality of the Australian and French brandy within the same price band, either through perception or actual discernment, are not matters which would disrupt Customs satisfaction that Australian produced brandy does have functional characteristics closely resembling the imported French brandy, the subject of the application

Content or production likeness

Different production processes may produce identical goods. However, different production processes may also be used to create different product characteristics. A comparison of production process will not of itself establish like goods, but may highlight differences or provide support to the assessment of other considerations.

Customs visited the four Australian companies nominated in the application as producers of like goods being Angoves, Hardys, Fosters and Tarac. Customs verified information provided and inspected manufacturing facilities and products. Customs found that each company produces brandy from Australian inputs and sells their production in bulk or in bottles.

These companies' brandy is made by fermenting and then distilling the juice from crushed grapes or the by-products of wine production, and then maturing the distillate in oak for at least two years. This matured brandy is:

- sold in bulk to another party for bottling under that second party's own label;
- sold in bulk to wineries mainly for fortifying purposes;
- sold in bulk to food processing companies; or
- used in-house for their own bottled brands.

Customs understands that similar processes are undertaken to make French brandy. Customs noted that EU Regulations lay down general rules on the definition, description and presentation of spirit drinks. In particular Council Regulation (EEC) No 1576/89 of 29 May 1989 in respect of brandy at Article 4(e) provides the following definition:

Brandy (or Weinbrand): A spirit drink

- produced from wine spirit, whether or not blended with a wine distillate distilled at less than 94.8% vol provided that the said distillate does not exceed a maximum of 50% by volume of the finished product,
- matured for at least one year in oak receptacles or for at least six months in oak casks with a capacity of less than 1,000 litres,
- containing a quantity of volatile substances equal to or exceeding 125 grams per hectolitre of 100% vol alcohol, and derived exclusively from the distillation or redistillation of the raw materials used,
- having a maximum methyl alcohol content of 200 grams per hectolitre of 100% vol alcohol.

Customs compared this definition with the definitions in the *Excise Act 1901*⁵ and other Australian legislation and found them complimentary except for the maturation period. To have the appellation 'brandy' in Australia the spirit must be matured for a longer period (at least two years)

Customs noted that most of the commercial documents accompanying the imported goods included certificates of age and production issued by the French authorities. These certificates attested that the brandy was made from grape or grape products and had been stored in oak receptacles for at least two years.

5 Refer footnote 4.

Conclusion

While it would be expected that the weighting of the above considerations would usually vary depending on the goods at issue, in this instance an evaluation of each consideration shows strong likeness correlations.

Customs is satisfied that Australian produced brandy has characteristics closely resembling the imported French brandy, the goods the subject of the application, and accordingly are like goods to those imports.

Produced in Australia

s. 269T(2) provides:

goods are not to be taken to have been produced in Australia unless the goods were wholly or partly manufactured in Australia

Customs visited the manufacturing sites and/or administrative premises of the nominated Australian brandy producers and is satisfied that the brandy produced by those companies is wholly manufactured in Australia.

s. 269T(3) provides:

goods shall not be taken to have been partly manufactured in Australia unless at least one substantial process in the manufacture of the goods must be carried out in Australia.

Customs also visited the manufacturing sites and/or administrative premises of other Australian companies (so called 'bottlers') who bottle imported French bulk brandy. Customs' consideration on whether the bottling of imported French brandy in Australia might be regarded as a substantial process in the manufacture of the goods follows in the next section.

Australian industry

s. 269T(4) provides that the Australian industry consists of the producer, or producers, of like goods in Australia. Customs is satisfied that the nominated producers being Angoves, Hardys, Fosters and Tarac are producers of like goods in Australia. The question of whether the bottlers should also be so regarded is now addressed.

Are the bottlers of French brandy part of the Australian industry?

In the initiation report⁶ Customs addressed this issue and foreshadowed the distribution of a discussion paper during the course of the inquiry.

On 7 August 2006 Customs published an Issues Paper⁷ on the composition of the Australian industry and sought submissions by 5 September 2006. All

⁶ Trade Measures Initiation Report No 2006/117 - Alleged countervailable subsidisation of certain brandy exported from France. This report is available on the Internet. From the Customs home page (<http://www.customs.gov.au>) follow the "anti-dumping" links

known interested parties (as defined by the legislation) were contacted directly by email and advised of the publication of the Paper and the date for submissions. Customs further reinforced the importance of the opportunity to all parties during subsequent site visits undertaken.

What processes do the bottlers undertake?

Fully matured French brandy in bulk is imported in tankers at a concentrated alcohol strength of approximately 66%. The alcohol strength is reduced in the bottling process to 37%. Bottlers undertake the following processes in taking in the imported bulk brandy and delivering bottled brandy for distribution:

- Delivery of the matured brandy to storage vats;
- Reduction of the alcohol strength. The batches are diluted with water to 37% alcohol. Caramel, to give colour, may be added. This product is left for a time to allow for any non-soluble components to settle;
- Filtration. The non-soluble components are filtered out as the contents are then transferred to another storage vat;
- Piping to the production line for bottling, labelling and packaging;
- Bottling;
- Capping & labelling; and
- Packing in cartons.

Responses to the Issues Paper

In response to the Issues Paper written submissions were received from:

- Angoves, Hardys and Tarac (a joint submission)
- Fosters
- Maxxium (an Australian distributor of French brandy).

Angoves, Hardys and Tarac stated that it was the nature of the process rather than cost that determines whether or not blending/bottling is a substantial process of manufacture. They submitted that the nature of the blending/bottling process cannot be categorised as a production process. They submitted that the good has been already 'produced' and has its intrinsic character or vital quality determined well before the blending/bottling operations.

⁷ Trade Measures Issues No 2006/117 – Investigation into the alleged countervailable subsidisation of certain brandy exported from France - Composition of the Australian Industry. This report is also available on the Internet via the Customs home page.

The joint submission further noted the importance of the pre blending/bottling stage, in particular in comparison to the generality of the subsequent operations in terms of equipment, capital investment, and waste and by-product generation (which are common across various spirit products). Importantly they note that the bottlers present a brandy to the market that is a “product of France” and not a “product of Australia” and drew Customs attention to the rules of origin in this regard.

Maxxium on the other hand submitted that the processes undertaken by the bottlers are indeed substantial and accordingly the bottlers should form part of the Australian industry producing like goods to brandy imported from France. In summary they supported this position as follows:

- There is a complex and onerous legislative framework surrounding the blending/bottling operations that would not be needed if the process were not substantial; and
- The Federal Court decision in *National Food Authority v The Scotch Whisky Association*⁸ is applicable to the consideration.

Fosters’ submission agreed with Maxxium’s that the industry should include blenders and bottlers as they make up a significant component of those producing and distributing brandy in Australian. In doing so they noted that the heavy regulation imposed on this market sector would not be necessary if the activities they undertook were not significant.

Customs’ assessment

In Customs’ view, for the process to be a substantial one it must add some essential or vital quality to the finished product.

Customs considers that the blending and the bottling operations are two complimentary but discrete aspects of the supply chain that the bottlers add in bringing French bottled brandy to the Australian market. Customs is satisfied that the bottling of the bulk brandy could not of itself be considered a substantial process of manufacture. Customs considers that the bottlers’ function in this respect is simply to repackage the finished goods into their retail containers (whether it be 700 ml, 375ml or some other sized container). The packaging of a product alone is not a process of manufacture.

In the Issues Paper Customs invited comment on factors such as the value added, the complexity of the operations and the investment in capital that might assist the evaluation.

Customs noted that the costs associated with blending and bottling in comparison to the total costs to produce bottled brandy are significant. At the

⁸ No. VG354 of 1994 FED No. 273/95 Health Law (1995) 29 ALR 357 (1995) 21 AAR 260 (1995). The decision from the Full Federal Court addressed the issue of variation of food standards in respect of whether or not concentrated whisky exported from Scotland and then blended and bottled in Australia could have the appropriate appellation of “Scotch Whisky” when sold on the Australian market.

same time it is clear to Customs that the major cost component is the bottle and other dry goods⁹, rather than the blending operation itself. The blending operations themselves (being that part of the blending/bottling that may constitute a process of manufacture) represent a relatively minor cost.

Fosters noted the considerable investment in bottling lines that would be necessary to join this industry sector. Customs observed bottling operations at a number of premises during the course of the investigation and agrees that a considerable investment is required to set up a bottling operation. At the same time Customs noted that none of the bottling lines inspected were dedicated solely to brandy bottling.

Both Maxxium and Fosters noted the complexity of the regulatory governance placed upon the bottlers requiring them to report and account to both Customs and the Australian Taxation Office and to other Government bodies. Both companies suggested that if the activities were not significant there would be no need for such extensive legislative and regulatory oversight. Customs view is that this complexity is not a matter of the substantiality of the processes the bottlers undertake but rather the high tax nature of the product(s) with which the bottlers work.

In respect of the significance of the blending operations, Customs notes that the purpose of exporting French brandy to Australia in a concentrated and bulk form is cost saving and risk reduction. Freight and insurance cost reductions can be achieved. Customs understands that French brandy would be matured for the requisite time at strengths of approximately 60% alcohol by volume and require a reduction before bottling for sale in the same general way that operations are conducted in Australia.

Again, fundamentally all that the blending operation entails is the addition of water, the simple mixing of brandies and the addition of caramel if necessary for colouring. The addition of water means that the resultant insoluble components must be filtered out. Given the transformation of grapes to grape juice to distilled spirit to matured brandy, Customs takes the view that this final blending stage could not be categorised as a substantial process of manufacture.

This view is supported by the joint industry submission which argued that the process does not alter the origin identity of the product. It arrives in bulk as a "Product of France", bottled and marketed in Australia under pertinent Australian legislation such as the Food Standards Code as a "Product of France".

Customs also noted s. 269D(3), which is concerned with the meaning of substantial process of manufacture for purposes of tariff concession orders and specifics¹⁰:

⁹ Dry goods refer to bottles, seals, labels and cartons.

¹⁰ It should be noted that this provision has no application to the dumping legislation.

Without limiting the meaning of the expression *substantial process in the manufacture of the goods*, any of the following operations or any combination of those operations does not constitute such a process:

- (a) operations to preserve goods during transportation or storage;
- (b) operations to improve the packing or labelling or marketable quality of goods;
- (c) operations to prepare goods for shipment;
- (d) simple assembly operations;
- (e) operations to mix goods where the resulting product does not have different properties from those of the goods that have been mixed.

Customs does not consider that the resulting mix of water and brandy in the reduction process results in a product which has different properties from those of the brandy and the water that constitute the mixture. The goods were, and the resulting goods still are, French brandy.

One interested party drew a parallel with paint in which tint is added to a base colour at the hardware store at the customer's request. The adding of the tint is, at least in the mind of the consumer, a process but not one that would in any way constitute a substantial one. So too the blending/bottling operations.

In taking the alternative position Maxxium referred to a 1995 Federal Court judgment (*National Food Authority v The Scotch Whisky Association*). Customs notes the Administrative Appeals Tribunal finding in that matter, but also notes that there are some differences to the matter at hand. The Tribunal finding related to the protection of the appellation "Scotch Whisky" when it was sold at differing strengths (40% alcohol by volume rather than 37% by volume) and with the addition of Australian water rather than Scottish water. In this matter no such exactness is influential. There has been no dispute that the resulting product should not rightfully be called "French" brandy.

The finding addressed the issue of the congeners that are released during the reduction of whisky and found the release of congeners as being decisive in identifying the products as different (ie Scotch whisky bottled and sold in the UK at 40% alcohol by volume compared to bulk Scotch Whisky reduced and sold in Australia at 37% by volume). Maxxium put the position that the finding has an undeniable relevance to brandy.

Customs accepts that the blending results in a different product as identified by the alcohol content. Clearly the imported good is at approximately 60% alcohol by volume and the resulting product is at 37%. What Customs does not accept is that a substantial process of manufacture has occurred, in terms of the legislation.

It should also be noted that the judgement refers to the then Standard P3 of the Australian Food Standards Code that specified:

Products consisting of imported spirits to which only water or caramel or both have been added in Australia shall be considered as wholly produced in the country of origin of the spirit.

Customs' conclusion

Customs concludes that blending and/or bottling are not substantial processes of manufacture. Therefore bottled brandy suppliers who simply blend and/or bottle bulk French brandies are not part of the Australian industry.

Conclusion

Customs concludes that there is an Australian industry producing like goods and that industry comprises of Angoves, Hardys, Tarac and Fosters.

5 AUSTRALIAN MARKET

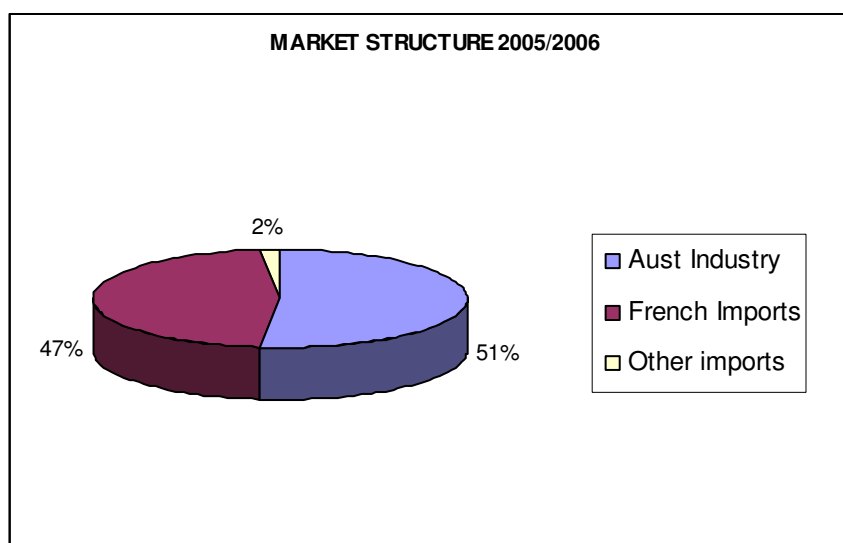
Market structure

Nearly all brandy enters the Australian retail market as a bottled product.¹¹

The bottled brandy market in Australia is supplied by:

- the Australian industry, which produces bulk brandy and in most instances also bottles the brandy;
- Australian bottlers, who purchase bulk Australian brandy and bottle it;
- Australian bottlers, who import bulk brandy from France and bottle it in Australia; and
- importers, who import bottled brandy, predominantly from France.

The market structure in 2005/06 is illustrated in the following graph:



All imported bulk brandy is diluted and bottled under bond in Customs licensed warehouses before entering the Australian market. Once bottled, imported bulk brandy competes against Australian brandy bottled by the industry and bottlers.

The majority of Australian bulk brandy production is also diluted and bottled prior to entry into the Australian market. Small volumes of locally produced

¹¹ There are minor sales of RTDs (ready to drink) and bulk sales to fortifiers and the food industry.

bulk brandy are sold for fortifying purposes and into the food preparation industry.

The distribution channels to the market for the imported goods and the locally produced goods are essentially the same. Predominantly bottled brandy, both French and Australian, is sold to consumers through the large supermarket chains or through entities controlled by these operators. Further sales are made to other chains, cooperatives and retail outlets.

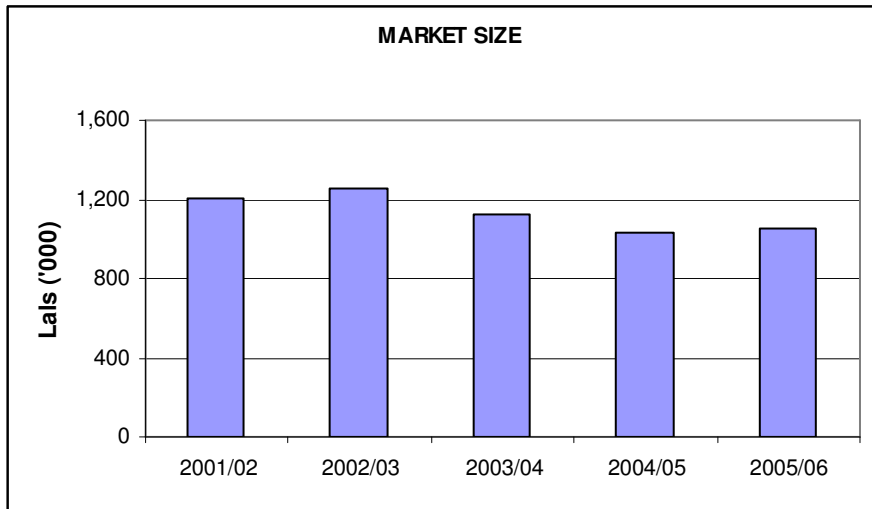
Supermarkets sometimes import bottled brandy directly from France and also purchase directly from the Australian brandy producers. They also purchase French or Australian bottled brandy from independent distributors, or from the Australian bottlers.

Customs was advised that the retail market for brandy could be divided into at least two distinctive price ranges for brandy; the 'standard' or 'value' end of the market and the 'high' or 'premium' end (which included cognac). It was the view of importers that the high end of the brandy market is very small, and that there is no essential distinguishable features between the brandies in the standard component of the brandy market.

Market size

Customs estimated market size using actual sales volumes where possible. To calculate a reasonably reliable estimate of the remaining market Customs used data from the Customs database (this meant that import volumes were considered as sales). Customs examined information from a number of other proprietary retail market data sources to validate these estimations.

Customs estimates that the total market for brandy in Australia in financial year 2005/06 was just over 1 million lals. Market size for the past five years is illustrated in the following graph.



Details of Customs' analysis of the Australian brandy market are at **Confidential Appendix 1.**

On this assessment, Customs found that, in the period 2001/2002 to 2005/06, the total Australian brandy market decreased by approximately 13%, that the market share held by the Australian industry decreased by approximately 3%, and the share held by French imports increased by approximately 3%.

6 THE SUBSIDISATION INVESTIGATION

Applicant's claims

Angoves based its' claim that brandy imports from France were subsidised on Customs' findings in previous investigations that brandy production in France was indeed subsidised. In doing so the applicant claimed that subsidised imports had an adverse effect on the economic condition of the industry through the continuation of subsidy schemes identified as:

- Primary aid
- Secondary aid, and
- Crisis Distillation.

Consultation with the EU delegation and French Governments

Prior to the initiation of the investigation Customs contacted the EC Delegation and the Embassy of France and gave these parties the opportunity to consult on the investigation¹². This opportunity was accepted and Customs met with representatives from these delegations on 6 July 2006.

On the commencement of the investigation Customs provided the EC Delegation and the Embassy of France with a questionnaire requesting the provision of data and information concerning the operation of the schemes. Customs requested this questionnaire response and information be supplied by 21 August 2006.

On 4 September 2006 the EC Delegation provided a response to the questionnaire. The questionnaire noted that the Embassy of France would subsequently provide a great deal of the requested and pertinent information.

On 3 October and 16 October 2006 Customs provided the EC Delegation with a series of supplementary questions in connection with the operation of the relevant schemes. The Delegation provided written responses to the questions posed.

On 20 October 2006 Customs received a questionnaire response from the Embassy of France. It did not provide a great deal of the requested and pertinent information.

¹² This is in accordance with Article 13 of the World Trade Organization Agreement on Subsidies and Countervailing Measures.

On 25 October 2006 and following receipt of the interdependent questionnaire response from the Embassy of France, Customs advised the EC Delegation that their questionnaire response, received 4 September 2006 was deficient and advised the EC Delegation the detail surrounding those deficiencies.

Non-confidential correspondence of the above consultations is available on public file.

On 25 October 2006 Customs had further consultations with officials from the EC¹³, including appropriate officials from the EC Directorate General for Agriculture and Rural Development. The consultations provided an opportunity for Customs to ask for verbal clarifications to the written answers provided in response to the supplementary questions received. During these consultations the EC offered to provide further data in relation to the operation of the schemes. Given the time constraints involved, this data will become available after the publication of this SEF and will be, pending confidentiality considerations, placed upon the public record on receipt.

Exporters

Customs used its import database to identify exporters, contacted those so identified at the initiation of the investigation and requested them to complete an exporter's questionnaire. None of the exporters returned a completed exporter's questionnaire, although a number sent back brief acknowledgements asserting that they did not receive any subsidies. No exporter provided Customs with any information concerning the structure of their business operation.

Other interested parties

In relation to subsidisation, Customs received submissions from the following:

- Camus Cognac;
- Fosters;
- Federation Francaise des Brandies; and
- Maxxium,

All these submissions made the point that none of the exporters (or the exported goods) gets the benefit of any subsidies. Customs considered this aspect in the course of the investigation and Customs' findings in this regard follow below.

13

Via video conference.

Customs' investigation

EC wine production regulatory regime

The EC has regulations governing the operation and development of the common market in agricultural products. From 1999 the rules relating to wine production, including that portion of wine produced which is used to make wine spirit (from which brandy is made), are set out in Council Regulation (EC) No. 1493/1999. This Regulation established a new common agricultural policy (including intervention aid programmes) in respect of wine. The detailed rules applicable to the regime so established are laid down in Council Regulation (EC) Regulation No. 1623/2000.

The regulatory regime provides aid to producers (being wine-makers) and distillers. The Regulations cater for situations where the producer and the distiller are the one economic entity. Customs understands that in France, just as in Australia, there are business entities that operate integrated operations being winemakers, as well as distillers, as well as brandy producers or combinations thereof.

Customs investigation of other schemes

The applicant claimed that there was material injury to the Australian industry caused by the operation of three (primary, secondary and crisis) distillation aid programmes. Customs requested information from the EC and France not only in respect of these three schemes but also in relation to any other subsidy schemes, which confer a benefit to the producers/exporters of the French brandy that was exported to Australia. No such information, in relation to other subsidy schemes was provided in the EC or French questionnaire response. Customs nevertheless investigated other schemes that came to notice during the course of the investigation.

Article 11 of the Agreement on Subsidies and Countervailing Measures (SCM) provides that countervailing investigations may only be initiated upon a written application that must provide evidence of the existence of a subsidy to the allegedly subsidised product. However, Customs notes the WTO case law¹⁴ which confirms that in accordance with Footnote 36 of Article 10 of the SCM, WTO Members may impose countervailing duties if any countervailable subsidy is found to exist in the course of a countervailing duties investigation conducted in accordance with the SCM.

That is, investigating authorities are not restricted from investigating subsidies not specified in the countervailing duties application. Further, all of the subsidies noted in the section headed "Other Aid Programmes for

¹⁴ See e.g., *US-Lead and Bismuth II* (WT/DS138/R) and *US-Final Countervailing duties Lumber from Canada* (WT/DS257/AB).

Winemakers and Distillers” and the aids under compulsory distillation programmes were raised with the EC and French officials¹⁵.

Customs’ assessment

Distillation schemes overview

Historically, the EU has had large surpluses of wine and has dealt with these market imbalances by Government intervention as the artificial outlet for surplus production and as a means to bolster domestic wine prices. The preamble to Council Regulation (EC) No. 1493/1999 makes it clear that one of the broad aims of the programmes is to facilitate the continuation of supplies of wine distillates to those parts of the potable alcohol sector that traditionally use that alcohol (such as brandy producers).

Within Council Regulation (EC) No. 1493/1999 the relevant articles are Articles 27 to 31 (See extract at **Non-Confidential Appendix 1**). In précis, Articles 27 and 28 of Council Regulation (EC) No. 1493/1999 specify that certain wine products must be distilled (compulsory distillation), Article 29 deals with arrangements governing voluntary distillation (optional distillation) which is generally available and Article 30 provides crisis distillation aid which is triggered or opened in certain market conditions.

The Regulations impose the minimum prices that (by law) must be paid by a distiller for wine or wine products to be used in distillation and set out the aid that is available to the distiller as a consequence of their distillation operations. The aid to the distiller is paid either as a direct grant or through the guarantee of a ‘selling’ price for the produced distillate.

¹⁵ It should be noted that this was only possible shortly before this statement due to the lateness of the response from the French authorities and deficiencies in the EC questionnaire response.

The following table summarises the schemes investigated and then a detailed discussion of the particular aid program follows.

Distillation Aid	Article¹⁶	Name
Optional	29 29	Primary Aid. Secondary Aid.
Compulsory	27 28	Compulsory Distillation of By-Products. Compulsory Distillation of dual-purpose grape wine.
Crisis	30 30	Crisis Aid. Exceptional National Aid.
Other Aid Programmes for Winemakers	24 34 64	Private Storage Aid Aid for the use of grape musts Refund on cost of sugar added to wine for export

In addition to these schemes further assistance measures surround the possibility of advance payments to distillers under Article 66 of Commission Regulation (EC) 1623/2000. This Article provides that distillers can get advances on all distillation aids from the government earlier than the completion of any actual distillation contracts.

Optional distillation – Article 29 – Primary Aid

1. Does this constitute a subsidy within s269T(1)?

To be subject to countervailing measures any aid must meet the subsidy definition within s. 269T(1). The definition limits subsidies to financial contributions made by, or on behalf of, a government, or specific forms of income or price support received from such a government or body, which confers a benefit in relation to the goods.

(a) Financial contribution

Article 29 encourages the distillation of EC table wines by setting a legislated buy-in price for wine but at the same time intends to ensure that sufficient

¹⁶ To Council Regulation (EC) No. 1493/1999.

volumes of distilled product are supplied to the potable alcohol sector at a price that will not disrupt that downstream market.

Under Article 29 Primary aid the legislated buy-in price for wine is set at €2.488 per lal for distillation. French wine producers cannot sell all their production to distillers at this price as the Regulations specify that only a set percentage of the yearly wine makers production¹⁷ can be so eligible for this guaranteed price under Article 29.

Without this intervention the market price for wine for this purpose (ie distillation for the potable alcohol sector) would be expected to be a lot lower. To overcome this distillers receive financial aid, from the relevant competent authority¹⁸, compensating the distiller for having to purchase wine at a minimum price that is higher than the market price for the product of the distillation.

Primary aid is a grant paid to distillers for each hecto-lal of alcohol that they distill from wine in each wine year.

Primary aid has remained unchanged at €1.751 per lal for sometime and was the relevant level of aid during the French wine years commencing 1 August 2000 and finishing 31 July 2004¹⁹. The amount is payable in respect of the distillation of raw alcohol, wine distillate and spirits distilled from wine.

¹⁷ Set at 40% of the wine makers production. Article 63(2) of Commission Regulation EC No 1623/2000 of 25 July 2000. The EC have advised Customs that this percentage has now been reduced to 25% (No further details available but have been requested from the EU).

¹⁸ In the case of France the relevant competent authority or intervention agency is the French National Office of Fruits, Vegetables, Wine and Horticulture or VINIFLHOR formerly ONIVIN.

¹⁹ The French wine year runs from 1 August to 31 July each year. It is the wine years 2000/01 to 2002/03, and perhaps though less likely wine year 2003/2004, that the brandy exported to Australia during the investigation period was most probably distilled.

Customs understands from information provided by the EC in a previous investigation that the calculation of this aid amount (€1.751 per lal) is made as follows:

Legislated Wine Buy-in Price	€2.488
+ Estimated Distillation Costs and Losses	€0.4219
= Estimated "production " costs	€2.9099

- Estimated Market Price for Wine Spirit/Alcohol ²⁰	€1.159

= Amount of Primary Aid	€1.751

In their response to the questionnaire the EC Delegation acknowledged that the aid payable under the programme was a financial contribution made by a government as follows:

..the term "subsidy" is defined in Article 1 of the Agreement on Subsidies and Countervailing Measures (ASCM). A subsidy is deemed to exist if there 1) e.g. is a "financial contribution by a government" and 2) "a benefit is thereby conferred". In the present case it is not disputed that the aid to distillers falls under the definition of "financial contribution by a government.

Customs concludes the aid constitutes a financial contribution by a government.

(b) Conferred benefit

In their response the EC Delegation submitted that despite the payment of the primary aid directly to the distillers there was no benefit conferred to the distiller. As follows:

In the present case, the financial contribution does not make the recipient better off, since its receipt is conditional upon him paying an above-market price, which makes him **worse off** than if he had paid the market price. The effect of the financial contribution is to **neutralise** the penalty of the minimum price.

Under s. 269T(2AC), a subsidy is taken to have been received in respect of particular goods whether the benefit conferred by the subsidy is conferred directly or indirectly in relation to those goods.

²⁰ This estimated market price was provided to Customs by the EC in September 2004. Further contemporary pricing may be available but Customs notes that this figure is still being used as the basis for the allocation of the aid in the current wine year.

For a benefit to be conferred, the recipient must be better off than if they did not receive the subsidy.

Customs understands that the Regulations in respect of Primary Aid set the price that the distillers must pay for their wine distillation input. Whether that price is an above or below market price is an irrelevance. The influences of the market have already been negated by the intervention. It is clear to Customs that any distiller who claims the aid is better off than a distiller who did not claim the aid. Moreover there would not seem to be any motivation for a wine grower to sell their productive input for distillation at less than the set price and that a distiller would not be able to conclude contracts other than at the set price. Customs is satisfied that a benefit is conferred to the distilled goods under the operation of the intervention scheme.

The aid confers a benefit, as the recipients are better off than they would have been in the absence of the aid.

(c) Specificity

s. 269TAAC(1) states that a subsidy is a countervailable subsidy if it is specific.

A subsidy can be described as specific if the government makes the subsidy subject to conditions, which will restrict eligibility, and thereby favours certain enterprises.

To claim the aid the distiller must apply to the competent authority and provide evidence of the quantity and volume of the wine distilled and the wine purchase price. The distiller must have also entered into a contract, which had been approved by the competent authority, for the supply of the wine to be distilled.

The aid is specific as only distillers are eligible for payment.

(d) Conclusion

On the basis of facts available, Customs is satisfied that the primary aid granted to distillers by the European Commission under Article 29 is a subsidy within the definition of s269T(1).

2. What is the amount of the benefit?

Distillers who receive the aid may or may not be the producers of the brandy that has been exported to Australia during the investigation period. As above Customs contacted all known exporters and none of them provided any assistance to Customs. In the absence of information to the contrary Customs expects that the brandy production in France would be undertaken in the same commercial ways that brandy is produced in Australia.

In Australia three of the four brandy producers are integrated operations i.e. they are wine makers, distillers and brandy producers. The EC has advised

Customs that there is nothing in the Regulations that prevents such integrated operations. Customs notes that information from the web site of one of the major exporters of brandy to Australia shows that this entity identifies itself as a *winemaker and distiller*, and other major exporters describe themselves as *distillers and brandy producers*.

Customs has thus evaluated the various schemes on the basis that on balance it is likely that the brandy exported to Australia has been the product of such integrated processors.

Regardless, the fact that the financial contribution is not paid on the production of the brandy exported to Australia but rather on the production or storage of an input to that manufacture (the wine distillate) does not mean that the producer of brandy exporter to Australia has not been the recipient of a benefit. However, in these instances it must be established that the benefit from the subsidy paid directly to the distillers is passed through, at least in part, to the producers of the brandy exported to Australia and hence to the exported goods themselves. When the distiller, in receipt of the aid, is also the producer of the brandy (an integrated operation) then such pass through of the subsidy is self-evident but in other instances this must be established.

As the aid is payable in respect of an agricultural product, Customs notes the WTO case law (both on pass-through of subsidisation of inputs to the processed product and that payments-in-kind) would constitute subsidies.

WTO case law has also clarified that in the case of upstream subsidies, it is necessary to analyse to what extent the subsidies have passed through to the processed product.

To obtain data for an analysis of the pass through of the subsidy, Customs sought information on a per company basis from the EC Delegation and the Embassy of France. No such data was supplied. Customs also contacted all known exporters seeking their assistance in supplying data in respect of their operations. The exporters did not provide any data suitable for such analysis. Without such assistance Customs can only rely on what facts are available or publicly obtainable to make such judgments. On the assumption that a brandy producer is not a distiller, then a pass-through analysis is required to determine whether the benefit of the subsidised input is passed through to the processed product (brandy).

Without the assistance of empirical data to prove or disprove the matter Customs undertook a qualitative analysis and considered some further relevant factors that would indicate that the subsidy would be passed through. The analysis is as follows:

1. The amount of the subsidy is material. A subsidy of €1.751 per lal or approximately \$2.80 per lal in terms of the Australian industry members costs to distil wine spirit would represent a significant portion of total costs and there is nothing to suggest that the subsidy would not be equally material to the French distillers. Given the subsidy provided to the French distillers is material then the indirect subsidy to the

French Brandy producers and their productive output is also likely to be significant.

2. It also follows that given the wine spirit or distillate is a significant cost factor in the production of brandy, a change in the price of wine spirit is likely to have a material impact on the cost of producing brandy.
3. The subsidy is not a one-off lump sum but rather an amount per volume produced and as such it would be expected to have affected the production decisions, made in the French wine distillation industry, and is thus more likely to have affected the price of wine spirit in France.
4. The subsidy is available to all French distillers. The likelihood of all the distillers subsuming the subsidy as profit or contribution without adjusting their prices is unlikely given that there are integrated operations in the French brandy sector²¹ as well as standalone brandy production and that there is nothing to suggest that this market is not a competitive one.
5. In France there are no close substitutes that the brandy producer could use as feedstock. As above brandy is defined in EC Regulations and must be a spirit drink the result of blending particular quantities of wine spirit or wine distillate at particular alcohol strengths. Given this it would be expected that an increase in the price for wine spirit or wine distillate would result in a commensurate decrease in the demand for the product from the brandy producers and thus the motivation for distillers to subsume the subsidy is less likely.
6. There is no evidence that the French distillers act as a monopoly. Given that Customs would expect that monopolists would in general pass through less of the subsidy than competitive industries this fact is not a mitigating factor against the likelihood of pass through.

On the basis of this qualitative analysis, Customs is satisfied that the price of the subsidised input (the wine spirit or distillate) paid by a French brandy producer is lower than the price of the input that the producer would have paid but for the presence of the subsidy payment.

Importantly Customs notes that if the distiller did not act in this economically rational manner then the overall intention of the scheme, as expressed in the preamble to Council Regulation (EC) No. 1493/1999, has been defeated as the support to the potable alcohol sector has not been provided.

In being so satisfied, Customs also took account of the results of a study, commissioned by the EU itself, which was undertaken by a panel of experts given the benefit of a large amount of data supplied by the Commission services and which concluded in part:

²¹ The websites of at least three exporters of brandy to Australia identify the entity as both a distiller and spirit producer.

“Aid for distillation of potable alcohol does not create an artificial demand, but does influence prices on the market for potable alcohol and hence the volume of supply.....The aid reduces the distillers costs for raw materials which leads to lower prices of potable alcohol and hence increasing demand according to its price elasticity.”²²

Customs concludes that the French brandy producers purchase their spirit on terms more favourable than those that would be available in the market if the primary aid were not provided to them and that the brandy so exported to Australia has necessarily benefited from the primary aid subsidy.

Customs is satisfied that the primary aid granted to distillers by the European Commission is a subsidy under s. 269T(1) in relation to the brandy exported to Australia from France.

The primary aid subsidy confers a benefit and that the amount of subsidy attributable to the benefit is €1.751 per lal.

²² ‘Ex Post evaluation of the Common Market Organisation for Wine’, November 2004, P.75.

Optional distillation – Article 29 – Secondary Aid

1. Does this constitute a subsidy within s269T(1)?

(a) Financial contribution

Article 29 Secondary aid is designed to facilitate the operation of the primary aid system and takes the form of a direct payment to distillers to cover storage costs of the resultant distilled product. Secondary aid has been payable as follows:

Wine Year	Amount per day	Amount per year
2000/2001	€0.000336 per litre	€0.12264 per litre
2001/2002	€0.000336 per litre	€0.12264 per litre
2002/2003	€0.00042 per lal	€0.1533 per lal
to current	€0.00042 per lal	€0.1533 per lal

As above, in their response to the questionnaire the EC Delegation acknowledged that the aid payable under the programme was a financial contribution made by a government.

Customs concludes the aid constitutes a financial contribution by a government.

(b) Conferred benefit

Customs has established that the secondary aid operates as a grant based on the length of time that the distiller stores the produced spirit. It is paid directly to distiller by the EC and as such Customs is satisfied that a benefit is conferred to the distiller under the operation of the scheme.

The aid confers a benefit, as it is a direct payment to distillers to cover storage costs of the resultant distilled product. They are better off than they would have been in the absence of the aid.

(c) Specificity

The amount is payable in respect of the storage of distillation products, including wine distillate and spirits distilled from wine, and is paid solely to distillers. The maximum storage period for which the aid is payable is 12 months. If distillers are also brandy producers the Regulations would allow the distiller to claim the storage aid for the duration of the necessary maturation period (in oak receptacles) to produce brandy in France (ie 6-12 months).

The aid is specific as only distillers are eligible for payment.

(d) Conclusion

On the basis of facts available, Customs is satisfied that the secondary granted to distillers by the European Commission under Article 29 is a subsidy within the definition of s269T(1).

2. What is the amount of the benefit?

Customs assessment of this aid programme pursuant to Articles 29 of Regulation 1493/1999 followed and considered the same parameters as set out above in Customs' consideration of the Primary aid programme. The procedures and financial impacts for the wine-maker, the distiller and the brandy producer are the same as in the above analysis in respect of the pass through of the subsidy to the exported brandy.

Based on the facts available, Customs concluded that a subsidy of €0.1533 per lal per year, or approximately \$A0.25 per lal per year is paid. Customs noted that in terms of the Australian industry members' same costs to store (or mature) wine spirit the subsidy is a significant amount.

Compulsory distillation – Article 27 & Article 28

1. Do these constitute subsidies within s269T(1)?

(a) Financial contribution

The Regulations require that all the by-products of wine-making including grape marc and wine lees (Article 27) and wine of certain varietal types (Article 28) must be sent for distillation. The Article 27 aid is intended to guarantee the quality of wines by avoiding over pressing and the Article 28 aid is to overcome surpluses of certain wine that might disrupt the white wine market. The buy-in prices and the aid payable in these instances are summarised as follows:

	Minimum Buy-in Price	Aid for Distillate (at least 52% vol)	Aid for Wine Spirit and raw alcohol
Article 27	€0.995 per lal	€0.3985 per lal	€0.2777 per lal
Article 28	€1.34 per lal	€0.6401 per lal	€0.6401 per lal

Article 28 aid is paid in respect of distilling wine made from so-called “dual purpose” grapes. Customs understands that these grape varieties are largely from the Charentes region and the normal purpose of the wine produced is for distillation into cognac.

As above, in their response to the questionnaire the EC Delegation acknowledged that the aid payable under the programme was a financial contribution made by a government. Therefore the aid is a subsidy within the definition of s269T(1).

Customs concludes the aid constitutes a financial contribution by a government.

(b) Conferred benefit

The aid confers a benefit, as it is a direct payment for distilled volumes.

(c) Specificity

The aid is specific as only distillers are eligible for payment.

(d) Conclusion

On the basis of facts available, Customs is satisfied that the compulsory distillation aids granted to distillers by the European Commission under Article 27 (distillation of by-products) are subsidies under s. 269T(1).

On the basis of facts available, Customs is satisfied that the compulsory distillation aids granted to distillers by the European Commission under Article 28 (distillation of dual purpose wines) are subsidies under s. 269T(1).

2. What is the amount of the benefit?

Customs has noted the advancement in oenological (wine-making) practices in respect of the distillation of surplus wine and grape products and their use by particular Australian industry members to produce quality and market competitive brandy. Customs is not aware of any reason why this would not also be the case and practice in France.

Customs assessment of this aid programme pursuant to Articles 27 and 28 of Regulation 1493/1999 followed and considered the same parameters as set out above in Customs' consideration of the Primary aid programme. The procedures and financial impacts for the wine-maker, the distiller and the brandy producer are the same as in the above analysis in respect of the pass through of the subsidy to the exported brandy.

It should be noted that Article 27 aid per lal as set out in the table above could be not simply aggregated in assessing the impact on the production of brandy (where the wine maker was also a brandy producer) because there needs to be an adjustment to take account of recovery levels in the winemaking process. Customs has established a simple factor of 0.25 for this purpose, on the basis of industry rule of thumb that 1 tonne of grapes, produces 800 litres of wine and 200 litres of by-product. This results as follows:

	Aid for Distillate (at least 52% vol – Recovery basis)	Aid for Wine Spirit and raw alcohol (Recovery basis)
Article 27	€0.0996 per lal	€0.0694 per lal
Article 28	€0.6401 per lal	€0.6401 per lal

Article 27 Compulsory distillation subsidy confers a benefit and that the amount of subsidy attributable to the benefit is €0.0996 per lal.

Article 28 Compulsory distillation subsidy confers a benefit and that the amount of subsidy attributable to the benefit is €0.6401 per lal.

Crisis Distillation Aid – Article 30 – Crisis Distillation Aid

1. Does this constitute a subsidy within s269T(1)?

(a) Financial contribution

Crisis Distillation Aid is intended to overcome exceptional and non-ongoing cases of over production and/or problems with wine quality. In such periods the relevant Member State is permitted to open or trigger crisis measures and provide government assistance directly to the market to facilitate a larger distillation of the wine surplus than that amount which is possible under Article 29 distillation.

During the wine years 2000/2001 and 2001/2002, France opened crisis distillation measures on three occasions and in respect of some 6.15 million hectolitres of wine.

Date	Regulation No.	Hectolitres of Wine
5 January 2001	EC No 25/2001	800,000
19 June 2001	EC No 1203/2001	1,500,000
25 February 2002	EC No 347/2002	3,850,000

It is the wine years 2000/01 to 2002/03, and perhaps though less likely wine year 2003/2004, that the brandy exported to Australia during the investigation period was most probably distilled.

The measures continue to be used regularly in the EU and France²³ and are aimed at overcoming a current oversupply or stock build up of wine in the market. The measures encourage an even greater portion of wine being

²³ Further crisis distillation measures were opened in May 2005 and June 2006.

directed to distillation. Again a legal minimum buy-in price is set which the distillers must pay the wine makers. Unlike Article 29 distillation, no ceiling is set on the quantity that individual wine makers can have distilled.

The minimum buy-in price is set at a lower price than that available under Article 29 distillation in an attempt to not adversely affect the application of distillation under that Article by ensuring that an ongoing volume of wine will be optionally distilled under Article 29.

Customs understands that since at least the wine year 1999/2000 the aid has been payable on the distillation of raw or neutral alcohol only and not the production of wine distillate or wine spirit. Stipulations in the Regulations opening the crisis aid specify that to qualify for the aid the product obtained from the distillation must be delivered to the relevant intervention agency and:

the product shall be of an alcoholic strength of at least 92% vol.

The Regulations then specify that upon delivery of the raw alcohol to the intervention agency the distillers are guaranteed a set price for the distilled product. It should be noted that this form of aid does not entail a direct payment from the government to the distillers (as in primary and secondary aid above) but rather sets a price (other and higher than the market price) that the distiller receives for their distilled product.

In respect of the three openings of crisis distillation (as detailed above) the following were the regulated wine buy-in prices and guaranteed alcohol purchase prices:

Date	Regulation No.	Wine Buy-in Price per lal	Distillate Price per lal
5 January 2001	EC No 25/2001	€1.914	€2.2812
19 June 2001	EC No 1203/2001	€1.914	€2.2812
25 February 2002	EC No 347/2002	€1.914	€2.2812

In a written response received from the EC Delegation, Customs was advised that under Article 30 distillation (crisis distillation):

the alcohol produced is absolutely not allowed to be used for the production of spirits.

This advice is not apparent on a plain reading of the relevant Regulations as Article 31 to Council Regulation (EC) No. 1493/1999 provides an exception clause that allows for the distillate to be directed to a sector of alcohol for comestible use (such as brandy production) when a situation arises where the

required supply to that sector has not been realised under the operation of other Articles, including Article 29²⁴.

In response to questions on this point the EC advised as follows:

Paragraph 2 of Article 31 provides that in exceptional cases this alcohol can be used in the comestible sector i.e. for brandy production. However, this is to be considered as a purely hypothetical safeguard measure, which has never been applied in practice: as the wine market in the EU is in a situation of structural surplus, the supply of the potable alcohol sector has never been a problem.

Despite this advice Customs has noted an incidence in the early 2001 when crisis aid (in the form of exceptional national aid – see discussion following²⁵) was indeed directed to the potable alcohol sector.

Customs further considered whether the requirement of the high alcohol content (>92%) would mean that the alcohol could not be used in brandy production. In this respect Customs noted that Council Regulation (EC) No. 1576/89 of 29 May 1982 lays down the general rules on the definition, description and presentation of spirit drinks. In respect of brandy the following definition is provided²⁶:

Brandy (or Weinbrand):

A spirit drink produced from wine spirit, whether or not blended with a wine distillate distilled at less than 94.8% vol provided that the said distillate does not exceed a maximum of 50% by volume of the finished product.

In respect of this definition Customs further notes that the product eligible for the crisis distillation aid (being a product of at least 92% vol) can constitute up to 50% of finished brandy in France (being a product of no more than 94.8% vol) and moreover could and can constitute an even higher percentage in finished French brandy for export to Australia.

Given these observations Customs requested that the EC provide further supporting evidence to their claim that crisis distillation aid was not provided to distillers whose product of distillation was then used in the production of potable spirits. This evidence has not yet been provided.

Without any further such information Customs has concluded on the basis of the current facts available that the likelihood exists that the distilled product subject to crisis distillation has been and can be directed to brandy production.

²⁴ A clearer explanation of this exception can be found at para 4, page 43 European Commission, DG Agriculture Working Paper “*Wine – Common Market Organisation*”, February 2006.

²⁵ Refer discussion on “Council Decision of 19 December 2000” underneath.

²⁶ Article 1(e) of Council Regulation (EC) No 1576/89.

As above, in their response to the questionnaire the EC Delegation acknowledged that the aid payable under the programme was a financial contribution made by a government.

Customs concludes the aid constitutes a financial contribution by a government.

(b) Conferred benefit

The aid confers a benefit due to the government set guaranteed price that the distiller receives for the product.

(c) Specificity

The aid is specific as only distillers are eligible for the set price.

(d) Conclusion

On the basis of facts available, Customs is satisfied that the crisis distillation aid granted to distillers by the European Commission and the French Government under Article 30 is a subsidy under s. 269T(1).

2. What is the amount of the benefit?

Customs has assessed the facts available and concluded that there is a likelihood of the distillate product, which is the subject of crisis distillation aid, being blended with wine spirit to make the brandy that was exported to Australia.

Customs assessment of this aid programme pursuant to Article 30 of Regulation 1493/1999 followed and considered the same parameters as set out above in Customs' consideration of the Primary aid programme. The procedures and financial impacts for the wine-maker, the distiller and the brandy producer are largely the same as in the above analysis in respect of the pass through of the subsidy to the exported brandy.

At the same time Customs notes that the increased distillation activity that this assistance program would engender, would provide a very helpful contribution to the French distillers operational overheads. This in turn would have an effect of reducing the cost of other distillation products that the French distiller makes including the wine spirit that was the feedstock for the brandy that was exported to Australia. Customs notes that this in itself may constitute a benefit but at the same time notes the inherent difficulty in quantifying the amount. Customs seeks the views of interested parties in this regard.

To establish the amount of the crisis aid Customs has used similar methodology to that which Customs understands applies to the calculation of the primary aid (see calculations above) as follows (per lal):

Guaranteed Distillate Price	€2.2812
- Estimated Market Price for Wine Spirit/Alcohol	€1.159

= Amount of Crisis Aid	€1.1222

Article 30 crisis distillation subsidy confers a benefit and that the amount of the subsidy attributable to the benefit is €1.222 per lal.

Crisis Distillation Aid – Article 30 – Exceptional National Aid.

1. Does this constitute a subsidy within s269T(1)?

(a) Financial contribution

During the wine years 2000/2001 and 2001/2002, France opened Exceptional National Aid on three occasions and in respect of some 6.3 million hectolitres²⁷ of wine as follows:

Council Decision Date	Regulation No.	Hectolitres of Wine
19 December 2000	2000/810/EC	800,000
19 June 2001	2001/477/EC	1,500,000
28 February 2002	2002/193/EC	4,000,000

The measures were aimed at increasing the wine buy-in price for distillation further and even higher than that provided for under the other distillation aid programmes available in Council Regulation (EC) No. 1493/1999, including the separately opened Article 30 Crisis Distillation Aid.

Exceptional National Aid is funded directly from the budget of the French Government and has been described to Customs as “*a national top-up to the EU premium*”. It is only for a discrete volume of wine and within a set national budget. It should be noted that this French aid was opened at the same time and in respect of the same amounts as the three instances of crisis aid as discussed above.

The EC has advised Customs that Exceptional National Aid was also opened in France during the 2005/2006 wine year. Customs has asked the EC to provide further details on this recent application of Exceptional National Aid.

²⁷

1 Hectolitre = 100 Litres.

Council Decision of 19 December 2000

Customs understands that the first tranche of this Exceptional National Aid was opened to table wine to be distilled under Article 29 distillation. (Council Decision of 19 December 2000 – 2000/810/EC refers)

Customs notes that this opening would appear to be at odds with the advice received from the EC that crisis aid is not or has not been directed to the potable alcohol sector.

Council Decision of 19 June 2001 & Council Decision of 28 February 2002

Customs further understands that the second and third tranche of this Exceptional National Aid was payable on the distillation of raw or neutral alcohol only (under Article 30) and not on the production of wine distillate or wine spirit under Article 29. (Council Decision of 19 June 2001 – 2001/477/EC and Council Decision of 28 February 2002 – 2002/193/EC refers)

Customs understands that this aid operated in the same way as the crisis distillation aid programme but with commensurately higher wine purchase prices and higher guaranteed prices to the distiller. Regulations show that the aid was intended to raise the wine selling price to distillers from the €1.914 per lal available under the crisis distillation to €3.05 per lal (from 19 June 2001) and €2.744 per lal (from 28 February 2002). To do so the Regulations increased the guaranteed distillate selling price for the distiller to €3.4172 per lal (from 19 June 2001) and €3.1112 per lal (from 28 February 2002).

The EC has again advised that the distillate produced and eligible for Exceptional National Aid is not directed to the potable alcohol sector. Given the observations above in respect of crisis aid distillation Customs has asked the EC to provide further supporting evidence to their claim that exceptional national aid was not provided by the French Government to distillers whose product of distillation was then used in the production of potable spirits. This evidence has not yet been provided.

Without any further such information Customs has concluded, on the basis of the current facts available, that the likelihood exists that the distilled product subject to exceptional national aid has been and can be directed to brandy production. In doing so Customs has formed the view that the likelihood of this occurring is even higher than that under crisis distillation, as the buy-in price of the wine under exceptional national aid is higher than that offered under Article 29 distillation. It would be expected that this would affect the supply of product presented for Article 29 thus creating shortages in that sector which could be remedied by directing the alcohol so produced back to the potable alcohol sector pursuant to Article 31.

As above, in their response to the questionnaire the EC Delegation acknowledged that the aid payable under the programme was a financial contribution made by a government. Therefore the aid is a subsidy within the definition of s269T(1).

Customs concludes the aid constitutes a financial contribution by a government.

(b) Conferred benefit

The aid confers a benefit, as it is a direct payment for distilled volumes in respect of the first Council decision and due to the availability of government set price for their product in respect of the second and third decisions.

(c) Specificity

The aid is specific as only distillers are eligible for the set price.

(d) Conclusion

On the basis of facts available, Customs is satisfied that the exceptional national aid granted to distillers by the European Commission and the French Government under Article 30 is a subsidy under s. 269T(1).

2. What is the amount of benefit?

Customs has assessed the facts available and concluded that there is a likelihood of the distillate product, which is the subject of exceptional national aid, being blended with wine spirit to make the brandy that was exported to Australia.

Customs assessment of this aid programme pursuant to Article 30 of Regulation 1493/1999 followed and considered the same parameters as set out above in Customs' consideration of the Primary aid programme. The procedures and financial impacts for the wine-maker, the distiller and the brandy producer are largely the same as in the above analysis in respect of the pass through of the subsidy to the exported brandy.

As for crisis distillation above, Customs notes that the increased distillation activity, that this assistance program would engender, would provide a very helpful contribution to the French distillers operational overheads. This in turn would have an effect of reducing the cost of other distillation products that the French distiller makes including the wine spirit that was the feedstock for the brandy that was exported to Australia. Customs again seeks the views of interested parties in this regard.

Council Decision of 19 December 2000

For those distillation contracts under Article 29 Distillation this would mean that the amount of the Exceptional National Aid from the French Government was as follows:

Exceptional Wine Buy-in Price	€3.70
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- Art 29 Legislated wine Buy-in Price	€2.488
= Exceptional National Aid	€1.212
+ Primary Aid	€1.751
= Amount of Primary & Exceptional Aid	€2.963

Customs notes that this payment was in respect of a discrete volume of wine (being 800K Hectolitres) and for contracts concluded (not actual distillation) within the period of the decision date and the next tranche of national aid (being the period from 19 December 2000 to 19 June 2001).

Exceptional National Aid subsidy pursuant to the Council Decision of 19 December 2000 conferred a benefit and the amount of the subsidy attributable to the benefit was €1.212 per lal. Customs notes that this was for a discrete (but considerable) volume of distilled spirit.

Council Decision of 19 June 2001 & Council Decision of 28 February 2002

In accordance with the methodology mentioned previously Customs has calculated the amount of this subsidy as follows:

	19 June 2001	28 Feb 2002
Guaranteed Distillate Selling Price	€3.4172	€3.1112
- Estimated Market Price for Wine Spirit/Alcohol	€1.159	€1.159
= Amount of Exceptional National Aid	€2.2582	€1.9522

Article 30 Exceptional National Aid subsidy pursuant to the Council Decision of 19 June 2001 conferred a benefit and the amount of the subsidy attributable to the benefit was €2.2582 per lal. Customs notes that this was for a discrete (but considerable) volume of distilled spirit.

Article 30 Exceptional National Aid subsidy pursuant to the Council Decision of 28 February 2002 conferred a benefit and the amount of the subsidy attributable to the benefit was €1.9522 per lal. Customs notes that this was for a discrete (but considerable) volume of distilled spirit.

Other Aid Programmes for Winemakers and Distillers

Council Regulation (EC) No.1493/1999 also sets out a number of other aid programmes that confer benefits on EU wine makers. For instance (but not limited to):

- Article 24 – Private Storage Aid
- Article 34 – Aid for the use of grape musts
- Article 64 – Refund on cost of sugar added to wine for export.

Customs considers that many of these schemes may constitute countervailable subsidies but the difficulties with establishing pass through of the subsidy and conferred benefit to exported brandy, given the number of parties through which the product passes, would make the requisite satisfaction level difficult to achieve. Customs seeks the views of interested parties in this regard.

Article 66 of Council Regulation (EC) No. 1623/1999 also sets out arrangements surrounding advanced payments that, in the view of Customs,

must confer a benefit to the distillers. Customs understands that the ability to get advanced payment applies to each of the various distillation schemes that have been discussed in this statement above. At the same time Customs notes the inherent difficulty in quantifying the respective amounts. Customs seeks the views of interested parties in this regard.

Countervailing amounts

Is the subsidy countervailable?

s. 269TAAC(1) states that a subsidy is a countervailable subsidy if:

- it is specific; and
- it is not an excluded subsidy.

s. 269TAAC(2) – (6) provide criteria for determining these matters. Customs assessed the compulsory, primary, secondary, crisis distillation and exceptional national aid subsidies against these provisions and concluded that the subsidies are specific and are not excluded subsidies.

Customs is satisfied that the subsidies are countervailable subsidies in terms of s. 269TAAC(1).

Subsidy amounts

Customs is satisfied, in accordance with s. 269TACC, that the

- Primary aid subsidy confers a benefit and that the amount of subsidy attributable to the benefit is €1.751 per lal.
- Secondary aid subsidy confers a benefit and that the amount of subsidy attributable to the benefit is at €0.00042 per lal per day or €0.1533 per lal per year.
- Compulsory distillation (Article 27) subsidy confers a benefit and that the amount of subsidy attributable to the benefit is €0.0996 per lal.
- Compulsory distillation (Article 28) subsidy confers a benefit and that the amount of subsidy attributable to the benefit is €0.6401 per lal.
- Crisis distillation (Article 30) subsidy confers a benefit and that the amount of the subsidy attributable to the benefit is €1.222 per lal.
- Exceptional National Aid subsidy pursuant to the Council Decision of 19 December 2000 conferred a benefit and the amount of the subsidy attributable to the benefit was €1.212 per lal. Customs notes that this was for a discrete (but considerable) volume of distilled spirit.
- Exceptional National Aid subsidy pursuant to the Council Decision of 19 June 2001 conferred a benefit and the amount of the subsidy

attributable to the benefit was €2.2582 per lal. Customs notes that this was for a discrete (but considerable) volume of distilled spirit.

- Exceptional National Aid subsidy pursuant to the Council Decision of 28 February 2002 conferred a benefit and the amount of the subsidy attributable to the benefit was €1.9522 per lal. Customs notes that this was for a discrete (but considerable) volume of distilled spirit.

Customs also notes that it is not possible to simply aggregate these subsidies as a number of the schemes present alternative distillation options and that each litre or lal of brandy that was exported to Australia would not have benefited from each form of assistance.

Is the countervailable subsidisation negligible?

s. 269TDA(2) specifies that the CEO must terminate an investigation in respect of an exporter where the subsidisation is found to be negligible. A countervailable subsidy would be considered to be negligible where it is less than 1% when expressed as a percentage of the export price of the goods. Customs has undertaken this comparison and concludes that the subsidisation is not negligible.

s. 269TDA(7) specifies that the CEO must terminate an investigation in respect of a country, where the volumes of subsidised goods are negligible. s. 269TDA(8) further specifies that countervailing investigations of non-developing countries must be terminated where the volume of the goods imported from that country over a "reasonable examination period" is less than 3% of the total Australian import volume of those goods. In respect of imports from France this is not the case. (Refer to the Table in Chapter 3 above). Customs concludes that the volume of subsidised goods is not negligible.

7 ECONOMIC CONDITION OF THE INDUSTRY

Introduction

This chapter reports on the economic condition of the industry and whether the industry has suffered injury. The injury analysis period is from July 2001 and references to financial years relate to periods ending 30 June.

For the Minister to impose countervailing duties he must be satisfied that the subsidised imports of brandy are causing material injury to the Australian industry producing like goods. If there is evidence of injury suffered by the applicants, Customs must consider whether any injury caused by the existence of subsidised goods constitutes material injury to the Australian industry as a whole.

Customs' assessment of the condition of the industry is largely based on verified information provided by:

- the applicant, Angoves;
- an Australian industry member, Tarac that supported the application; and
- another Australian industry member Southcorp, part of Fosters Group, that did not support the application.

Customs also visited a fourth Australian industry member, Hardys, and received estimates of their sales volumes in the injury analysis period. Although not verified Customs considers Hardys' sales volume information is reasonable for establishing total industry sales volumes and market shares. However, Customs has not included Hardys' price and cost information in the injury analysis.

Customs estimates that, in terms of volume, Angoves, Tarac and Southcorp combined constituted the major proportion²⁸ of the brandy market supplied by the Australian industry in 2005/06. Customs therefore considered the combination of their sales and cost information was sufficient for Customs to make an assessment of the economic condition of the industry as a whole.

Customs notes that the injury (as advised by the Australian industry and examined in previous investigations) extends prior to July 2001. Customs injury analysis has therefore just considered trends over the injury analysis period with no reference to a base year.

²⁸ Customs is unable to disclose this proportion in percentage terms as it would then also disclose the remaining member's percentage of the Australian industry sales.

In the application Angoves stated that:

- apart from the small quantities of locally produced bulk brandy which are sold for use in food preparation or fortifying, all bulk brandy, whether imported or locally produced, is bottled before entry into the Australian market. It is at this point where Australian and French brandies compete and the injury to the Australian industry occurs.
- Material injury is being caused to the Australian industry by the continued presence in the Australian market of heavily subsidised (currently €3.04042 per lal) brandy bottled in France and bulk French brandy bottled in Australia sold at prices which significantly undercut the applicants prices.
- Effectiveness of the countervailing measures (now expired) on bottled French brandy imposed in 2001 has been eroded by rising costs. Because of the presence of the subsidised French Brandy, Angove's selling prices have not risen at the same rate as costs. In addition, limitation of the measures to imports A\$13 per lal FOB or below has not provided the intended protection against subsidised imports.
- The French brandy which undercuts the Australian industry's prices is both imported in bottles and imported in bulk and bottled in Australia.
- The price undercutting which has led to price suppression, reduced profit and profitability is the direct result of EC subsidisation.

In response to the initiation of the investigation Fosters stated that:

- Any alleged material injury can only be considered if it has occurred after the previous measures have ceased to operate; and
- There are two distinct markets involved (being bulk and bottled) and this is confirmed by the several examinations of the matters to date. Any alleged injury that may be considered to have occurred should be clearly identified back to the source of the injury being either "bulk" or "bottled" brandy.

Price Effects

Customs analysed price undercutting using sales of bottled brandy to the same or comparable customers. Customs considered it most appropriate to analyse price depression and suppression separately for sales of brandy in bulk, and sales of brandy in bottles. This is because bulk brandy and bottled brandy are sold into different markets with significant differences in sale prices and costs to produce. A combined analysis would be meaningless in terms of price depression and suppression.

Price depression

Price depression occurs when there is a trend of declining prices realised by the Australian industry.

Brandy in bulk

There was no price depression as the weighted average price per lal for Brandy in bulk increased over the period, as shown below:

Period	2001/02	2002/03	2003/04	2004/05	2005/06
Price Index	100	78	93	116	116

Brandy in bottles

There was no price depression as the weighted average price per lal for Brandy in bottles increased over the period as shown below:

Period	2001/02	2002/03	2003/04	2004/05	2005/06
Price Index	100	99	103	107	109

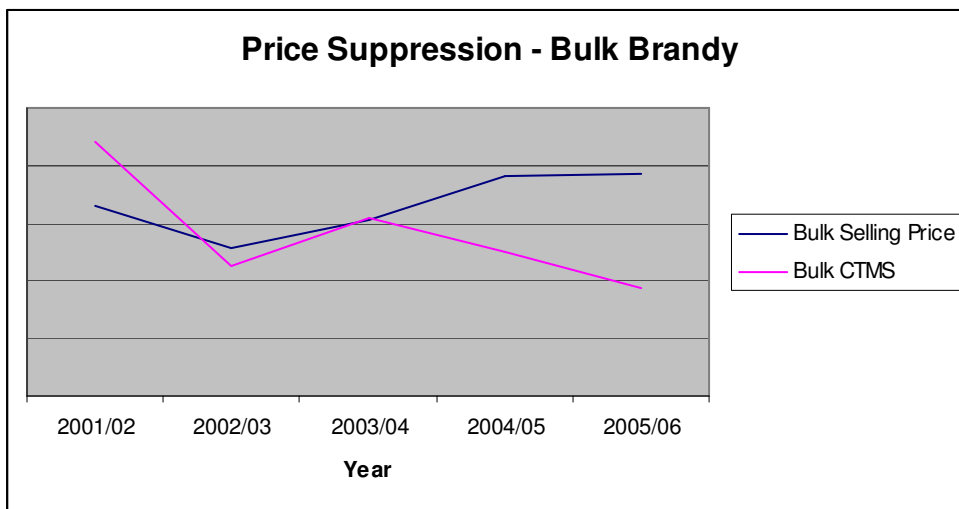
Customs considers that the industry is not suffering injury from price depression. Customs price depression analysis is at **confidential appendix 3**.

Price suppression

Price suppression is the inability to raise prices in line with cost increases.

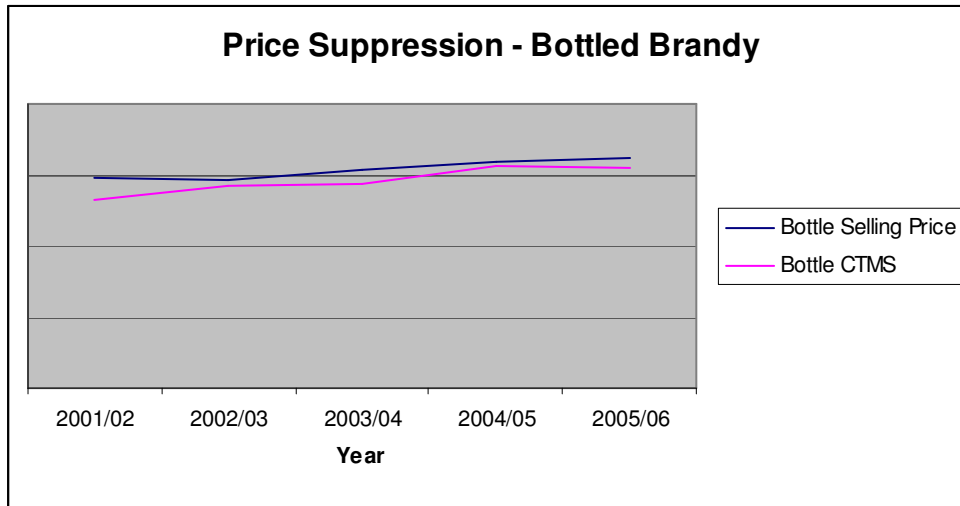
Brandy in bulk

The weighted average price per lal increased over the injury analysis period while the cost to make and sell (CTMS) per lal decreased, resulting in no price suppression, as shown in the graph below:



Brandy in bottles

The weighted average price per lal increased over the injury analysis period while the CTMS per lal also increased, but at a greater rate resulting in price suppression, as shown in the graph below:



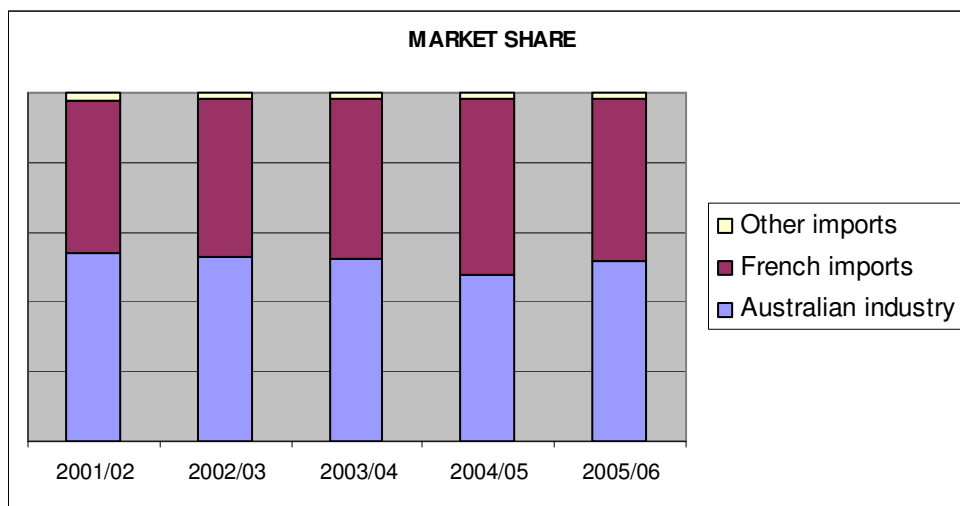
Customs considers that the industry is suffering price suppression on sales of bottled brandy alone but notes that bottled brandy constitutes approximately 80% of the sales of the Australian industry in 2005/06. Customs price suppression analysis is at **confidential appendix 3**.

Volume effects

In analysing volume effects Customs compared performance over the period 2001 to 2006. Customs analysed volume effects on an overall basis, that is, a combination of bulk sales and bottle sales.

Market share

Customs' analysis of market share demonstrated that the Australian market is in decline. The Australian industry's share of that shrinking market decreased by 3% over the injury analysis period.



Customs considers that the Australian industry is suffering injury in the form of loss of market share. Customs analysis of market share is at **confidential appendix 1**.

Sales Volumes

Sales volume, in lals, decreased over the period.

Period	2001/02	2002/03	2003/04	2004/05	2005/06
Sales Volume Index	100	102	90	76	83

Customs considers that the Australian industry is suffering injury in the form of a loss of sales volume. Customs sales volume analysis is at **confidential appendix 3**.

Profits and profitability

Customs examined profit and profitability effects over the period 2001 to 2006. Customs analysed profit and overall profitability for all brandy sales, that is, bulk and bottle sales.

Profit

Profit for brandy decreased significantly over the injury period.

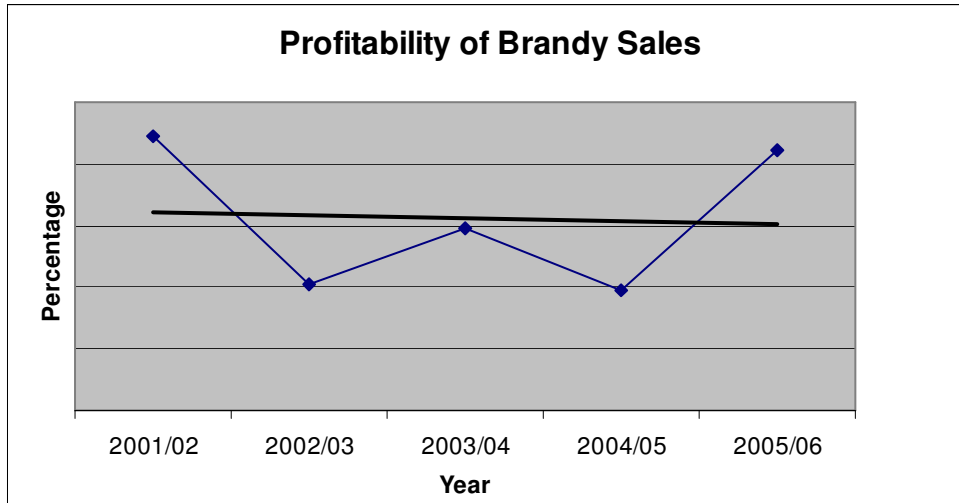
Period	2001/02	2002/03	2003/04	2004/05	2005/06
Profit Index	100	43	57	36	82

Customs considers that the Australian industry is suffering loss of profits, while noting a considerable recovery in 2004/05 to 2005/06 due to a significant reduction in costs by one member of the Australian industry. Customs profit analysis is at **confidential appendix 3**.

Profitability

Profitability was derived from overall profit (for all Australian producers) as a percentage of overall sales (for all producers).

While profitability decreases in 2002/03 and 2004/05, there was a noticeable recovery in 2005/06, though not to the level achieved in 2001/02 as shown in the graph below. The graph also includes a 'trendline' for the injury analysis period.



The percentage decrease from the start of the injury was in the range of 0 - 5%.

Customs considers that the Australian industry is suffering a reduction in profitability, while noting a considerable recovery in 2003/04 to 2005/06 due to a significant reduction in costs by one member of the Australian industry. Customs profitability analysis is at **confidential appendix 3**.

Other factors

Article 3.4 of the WTO agreement states that the examination of the impact of the imports on the domestic industry concerned shall include an evaluation of all relevant factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilisation of capacity; factors affecting domestic prices; actual and potential negative effects on cash flows, inventories, employment, wages, growth, ability to raise capital or investments.

Customs examination of other relevant economic factors is detailed below:

Assets and capital investment

Customs noted that the value of assets employed (by the applicant) in the production of brandy decreased over the injury period as a result of normal depreciation charges, while capital investment remained unchanged. Customs did not consider the evaluation of the current level of assets employed or capital investment provided an additional indication of injury to the Australian industry.

Revenue

Revenue from the sale of brandy decreased over the injury period for the Australian industry as a whole as a result of the loss in sales volume as shown below:

Period	2001/02	2002/03	2003/04	2004/05	2005/06
Revenue Index	100	93	86	84	86

The Australian industry is suffering injury in the form of reduced revenue. Customs sales value analysis is at **confidential appendix 3**.

Capacity utilisation

The capacity utilisation decreased over the injury period (for the applicant) as a result of loss of sales volume in a declining market. The Australian industry is experiencing injury in the form of reduced capacity utilisation.

Employment

Customs noted that the number of those employed in the production of brandy remained constant over the injury period for the applicant. Other members of the Australian industry also advised Customs of no changes to the employees involved in brandy production. Customs did not consider the evaluation of employee numbers provided an additional indication of injury to the Australian industry.

Conclusion

The majority of bulk brandy, whether imported or locally produced, is bottled before entry into the Australian market. It is at this point the Australian and French brandies compete and the injury to the Australian industry occurs for both the bulk and bottled imports. Customs therefore considers it appropriate to look at the market for brandy as a whole, regardless of whether it is imported in bulk or in bottles.

Customs' view is that it would not be sufficient for the injury analysis to consider only the time following the expiration of measures. This is because the measures may have been inadequate. Customs makes this observation because more subsidy schemes came to Customs' attention during the investigation.

Examination of information provided by the Australian industry and verified by Customs shows that the Australian industry is suffering injury in the form of:

- price suppression on brandy in bottles (approximately 80% of sales);
- loss of market share;
- loss of sales volume and capacity utilisation;

- loss of revenue;
- loss of profit; and
- reduction in profitability.

8 HAS SUBSIDISATION CAUSED MATERIAL INJURY

Introduction

As reported in the last two chapters, Customs is satisfied that:

- countervailable subsidies have been received in respect of the goods; and
- the Australian industry producing like goods has suffered injury.

This chapter considers whether the Countervailable subsidies in respect of the goods have caused material injury to the industry.

The discussion also addresses whether or not the injury was caused by factors other than the countervailable subsidies in respect of the goods.

Australian industry's claims

Angoves

Angoves stated that material injury is being caused to the Australian industry by the continued presence in the Australian market of heavily subsidised brandy bottled in France and bulk French brandy bottled in Australia at prices that significantly undercut the applicant's prices.

Angoves submitted that the effectiveness of the existing countervailing measures on bottled French brandy imposed in 2001 has been eroded by rising costs. Angoves stated that because of the presence of the subsidised French brandy, Angoves selling prices have not risen at the same rate as costs. In addition, limitation of the measures to imports A\$13 per lal FOB or below has not provided the intended remedy against the injury caused by subsidised imports.

Angoves stated that all imported French bulk brandy is bottled in Australia and, along with the imported brandy bottled in France, competes directly with Australian produced brandy. Consequently, the injury caused by imports of bulk brandy is experienced in the applicant's (and the industry's) performance in its bottled brandy operations.

Angoves stated that it has not been able to increase its prices to cover increasing costs because of the presence of French brandy either imported in bottles or French brandy imported in bulk and bottled in Australia at prices which significantly undercut Angoves' prices. It is Angoves' view that this price undercutting, which has led to price suppression, reduced profit and profitability is the direct result of EC subsidisation.

The reduction in sales volumes due to the declining Australian brandy market has had a negative impact on Angoves performance. Angoves submitted that

this factor reinforces the need for a correction to protect Angoves price and profitability against the effect of EC subsidisation.

Tarac

Tarac advised that while the decline in the Australian brandy market due to consumer preference was a matter of fact, this enhanced the competitiveness within the market and increased the impact that the allegedly subsidised imports had on its economic performance.

Fosters (Southcorp)

Fosters advised that market data showed that most of the French and Australian brandies operated within a narrow price band and that the Australian brandies were generally lower in price than the French brandies.

Fosters agreed with the proposition that the decline in the Australian brandy market was a matter of fact and that this decline enhanced the competitiveness within the market and increased the impact that the allegedly subsidised imports had on the industry's economic performance. At the same time, Fosters noted that the major distribution to the market was through the large buying chains such as Woolworths and Coles who dominated the spirits market and were responsible for driving, and keeping prices, down.

Importers' claims

Woolworths

Woolworths explained that unlike certain whisky brands, customers in the brandy market buy more on price rather than brand. Brandy is '*a very price-driven market*'. That is, people switch brands according to what is the cheapest brandy on the market at the time of purchase. Woolworths pointed out that where there is no real brand loyalty, most brandy consumers will purchase what is on special.

Fosters (Continental)

Fosters is of the view that:

- the brandy market continues to be a decreasing one;
- brandy, regardless of origin, has an image problem in the market place (it does not appeal to the 'younger' drinkers); and
- the market is impacted by the competitive actions of the Australian brandy producing industry.

Fosters is of the view that competitive forces between the Australian industry members is impacting the price and believe that even if the French brandy were not in the market, the price would not rise significantly.

EC and French Governments

The EC claimed that the application failed to demonstrate *prima facie* that the Australian industry suffers material injury. The EC was especially concerned that no causal relationship between the alleged injury and French imports had been demonstrated. The EC submitted that in this respect, the data in the complaint seemed to indicate that the alleged injury was caused by other factors. The EC noted that the market appears to be shrinking and other Australian producers seem to have increased their sales volumes thereby putting the complainant (Angoves) under pressure. The EC drew Customs attention to what was in their view a corroboration of this fact in Trade Measures Branch Report No. 85 of 15 January 2005, which stated that as far as bulk brandy is concerned the cause of injury to the domestic industry is the “*presence of substantial volumes of lower price local production*”.

Customs’ assessment

Price undercutting

Price undercutting occurs when imported product is sold at a price below that of the Australian manufactured product. Customs examined prices in the financial year July 2005 to June 2006, using detailed sales data provided by the industry members and importers.

From available data of sales to the same major customers Customs calculated a weighted average price of all Australian brands and compared this to the weighted average price of all French brands and found that on average the French brandies undercut the Australian brandies in three out of the four quarters analysed to the levels as detailed below:

Jul 05 – Sep 05	Oct 05 – Dec 05	Jan 06 – Mar 06	Apr 06 – Jun 06
Price undercutting of 7%	No price undercutting (Australian industry prices were on average 7% lower)	Price undercutting of 12%	Price undercutting of 6%

These sales included:

- sales of bottled brandy by the Australian industry;
- sales of French brandy bottled underbond by importers; and
- French brandy imported by the customer.

Customs also calculated a quarterly weighted average net sale price per lal individually for six brandy brands, which are estimated to represent approximately 65% of the total market for brandy in Australia. The results below reflect the comparison of the highest price Australian brandy to the lowest priced French brandy:

Jul 05 – Sep 05	Oct 05 – Dec 05	Jan 06 – Mar 06	Apr 06 – Jun 06
Price undercutting of up to 29% by certain French brands	Price undercutting of up to 26% by certain French brands	Price undercutting of up to 33% by certain French brands	Price undercutting of up to 35% by certain French brands

Customs price undercutting analysis is at **confidential appendix 2**.

Price effects

The views of interested parties depicted a market for brandy which was very price sensitive²⁹ in the 'value' brand price range, but also with a degree of brand loyalty in certain regional markets.

In the analysis of market price (as detailed in chapter 7 above) for sales of 700ml bottle brandy to comparable major customers by the Australian industry and importers, Customs found that the French imports regularly undercut the Australian industry price, in some cases quite significantly, at levels up to 35%. Given the price sensitive nature of the market for bottled brandy this undercutting led to the imports increasing their market share.

Customs found that costs for the Australian industry increased during the injury analysis period. However, the cost increases could not be fully recouped through corresponding price increases, as the Australian industry was unable to raise its price to a level that it could reasonably be expected to achieve due to the price undercutting by the French imports. This resulted in price suppression, which led to a reduction in profitability and therefore a corresponding reduction in profits.

Customs is satisfied that the subsidies have enabled export prices for French bottled brandy to be reduced below what they otherwise would be and therefore allowed them to undercut the Australian industry price, which has caused price suppression, loss of profitability and reduced profits.

Volume effects

Customs noted a decline in the Australian market for brandy over the injury analysis period of approximately 13% in total.

During this period the Australian industry experienced a 17% decline in sales and a loss in market share to French imports of approximately 3%.

The price undercutting by the French imports has enabled them to gain market share. The Australian industry has sacrificed market share by not decreasing its price to match that of the French in an attempt to maintain its price at a level that recoups at least some of its increasing costs.

The consequence of this loss of market share is a corresponding loss of profit.

²⁹ The acknowledgment of this price sensitivity was pervasive across the investigation.

Other possible causes of injury

Customs is required to consider whether injury to an industry is being caused, or threatened, by a factor other than subsidised imports.

Declining market

A view expressed by many interested parties and acknowledged by the applicant was that the market for brandy in Australia was on the decline. It was thought that brandy is not considered to be a 'fashionable' drink and that individual brandy brands do not have sufficient exposure in the overall spirit market. Any injury suffered by the Australian industry was in the view of some parties attributed to this declining market.

However, a view also supported by many interested parties was that in a declining market, price becomes a critical factor.

While a significant proportion of the Australian industry's loss of sales volume and therefore loss of profit can be directly attributed to the decline in the market, the Australian industry has nevertheless experienced injury over and above this, through a continuing loss of market share to French imports, of 3% over the injury period.

Customs also notes that the susceptibility of the Australian industry to injury from subsidised imports is actually exacerbated by the visible deterioration of the Australian market for brandy. As discussed in the letter of the Minister for Industry Technology and Commerce, 16 December 1991:

.....an industry which at one point in time is healthy and could shrug off the effects of the presence of dumped products in its market, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping.³⁰

Conclusion

During the investigation period imported French brandy sold on the Australian market has benefited from a number of subsidies, the total value of which is over and above the amount of the measure in effect during this period. The amount by which the countervailable subsidies are higher than the measure is not insignificant.

Customs is of the view that the further subsidisation of imported French brandy has enabled sellers to undercut the price of the Australian industry products thereby impeding any increases in the price of the Australian product (and the ability of the Australian industry to recoup increasing costs and thereby maintain its level of profitability).

³⁰ Customs notes the reference is to dumping rather than countervailing but takes the view that this has been cast in a generic rather than a specific sense and applies equally to considerations in respect of an application for Countervailing duty.

This price undercutting has also assisted the French brandy sellers in taking market share away from the Australian industry.

The combination of the reduction in profitability and loss in market share results in decreased profits, which are considered to be material.

Customs concludes that material injury was caused to the Australian industry by imports of subsidised bottled brandy from France.

WILL SUBSIDISATION & MATERIAL INJURY CONTINUE?

In the case where the Minister is satisfied that material injury has been caused to an industry, countervailing measures may be imposed on future exports of the goods only if the Minister is satisfied that future exports of like goods may be subsidised.

As described in Chapter 6 of this report, some of the subsidy schemes are available each wine year (being compulsory distillation, primary and secondary aid) while some are purportedly only raised in crisis situations. Customs notes that EC crisis distillation has been opened on a regular basis over the injury period with the most recent opening being in June 2006. Since brandy must be matured for a minimum of two years Customs would anticipate that the effect of these most recent openings of crisis distillation aid would be evident in the exported goods during the period that any future measures that might be imposed.

For the general subsidies Customs notes they are available and availed of each wine year and Customs has no reason to believe that future exports would not receive the benefit of these countervailable subsidies.

In their submission the EC advised Customs that a reform agenda was underway in the EU wine sector and that there was a strong possibility that some or all of the distillation schemes may be abandoned in early 2007. Customs noted that there have been calls for reform in this manner for a considerable period of time and that such changes could only be made on a consensus basis within the Community. The prospect of the schemes being abandoned is not sufficiently certain. Given this uncertainty, Customs intends to recommend to the Minister that he should be satisfied that countervailable subsidies may be received in respect of like goods exported to Australia in the future.

There is no evidence to suggest there will be significant changes to either prices or volumes of bottled brandy imported from France. In that situation, Customs considers that material injury to the Australian industry will continue.

Summary

Customs is satisfied that countervailable subsidies will continue to be received in respect of the goods and that in the absence of appropriate measures material injury to the Australian industry will continue.

9. NON-INJURIOUS PRICE

The SCM notes that it is desirable that the amount of countervailing duty be less than the amount of the subsidy, if such lesser duty would be adequate to remove the injury to the domestic industry. This principle is adopted in the Customs Act and in s.10 (3C) of the *Customs Tariff (Anti-Dumping) Act 1975*. This latter provision sets out that the interim countervailing duty payable is the difference between (a) and (b) below:

- (a) the lower of:
 - (i) the sum of the export price and the amount of the ascertained countervailable subsidy; or
 - (ii) the non-injurious price (NIP).
- and
- (b) the export price.

s. 269TACA defines the NIP as follows:

‘The non-injurious price of goods exported to Australia is the minimum price necessary:

- (c) if the goods are the subject of, or of an application for, a countervailing duty notice under subsection 269TJ(1) or (2)—to prevent the injury, or a recurrence of the injury, or to remove the hindrance, referred to in paragraph 269TJ(l)(b) or (2)(b);’

Countervailing duties are based on FOB prices in the country of export. Therefore a NIP is normally calculated in FOB terms for the country of export.

The usual method is to first determine an ‘unsuppressed selling price’ (USP). A USP is the price that the Australian industry would realistically be able to achieve for the goods in a market unaffected by countervailable subsidies.

In determining a USP, Customs’ first preference is to look to the Australian market place for guidance. Customs looks for prices of the locally produced goods at a time when the market was not affected by countervailable subsidies. If this is not possible, Customs looks at the Australian industry’s current cost to make and sell. To this is added an estimate of the profit (if any) that would be achieved by the industry in a market not affected by countervailable subsidies. In estimating this profit, Customs again looks at the market for guidance.

To calculate the NIP, post FOB exportation costs such as overseas freight, insurance, costs incurred in Australia and an amount for importer's profit are deducted from the USP.

In this case, the injury period goes back to July 1996. Given this time span, and the fact that the market is a declining one, Customs considers that it would be inappropriate to determine a USP based on the market place that existed prior to July 1996. Therefore Customs would determine the USP based on the industry's current cost to make and sell plus a suitable level of profit. Customs notes that the profit figure in the most recent Customs' determination of USP³¹ on this product was assessed by reference to the 1995/96 financial year. Customs has reservations in regards to the appropriateness of this reference point and therefore invites submissions from interested parties regarding an alternative reference point and level of profit.

³¹ Trade Measures Report No 40 (2001)

APPENDICES**Non Confidential Appendix**

No	Description
1	Extract from Council Regulation (EC) No. 1493/1999

Confidential Appendices

No	Description
1	Details of Customs' analysis of the Australian brandy market
2	Customs price undercutting analysis
3	Customs injury analysis

Non-Confidential Appendix 1

Extract from Council Regulation (EC) No. 1493/1999

Article 27

1. The overpressing of grapes, whether or not crushed, and the pressing of wine lees shall be prohibited. The refermentation of grape marc for purposes other than distillation shall be prohibited.
2. Filtering and centrifuging of wine lees shall not be considered as pressing where:
 - (a) the products obtained are of sound, genuine and merchantable quality,
 - (b) the lees are not reduced to the dry state.
3. Any natural or legal person or group of persons, with the exception of the persons and groups referred to in paragraph 7, having made wine, shall be required to deliver for distillation all the by-products of that winemaking.
4. The quantity of alcohol contained in the by-products must be at least equal to 10 % in relation to the volume of alcohol contained in the wine produced if the wine has been made directly from grapes. Save in the case of derogations for technically justified cases, it may not be less than 5 % where the wine has been made by vinification of grape musts, partially fermented grape musts or new wines in fermentation. Should the relevant percentage not be reached, those subject to the obligation shall deliver a quantity of wine from their own production, thus ensuring attainment of that percentage. Derogations may be made from paragraph 3 and the first subparagraph of this paragraph for categories of producers to be determined, for certain production regions and for wines subject to the distillation referred to in Article 28.
5. The delivery obligation set out in paragraph 3 may instead be satisfied by delivery of wine to a vinegar manufacturer.
6. Any natural or legal persons or groups of persons, with the exception of the persons and groups referred to in paragraph 7, who hold byproducts of any processing of grapes other than vinification shall be required to deliver them for distillation.
7. Any natural or legal persons or groups of persons who process grapes harvested in wine-growing zone A or in the German part of wine-growing zone B, or on areas planted with vines in Austria or in the Czech Republic shall be required to withdraw the by products of such processing under supervision and subject to conditions to be determined.
8. Those subject to the obligations referred to in paragraph 3 or to that referred to in paragraph 6 may discharge that obligation by the withdrawal of the by-products of vinification under supervision and subject to conditions to be determined.
9. The buying-in price of grape marc, wine lees and of wine delivered for distillation under this Article shall be EUR 0,995 per % vol/h.
10. The price paid by the distiller may not be lower than the buying in price.
11. The distiller may either:
 - (a) receive aid in respect of the product to be distilled, provided that the product obtained by distillation has an alcoholic strength of at least 52 % vol; or
 - (b) deliver the product obtained by distillation to the intervention agency; provided that it has an alcoholic strength of at least 92 % vol.

If wine has been processed into wine fortified for distillation before delivery to the distiller, the aid referred to in (a) shall be paid to the manufacturer of the fortified wine and the product of the distillation may not be delivered to the intervention agency.

12. It may be decided that delivery of the alcohol to the intervention agency may be replaced by delivery to an operator who has submitted a tender in the framework of sales organised for the disposal of the products of distillation which has been accepted under the procedure referred to in Article 31(1).

13. Paragraphs 1 to 12 shall not apply to grape juice or concentrated grape juice or grape must or concentrated grape must intended for the preparation of grape juice.

Article 28

1. Where wine is produced from a grape variety listed in the classification for the same administrative unit as both a wine grape variety and a variety for use for another purpose, any wine which is produced in excess of the normal quantity and which is not exported during the wine year concerned shall be distilled by a date to be determined.

Except by derogation, it may not be moved except to a distillery.

2. The quantity of wine normally produced shall be determined from:

- (a) the quantities produced during a reference period to be determined;
- (b) the quantities of wine put to traditional uses.

3. The buying-in price of wine delivered for distillation under this Article shall be EUR 1,34 per % vol; it may vary during a given wine year provided that the average for that wine year remains EUR 1,34 per% vol.

4. The price paid by the distiller may not be lower than the buying in price.

5. The distiller may either:

- (a) receive aid in respect of the product to be distilled, provided that the product obtained by distillation has an alcoholic strength of at least 52 % vol; or
- (b) deliver the product obtained by distillation to the intervention agency, provided that it has an alcoholic strength of at least 92 % vol.

If wine has been processed into wine fortified for distillation before delivery to the distiller, the aid referred to in (a) shall be paid to the manufacturer of the fortified wine and the product of the distillation may not be delivered to the intervention agency.

6. It may be decided that delivery of the alcohol to the intervention agency may be replaced by delivery to an operator who has submitted a tender in the framework of sales organised for the disposal of the products of distillation which has been accepted under the procedure referred to in Article 31(1).

7. This Article shall apply notwithstanding Article 1(2).

Article 29

1. The Community may provide support for the distillation of table wines and wines suitable for yielding table wines in order to support the wine market and, as a consequence, facilitate the continuation of supplies of wine distillate to those parts of the potable alcohol sector, where the use of such alcohol is traditional.

2. The support shall take the form of a primary aid and a secondary aid paid to distillers.

3. The primary aid shall be paid on the basis of the volume of table wine and wine suitable for yielding table wine which is distilled.

4. The primary aid shall be implemented on the basis of a system of contracts concluded between distillers and wine producers. A minimum price to be paid by distillers to wine producers shall be determined; it may vary during a given wine

year³² provided that the average for that wine year remains at least EUR 2,488 per % vol.

5. The level of primary aid shall reflect:

(a) the need for the average minimum price to be paid by distillers to wine producers in a given wine year to respect the level referred to in paragraph 4;

(b) the need to maintain supplies to traditional outlets in the potable alcohol sector at competitive prices.

6. The secondary aid shall take the form of a payment to cover reasonable storage costs of the resultant product. It shall serve to facilitate the operation of the primary aid system.

Article 30

1. There may be a crisis distillation measure if there is an exceptional case of market disturbance caused by serious surpluses and/or problems of quality.

2. The measure shall have as its objectives: the elimination of specific pockets of surplus;

(a) the elimination of specific pockets of surplus;

(b) the assurance of supply continuity from one harvest to another.

3. The measure shall be voluntary on the part of producers.

4. The measure may be limited to certain categories of wine or certain areas of production. The measure may be applied to quality wine psr only at the request of the Member State concerned.

5. A criterion for introducing the measure may be a demonstrable deterioration, over time, in the market price for a category of wine or for wines from certain areas of production.

6. Should the Community use this measure for three years in succession, for a particular type of wine (in a particular area), the Commission shall draw up a report to the European Parliament and the Council on the persistent crisis including, if appropriate, proposals.

Article 31

1. Alcohol taken over by the intervention agency shall be disposed of either by public auction or by a tendering process. When disposing of such alcohol, as far as possible, the authorities shall avoid affecting the market outlets for alcohol traditionally dependent on the existence of such outlets. It may not be disposed of into the sector of alcohol destined for comestible use.

2. However, it may be decided that if the supply of the part of that sector where the use of wine alcohol is compulsory is not assured by means of the operation of Articles 27, 28 and 29, such alcohol may be disposed of into that sector.

³²

Under EU legislation the wine year is from August to July. For example the 2001/2002 wine year commenced on 1 August 2001 and finished on 30 July 2002.