



WineAmerica Newsletter – August 2009

From The President's Desk

Summer doldrums?

Things have settled down a fair bit in Washington. Talk of health care cost control, structure and, to a lesser extent, financing took up most of the air in Congress in July. Luckily, there was still enough oxygen for a few of our issues. Congress found time to work in several areas important to wineries and we can report making real progress on several fronts.

Agriculture Appropriations were passed by the House and considered by a key Senate committee in July. While the Senate Appropriations Committee version is not as favorable as the bill passed by the full House, it address key research issues of important to wineries. We believe the ultimate product following the House and Senate conference on appropriations will be positive.

You may also have heard reports about House passage of a sweeping food safety bill (H.R. 2749). As we reported last month, we managed to get language in H.R. 2749 that will exempt wineries from its requirements to the extent that they are producing table and dessert wines.

WineAmerica continues its efforts to preserve this exemption and you can find a more detailed account

of our progress later in this newsletter. *See* page 3. So far there's been little controversy regarding the exemption which excludes wineries from a new fee of at least \$500 per year as well as from burdensome and duplicative regulation. But we have to work to be sure that the Senate follows the House in excluding wineries from the bill and iron out some wrinkles in the technical language.

We've nearly defeated the administration's proposal to reinstitute fees to pay for TTB operations, essentially the reintroduction of the Special Occupational Tax. Both the House and Senate Financial Services Appropriations bills contain language specifically rejecting those fees. While the fee proposal may come up again in the next few years, we should enjoy this victory. It demonstrates to a new administration that taxes on the "privilege" of doing business are counterproductive, particularly where they undermine growing and valuable businesses. We appreciate the work of our members who contacted members of Congress about this issue. Your efforts make a difference.

As Congress continues to struggle with the health care debate, we

remain concerned about potential product-specific taxes being introduced, as a means of both raising money under the umbrella of "promoting wellness and healthy choices and curbing activities that increase overall health care costs." Finding the money for the expansion of health care is certainly a problem. In July, Congress seemed to be considering a tax on sugar sweetened beverages. From a practical policy standpoint, it's not a long leap from a soda tax to tax increases for beer, wine and spirits. Fortunately, the soda tax chatter has quieted for now, but we are closely monitoring the situation.

International

Recently JBC International (they represent WineAmerica, Wine Institute and California Association of Wine Grape growers on several international matters) sent a letter to the EU commenting on their proposals for regulation traditional expressions. It contains the following paragraph which articulates our position:

(1) [the EU's request for] A change in the definition for clos and chateau from that adopted by our producer groups

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As we stated in our initial letter we believe that the definitions we submitted already provide European Community consumers with clear indications describing the wine and its characteristics in order to prevent practices likely to be misleading as to the nature of the product. We also believe that in keeping with status the European Community has previously provided to similar descriptors from Canada, Australia, Chile and South Africa, our definitions of terms are equivalent to the same terms in those countries and in the case of clos and chateau, provide more detailed definitions than is provided in the other agreements. In fact, none of those agreements provide a definition for the two terms, clos and chateau. These terms are more often used in trademarks which is acknowledged in the EU-Canadian Agreement where the EU has agreed to accept those terms in trademarks without

definition. At a minimum, the EU should apply the same standard to U.S. Trademarks containing the terms. We believe all of our definitions meet the standards already set for third country use including use in trademarks.

Since some American wineries have the term “Chateau” and “Clos” in their brand names, it is important that we hold our ground and fight for a reasonable accommodation from the EU that recognizes their intellectual property rights. The EU’s desire to regulate traditional expressions should not threaten our exports and potential exports.

WineAmerica is Moving to New Offices

WineAmerica is moving to a new office at the end of the month. Our new address will be: 1015 18th Street NW, Suite 500 Washington DC, 20036-5227. We hope to keep move disruptions to a minimum.

Our phone numbers should remain the same.

Helping Small Wineries Export Their Wine

In collaboration with the TTB, WineAmerica has been organizing a “practical aspects of exporting wine for small wineries” seminar for the end of October. Topics will include: (1) how to export, (2) how to get paid and other details, (3) how to find customers, (4) the impact of trade negotiations and (5) legal considerations in exporting wine. There will be presentations from TTB, U.S. Department of Agriculture Foreign Agriculture Service, Department of Commerce, the U.S. Trade Representative and JBC International. The seminar will be held in Washington, D.C. and is for state association leaders to provide them with the tools to guide their member wineries through the export process.



House Small Business Committee Holds Hearing on Specialty Crops

by Jennifer Montgomery

The Subcommittee on Rural Development, Entrepreneurship and Trade, part of the House Committee on Small Business, held a hearing last week on Specialty Crop programs included in the 2008 Farm Bill. The hearing was presided over by subcommittee Chairman Rep. Heath Shuler (D-NC) and Ranking Member Rep. Blaine Luetkemeyer (R-MO), and examined the implementation of

Specialty Crop programs by the US Department of Agriculture (USDA) as well as the impact of the programs on small farmers and on the future of Specialty Crops.

Prior to the hearing, the subcommittee had asked several Specialty Crop growers and industry representatives to provide testimony. Among those who testified at the hearing, held in Washington, D.C., was Jim

Anderson—a member of WineAmerica’s Board of Directors and the Executive Director of the Missouri Wine & Grape Board. Other witnesses included the Honorable Kathleen Merrigan, USDA’s Deputy Secretary of Agriculture, several growers from North Carolina, and the CEO of the California Canning Peach Association.

During his testimony, Mr.

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Anderson commented that “As an emerging and growing specialty crop industry that is populated by many small family farms, we were pleased to see that mandatory funding for specialty crop programs was included in the Farm Bill.” He went on to discuss the success of the Specialty Crop Block Grant program, as well as the critical importance of the National Clean Plant Network.

Ranking Member Luetkemeyer (R-MO), who had been instrumental in making sure the wine and grape industry was represented at the hearing, added that, “Agriculture is the largest economic sector in my state and district and it is of vital importance to our overall national economy as well. Specialty crops face stiff international competition, and it is

important that we support this industry to ensure the future of our nation’s agriculture and small farms.”

The committee is expected to hold future hearings on Specialty Crops and small farmers. WineAmerica will keep you advised as these take place.



Food Safety Bill Update

by Cary Greene

Last month, we reported on a major lobbying success for our members that would exempt wineries from the requirements of a new food safety bill, the Food Safety Enhancement Act of 2009 (H.R. 2749), then working its way through the House. See Cary Greene, *A Peek at the Food Safety Bill Negotiations* (July 2009). H.R. 2749 introduces a

recordkeeping, traceability, testing, distribution, recall and reporting among other requirements. Various news reports have called the bill “sweeping” in its scope.

Absent an exemption, wineries would be subject to these requirements as “food” processing facilities. Because wines are already thoroughly regulated by TTB and pathogens don’t survive

Since our report last month, the bill—including the winery exemption—was overwhelmingly passed by the House. The next battle will be in the Senate where we have our work cut out for us convincing the Senate Health, Education, Labor and Pensions Committee that the House bill exemption for wineries, with minor modification (explained below),

Because wines are already thoroughly regulated by TTB and pathogens don’t survive in wine, we argued ... that our members should be excluded from the substantive requirements of the Act and any associated fees.

broad range of Food & Drug Administration (FDA) regulatory controls intended to prevent the spread of food-borne illnesses. The bill would impose new restrictions on food production,

in wine, we argued, together with other alcohol beverage trade groups, that our members should be excluded from the substantive requirements of the Act and any associated fees.

should be included in the Senate bill.

The reason modification of the House exemption will be necessary is a last minute change in the bill inserted at the request of

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Wine & Spirits Wholesalers of America that was intended to give wholesaler facilities full exemption from the food safety bills requirements *even if* they carried up to 5% non-alcohol beverage products. For technical reasons, the language doesn't do what it was intended to do. Instead, it potentially puts wineries and other alcohol beverage producers at risk of losing the exemption for all of their products if *more than 5%* of sales from their facility are things other than wines over 7% alcohol by volume. In other words, 94% of your production could be table

wine, but if 6% of your sales are wines under 7% alcohol by volume, grape seed oil, cream of tartar, etc., you could lose the exemption.

This makes the H.R. 2749 exemption something of a moving target on the Senate side, and we are determining the most appropriate way to ensure wineries keep their exemption.

Of course, as we briefly mentioned last month, we are still working on a plan for wines under 7% alcohol by volume which are *not* currently included in the H.R.

2749 exemption. The problem with wines under 7% is that they are regulated partially by FDA (the primary federal food agency) and partially by TTB. In particular, with respect to issues of so-called "adulteration," or tainted food products, FDA has primary authority over wines under 7% alcohol by volume.

We will continue to provide updates as the food safety bill moves its way through Congress.



Regulatory News Briefs: August 2009

by Michael Kaiser

Organic Guidelines Clarification

Last month we reported on the new rules for wines labels with organic claims. Understandably, there might be some confusion about the new rules. The new rules require wines made with at least 70% organic grapes (not organic wine) to contain a "made with organic ingredients" statement. If the wine is made with at least 70% organic grapes, but also contains some non-organic grapes the back label must indicate "made with organic and non-organic grapes." For these over 70% wines, TTB does not require that percentages be listed on the label. Additionally, if the wine contains less than 70% organic ingredients, you may list the

organic grapes (or fruit) so long as it is further qualified with a listing by percentage of any non-organic ingredients.

To avoid confusing wines made with only organic *grapes* from 100% organic *wine*, TTB will no longer allow the use of the statement, "Contains 100% organic grapes (or other fruit)" on wine labels. Please contact WineAmerica with any further questions.

WineAmerica to Examine Labeling Requirements for "Fortified" Wines

In accordance with the 2006 US-EU Wine Trade Agreement, US wineries are not allowed to introduce new "port" and "sherry" labels unless they received label

approval on the same products prior to March 2006. US wineries are still permitted to produce port-style and sherry-style wines, but they cannot refer to them as "port" or "sherry" on products introduced since March 2006. This has created a dilemma for many wineries producing these products, since through a quirk in TTB's regulatory scheme, wineries are limited with respect to how they can refer to these wines. One alternative solution would be to use the term "fortified wine." TTB regulations contain a prohibition on label claims that "tend[] to create the impression that a wine...contains distilled spirits," and TTB seems to have interpreted this language to prohibit use of the term "fortified." Of course, fortified wines traditionally

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do contain spirits, and we believe use of the term “fortified” is simply a matter of truth in labeling. Notably, the Supreme Court struck down similar TTB restrictions on beer “strength” claims, and we believe prohibiting use of the term “fortified” may be unconstitutional. This month we are

meeting with TTB officials to discuss this matter and try to develop an accommodation for wineries that produce port- and sherry-style wines. Let us know if you have any suggestions on this matter.



2009 Policy Retreat and Board Meeting November 16 to 18 - Fredericksburg Texas

Mark your calendars, the 2009 WineAmerica Fall Board of Directors and Membership Meeting is being held November 16 to November 18. This year we will be at the Inn on Barons Creek in Fredericksburg, Texas. Fredericksburg is in the heart of the Texas Hill Country, located approximately 70 miles from Austin and 70 miles from San Antonio.

The Hill Country has more than 30 wineries with seven in the immediate Fredericksburg area and five within easy driving distance. We are excited to be visiting Texas this year and hope you will be able to join us.

WineAmerica will be providing registration information for the 2009 Fall Meeting in the next newsletter and on the WineAmerica website.