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EU Agricultural Policy

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Outline

- Common Agricultural Policy (CAP)
- Regulation 1308/2013 establishing a common organisation of the markets in agricultural products
- New World v Old World

The four basic EU regulations of the new Common Agricultural Policy (CAP), 20 December 2013.

Rural Development: Reg 1305/2013

Horizontal" issues- funding and controls: Reg1306/2013

Direct payments for farmers: Reg 1307/2013

Market measures: Reg 1308/2013



- **REGULATION (EU) No 1308/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 December 2013**
- **establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007**

Article 1

Scope

1. This Regulation establishes a common organisation of the markets for agricultural products, which means all the products listed in Annex I to the Treaties with the exception of the fishery and aquaculture products...

Section 2 Designations of origin, geographical indications and traditional terms in the wine sector

Article 92 1. Rules on designations of origin, geographical indications and traditional terms laid down in this Section shall apply to the products referred to in points 1, 3 to 6, 8, 9, 11, 15 and 16 of Part II of Annex VIII.

2. The rules referred to in paragraph 1 shall be based on:

- (a) protecting the legitimate interests of consumers and producers;
- (b) ensuring the smooth operation of the internal market in the products concerned; and
- (c) promoting the production of quality products referred to in this Section, whilst allowing national quality policy measures.

Subsection 2 Designations of origin and geographical indications

Art.93 Definitions

1. For the purposes of this Section, the following definitions shall apply:

(a) "a designation of origin" means the name of a region, a specific place or, in exceptional and duly justifiable cases, a country used to describe a product referred to in Article 92(1) fulfilling the following requirements:

(i) the quality and characteristics of the product are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors;

(ii) the grapes from which the product is produced come exclusively from that geographical area;

(iii) the production takes place in that geographical area; and

(iv) the product is obtained from vine varieties belonging to *Vitis vinifera*;

(b) "a geographical indication" means an indication referring to a region, a specific place or, in exceptional and duly justifiable cases, a country, used to describe a product referred to in Article 92(1) fulfilling the following requirements:

(i) it possesses a specific quality, reputation or other characteristics attributable to that geographical origin;

(ii) at least 85 % of the grapes used for its production come exclusively from that geographical area;

(iii) its production takes place in that geographical area; and

(iv) it is obtained from vine varieties belonging to *Vitis vinifera* or a cross between the *Vitis vinifera* species and other species of the genus *Vitis*.

Vitis vinifera, the **common grape vine**, is a species of *Vitis*, native to the Mediterranean region, central Europe, and southwestern Asia from Morocco and Portugal north to southern Germany and east to northern Iran. There are currently between 5,000 and 10,000 varieties of *Vitis vinifera* grapes though only a few are of commercial significance for wine and table grape production

Article 94 Applications for protection

1. Applications for protection of names as designations of origin or geographical indications shall include a technical file containing:

- (a) the name to be protected;
- (b) the name and address of the applicant;
- (c) a product specification, as referred to in paragraph 2; and
- (d) a single document summarising the product specification referred to in paragraph 2.

2. The product specification shall enable interested parties to verify the relevant conditions of production relating to the designation of origin or geographical indication.

The product specification shall at least consist of:

- (a) the name to be protected;
- (b) description of the wine or wines:
 - (i) in respect of a designation of origin, the principal analytical and organoleptic characteristics;
 - (ii) in respect of a geographical indication, the principal analytical characteristics as well as an evaluation or indication of its organoleptic characteristics;

Art.100(3)

3. Where the name of a wine grape variety contains or consists of a protected designation of origin or a protected geographical indication, that name shall not be used for the purposes of labelling agricultural products.

Comité Interprofessionnel du Vin de Champagne Aldi
Süd Dienstleistungs-GmbH & Co OHG
(C-393/16), 20 December 2017)

- Comité Inteprofessionnel du Vin de Champagne (CIPV), an association of champagne producers, brought proceedings against German discounter Aldi Süd to prohibit it from selling a sorbet under the name 'Champagner Sorbet' which only contained 12% champagne.



- While CIPV succeeded at first instance, the second instance court in Munich saw things differently and found that use of the sign “Champagner” did not exploit the reputation of the PDO for “Champagne”.
- On further appeal, the German Federal Court of Justice (Bundesgerichtshof) referred the case to the CJEU for a preliminary ruling in order to clarify the "conditions" under which it would be allowed for a food operator to use the protected term ‘Champagne’ on a product which is not Champagne but which contains Champagne.

- The CJEU held that the unlawful exploitation of the reputation of a PDO entails use of the PDO that seeks to take undue advantage of its reputation.
- The CJEU further found held that the name used by Aldi Süd "Champagner Sorbet" was liable to extend the reputation of the PDO Champagne to that product.
- However, the CJEU held that the sorbet product may be sold under name 'Champagner Sorbet' if it is one of its essential characteristics, i.e. if it has a taste attributable primarily to champagne. If so, then the product name did not take undue advantage of the PDO 'Champagne' and could be used.

- 31. It should be noted, first, that the scope of protection afforded by Art, 118m(2)(a) of Reg.1234/2007 and Art.103(2)(a) of Reg. 1308/2013 is particularly broad, in that those provisions are directed at any direct or indirect commercial use of a PDO or a PGI and protect them against such use, both as regards comparable products which do not comply with the product specifications of the protected name and as regards products which are not comparable, in so far as that use exploits the reputation of that PDO or PGI.
- The extent of that protection is consistent with the objective, confirmed in recital 97 of Regulation No 1308/2013, of protecting PDOs and PGIs against any use intended to take advantage of the reputation enjoyed by products which comply with the relevant specifications.

EC Guidelines on the labelling of foodstuffs using PDOs or PGIs as ingredients (OJ 2010 C 341, p. 3)

1. A name registered as a PDO or PGI may legitimately be included in the list of ingredients of a foodstuff.
2. A name registered as a PDO or PGI may be mentioned in or close to the trade name of a foodstuff incorporating products benefiting from a registered name, as well as in the labelling, presentation and advertising relating to that foodstuff, provided that the following conditions are met.
 - The foodstuff in question should not contain any other “comparable ingredient”, i.e. any other ingredient which may partially or totally replace the ingredient benefiting from a PDO or PGI. Eg a blue-veined cheese (commonly known as “blue cheese”) could be considered comparable to “Roquefort” cheese. |
 - This ingredient should also be used in sufficient quantities to confer an essential characteristic on the foodstuff concerned.
 - The percentage of incorporation of an ingredient with a PDO or PGI should ideally be indicated in or in close proximity to the trade name of the relevant foodstuff or in the list of ingredients, in direct relation to the ingredient in question.

Article 101 Additional grounds for refusal of protection

1. A name that has become **generic** shall not be protected as a designation of origin or a geographical indication.

For the purposes of this Section, a "name that has become generic" means the name of a wine which, although it relates to the place or the region where this product was originally produced or marketed, has become the **common name** of a wine in the Union.

To establish whether or not a name has become generic, the relevant factors shall be taken into account, in particular:

- (a) the existing situation in the Union, notably in areas of consumption;
- (b) the relevant Union or national law.

2. A name shall not be protected as a designation of origin or geographical indication where, in the light of a trade mark's reputation and renown, protection could mislead the consumer as to the true identity of the wine.

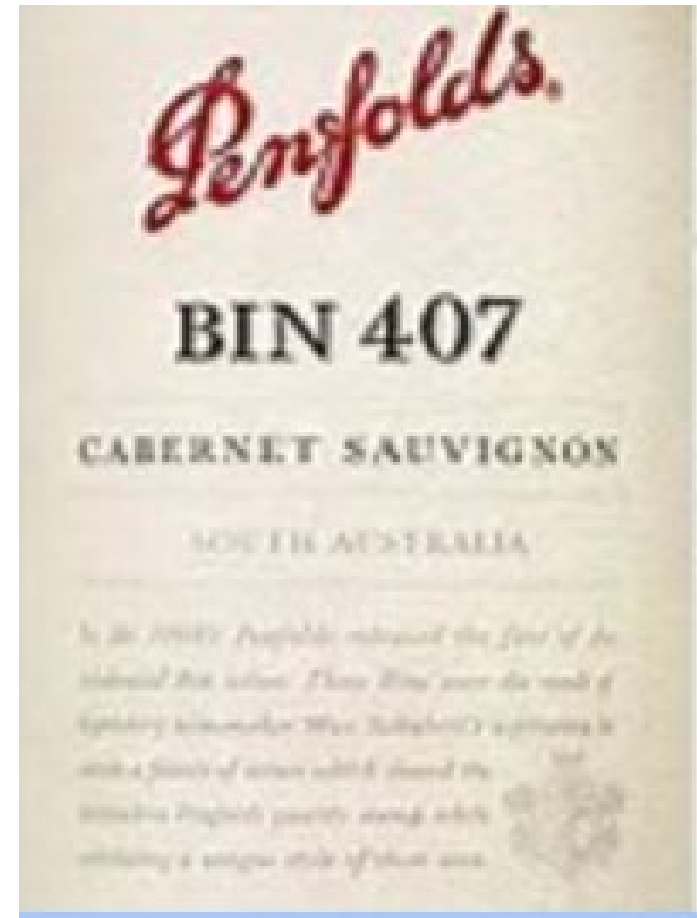
Generic wine names?

- Chablis, Burgundy, Champagne, Sherry and Port.
- Bordeaux, Chianti, Beaujolais.
- Spumante, Sekt.

US imitation of Italian wine



Counterfeit Wines

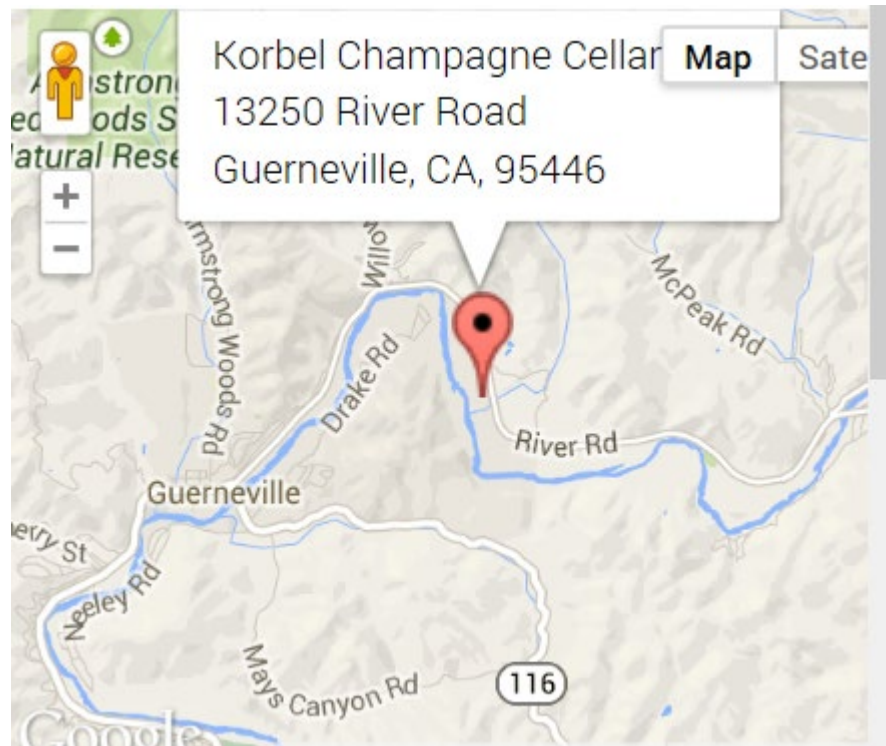


New World v Old World





California Champagne



KORBEL[®]

CALIFORNIA CHAMPAGNE

Champagne Province France



Budweiser/Budweis



Budejovický Budvar v Anheuser- Busch [2008] EUECJ T-225/06



Budweiser[®]
Budvar

Kaiser Stuhl (Australia)

Kaiser Stuhl Wine



Kaiser Stuhl (Barossa Range)



South Australian wine industry

- South Australian wine industry established by Lutheran immigrants from various Prussian provinces. A number of settlers were escaping religious persecution in the Prussian province of Silesia (now Poland).
- In 1841 the South Australian Company chartered three ships to Silesia to offer refuge and land in the Barossa Valley. Nearly 500 families accepted the offer and settled in the Barossa Valley.

Kaiserstuhl - Germany



Kaiser Stuhl

- Dispute between Zentralkellerei Badischer Winzergenossenschaften e.G. and Barossa Co-operative Winery Limited regarding the use of the name “Kaiser Stuhl” settled by a commercial agreement which enabled the Barossa Cooperative to enter the words “Kaiser Stuhl” in the Australian Register of Protected Names and to describe, present, sell or export wines under this name and that Zentralkellerei Badischer Winzergenossenschaften e.G. and would use the GI "Bereich Kaiserstuhl".

European wine names in Australian courts

- *Re Comite Interprofessionel Du Vin De Champagne v N L Burton Pty Limited* [1981] FCA 196 concerned the importation and sale of “Spanish Champagne” the Federal Court in declining to find a breach of the law was influenced by the evidence of consumers “that they regarded ‘champagne’” as a bubbly drink particularly appropriate for festive occasions.”

European wine names in Australian courts

- *Re Gavioli Luigi & Figli SNC v GJ Coles & Co Pty Ltd* [1983] FCA 353 a fight between an importer and a distributor of Lambrusco wine in Australia.
- The judge in that case referred to the earlier Champagne case “as an illustration of the reluctance of the courts to find misleading or deceptive conduct in respect of the use of a name descriptive of a particular type of wine”.

French nuclear testing in the Pacific



- A total of 193 nuclear tests were carried out in Polynesia from 1966 to 1996.
- Muraroa Atoll pictured

Australia and European Union Wine Agreement 1994

- Agreement between the European Community and Australia on trade in wine came into effect on 1 March 1994.
- In exchange for the European Community reducing the technical barriers for Australian wines exports, Australia agreed to phase out the use of European GIs and other geographical names listed in Schedule 2 to the agreement.

Australia and European Union Wine Agreement 1994

- (a) transitional period ending on 31 December 1993: Beaujolais, Cava, Frascati, Sancerre, Saint-Emilion/St. Emilion, Vinho Verde/Vino Verde, White Bordeaux; (b) transitional period ending on 31 December 1997: Chianti, Frontignan, Hock, Madeira and Malaga.
- Article 9 of the Agreement provided for the negotiation by 31 December 1997 of transitional periods for: Burgundy, Chablis, Champagne, Claret, Graves, Marsala, Moselle, Port, Sauternes, Sherry and White Burgundy.
- A transitional period for "Beaujolais" was to be subject to an agreement between the Australian producers and the competent French authorities representing the producers of "Beaujolais".

Australian Wine and Brandy Corporation Act 1980 amended 1999-2011 to take account of TRIPS, Art 23 and the Wine Agreements. In 2011 became the Wine Australia Corporation Act 2011

Section 40ZC established a Register of Protected Geographical Indications.

Includes: (i) GIs in relation to wines originating in Australia and conditions of use applicable to those indications;

(ii) GIs in relation to wines originating in a foreign country any translations of those indications, and any conditions of use applicable to those indications or translations;

(iii) Traditional expressions in relation to wines originating in a foreign country and any conditions of use applicable to those expressions

- The effect of the Act was tested by the Federal Court of Australia in *Comite Interprofessionnel des Vins Cotes de Provence v Stuart Alexander Bryce* [1996] FCA 742.
- The applicants (public bodies established under French law and representatives of wine producers in Provence) complained of the sale by the respondents of wine under the name "La Provence" from their Tasmanian vineyard.
- The respondents' vineyard had been established in 1956 by Jean Miguet, the son of a fifth generation winemaker from Provence who came to Tasmania to work on a hydro-electric scheme.
- Counsel for the respondents argued that "Provence" was not a registered geographical indication within the meaning of the Act. This was categorically rejected by the Court, which noted that the statutory definition of "geographical indication" in s 4(1) included "a hierarchy - country, region, locality".

the Court observed that

“Provence is well known in Australia as a wine producing region. The leading trade publication "Thompsons Liquor Guide" has for many years listed Provence wines under a separate heading "Provence". Similarly "Parkers Wine Buyers Guide", published in a large number of countries around the world including Australia, refers to Provence wines under the heading "Provence" in a separate section of the book. “

The Court therefore found that “wine sold in bottles bearing the respondents' labels would be sold with a false description and presentation within the meaning of s 40C(1) by reason of the inclusion on the labels of the word "Provence", which is a "registered geographical indication" as it was common ground that the respondents' wine did not originate in Provence.

Australian Wine Trade

- The Australian Department of Agriculture Forestry and Fisheries in introducing the 2009 Wine Agreement explained that the EU accounted for just over half of all Australian wine exports in 2007-08. During that year, Australia exported 397 million litres of wine to the EC worth \$AUD1.3 billion while importing 18 million litres from Europe, valued at \$AUD212 million.
- Similarly, in the Press Release of Mariann Fischer Boel, European Commissioner for Agriculture and Rural Development announcing the signature of the agreement that EU wine exports to Australia were worth €62 million in 2006 and imports from Australia were worth €868 million.

- Although Australia has been seen as one of the main opponent of the extension of the European GIs system, it has been obliged by its bilateral wine agreements with the EU to protect European wine and spirits GIs. This has had the beneficial side effect of encouraging Australian wine producers to establish their own wine GIs and may ultimately result in a conversion of Australia to the advantages of GIs as a marketing tool.

Australian wine GIs

- Division 3 of the Wine Australia Corporation Act 2011 establishes a Geographical Indications Committee (GIC) empowered to deal with applications for the determination of GIs for wine in relation to regions and localities in Australia.

Australian Wine Regions

South Australia (SA)

Barossa

Barossa Valley, Eden Valley, High Eden

Far North

Southern Flinders Ranges

Fleurieu

Currency Creek, Kangaroo Island, Langhorne Creek, McLaren Vale, Southern Fleurieu

Limestone Coast

Coonawarra, Mount Benson, Mount Gambier, Padthaway, Robe
Wrattonbully

Moutny Lofty Ranges

Adelaide Hills, Adelaide Plains, Clare Valley, Lenswood, Piccadilly Valley

Denmark WA Wineries Map - Map to Denmark's Cellar Doors (Wine Tasting and Sales)



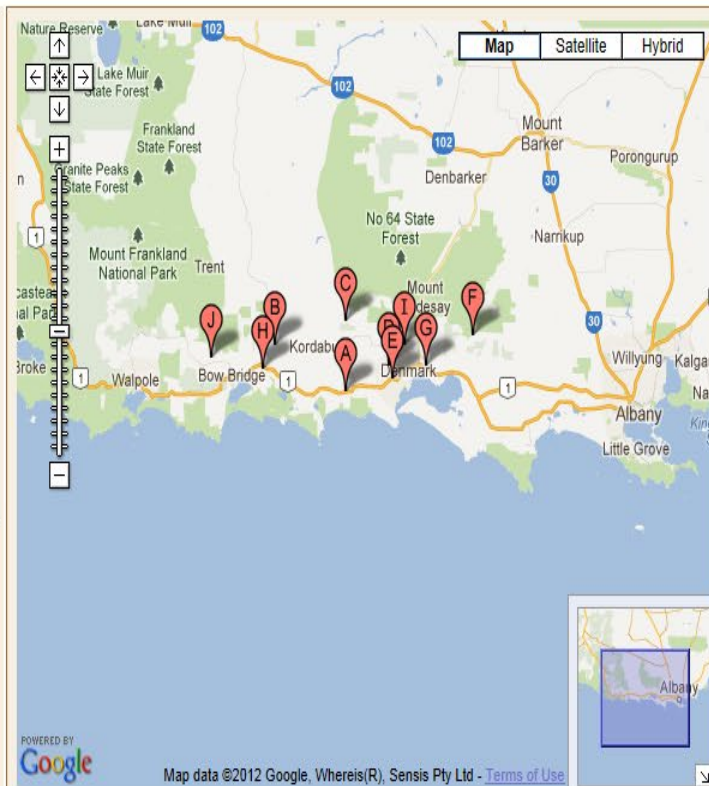
Wineries, Vineyards & Estates Map of Denmark, Western Australia



MAP KEY / LEGEND

CLICK the links below, or the markers on the map to find out more about the winery, vineyard or estate's cellar door sales:

- A** [Bartholomews Meadery](#)
- B** [Moombaki Wines](#)
- C** [Whitfield Estate](#)
- D** [The Lake House](#)
- E** [Forest Hill Vineyard](#)
- F** [Yilgarnia Wines](#)
- G** [Willoughby Park Winery & Boston Brewery](#)
- H** [Old Kent River Wines](#)
- I** [Matildas Estate](#)
- J** [Valley of the Giants Wine & Olives](#)



[View a list of Wineries, Vineyards & Estates in Denmark, Western Australia](#)

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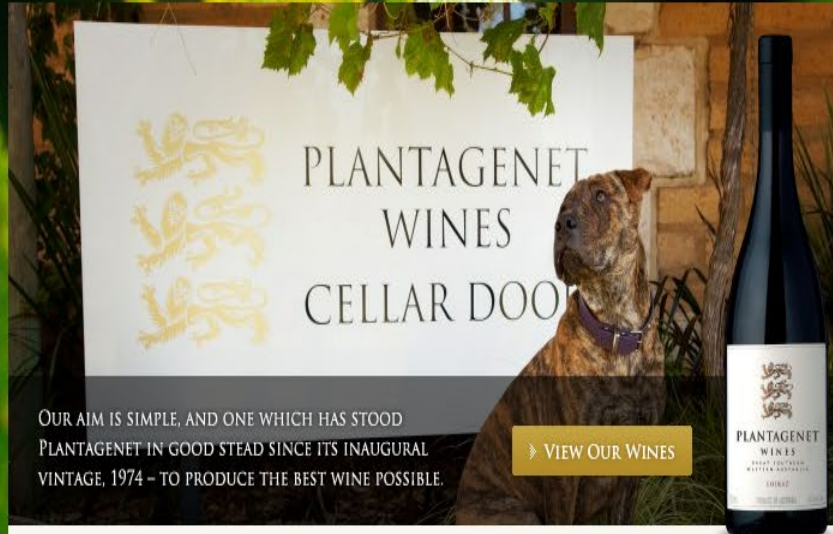
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Claw-back: EU's Wish List

In September 2003, during the WTO Fifth Ministerial meeting in Cancun, Mexico, the EU presented a list of the following GIs to be clawed back:

- Feta
- Fontina
- Gorgonzola
- Grana Padano
- Manchego
- Mozzarella di Bufala Campagna
- Parmiggiano Reggiano
- Pecorino Romano
- Reblochon
- Roquefort

Potential GI Impact On IDFA Members



<u>Cheese</u>	<u># of Companies</u>
- Asiago	24
- Blue Cheese/Gorgonzola	22
- Cream Cheese/Neufchatel	29
- Feta	29
- Fontina	12
- Harvati	19
- Mascarpone	8
- Mozzarella	72
- Parmesan	43
- Provolone	39
- Romano	27
- Swiss/Emment	