



## TRADE MEASURES ISSUES PAPER - 2006/117

### Investigation into alleged subsidisation of certain brandy exported from France

#### COMPOSITION OF AUSTRALIAN INDUSTRY

##### PURPOSE

Issues papers afford interested parties the opportunity to comment on the issues raised in an investigation. By providing issues papers, Customs aims to consider significant issues in detail before publishing the statement of essential facts (SEF) (a statement of facts on which Customs proposes to base recommendations to the Minister). Customs will take into account all interested parties' comments, whether provided previously, obtained in the course of the investigation or made in response to this paper that are received in a timely manner, before issuing the SEF.

##### BACKGROUND

This particular investigation<sup>1</sup> follows an application from Angove's Pty Ltd (Angoves)<sup>2</sup> requesting that the Minister for Justice and Customs publish a countervailing duty notice in respect of certain brandy (brandy) exported to Australia from France. Angoves described the goods under consideration as follows:

The goods the subject of the application are brandy distilled wholly from grape wine from France in bottles or other containers and bulk. Cognac and Armagnac are excluded from the investigation.

In considering the application Customs formed the view that entities that blend and bottle brandy in Australia from bulk spirit do not undertake a substantial process of manufacture in Australia and do not form part of the

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<sup>1</sup> See Australian Customs Dumping Notice No 2006/29 - Certain brandy exported from France - Initiation of an investigation into alleged subsidisation.

<sup>2</sup> A non-confidential version of the Application for Countervailing Duties by Angove's Pty Ltd lodged 22 June 2006 is available on the public file. For information concerning access to the Public File see Australian Customs Dumping Notice No 2006/29.

Australian industry. However, the initiation report<sup>3</sup> stated that Customs would canvass this issue during the investigation through an issues paper.

Angoves identified the Australian industry for brandy as consisting of itself, Tarac Technologies Pty Ltd (Tarac), Hardy Wine Company (Hardys) and Fosters Wine Estates (Fosters). Angoves, Tarac, Hardys and Fosters all distil and produce brandy for sale, either in bottles or in bulk form. Other entities in Australia known as bottlers do not distil brandy but rather blend and bottle the product from bulk.

Angoves excluded bottlers from the Australian industry because it considered that the blending and bottling of brandy was not a substantial process of manufacture in Australia. Customs understands that the blending and bottling of bulk brandy may include processes such as blending, diluting, filtering, the addition of colouring and bottling.

In past anti-dumping investigations, Customs noted that the cost to blend and bottle brandy from bulk was not insignificant and for some producers could account for up to 30% of the overall cost of production. High proportional costs might indicate that blending and bottling processes are substantial and that the bottlers might form part of the Australian industry.

## THE ISSUE

### **Do bottlers form part of the Australian industry producing like goods to brandy imported from France?**

In providing views on this question, interested parties may wish to comment on:

- the operations involved in blending and bottling bulk brandy;
- whether the operations performed by bottlers in Australia (eg blending, bottling etc.), either as individual operations or in any combination, constitute a substantial process of manufacture; and
- reasons why the operations may or may not be considered a substantial process of manufacture having regard to factors such as the value added, the complexity of the operations and the investment in capital.

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<sup>3</sup> 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.

## LEGISLATION

Part XVB of the *Customs Act 1901*<sup>4</sup>, and the *Customs Tariff Anti-Dumping Act 1975* provide for anti-dumping and countervailing measures to be imposed where dumping or subsidisation has caused, or threatens to cause, material injury to an Australian industry producing like goods.

Australian industry is defined in section 269T(4) as a person or person who produce like goods in Australia.

Section 269T(2) says goods are not to be taken to have been produced in Australia unless the goods were wholly or partly manufactured in Australia.

Section 269T(3) says goods shall not be taken to have been partly manufactured in Australia unless at least one substantial process in the manufacture of the goods was carried out in Australia.

## THE APPLICANT'S CLAIMS

The applicant provided the following summary of the production process:

1. Brandy is usually produced by distillation of grape wine obtained from grapes. Distillation occurs throughout the vintage period. The distilled wine must be matured in oak for a minimum of two years before it is considered to be brandy. This is a requirement of the *Spirits Act 1906*. When put in oak, the brandy has an alcoholic strength of about 66 percent by volume of alcohol. During the maturation process the brandy takes on the flavour of the oak and also extracts colour from the oak.
2. Prior to entry for home consumption, the bulk brandy is diluted with distilled water to 37.1 percent by volume of alcohol, filtered and bottled. The brandy may also be blended with other brandies to obtain the correct flavour and caramel may be added to adjust the colour. Once the brandy is bottled, no further maturation is required.

The applicant claimed that they performed the complete process of distillation, maturation and packaging in Australia.

The applicant claimed that the bottlers perform only the second process described above and that this was not a substantial process of manufacture. The applicant identified Continental Spirits Pty Ltd and Blue Pyrenes Estates as bottlers of brandy who did not form part of the Australian industry.

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<sup>4</sup> References to legislation in this paper refer to provisions of the *Customs Act 1901* unless explicitly expressed otherwise.

The applicant also stated in their application that:

In Report No 40, Customs concluded that blending and/or bottling are not substantial processes of manufacture and therefore bottled brandy suppliers who simply blend and/or bottle bulk brandy are not part of the Australian industry. In reaching this conclusion, Customs had regard to:

- views from interested parties,
- blending and bottling operations of Blue Pyrenees Estates, and
- s. 269D(3) of the Act which defines substantial process for the purposes of Tariff Concession Orders

In addition, ACS Manual reference 2.1.1(5) direct that:

“Customs may not regard the conversion of intermediate goods into final goods by virtue of a simple process such as dividing, simple assembly, packaging or labelling as substantial”.

#### PREVIOUS CONSIDERATION BY CUSTOMS

Customs considered the issue of whether the bottlers performed a substantial process of manufacture and formed part of the Australian industry in Customs’ investigation into the subsidisation of bottled brandy from France in 2001.

In Trade Measures Report No. 40<sup>5</sup> Customs stated that:

Customs considered the preceding issue at length. It sought views from interested parties, including Blue Pyrenees Estates and Continental Spirits Pty Ltd. Customs noted that the blending carried out by Blue Pyrenees was a simple mixing of two brandies and different to the type of blending described in section 4.1.1. Customs also had regard to s. 269D(3) of the Act, which is concerned with the meaning of substantial process of manufacture for purposes of tariff concession orders.

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

Blue Pyrenees Estates and Continental Spirits Pty Ltd were identified as bottlers of bulk brandy in the 2001 investigation.

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<sup>5</sup> Trade Measures Report No. 40 - Certain bottled brandy exported from France is also available on the Internet. As above from the Customs home page (<http://www.customs.gov.au>) follow the “anti-dumping” links.

## CUSTOMS' APPROACH TO SUBSTANTIAL PROCESS OF MANUFACTURE

Customs' approach is set out in the Australian Customs Service Manual Vol.22<sup>6</sup>, Division 2, para 2.1.1 (3-5) that states:

- (3) Section 269T(2) provides that goods, other than unmanufactured raw products, cannot be regarded as produced in Australia unless the goods were wholly or partly manufactured in Australia.
- (4) Section 269T(3) gives further guidance on the term partly manufactured. For goods to be regarded as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia. Substantial process is not defined in the legislation but before it can be assessed, the process or processes undertaken in Australia must be identified.
- (5) To be substantial, the process must add some essential or vital quality or character to the finished product of like goods. Customs may not regard the conversion of intermediate goods into final goods by virtue of a simple process such as dividing, sorting, simple assembly, packaging or labelling as substantial.

In addition the Customs Form B 1087 Aug/01, Application for Dumping and/or Countervailing Duties, asks at Section A-3 (7) that, where a product is manufactured from both Australian and imported inputs, the applicant should:

identify that at least one substantial process of manufacture occurs in Australia (for example by reference to the value added, complexity of process, or investment in capital).

## INTERESTED PARTIES' CONSIDERATION

Customs seeks the views of interested parties on this issue of the composition of the Australian industry having regard to Customs' approach as stated above.

Your response may include examples or analysis to support the Australian industry view or refute it. Should your response be confidential, a non-confidential version must also be provided or Customs may have to disregard your response. The non-confidential version will be placed on the public file

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<sup>6</sup> Available on the Internet.

<sup>7</sup> Available on the Internet.

for this investigation. The non-confidential versions must be in sufficient detail to allow a reasonable understanding of its content.

### RESPONSES TO THIS PAPER

Responses to this paper should be lodged no later than 5 September 2006 and addressed to:

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Operations Group 2  
Trade Measures Branch  
Customs House  
5 Constitution Avenue  
CANBERRA ACT 2601

or sent by facsimile to:

(02) 6275 6888

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