

# OUT WITH THE OLD, IN WITH THE NEW: AN ANALYSIS OF ECONOMIC TRENDS BEYOND NEW WORLD WINE INNOVATION

## I. INTRODUCTION

The global wine industry, almost a three hundred billion dollar market, has seen a shift in recent years with “Old World” wine producers no longer being the dominant players that they were for decades.<sup>1</sup> Tightening regulations in traditional wine-producing countries provided an opportunity for “New World” producers to emerge.<sup>2</sup> The New World countries embraced freedom from the restrictions of traditional standards and methods of production, leading to disruption and a major shift in the industry.<sup>3</sup> The New World producers were not subject to the

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1. See Wine Industry Market Research & Statistics, ReportLinker, available at <http://www.reportlinker.com/ci02017/Wine.html> (last visited Oct. 14, 2014) (providing statistics on size of wine industry based on various segments and geographies). See generally Christopher Bartlett, *Global Wine Wars: New World Versus Old*, HARV. BUS. REV. (2009) (detailing global competition between New World and Old World wines). Some examples of the “Old World” wine countries are France, Italy, and Spain. *Id.* Alternately, examples of the “New World” wine countries are the United States, Australia, and Chile. *Id.*

2. See Wine Industry Market Research & Statistics, *supra* note 1 (stating how New World wine emerged).

3. See Bartlett, *supra* note 1, at 15 (discussing tactics deployed by each region to stay competitive). See also *id.* at 4-5 (describing innovative methods New World producers used to gain advantages). New World countries such as the United States and Australia were able to utilize their extensive land for vineyards, setting them up in a position to be able to grow and scale. *Id.* New World producers did not have to follow wine-making traditions and norms, allowing them to experiment with grape growth and winemaking methodologies. *Id.* For instance, drip irrigation allowed the Australians to expand to marginal land. *Id.* Producers used specialized equipment to reduce labor costs and used techniques such as night harvesting, using fertilizers, experimented with pruning methods, and fermentation in steel containers. *Id.* While many of these techniques resulted in higher yield or better quality wine, many techniques were forbidden by traditions and regulations in Old World countries. *Id.* See also *id.* at 16-18 (demonstrating how traditional wine producing countries experience reduced growth of production and consumption). From 1966 to 2006, wine consumption per capita France and Italy has decreased more than 50 percent. *Id.* In comparison, wine consumption in the United States and Australia has increased over the same period of time. *Id.* There is a stark contrast in the trends of world wine consumption. *Id.* Notably, the traditional wine producing countries are experiencing negative percentage changes in production between 2002 and 2006, whereas New World countries have positive growth. *Id.* See also James Simpson, *World Versus New World: The Origins of Organizational Diversity in the International Wine Industry, 1850-1914*, available at <http://www.ehs.org.uk/dotAsset/0c8a117f-c962-40fc-bca4-4752bed84489.doc> (comparing characteristics of Old World and New World producers and noting mar-

same regulations and, in recent times, the regulations in emerging wine-producing countries have been supportive to business rather than acting as barriers.<sup>4</sup> The fundamental difference between the competing global regions lies in how the Old World and New World perceive the process of wine making.<sup>5</sup> As a result of the fragmented approach of wine production and classification systems in various regions in the Old World, countries such as France were not able to support a branding strategy.<sup>6</sup>

In contrast, New World producers used their land to their advantage and “industrialized” the wine-making process, creating an efficient production method while developing globally recognizable brand names that customers have grown to trust.<sup>7</sup> Having no traditional processes to follow, the New World pro-

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ket-shifting trends). The New World producers created vertical integration in their operations and invested in advertising and brands to sell to customers that were previously not targeted. *Id.* at 2. Technological advances such as greater use of plows, labor-reducing equipment, and wine fortification all helped New World producers significantly grow their market. *Id.* at 10-11.

4. See Bartlett, *supra* note 1, at 5, 9 (acknowledging tight government regulations and their impact on wine production). Tight government regulations created a multilevel value chain and fragmented production in Old World countries. *Id.* In contrast, New World producers were able to control the entire value chain and build expertise and efficiencies. *Id.* See also SUSAN CHOLETTE ET AL., THE GLOBALIZATION OF THE WINE INDUSTRY: IMPLICATIONS FOR OLD AND NEW WORLD PRODUCERS, available at <http://userwww.sfsu.edu/ibec/papers/21.pdf> (exploring forces which have reshaped wine industry and participants’ responses).

5. See CHOLETTE, *supra* note 4 (considering Old and New World wines). While traditional Old World wine producers such as France and Italy are dealing with challenges of globalization as they face competition from far away competitors, countries such as the United States are taking a different approach to the situation by focusing on creating a global product and investing in technology that would improve the quality. *Id.*

6. DEWEY MARKHAM, 1855: A HISTORY OF THE BORDEAUX CLASSIFICATION 177 (1997) (examining origins of French classification system of wine); see Bartlett, *supra* note 1, at 8 (analyzing the fragmented nature of the wine industry and its impact on branding). The European wine industry was extremely fragmented, making it extremely difficult for the wine manufacturers to support a branding strategy due to their low volumes. Bartlett, *supra*. Without high volumes of production and demand globally, producers would not have the budgets to create a global marketing or branding campaign, similar to what New World producers had done. *Id.* The few recognizable brands that existed catered to the high-end consumer. *Id.* While the government classification systems were focused on identifying regions of the wine, the everyday consumer had very little education on wines to have an appreciation for the exclusivity of Old World wines. *Id.* New World countries such as Australia were able to learn consumer preferences and create a brand that was simple and appealed to the masses, with various price points under the same name. *Id.*

7. See Bartlett, *supra* note 1, at 4-5 (offering investors’ view of global wine industry).

ducers are able to take bigger risks with innovation, driving consumer demand in the wine industry.<sup>8</sup> Each and every step of the value chain experienced innovation, and the result was increased efficiency, which cut costs and scaled production.<sup>9</sup> The New World wines are no longer perceived as inferior in the marketplace and aspects such as marketing, packaging, and even mode of delivery are differentiators that manufacturers and retailers are using to get ahead in the competitive landscape.<sup>10</sup> The shift in consumer preferences, especially by the Generation-Y consumers, has had profound implications throughout various aspects of society.<sup>11</sup> Given the size of the market and considering the direct and indirect economic impact on the entire supply chain process, there are many jobs and dollars at stake.<sup>12</sup>

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8. *Id.* (highlighting competitiveness in global wine industry).

9. See D.K. Aylward, *A Documentary of Innovation Support Among New World Wine Industries*, 14 J. WINE RES. 1, 5 (2003), available at [http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1008&context=commpapers&seiredir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fstart%3D0%26q%3Dnew%2Bworld%2Bwine%26hl%3Den%26as\\_sdt%3D0%2C22#search=%22new%20world%20wine%22](http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1008&context=commpapers&seiredir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fstart%3D0%26q%3Dnew%2Bworld%2Bwine%26hl%3Den%26as_sdt%3D0%2C22#search=%22new%20world%20wine%22) (seeking to explore support systems leading to innovative culture in New World countries). The New World wine producers have built their own networks, referred to as “innovation territories,” which essentially establish the relationship between suppliers, producers, industry organizations, research organizations, and governments. *Id.* at 1-2. This collaboration among all the stakeholders that are involved in the industry creates an innovative culture, which is drastically different than the fragmented approach of the Old World countries. *Id.* The willingness of the New World countries to experiment with new techniques as well as the open channels of communication with the various participants of the value chain served extremely advantageous. *Id.* Factors leading to innovation include focus on research and development, improved viticultural and oenological techniques, training, and transfer of information. *Id.*

10. See *id.* (acknowledging innovative culture in New World wines). See generally GEORGE M. TABER, JUDGMENT OF PARIS: CALIFORNIA VS. FRANCE AND THE HISTORIC 1976 PARIS TASTING THAT REVOLUTIONIZED WINE (2006) (establishing turning point of perception of New World wines). Judgment of Paris was a blind taste-test in which wines from New World producers got high marks, disproving public perception that they were of inferior quality. *Id.* It also established that not following traditional wine-making methods did not compromise taste and quality. *Id.*

11. Aylward, *supra* note 9, at 4-5 (discussing shift in consumer preferences). Consumer preferences and increase in demand for New World wines are due to their uniqueness, value, and innovative blends. *Id.* at 4.

12. Gideon Rachman, *The Globe in a Glass*, ECONOMIST, Dec. 16, 1999, at 91 (indicating causes for shift in perception of New World wines among consumers). Ordinary consumers are becoming more aware that you do not need to have a long history of winemaking in order to make good wine. *Id.* The shifting demand is evident in the numbers. *Id.* In the late 1980s, around 85% of wine exports came from Spain, France, Italy, and Portugal. *Id.* In 1997, the percentage fell to 72% and further fell to below 70%. *Id.* See Bartlett, *supra* note 1, at 1 (summarizing current landscape

This Note analyzes the economic, political, and legislative implications of this fierce Global War in the wine industry, and delves into the drivers that will determine the shape of the industry for years to come.<sup>13</sup> Part II of the Note discusses the history of the wine industry and the Old World processes of wine production, along with the cultural significance of wine-making to these nations.<sup>14</sup> Part III discusses the impact of regulations on the industry and the ways in which producers adapted to these regulations, comparing the regulatory environment between the Old and New World and the shift in global dominance.<sup>15</sup> Part IV analyzes innovations in the industry that permanently caused disruption both in the production as well as consumption of wine, and discusses the regulatory environment today and its impact on consumer trends.<sup>16</sup> Finally, Part V concludes with an analysis of the major factors that have shaped the wine industry until now and highlights drivers that will be crucial in determining the direction of the industry.<sup>17</sup>

## II. FACTS

### A. Regulations on the Global Wine Industry

#### 1. Old World Wines

##### a. European Union

The E.U. wine regulations are a part of the Common Agricultural Policy (CAP).<sup>18</sup> Despite the set of rules that guide the

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of global wine industry). There was fierce competition among industry participants for a share of the USD230 billion global wine market. *Id.*

13. *See infra* Parts II-V (determining drivers for future of wine industry).

14. *See infra* Part II (providing historical context of wine-making in Old World countries).

15. *See infra* Part III (analyzing regulatory environment of wine industry).

16. *See infra* Part IV (highlighting technical advances leading to shift of wine industry).

17. *See infra* Part V (drawing conclusions on factors shaping industry in future).

18. *See generally* SUMMARIES OF EU LEGISLATION, [http://europa.eu/legislation\\_summaries/other/l60031\\_en.htm](http://europa.eu/legislation_summaries/other/l60031_en.htm) (last visited on Oct. 20, 2014) (discussing European Union Common Agricultural Policy). The Common Agricultural Policy, referred to as CAP, aimed to provide stability to the agricultural market. *Id.* It aims to protect the agricultural industry and its participants from international competition and to an extent, encourage growth and productivity of the industry. *Id.* The CAP seeks to oversee prices to ensure fairness for the consumers as well as the farmers. *Id.* The policy is responsible for defining subsidies for the farmers. *Id.* The European regulations aim to create a balance between supply and demand by defining areas of wine production. *Id.* Member states grant rights to produce wine in areas where

wine sector in areas concerning production, oenological practices and processes, classification of wines, rules around labeling of wines, and imports from non-E.U. countries, each country within the European Union has its own legal framework concerning specific regulations that govern the percentage of a grape needed in a wine to be deemed a particular wine variety.<sup>19</sup> Historically, Europe had laws devoted to limiting the use of certain geographic words to designated producers in particular regions to protect specific products' prestige and meaning like "wine," thus protecting the consumer from misinformation.<sup>20</sup> Of these laws, one of the most important has been the French system of appellations, *d'Origine Controlees*.<sup>21</sup>

Appellation laws come from the idea of "*terroir*," meaning that a particular land directly impacts the quality of that prod-

demand is higher than supply and prohibit production in areas where supply is greater. *Id.* The regulations also define a standard of quality and labeling practices make the industry more stabilized across member states. *Id.*

19. *See id.* (explaining requirements for grapes to create specific wine variety). *See also The Common Agricultural Policy: A Partnership Between Europe and Farmers*, EUROPEAN UNION, 2012, available at [http://ec.europa.eu/agriculture/cap-overview/2012\\_en.pdf](http://ec.europa.eu/agriculture/cap-overview/2012_en.pdf) (overviewing Common Agricultural Policy). The CAP was established as a partnership between the society in Europe and the farmers, striving to ensure a stable and affordable supply of food for the people while considering the interests of the farmers. *Id.* The CAP plays a major role in ensuring the quality and hygiene of the grapes that go into the wine production process. *Id.* The CAP's role is to certify minimum quality standards, so that consumers can be confident that they are indeed purchasing what they are paying for. *Id.* *See* COMITE EUROPEEN DES ENTREPRISES VINS., available at <http://ceev.eu/about-us> (last visited Oct. 20, 2014) (discussing European committee acting for interests of stakeholders in European wine industry). The CEEV, or Comite Europeen des entreprises vins, strives to create a favorable environment for the wine industry in Europe. *Id.* The committee is made up of members comprising twenty-three national associations across Europe, that represent each wine-producing geography. *Id.* By working together with all the nations, the committee tries to promote a social, economic, and legal environment that would support growth for the entire industry, despite each nation having their own set of legislations. *Id.* The CAP was first introduced in 1962, but has been updated many times, most recently in 2013 to keep up with the changing market dynamics. *Id.*

20. *See* Justin Hughes, *Champagne, Feta, and Bourbon: The Spirited Debate About Geographical Indications*, 58 HASTINGS L.J. 299, 301 (2006) (recognizing necessity behind appellation laws for certain products). Geographical Indications, also referred to as GIs, have been implemented through appellation laws in Old World countries such as France and through certifications in the United States. *Id.* at 305-309. The idea of these indications is to protect the authenticity of the products by only reserving the right to use those classifications for products that were actually produced in the region. *Id.* at 305-306. For instance, the name "Bordeaux" is reserved only for wines that have been produced in the Bordeaux region of France. *Id.* at 306.

21. *See id.* (highlighting French system as most important appellation law).

uct.<sup>22</sup> Laws, like appellation laws, are created since no one outside the locale can truly make the same product, and when a geographic name carried a certain cachet, this exclusive control can produce certain economic benefits for the local producers.<sup>23</sup> The European Union has an international registration system that provides a mandatory strong protection of Old World agricultural production names.<sup>24</sup> While the European Union has strict laws and wine regulations, it is made up of individual regulatory systems of the European Union's Member States, which also have their own individual requirements and standards.<sup>25</sup>

## b. French Wine Regulations

In France, the Appellation d'Origine Contrôlée (AOC) system governs quality wine law.<sup>26</sup> The French policy is concerned

22. *Id.* (describing appellation laws traditionally). "There is no direct English translation of '*terroir*,' but the idea is that the product's qualities 'come with the territory.'" *Id.* at 301. See also FRENCH WINE GUIDE, <http://www.terroir-france.com/theclub/meaning.htm> (last visited Oct. 14, 2014) (defining *terroir* relating to French wine). "A *terroir* is a group of vineyards . . . from the same region, belonging to a specific appellation, and sharing the same type of soil, weather conditions, grapes and wine making [techniques], which [make up the] personality of a wine." *Id.*

23. See Hughes, *supra* note 20, at 301 (exploring benefits of appellation laws). Other countries have followed France's lead in seeking protection for geographical indications also known as GIs. *Id.*

24. *Id.* at 302 (detailing European Union's advocacy for strong protection of Old World agricultural names).

25. See Lisa Barriger, *Global Warming and Viticulture: The Ability of Wine Regions to Adapt in Differing Regulatory Schemes*, 19 PENN. ST. ENVTL. L. REV. 311, 318 (2011) (examining E.U. wine regulations). "When assessing the larger E.U. wine regulatory framework, it is important to understand the individual regulatory systems of the European Union Member States because they are allowed to apply more stringent rules than those set forth in Regulation 479/2008." *Id.*

26. See Antoine Vialard, *Essay Regulating Quality Wines in European and French Law*, 19 N. ILL. U. L. REV. 235, 241 (1999) (outlining French wine quality AOC system); see also Hughes, *supra* note 20, at 307 (discussing French system of Appellations d'Origine Contrôlées (AOC)); Jim Chen, *A Sober Second Look at Appellations of Origin: How the United States Will Crash France's Wine and Cheese Party*, 5 MINN. J. GLOBAL TRADE 29 (1996) (identifying French regulation system for commodities like wine); Albert Céline, *The Appellation d'Origine Contrôlée (AOC) and Other Official Product Identification Standards*, Sept. 1998, available at <http://www.rural.org/publications/aoc.pdf> (1998) (detailing AOC and its standards). The Appellation d'Origine Contrôlée, also known as the AOC, allows recognition of a particular product that takes its qualities from its *terroir*. Céline, *supra*, at 5. While the AOC is not specifically for wine, it was created in 1935 for the purpose of classifying wine. *Id.* The law originated as a result of fraudulent use of geographical appellation. *Id.* at 4. Following 1935, AOC wines were upheld to strict criteria regarding production conditions. *Id.* at 10. The AOC designation symbolizes official quality standards and geographic origin. *Id.* at 42.

with having trade names from a specific place of origin, helping guarantee quality, and providing an easily identifiable mark for the public.<sup>27</sup> The AOC integrates the concept of a required trade name, region, and guarantee.<sup>28</sup> The AOC system is also founded on the idea of a *terroir*, meaning that a particular wine's qualities come with the territory or the vine's environment.<sup>29</sup> French law controls AOC-regulated products like wine by requiring them to be processed in the same region where the grapes are produced.<sup>30</sup>

### c. Italian Wine Regulations

Similar to the French AOC classification requirements is the Italian *Denominazione di origine controllata e Garantita* (DOCG) and the *Denominazione di origine controllata* (DOC) classification system.<sup>31</sup> The Italian system has four quality clas-

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27. See Céline, *supra* note 26, at 4, 42 (identifying two concepts key to idea of trade names from specific origin). Some of the successes of having trade names from a specified place of origin include simplicity of wine trade names for the consumer, while high regulations in this prevents overuse of devaluing the name, clarity of presentation and prohibiting any consumer confusion. *Id.*

28. *Id.* at 4 (examining AOC concept and requirements for French quality wine). The AOC label constitutes a trade name from specified origin: the name of a country, region or locality used by a product that originates from it. *Id.* The product's quality or character is determined by its geographic origins, either because of natural or human factors. *Id.* See also FRENCH WINE LABEL INFORMATION, <http://www.wine-searcher.com/wine-label-france.lml> (last visited Oct. 31, 2015) (providing detailed information on each aspect of wine label); Euromonitor Int'l, *Wine in France*, PASSPORT, Oct. 2014, at 1-7 [hereinafter Wine in France Report] (detailing recent trends in French wine industry depicting prestigious image French wines have globally). The results of wine sales in the previous year in France were mixed, with new modern approaches such as innovative flavors, packaging, and quality classifications supporting sales. Euromonitor Int'l, *supra*, at 1-3. The market in general remained extremely fragmented, with the top five producers in France only making up 14% of sales. *Id.* at 4. Branding is still limited among wineries and growth for manufacturers results from acquiring other companies. *Id.* Branding is extremely strong for champagnes, but only some are able to carry the premium status whereas others are forced to discount prices. *Id.*

29. See Hughes, *supra* note 20, at 307 (explaining French appellation system). "French law defines an AOC as a region or locality name that serves to designate a product of that origin whose qualities or characteristics are due to the geographic milieu, which includes natural and human elements." *Id.*

30. See Chen, *supra* note 26, at 29 (setting forth requirements of AOC regulated products like wine).

31. See ITALIAN APPELLATION SYSTEM, [http://www.tarandroses.net/index.php?option=com\\_content&view=article&id=879&Itemid=37](http://www.tarandroses.net/index.php?option=com_content&view=article&id=879&Itemid=37) (last visited Oct. 18, 2014) (discussing DOC and DOCG classification system). Similar to the AOC, the Italian appellation system aims to guarantee the quality of wines and their origin. *Id.* It was

sifications, with each hierarchy reflecting a level of quality of the wine.<sup>32</sup> The highest quality level is DOCG, Appellation of Controlled and Guaranteed, followed by DOC, Appellation of Controlled Origin, *Indicazione Geografica Tipica* (IGT), Typical Geographic Indication, and lastly, *Vino da Tavola* (VDT), Table Wine.<sup>33</sup>

#### d. Spanish Wine Regulations

The Spanish classification system is known as *Denominación de Origen* (DO).<sup>34</sup> Prior case law has shown that Spanish wine regulations require wine to be bottled in cellars at the place of origin, which satisfy the conditions as to quality, but this is just one of the many regulations that impact the Spanish wine industry.<sup>35</sup> Though Spain is a member of the European Union

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first introduced in 1963 and differentiates higher quality wines from “table wines,” which are classified as the lowest quality in the appellation categories as “vino da tavola.” *Id.* The current appellation was introduced in 1992 and replaced the precedent law of 1963. *Id.* See also Euromonitor Int’l, *Wine in Italy*, PASSPORT, Sept. 2014, at 1-5 [hereinafter *Wine in Italy Report*] (recognizing impact of classifications on recent trends). Consumers are showing concern for quality as sales of non-certified wines are declining, while DOC wines increased their market share. *Id.* at 2.

32. Euromonitor Int’l, *supra* note 31, at 2 (highlighting number of Italian classifications).

33. *Id.* (outlining four Italian appellation classification systems). The Italian classification system:

Primarily defines the geographic area of the appellation, grapes and proportions admitted for a specific wine production, the maximum yield per hectare, minimum percentage of alcohol by volume, the styles and types of wines recognized by the appellation system, the minimum time of aging before the wine can be sold, chemical and physical characteristics as well as organoleptic qualities.

*Id.* It is these categories that define one of the four quality classes. *Id.* The IGT is one level of classification higher than table wines. *Id.* It was originally introduced as a way to distinguish a slightly higher quality over the table wine, as the French and German classifications had done in their classification systems. *Id.* The better quality and well known table wines were given the IGT designation. *Id.*

34. See Chad Killian, *Spanish Wine Laws and Terms*, BEVERAGE PROFESSOR (Oct. 19, 2014), <http://beverageprofessor.com/index.php/spanish-wine-intro/spanish-wine-laws-and-terms> (clarifying Spanish wine classifications and *Denominaciones de Origen* (DO)). Similar to the French appellation laws, DO is a prestigious status given to wines that have been produced in a region that has been recognized for producing high-quality wines for a period of at least five years, as deemed by the regulatory board. *Id.*

35. See *Case C-388/95 Belgium v Spain* (2000) ECR, I-3123 (noting prior case law resulting in Spanish wine regulations). Spanish regulations, specifically DO, protect wines to be labeled with the region that they originate from. *Id.* This case concerns the designation of the origin “Rioja.” Belgium brought forward a case that the Spanish regulations requiring that wines be bottled in cellars in the region to obtain the



and complies with their laws and standards, they also have their own classification system.<sup>36</sup> Per E.U. standards, Spain divides wines into two categories: “table wines and quality wines.”<sup>37</sup>

Spanish table wines are subdivided into two further categories: *Vino de mesa*, meaning table wines that account for half of Spain’s production, and *Vino de la tierra*, or country wines that come from a broad wine region or geographical indication (GI) that must meet “alcohol and sensory standards.”<sup>38</sup> In addition, Spain has four subcategories of quality wines recognized by different standards, the *Vino de Calidad con Indicació Geográfica* [VCIG], *Denominaciones de Origen* [DO], *Denominaciones de Origen Calificada* [DOCa], and *Vinos de Pago* [DO/DOCa

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Rioja designation violated the free movement of goods. *Id.* Spain claimed that the goal of the regulation is to preserve the reputation of wine having the designation of its origin to control that it meets the quality and standards of the characteristics associated with Rioja. *Id.* Netherlands, Finland, Denmark, and the United Kingdom sided with Belgium. *Id.* Italy and Portugal sided with Spain. *Id.* The court dismissed the case and ruled in favor of Spain, citing that there was a great risk of compromising the final quality of the product if it were to be produced in regions outside of Rioja. *Id.* See also BERNARD O’CONNOR, *THE LAW OF GEOGRAPHICAL INDICATIONS* 197 (2004) (summarizing prior case law relating to Rioja). In the *Delhaize v. Promalvin* case, Delhaize placed an order for 3,000 hectoliters of Rioja wine from Promalvin. *Id.* While Promalvin accepted the order initially, they later informed Delhaize that the order could not be satisfied, citing a limit on the volume of exports. *Id.* Promalvin filed suit, contesting that the rules were inconsistent because they did not limit the volume of bulk sale within the region the wine was produced, but only applied to outside regions. *Id.* The court deemed the rules to be illegal since they did not have an equivalent amount of quantitative restrictions and therefore, did not promote free trade. *Id.*

36. See Killian, *supra* note 34 (discussing Spanish wine regulations and classification system). As a member of the European Union, the Spanish classification system divides wines into the quality wine and table wine categories. *Id.* The “table wine” category is divided among a broad category of table wines and “country wines,” which comprises of wine from a single wine region of Spain. *Id.* The categorization is similar to that of Italian wines, but since the regulations are region-specific, each country establishes its own system, that also serves as a way to identify their wines around the world. *Id.*

37. See *id.* (characterizing Spanish wine regulations).

38. *Id.* (defining Spanish wine classifications and table wine category).

The other category of “Quality Wines” are labeled as VCPRD which stands for “vinos de calidad producidos en una region determinada.” These wines are produced within more narrowly defined regions and have higher production standards than table wines. A government organization made up of primarily wine growers establishes rules and regulations related to the wine-making process in each geographical area. They regulate the cultivation, production and ageing of Spanish wines in order to guarantee the consumer gets a quality product.

*Id.*

Pago].<sup>39</sup> Quality wines in Spain may also use other terminology based on specific ageing requirements.<sup>40</sup>

## 2. *New World Wines*

### a. United States

The United States does not fully recognize the French AOC system, but instead has its own regulations regarding wine.<sup>41</sup> The U.S. Department of the Treasury, and the Alcohol and Tobacco Tax and Trade Bureau governs wine laws and regula-

39. See *id.* (outlining four Spanish quality wine subcategories). *Vino de Calidad con Indicació Geográfica* [VCIG] requires that the wine remain with the VCIG status for five years before becoming eligible for DO status and are labeled “‘Vino de Calidad de’ followed by the region name.” *Id.* *Denominaciones de Origen* [DO], are prestigious labeled wines and are “produced in a demarcated zone of production whose production is regulated by a Governing Body that ensures winemakers compliance to the standards set with regard to grape varieties, crop yields, winemaking methods, and aging regimens. The wines will be labeled ‘Denominación de Origen’ followed by the region name.” *Id.* *Denominaciones de Origen Calificada* [DOCa], is for standout regions among the DO wines with a higher set of standards than DO wines. See Killian, *supra* note 34. DOCa wines also require that products must come to market bottled in wineries located in the region where they are produced or the region that follows a suitable quality control system that is imposed by their regulating body. *Id.* *Vinos de Pago* [DO/DOCa Pago], the last classification category, is also known as estate wines and is the highest category of Spanish wines. *Id.* *Vinos de Pago* set their own appellation rules, but these rules must at least exceed those of larger DO category wines. *Id.*

40. See Killian, *supra* note 34 (contemplating other terminology for Spanish wines based off different ageing requirements). *Crianza* requires red wine be aged for two years and six months spent in oak barrels, *Reserva* requires red wine to be aged for a minimum of thirty-six months and twelve months spent in oak barrels, and *Gran reserve* requires red wines to be aged for a minimum of sixty months and eighteen months spent in oak barrels. *Id.* See also SPANISH WINE LAWS, <http://www.winesfromspainusa.com/learn/spanish-wine-laws> (last visited on October 21, 2014) (discussing *Crianza*, *Reserva*, and *Gran reserve* Spanish wines and Spanish wine laws).

41. See Chen, *supra* note 26 at 33-34 (contrasting American law and AOC regulations).

In 1992, the Council of Ministers of the European Union promulgated a regulation authorizing the establishment of an ecolabel under the supervision of the European Commission and in consultation with various industrial, commercial, labor, consumer, and environmental interest groups. The closest equivalent of the ecolabel in American law is the certification of organic food production and processing made possible by the federal Organic Foods Production Act of 1990 and its state-law counterparts. State laws may impose more stringent production and labeling standards for organic foods, subject to approval by the United States Secretary of Agriculture.

*Id.* at 34.

tions.<sup>42</sup> The U.S. microclimate appellations and viticultural areas, which are modeled after the old world's classification systems, are known as the American Viticultural Area (AVA).<sup>43</sup> Appellations and AVAs are not just regulations to promote the sale of wine through labeling, they also serve as a way to preserve and defend the quality of a wine product.<sup>44</sup> The regulations cover basic permits around the sale of alcoholic products; the labeling and advertising of wine, define statements regarding the health and safety that must be disclosed, and define designated areas that can be used as wine regions.<sup>45</sup> Although the strategy of defining areas that may be used as wine growing regions and governing the labeling of wines to ensure that they are in accordance to certain requirements seems similar to what the AOC does in France, the regulations in the United States have only been around for a couple of decades and are still developing.<sup>46</sup>

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42. See ALCOHOL AND TOBACCO TAX AND TRADE BUREAU, U.S. DEP'T OF TREASURY, WINE LAWS AND REGULATIONS, [http://www.ttb.gov/wine/wine\\_regs.shtml](http://www.ttb.gov/wine/wine_regs.shtml) (last updated Oct. 22, 2014) (outlining U.S. wine laws and regulations).

43. See Barriger, *supra* note 25, at 316 (reviewing U.S. AVA wine regulations). The AVA does not have any specific wine production restrictions or controls, it just requires in order to label a bottle of wine as being from a certain AVA, 85% of its contents must be from grapes grown within a certain geographical area. *Id.* "The restrictions on labeling wine as from a specific appellation are more lenient, requiring that only seventy-five percent of the wine is derived from agricultural products grown in the specific appellation." *Id.*

44. See *id.*

45. See *supra* note 42 and accompanying text (looking further into U.S. wine laws and regulations).

46. See Alyson M. Chouinard, *Wine Appellation Regulation in the US and France as a Response to Globalization*, 3 *Student Pulse* (2011), <http://www.studentpulse.com/articles/360/2/wine-appellation-regulation-in-the-us-and-france-as-a-response-to-globalization> (last visited Oct. 20, 2014) (comparing wine appellation in United States and France). The purpose of the regulations is not necessarily to impose restrictions, but rather to make it easier to enforce existing rules. See *id.*

The U.S. regulations had two main origins. Rules about the use of regional indices were vague and difficult to enforce prior to the establishment of the viticultural areas (Lee 1992). Among these rules was the requirement that 75 percent of the grapes must originate from the locality named on the label; in the regulations of 1978 the requirement became 85 percent for Viticultural Areas and 75 percent for single counties or single states. In order to enforce these rules, it was necessary to define viticultural areas.

Warren Moran, *The Wine Appellation as Territory in France and California*, 83 *ANNALS OF THE ASS'N OF AM. GEOGRAPHERS*, No. 4, 694, 706 (1993).

In comparing the two systems, the French system is hierarchical and the classifications are also a perception of quality, whereas in the United States, they simply identify wines with the regions that they came from.<sup>47</sup> While most of the Alcohol and Tobacco Tax and Trade Bureau regulations focus on the permissibility of aspects such as labeling and advertising, there has been little focus on the vineyards themselves from the Food and Drug Administration (FDA) until the Food Safety Modernization Act (FSMA) was legislated in January 2011.<sup>48</sup> This enactment has resulted in the wineries having to go through inspections by the FDA and also follow certain preventative measures.<sup>49</sup>

#### b. Australia

One of the biggest New World producers, Australia, is also adopting new regulatory measures to support the wine sector.<sup>50</sup>

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47. See *id.* (laying out French geographical indications). Daniel Gade notes in his article, “French wine remains the classic product of geographical indication in the world. The concept has spread to other countries, including the United States, but without the same stringent requirements or seriousness of application.” *Id.* at 849. See Daniel W. Gade, *Tradition, Territory, and Terrior in French Culture: Cassis, France, and Appellation Contr?lee*, 94 ANNALS ASS’N AM. GEOGRAPHERS 848, (Dec. 2004), available at <http://www.jstor.org/stable/3694101> (addressing AOC concept).

48. See Rebecca Anderson Smith, *Food Safety Modernization Act*, WINES & VINES (Sept. 2013), available at <http://www.winesandvines.com/template.cfm?section=features&content=121416> (elucidating Food Safety Modernization Act). The Food and Drug Administration (FDA) has historically not had a large focus on wine. *Id.* Wine fell into the FDA’s vague definition of “food,” therefore, the FDA does oversee the safety of wine that is produced. *Id.* Since it is considered a low-hazard product, the FDA’s oversight has been generally passive. *Id.* With the federal Food Safety Modernization Act, the FDA is required to inspect every single food facility in the United States, which includes wineries, by 2018. *Id.* Rather than having a reactive program as they have in the past, the FDA is gaining knowledge of wine and its potential risks from the industry participants and is implementing policies and procedures that would prevent potential risks to the consumer. *Id.*

49. See *id.* (analyzing FDA requirements). The FSMA requires the FDA to inspect all food facilities in the United States, including wineries. *Id.* Key preventative measures such as developing a food-tracing program and setting minimum food-safety measures. *Id.*

50. See AUSTRALIAN GRAPE AND WINE AUTHORITY, COMPLIANCE GUIDE FOR AUSTRALIAN WINE PRODUCERS (2014) (looking into Australian wine regulations); see also David K. Aylward, *The Road to Innovation: Experiences in the Australian Wine Industry*, UNIVERSITY OF WOLLONGONG, (2006) available at <http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1080&context=commpapers> (detailing factors leading to Australia becoming a major player in the global wine market). The desire to export and excel in areas that traditional wine producers currently lacked created a competitive advantage for Australian wine in the global market. *Id.* at 5. The Australian wine

The Australian Grape and Wine Authority, which was established in 2014, is responsible for creating regulations around exporting and compliance, domestic and international wine promotion, maintaining the integrity of the wine labels and practices, and identifying the boundaries of the wine producing areas in Australia.<sup>51</sup> Similar to the regulations in the United States, the labeling of wine is strictly governed by legislations and must include the variety of the wine, country and region of origin, and additives among other details.<sup>52</sup> While the United States regulations require 75% of the wine to be from a stated county, claiming an Australian Geographical Indication (GI) requires 85% of the wine to be from that region, which is similar to the requirement to claim an American Viticulture Area (AVA).<sup>53</sup> The Australian government is very supportive of the industry, working with winemakers and grape growers domestically to ensure they remain competitive in the industry by addressing national issues.<sup>54</sup> In international matters, the government has been in favor of improving trade access with

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industry is recognized for their leadership in new product development, product differentiation, employee training, distribution networks, and marketing. *Id.* at 6.

51. AUSTRALIAN GRAPE AND WINE AUTHORITY, *supra* note, at 50 (articulating Australian wine regulations around exporting). All shipments that are over 100 litres must receive approval from the authority. *Id.* The objective of the export regulations is to protect the reputation of Australian wines by helping them meet international standards and ensuring that all policies and procedures have been properly followed. *Id.* In order to receive approval, an exporter must obtain a license to export, register the product by following the guidelines, and obtain an export permit. *Id.*

52. *Id.* (stating wine label regulations). The labeling of wine is governed by different federal and state regulations including the Australian Grape and Wine Authority Act 2013, Food Standards Code, National Trade Measurement Regulations 2009, Competition and Consumer Act 2010, State Consumer Laws. *Id.*

53. *See id.* (defining Australian regulation standards). The Australian Grape and Wine Authority defines a Geographical Indication (GI) as:

A word or expression used in the description and presentation of a wine to indicate the country, region, or locality in which originated or to suggest that a particular quality, reputation or characteristic of the wine is attributable to the wine having originated in the country, region or locality indicated by the word or expression.

*Id.* The GI is optional on the label, as is the Vintage (harvest year) and the variety (type of grape). *Id.* If claimed, however, the labels must meet the regulations. *Id.*

54. *See* DEP'T OF AGRICULTURE, AUSTRALIAN GOVERNMENT, <http://www.agriculture.gov.au/agriculture-food/wine-policy> (last visited Oct. 20, 2014) (announcing laws for Australian wines). The Australian government supports the wine suppliers in domestic matters such as industry structure, taxation, health, natural resource management, and the environment. *Id.*

other nations, allowing the wine industry in Australia to be competitive and reach distant markets.<sup>55</sup>

### 3. *Shift in Focus of Driving Forces in the Wine Industry*

Shifting away from the regulations regarding the production of wine, New World countries are focusing on legislations to pave a way for innovative methods of distribution.<sup>56</sup> The focus is no longer on the classification and labeling of wine, but instead on the entire supply chain, as wine producers are attempting to deliver directly to consumers and sell online.<sup>57</sup> The Wine Institute, which is a public policy advocacy association, represents the industry at the state, federal, and international levels.<sup>58</sup> The primary purpose of the association is to create unity within the industry and cohesively work with the regulators to establish

55. See *id.* (examining trade access regarding wine regulations and exporting). The Australian government works with other government agencies, international organizations, and establishes bilateral trade agreements to benefit Australian exporters. *Id.* Organizations that they engage with include the World Trade Organization, International Organization of Vine and Wine, and the World Wine Trade Group. *Id.*

56. See Brian Gruley, *Need Liquor Delivered Now? The Startup World's Got You Covered*, BLOOMBERG BUSINESSWEEK, (Sept. 18, 2014), available at <http://www.businessweek.com/articles/2014-09-18/alcohol-delivery-startups-grow-by-wooing-distributors-regulators> (articulating regulations surrounding alcohol delivery). Wine delivery is legal in many states, but not all. *Id.* The article cites an app-startup that is attempting to deliver alcohol directly to consumers. *Id.* This would avoid the need for consumers to step outside their house and would open up the market for retailers to deliver to people who may not step in their locations otherwise. *Id.* The app is beneficial not just for retailers, but also for producers as it gives them a new avenue to market and advertise their products through. *Id.* Some retailers have cited an increase of 25% in business by partnering with one of these startups. *Id.*

57. *Id.* (focusing on alcohol delivery regulations). See also Greg Bensinger, *Wine: the Web's Final Frontier*, WALL ST. J., Oct. 26, 2012, available at <http://www.wsj.com/articles/SB10000872396390444592704578067270510751116> (articulating wine regulations for online sales). The regulations over online sale of wine are not very clear-cut, with each state in the United States regulating the situation differently where "each state acts like its own country." *Id.* (discussing how each U.S. state treats situations differently). Texas prohibits delivery of beverages with over 16% alcohol. *Id.* Other laws require that someone over the age of twenty-one be available to sign for the delivery of a package that contains alcohol. *Id.* Laws in eleven states favor distributors and prohibit the wineries from selling directly to consumers. *Id.* Websites, such as [www.wine.com](http://www.wine.com), have to pay USD2 million annually for regulatory licenses, legal costs, and other factors associated with selling wine online. *Id.*

58. See STATE SHIPPING LAWS FOR WINERIES PORTAL, <http://www.wineinstitute.org/initiatives/stateshippinglaws> (last visited Oct. 20, 2014) (describing organization's role). The association also publishes a comprehensive list of the wine regulations around online sales with regards to each state. *Id.*

laws that do not serve as barriers.<sup>59</sup> A driving demographic determining growth of the wine industry is the millennial population, a group that is technologically savvy and seeks innovation.<sup>60</sup>

### III. HISTORY

#### A. History of the Wine Regulations

##### 1. Necessity of Regulations in the Wine Industry

Laws in France, Portugal, and Italy focused on controlling wine labeling date back as early as the fourteenth and fifteenth centuries, but have come into legislation fairly recently.<sup>61</sup> In

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59. See STATE SHIPPING LAWS FOR WINERIES PORTAL, *supra* note 58 (providing U.S. State shipping laws). Each state in the United States follows its own set of laws for shipping wine. See, e.g., STATE SHIPPING LAWS FOR WINERIES: MASSACHUSETTS, <http://wineinstitute.shipcompliant.com/StateDetail.aspx?StateId=53> (last visited Oct. 20, 2014) (explaining wine shipping laws in state of Massachusetts); STATE SHIPPING LAWS FOR WINERIES: ALASKA, <http://wineinstitute.shipcompliant.com/StateDetail.aspx?StateId=30> (last visited Oct. 20, 2014) (setting forth state of Alaska's wine shipping laws); STATE SHIPPING LAWS FOR WINERIES: KENTUCKY, <http://wineinstitute.shipcompliant.com/StateDetail.aspx?State-Id=50> (last visited Oct. 20, 2014) (describing wine Kentucky state shipping laws); STATE SHIPPING LAWS FOR WINERIES: CALIFORNIA, <http://wineinstitute.shipcompliant.com/StateDetail.aspx?StateId=6> (last visited Oct. 20, 2014) (laying out wine Californian shipping laws). There are various regulations around the volume limit for shipping from each winery, restrictions on onsite vs. offsite sales, special labeling, solicitation limits, compliance reporting, and taxes. See generally STATE SHIPPING LAWS FOR WINERIES PORTAL, *supra* note 58 (listing state wine laws).

60. See Leora Kalikow, *The Future of Millennial Drinking Is the Box*, HUFFINGTON POST, Feb. 27, 2014, [http://www.huffingtonpost.com/leora-kalikow/the-future-of-millennial-b\\_4859049.html](http://www.huffingtonpost.com/leora-kalikow/the-future-of-millennial-b_4859049.html) (maintaining overarching trends in wine industry geared towards millennials). Among trends noted for millennials, the article refers to them as mobile, spontaneous, social, and open-minded. *Id.* All of the trends point to unconventional methods of wine packaging such as canned wine, tap wine, and boxed wine benefiting. *Id.* See also Holly Howell, *Holly Howell Reflects on Wine Industry Innovations*, DEMOCRAT & CHRON., Jan. 2, 2015, <http://www.democratandchronicle.com/story/lifestyle/columnist/howell/2015/01/02/howell-wine-industry-innovations/21013605/> (reflecting on wine industry); Tyler Kingkade, *Wine In a Can Company Wants Millennials to Think Outside the Box*, HUFFINGTON POST, Nov. 15, 2013, [http://www.huffingtonpost.com/2013/11/15/wine-in-a-can-friends\\_n\\_4262230.html](http://www.huffingtonpost.com/2013/11/15/wine-in-a-can-friends_n_4262230.html) (providing examples of wine producer targeting millennials with new "wine in a can" product).

61. See Hughes, *supra* note 20, at 306 (highlighting how early wine laws came into existence). "The first modern French law to combat fraudulently labeled wines was passed in 1905, but France's first government committee on appellations of origin for wines and eaux de vie was not established until 1935. In 1947, that committee became the Institut National des Appellations d'Origine (INAO), now part of the Ministry of Agriculture." *Id.* at 307. See also *The Wines of Tuscany: Complete Guide*

the early twentieth century, the issue of producing fraudulent wines came about when producers in France were mixing wine from regions that are regarded as inferior into bottles labeled Bordeaux and Champagne.<sup>62</sup> To fight the fraud in the wine industry in 1905, France established its first laws governing the appellation of wine origins.<sup>63</sup> At first, the laws were ineffective because it loosely governed labeling fraud without addressing the region classification issues and quality controls.<sup>64</sup> After this, particular producers requested more stringent regulations on wine and as a result, France established the Appellation d'Origine Contrôlée (AOC) in 1935.<sup>65</sup> Using France's AOC legislation as an example, E.U. Member States like Spain, Ger-

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to DOC and DOCG Wines, DEPT. OF ECONOMIC DEVELOPMENT FOR TUSCANY, (Dec. 2008), available at [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB0QFjAAahUKEwi32Z2HiejIAhVHFj4KHejoBHI&url=http%3A%2F%2Fwww.toscanapromozione.com%2FnfEditInlineDownloadMedia%2Fmedia%2Fcdf9cdeed41502653dbbd211a364fcb64e1cae10%2F3976%2FnfSlot&usg=AFQjCNGYRbNtVW8iWGvoOwG7OS\\_PqC59rg&sig2=8bGR\\_fiwPJRp\\_5t8IiBfQ&bvm=bv.106130839,d.cWw](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB0QFjAAahUKEwi32Z2HiejIAhVHFj4KHejoBHI&url=http%3A%2F%2Fwww.toscanapromozione.com%2FnfEditInlineDownloadMedia%2Fmedia%2Fcdf9cdeed41502653dbbd211a364fcb64e1cae10%2F3976%2FnfSlot&usg=AFQjCNGYRbNtVW8iWGvoOwG7OS_PqC59rg&sig2=8bGR_fiwPJRp_5t8IiBfQ&bvm=bv.106130839,d.cWw) (detailing history and specifics of Italian wine labeling regulations). The Italian law stipulates regulations that indicate area of production, maximum quantity produced per hectare, methods and times of vinification, and characteristics about the wine. *Id.* at 18. DOCG wines in Italy require stamping of every bottle that has passed the inspections. *Id.* at 19. See also Opaz, Gabriella, *Interpreting the Portuguese Wine Label, Catavino* (April 17, 2006), <http://catavino.net/portuguese-wine-label/> (last visited Oct. 27, 2015) (explaining components of wine label from Portugal). The front of a Portuguese wine bottle consists of the name of the winery, the region where the grapes were grown, the stamp by the commission to show authenticity, a classification of the quality of wine, the type of grape used to make the wine, and the year of production. *Id.* Similar to France and Italy, Portugal has a hierarchal structure of its quality classifications. *Id.*

62. See Angela Huisingh, Comment, *I Like Cabernet and Merlot but I'm Not Drinking Bordeaux: Certified Confusion*, 13 J. MARSHALL REV. INTELL. PROP. L. 203, 204 (2013) (searching for reason behind wine regulations). French producers were labeling inferior wines as Bordeaux and Champagne, damaging the reputation of the high-quality producers that associated their products with these names and regions. *Id.*

63. *Id.* (explaining first law governing appellation of wine origin). The French established the first law in 1905 to fight misrepresentation from the producers and to create stricter labeling policies. This was followed by a more comprehensive legislation, *Appellation d'Origine Controllee (AOC)*. *Id.*

64. *Id.* (enumerating French law on appellation of wine origin). "Without a system in place to protect their unique *terroir* (the character of the region represented in the wine), the producers of Bordeaux spearheaded an arduous campaign for more stringent regulation, causing riotous outbursts." *Id.* This gave rise to the French AOC system. See *supra* note 26 and accompanying text (examining French AOC classification system).

65. See *supra* note 26 (exposing origin of French AOC system).



many, and Italy created volumes of wine regulations to protect geographical identity.<sup>66</sup>

In addition to combatting fraud, wine rules and regulations impact economic interests through the governance of wine production, distribution and sale to consumers.<sup>67</sup> In the United States, each state has employed a wide variety of regulatory schemes to control production, distribution, and sale of wine; however, all states use a variation of a three-tier system to prevent economic relationships between producers and wholesalers, between wholesalers and retailers, and between producers and retailers in an effort to prevent the issues that arose during Prohibition.<sup>68</sup> The wine industry has changed dramatically in the last fifty years, formerly having few producers and many wholesalers.<sup>69</sup> Early American wine producers did not have their own wine culture, instead they borrowed wine denominations from European wine producers of Old World wines, and it was these Old World wine producers that encouraged New World wines to adopt the Old World appellation system in order to agree with Old World wine labels.<sup>70</sup>

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66. See Barriger, *supra* note 25, at 318 (exemplifying additional necessities for wine regulations).

67. See Susan Lorde Martin, *Wine Wars—Consumers and Mom-and-Pop Wineries vs. Big Business Wholesalers: A Citizens United Example*, 21 KAN. J.L. & PUB. POL'Y 1, 1 (2011) (highlighting necessity of wine regulations as economic interest). In 2005 there was a famous Supreme Court decision, *Granholm v. Heald*, 544 U.S. 460 (2005), regarding the regulation of wine sales to consumers in the United States. *Id.* at 2. “The issue in *Granholm* was whether state laws in Michigan and New York that allowed in-state wineries to ship wine directly to consumers in the state but required out-of-state wineries to use wholesale distributors were unconstitutional. The Supreme Court answered that question in the affirmative.” *Id.* at 2.

68. See *id.* at 3 (providing three-tier regulatory system).

69. *Id.* at 4 (highlighting changes in wine industry).

“About ninety-seven percent of all wine sales in the United States” pass through wholesalers. The five largest U.S. wholesalers control almost fifty percent of the wine market. The three-tier system creates market power and economic rents for these relatively few wholesalers. The more than 6,000 wineries in the United States produce about 7,000 wine brands that have to squeeze through the distribution bottleneck. Thus, wholesalers can engage in product-tying or bundling the way that Microsoft does.

*Id.* at 5 (explaining impact of wine industry’s three-tier system).

70. See Lindsey A. Zahn, *Australia Corked Its Champagne and So Should We: Enforcing Stricter Protection for Semi-Generic Wines in the United States*, 21 TRANS-NAT'L L. & CONTEMP. PROBS. 477, 485 (2012) (noting emergence of New World wine regulations). Americans have embraced their own philosophy in wine production and continue to create their own wine names that do not correspond with the traditional

## 2. Appellation Systems and Quality Controls

The geographical notion of appellation in American wine law began with the tradition of *terroir* which European winemakers have esteemed for centuries.<sup>71</sup> The European Union has long recognized the concept of quality wines being attributable to the wine's geographical origin.<sup>72</sup> Similarly, the United States's system of classifications was based on geographical origin, but did not have stringent requirements.<sup>73</sup>

### B. Emergence of New World Wines

The U.S. wine industry took off after its victory against French wines in the famous blind tasting of 1976.<sup>74</sup> The traditional wine producers, referred to as the "Old World," faced increased regulation as the wine industry developed.<sup>75</sup> As a result of their nations wanting to uphold traditional processes and cul-

European geographical system. *Id.* The American laws governing wine products continue to develop with the New World approach to American wine production. *Id.*

71. See Barriger, *supra* note 25, at 317 (delving into origin of notion of appellation).

72. See *id.* (evincing concept of quality of wines due to geographic origin)

The principles of *terroir* can be seen in E.U. legislation within the precepts of Council Regulation 479/2008, which amends prior regulations on the common organization of the wine market. With regard to brand recognition and the insurance of wine quality and honest labeling practices, E.U. Regulation 479/2008 sets forth a definition of 'designation of origin' as requiring the grapes from which a wine is produced to come completely and exclusively from the specific geographical area in which production occurs.

*Id.* at 317-18. The second longstanding labeling standard under regulation is known as "geographical indication" or GIs and are seen as the functional equivalent of AVAs because they require at least 85% of grapes in a wine to come from a specific geographic area. *Id.* at 318.

73. See Barriger, *supra* note 25, at 316 (reviewing AVA regulations).

74. See Huisingsh, *supra* note 62, at 204 (describing start of U.S. wine industry); see also Rachman, *supra* note 12, at 91 (delimiting Judgment of Paris in 1976).

Though plagued by similar issues of quality control and overproduction of bulk wine, the majority of litigation in the United States has been over brand names. Consumers in the United States do not learn about wine based on regions; rather, grape varietal and brand names dominate how they come to appreciate wine. But the recent trend in the most-developed wine regions in the United States indicates a growing desire among domestic wine producers to protect their regional *terroirs* from fraud and misrepresentation of origin.

See Huisingsh, *supra* note 62, at 205 (expressing issues in U.S. wine industry both historic and present).

75. See Bartlett, *supra* note 1, at 2 (illuminating traditions of Old World wines).

tural roots, the winemaking process as well as the classification system was strictly controlled.<sup>76</sup> Although this increased barrier to entry, it also allowed other competitors that were not bound by the same cultural ties to enter and disrupt industry through innovation.<sup>77</sup> Through advancements in production as well as through marketing innovation, New World countries such as Australia and the United States were able to gain market share from the traditional wine producers through efficiency and triggering a “Global Wine War.”<sup>78</sup> Despite their increased popularity, New World wines were still perceived by wine critics and consumers as inferior in quality, which drastically changed after a watershed event in the industry known as the Judgment of Paris in 1976.<sup>79</sup>

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76. See *id.* (explaining traditional processes meant strict regulations).

77. See Bartlett, *supra* note 1, at 3 (pointing to wine industry disruption through innovation); see also Tim Atkin, *Why France Is Whining About Wine*, GUARDIAN, Jan. 30, 2005, <http://www.theguardian.com/world/2005/jan/30/france.timatkin> (analyzing shift in consumer preferences from complex to simpler wines).

78. See Bartlett, *supra* note 1, at 4 (analyzing emergence of New World wines and “Global Wine War”). New World companies broke many wine making traditions. *Id.* For instance, the Australians used controlled drip irrigation to expand into marginal land, a practice that was forbidden under French AOC regulations. *Id.* Techniques such as night harvesting were pursued to maximize grape sugars, while some companies experimented with reverse osmosis technology to create a richer tasting wine. *Id.* These were all practices that were either forbidden by AOC regulations or looked down upon by traditional winemakers, and their failure to adapt to the changing industrial landscape caused them to lose their dominance. *Id.*

79. See Rachman, *supra* note 12, at 91 (defining impact from Judgment of Paris in 1976). The Judgment of Paris consisted of a blind-tasting panel to rate the top wines from France and California. *Id.* The American wines came out on top in both the red and white wine categories. *Id.* See also Bartlett, *supra* note 1, at 5-6 (describing change in perception of American wines after Judgment of Paris). A British wine merchant set up a blind-tasting event with nine French wine critics on the panel. *Id.* The advantage was heavily considered to be with the French wines as the event itself was held in Paris. *Id.* To everyone’s surprise, the American wines came out on top. *Id.* The event was criticized for being rigged by the French winemakers. *Id.* However, the results were the same in a judging event held two years later. *Id.* The Judgment of Paris was a shock to the world and resulted in a great amount of publicity for American wines. Bartlett, *supra*. The notion that French wines were superior was proven wrong and was a wake up call to Old World producers that competition from non-traditional producers was not to be taken lightly. *Id.* On the other hand, the event served as validation and encouragement for New World producers that they could compete in the international market. *Id.* See also The 1976 Paris Tasting, <https://www.cask23.com/history/parisTasting/> (last visited Oct. 27, 2015) [hereinafter Paris Tasting] (providing details on Judgment of Paris from producer’s point of view). Barbara Ensrud of the Wall Street Journal states, “The 1976 Paris Tasting, or Judgment of Paris as it became to be known, had a revolutionary effect, ‘like a vinous shot heard round the world.’” *Id.* The nine members chosen for the panel had impeccable

## IV. ANALYSIS

A. *Impact of Regulatory Environment on the Dynamics of the Wine Industry*1. *Old World Regulatory Environment*

When considering the regulatory framework established in the traditional countries, although established to protect the wine producers and the consumers, the complex framework has been a hindrance and barrier to entry, allowing other wine producers to get ahead.<sup>80</sup> The hindrance lies not only in the complexity of the regulations themselves, but also in the multiple levels of regulations that a wine producer must follow, which include regulations from the European Union, the member nation, and frequently the specific region where the wine is being produced.<sup>81</sup> Although avoiding fraudulent labeling and ensuring a high level of quality, the governing bodies of the Old World nations have burdened the industry by creating so much “red tape” and fragmented the industry because they were not cohesive and collaborative in their planning.<sup>82</sup>

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professional credentials in the wine industry. *Id.* The identities of the wines were concealed and the panel was only made aware of the labels after they had already selected their preferences. *Id.* The winner was the 1973 Stag Leap Cellars Cabernet Sauvignon, a wine that had been aged for only three years. *Id.* The panel selected it over four Bordeauxs that were previously considered to be the best. *Id.* The judges were themselves in shock when the labels were revealed and the newspapers were there to immediately capture the reactions and publish their stories. Paris Tasting, *supra*.

80. See Barriger, *supra* note 25, at 318 (regarding E.U. wine regulations). “When assessing the larger E.U. wine regulatory framework, it is important to understand the individual regulatory systems of the E.U. Member States because they are allowed to apply more stringent rules than those set forth in Regulation 479/2008.” *Id.*

81. See generally SUMMARIES OF EU LEGISLATION, *supra* note 18 (contemplating E.U. Common Agricultural Policy and other regulations).

82. *Id.* (expanding on E.U. wine regulations). See also Wine in Italy Report, *supra* note 31 at 1-5 (outlining wine trends in Italy). Italian wine producers are beginning to realize that consumers are looking for simplicity in wine labels. *Id.* Since the market is made up of many small producers, it is extremely fragmented with the leading wine producer, Caviro, having only a 7% market share. *Id.* Trends in recent studies show that consumers are looking for product labels that are easier to understand and are seeking out products that provide good “value.” *Id.* Italian wine consumption has decreased to a record low as prices of wine have increased. *Id.* The cause of rising prices can be attributed to a bad harvest year. *Id.* The volume is expected to decline by 3% over the next year. *Id.* The report also analyzes off-channel vs. on-channel consumption, noting that off-channel consumption increased as a result of more people opting to consume wine in their households. *Id.* In terms of perception among consumers, Italian consumers perceive domestic wines to be of higher quality

For instance, French wines, renowned as some of the best in the world, only have a handful of recognizable “international” brands, largely attributed to the fragmented approach of labeling and branding.<sup>83</sup> Since the appellation laws dictate that the names of the wines and qualities are associated with the *terroir*, there is really no opportunity for a wine producer to create a brand that can be marketed globally and on a scale large enough to compete in the global wine market.<sup>84</sup> Although French wines carry a prestige and exclusivity that is unmatched, the labeling of the wines, as a result of the regulations, makes the products difficult to market to the average consumer.<sup>85</sup> From a business perspective, the French wines are attractive to those who are already wine connoisseurs and unappealing to the mass market due to its complex nature, higher price point, and unrecognizable brand names.<sup>86</sup> A consumer, unaware of the classification

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compared to foreign wines. *Id.* According to trade interviews, bottle labels were a major driver of consumer buying decisions and resulted in companies focusing their strategy on marketing and packaging. *Id.* Given this consumer behavior, it was to Italy’s disadvantage that the market was extremely fragmented and made up of thousands of small companies scattered all over the country. *Id.* Each region, variety of wine, and quality classification added complexity for the consumer and made it difficult to create brand awareness. *Id.*

83. See generally MARKHAM, *supra* note 6 (looking into origins of French classification system of wine). French wine is generally considered to be exclusive and distinguished, making it difficult to scale a certain brand as a specific type can only be produced for a limited quantity in a given year. *Id.*

84. *Id.* (pointing to French classification system). See also FRENCH WINE LABEL INFORMATION, *supra* note 28 (offering details of French classification system). The three tiers of French wine classification system, from highest to lowest quality, include AOC (Appellation d’Origine Contrôlée), Vin de Pays, and Vin de France. *Id.* The AOC is further classified into Grand Cru, which is the highest classification, and Premier Cru. *Id.* The equivalent of AOC across Europe is Appellation d’Origine Protégée (AOP). *Id.*

85. See Vialard, *supra* note 26 (summarizing French wine quality AOC system); see also Hughes, *supra* note 20, at 307 (talking about French system of appellations d’origine contrôlées); Chen, *supra* note 26 (explaining barriers of French wine regulation system). The AOC requires wine to be produced in the same region as the agricultural commodities are produced. *Id.* The author explains that this system is unlikely to gain acceptance worldwide due to its localized and regional approach that is specific to France and that the geographical indications are not fully protected outside France and Europe. *Id.*

86. See generally Chen, *supra* note 26 (considering AOC system’s appeal to consumers). While the AOC serves as way to protect the consumer by guaranteeing a certain quality of wine, the ordinary consumer has no knowledge of the origins of a particular wine. *Id.* Specifically, American consumers are ignorant of the complex linkages in the AOC regarding origins of products. *Id.* This makes it difficult for the AOC to be appreciated or enforced to an average consumer. *Id.*

system and how to identify a quality wine, is unlikely to appreciate or understand its quality, thereby holding a low appeal in the global market when compared to wines from the New World producers.<sup>87</sup>

Similarly, the Italian classification system is divided into four classifications based on quality.<sup>88</sup> This makes it extremely difficult for a layman to understand the system and make a buying decision based on the certifications.<sup>89</sup> While the classification system makes sense in theory, a country-specific methodology diminishes the attainable market for wine producers on a global scale.<sup>90</sup>

The Spanish classification system follows France and Italy, implementing a similar classification that is first divided into two lower categories and then into four quality subcategories, signifying the quality of the wine.<sup>91</sup> While it is useful from the regulatory point of view to monitor and determine standards for wine quality and labeling, when each country has their own classification system, in addition to E.U. regulations, the consumer is left confused and any marketing efforts become extremely dif-

87. See Atkin, *supra* note 77 (commenting on appeal of French wines to mass market). The author states that French wines have increased competition from New World wines and are facing difficulty competing globally. *Id.* “France has found it difficult to keep up with the change to simpler, mass-produced wines styles. It is stuck with restrictive laws that govern which grape variety can be grown where and a fragmented production base.” *Id.* Furthermore, the legislation is too complex for the modern consumer as they do not usually know the difference between regions in France. *Id.*

88. See ITALIAN APPELLATION SYSTEM, *supra* note 31 (comparing DOC and DOCG classification systems). Under the DOC classification, the producer must prove limited production of grapes in a vineyard, have a minimum natural alcoholic content, and a minimum level of maturity. *Id.* In the DOCG classification, the size of the bottle must follow the regulations and each bottle must have a seal of guarantee, issued by the Italian government. *Id.*

89. *Id.* (addressing characteristics of each quality certification).

90. *Id.* (relaying wine classification system in Italy and quality associated with those classifications). See also SUMMARIES OF EU LEGISLATION, *supra* note 18 (defining European Union regulation). Each country or specific region may have more stringent regulations regarding wine production that need to be followed in addition to the regulations set forth by the European Union. *Id.*

91. See Killian, *supra* note 36 (articulating Spanish wine regulations and classification system). The two lower categories, *Vino de mesa* and *Vino de la tierra*, account for the majority of wine production in Spain. *Id.* The four categories of quality wine are referred to as “VCPRD,” which stands for “vinos de calidad producidos en una region determinada.” *Id.* These wines are held to a higher quality standard and are strictly classified based on their region. *Id.*

difficult due to the regulatory constraints.<sup>92</sup> Labeling and packaging are a huge factor in determining which wine to purchase and without a consistent standard, it becomes difficult for wine producers to compete with each other.<sup>93</sup> A wine produced in a certain region is likely to be most popular within that region or country, as it does not have any brand recognition outside of the country.<sup>94</sup>

On the other hand, exclusivity and having limited production allows wine makers to demand a higher price and creates a perception of high quality, an extremely valuable differentiator in a crowded wine market.<sup>95</sup> With the competitive and cutthroat nature of the wine industry, differentiation is a key to remaining relevant.<sup>96</sup> Consumers are increasingly willing to spend more money on higher quality wines and Old World wines, especially from France and Italy, as they hold prestige around the world.<sup>97</sup> Since the wine industry is highly dependent on a nation's economy and consumer discretionary income, producers that are reluctant to differentiate their products have faced difficulty competing in the global wine industry.<sup>98</sup>

## 2. *New World Regulatory Environment*

The regulatory environment towards the wine industry in the New World has allowed for innovation, serving as an en-

92. *Id.* (analyzing effects of classification system on marketing wine).

93. *Id.* (discussing wine labels impact on purchasing decisions).

94. *See* Wine in Italy Report, *supra* note 31, at 1-5 (noting recent trends in wine industry). Using Italy as an example, even the largest brands do not have great market share or brand awareness ratings. *Id.* The majority of the wine consumed in Italy is Italian wine, therefore, the brands cater to a domestic market. *Id.*

95. *See generally* Killian, *supra* note 34 (exploring benefits of appellation laws). Other countries have followed France's lead in seeking protection for geographical indications also known as GIs. *Id.*

96. *See* Bartlett, *supra* note 1, at 4-5 (surveying landscape of global wine industry from investor's point of view). Presents possible threats to current industry leaders and author's opinion on where he believes the industry is headed. *Id.*

97. *See* Wine in France Report, *supra* note 28, at 1-7 (pointing to trends in French wine industry). French wines are world-renowned and can command a higher price point due to their worldwide prestige. *Id.* at 1. Although the market is fragmented and the economy plays a large part in determining the state of the industry, French wines have fared comparatively well because of their status. *Id.*

98. *See* Wine in Italy Report, September 2014, *supra* note 31, at 1-5 (explaining recent challenges for Italy in growing wine sales resulting from slowing economy and decreased consumption). Italian wines are primarily consumed within Italy and without a global presence or differentiation, wine producers must rely on the state of the Italian wine industry. *Id.*

couragement for change, rather than a hindrance.<sup>99</sup> In the United States, although the regulatory processes are strict, they intend to protect the consumers and ensure the quality of the product.<sup>100</sup> The United States has its own system for classification, but unlike the European Union, the United States covers a larger geographical territory and therefore, does not have nearby nations with competing classifications.<sup>101</sup> Instead of confusing the consumer with local regions and classifications, American regulations in fact make it easier for the consumer to compare products and educate themselves on what they are buying, while having confidence in its safety.<sup>102</sup>

The Australian wine industry, which has been an emerging leader amongst New World wine countries, is supported and encouraged by its government.<sup>103</sup> Not only do the authorities oversee the labeling and regulatory aspects of wine, but they also focus on international marketing efforts to promote the industry and Australian wines in general.<sup>104</sup> Support from legal authorities fosters an environment of innovation and, as a result, differentiated products and processes have emerged.<sup>105</sup> When the government works hand in hand with wine producers and grape growers to change national policies so that they can be beneficial to all the participants, the wine industry is bound to flourish as the country removes the barriers from a legal standpoint of doing business.<sup>106</sup> Although Old World countries have

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99. See Bartlett, *supra* note 1 (referring to global wine war).

100. See Barriger, *supra* note 25, at 318 (advocating AVA wine regulations).

101. *Id.* (considering impact of AVA wine regulations).

102. See ALCOHOL AND TOBACCO TAX AND TRADE BUREAU, *supra* note 42 (focusing on U.S. wine laws and regulations).

103. See AUSTRALIAN GRAPE AND WINE AUTHORITY, *supra* note 50 (outlining wine regulations in Australia).

104. *Id.* (highlighting impact of Australian wine regulations).

105. See DEP'T OF AGRICULTURE, AUSTRALIAN GOVERNMENT, *supra* note 54 (defining laws for Australian wines). The Australian government supports the wine suppliers in domestic matters such as industry structure, taxation, health, natural resource management, and the environment. *Id.* The Federal Government of Australia matches dollar for dollar up to .5% of gross output value for money spent on research and development by the producer, encouraging an environment for innovation. *Id.* See also Aylward, *supra* note 50, at 2-3 (exemplifying support measures from Australian government towards wine industry). The government also supports creating strong links between all aspects of the business including distribution, marketing, and technology. *Id.* at 10.

106. *Id.* (observing Australian wine laws). Rather than being an "authority," the Australian government takes on the role of being a partner, with the intent to oversee for all the right reasons. *Id.* Rather than being a barrier, as most government regula-



just begun to understand and adapt to the changing market needs, they lack the innovative approach that the New World countries have brought to the wine industry.<sup>107</sup>

### 3. *New Driving Forces in the Wine Industry*

Supplemented by fair regulations, New World wine producers have managed to gain market share over the years over traditional wine countries through process efficiencies, innovations in products and marketing.<sup>108</sup> In a market where products have not been historically differentiated, wine producers of the New World have introduced disruptive innovations and have fought the stigma that their wine is inferior.<sup>109</sup> In fact, while Old World producers have been stuck boasting that they produce higher quality wine, New World producers have gained a lead in building global brand names through sheer volume and marketing efforts.<sup>110</sup>

Going forward, wine regulations in the realm of classifications and labeling are no longer the driving forces as wine producers are looking into expanding their markets and entering the uncharted territory of online sales and other innovative methods of distribution.<sup>111</sup> Producers are targeting Generation Y with their innovations and marketing, and introducing products that potentially reshape the entire industry, as we know it.<sup>112</sup> Old World producers who were reluctant to alter their

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tions are considered, the Australian government seeks growth of the industry and guides the participants through the legal procedures of establishing and operating a winery in Australia. *Id.*

107. See Wine in Italy Report, *supra* note 31, at 1-5 (expanding on Italian wine industry). A study of the wine industry in Italy notes a trend that producers are focusing on simplifying wine labels to make it easier for consumers to make a decision. *Id.* at 4. It notes that the Italian market is extremely fragmented and the top producer only holds a 7% market share of the wine industry in Italy. *Id.* at 1. The majority of the wines consumed in Italy are Italian wines and Italian producers do not have a strong foothold in the global market. *Id.* at 2.

108. See Bartlett, *supra* note 1 (showing how traditional wine methods started to stunt growth).

109. See Aylward, *supra* note 9 (contemplating futures of New World wines).

110. See Bartlett, *supra* note 1, at 4-5 (exposing competitiveness of global wine industry).

111. See *supra* notes 56-57 and accompanying text (analyzing future of alcohol delivery and regulations).

112. See Howell, *supra* note 60 (exploring wine innovations). Examples of innovations include screw-tops, which used to be considered inferior quality, box wines, colored and flavored wines, and accessories for wine market that help preserve quality of wine over long periods of time. *Id.*

traditional practices are beginning to adapt; however, they will be left behind as New World producers are gaining a further lead by targeting the younger generation.<sup>113</sup> Marketing and mode of delivery, which now include online sales, are part of the company strategy for participants to differentiate from the traditional dynamics of the industry and gain a competitive advantage.<sup>114</sup>

## V. CONCLUSION

The stringent regulations in Old World wine countries along with their resistance to change to preserve cultural ties allowed New World countries to initially gain a foothold in the competitive wine industry.<sup>115</sup> Although Old World wine countries have begun to adapt to changing market dynamics, the New World countries have continued to innovate and gain market share.<sup>116</sup> As wine sales and exports continue to increase in countries such as the United States and Australia, traditional wine producing countries are struggling to grow, which stems from their lack of innovation and ability to respond to market needs and consumer behavior changes.<sup>117</sup> While favorable regulations, prestige, and wine-making techniques were historically a competitive edge, they are no longer the driving forces in today's marketplace.<sup>118</sup> Going forward, marketing, branding, innovative product offerings, and leveraging new avenues of sale will determine the fate of wine producers.<sup>119</sup>

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113. *Id.* (examining new directions of wine).

114. *See* Bensinger, *supra* note 57 (describing present and future changes of global wine industry).

115. *See supra* note 1 and accompanying text (elucidating how New World wines gained competitive advantage).

116. *See supra* notes 6-7 and accompanying text (accounting for how New World wine countries surpassed Old World wine countries in terms of success).

117. *See* Wine in France Report, *supra* note 28, at 4 (explaining trends in Old World wine countries); *see also* Euromonitor International: Passport, Wine in Italy Report, *supra* note 31, at 4 (recognizing trends in Old World wine countries).

118. *See* Howell, *supra* note 60 (exploring disruptions in wine industry).

119. *See id.* (considering innovations and future of Global Wine Industry).