

THE GLOBAL WINEGLASS: AN ECONOMIC AND ANTITRUST PERSPECTIVE ON THE INTERNATIONAL WINE MARKET

Abstract: On July 9, 2021, President Joe Biden issued an executive order aimed at promoting competition in the adult beverage industry. As mandated by the executive order, the Department of the Treasury—with the assistance of the Department of Justice, Federal Trade Commission, and Alcohol and Tobacco Tax and Trade Bureau (TTB)—released a report detailing anticompetitive practices in the American markets for beer, wine, and spirits. The report concluded that several winemaking practice regulations inflicted an unjustified regulatory burden on producers. Therefore, the Treasury ordered the TTB to evaluate its regulations and eliminate any obstacles to competition. This Note first discusses the regulatory frameworks of prominent wine regions across the world, then examines the underlying policy of wine legislation. This Note argues that the TTB should modernize wine regulations and adopt more stringent standards in further rule-making to comply with federal antitrust law in the United States.

INTRODUCTION

In 1976, a panel of nine critics gathered in Paris to conduct a blind tasting of wines from France and California.¹ Top wines from Burgundy and Bordeaux competed against unrenowned wines of Napa Valley.² To the dismay of the French judges, they awarded the top scores to a chardonnay and cabernet sauvignon from California.³ The contest, termed the Judgment of Paris, revolu-

¹ Katy Steinmetz, *How America Kicked France in the Pants and Changed the World of Wine Forever*, TIME (May 24, 2016), <https://time.com/4342433/judgment-of-paris-time-magazine-anniversary/> [<https://perma.cc/2B5K-Y7FU>]. All nine judges were French, and included the director of a prestigious wine estate. Jacopo Prisco, *Judgment of Paris: The Tasting That Changed Wine Forever*, CNN (Sept. 24, 2021), <https://www.cnn.com/travel/article/judgment-of-paris-wine-tasting-cmd/index.html> [<https://perma.cc/26NY-H5HB>].

² See Steinmetz, *supra* note 1 (explaining that French wine existed on a pedestal and California wine was insignificant). Before the contest, roughly forty wineries existed in Napa Valley. Colman Andrews, *Paradise Lost: The Flame Out of Napa Valley's Iconic Wine Country*, L.A. MAG. (Oct. 11, 2022), <https://lamag.com/featured/paradise-lost-the-flame-out-of-napa-valleys-iconic-wine-country> [<https://perma.cc/5PUS-4TCF>]. Today, the number of Napa Valley wineries has surged to about 1,700. *Id.*

³ Steinmetz, *supra* note 1. The French critics were astonished after the winner was announced. *Id.* As retaliation for the negative results, French wineries shunned Steven Spurrier, the organizer of the contest. See *id.* (reporting that several of the critics were removed from their positions of honor). The victorious wines were 1973 vintages (i.e., they were harvested that year)—the white, a bottle of chardonnay from Napa Valley's Chateau Montelena, and the red, a cabernet sauvignon from Stag's Leap Wine Cellars. *Id.* The Smithsonian honored the bottle of Stag's Leap as a top item that "made" America, recognizing that the Judgment of Paris was a significant factor in California's wine growth over the past

tionized the world of wine and triggered an expansion of wine production in the United States, South America, and Australia.⁴ Today, wine critics consider so-called New World wine-producing regions such as Napa, the Maipo Valley, and the Barossa Valley to be powerhouses.⁵ Although the quality of wines has narrowed, Old World countries—France, Italy, and Spain—are still the leading producers worldwide.⁶

Competition for market share between New World and Old World countries is sharply contested, but their regulatory systems differ dramatically.⁷ On

several decades. *101 Objects That Made America: America in the World*, SMITHSONIAN MAG. (Oct. 31, 2013), <https://www.smithsonianmag.com/history/101-objects-that-made-america-2254692/> [<https://perma.cc/2UQT-J2T4>].

⁴ See Brian Freedman, *The Judgment of Napa: Commemorating the 1976 Tasting, and Pitting Napa Against the World's Top Wines*, FORBES (Nov. 1, 2021), <https://www.forbes.com/sites/brian-freedman/2021/11/01/the-judgement-of-napa-commemorating-the-1976-tasting-and-pitting-napa-against-the-worlds-top-wines/?sh=43774083c3f9> [<https://perma.cc/YD48-MTJ9>] (explaining that the contest's importance is impossible to overstate); Andrews, *supra* note 2 (revealing that the Judgment of Paris catapulted Napa Valley wine and accorded it instant credibility). On the other hand, France suffered difficulties both domestically and in its export market over the past fifty years. See Eric Asimov, *In the World of Fine Wine, There'll Always Be a France*, N.Y. TIMES (July 5, 2006), <https://www.nytimes.com/2006/07/05/dining/in-the-world-of-fine-wine-therell-always-be-a-france.html> [<https://perma.cc/S63M-4JL9>] (describing the French wine business). Domestically, consumers have decreased their wine consumption and the French wine culture has subsided. *Id.* French consumption has decreased as economic productivity has increased. *Id.* Further, laws proscribing drunk driving have limited excessive wine consumption. *Id.* Abroad, New World wine continues to evolve, competing against top-tier French wines; but stringent winemaking regulations preclude French vintners from modernizing their techniques. *Id.*; see *Vintners*, OXFORD COMPANION TO WINE 799 (Jancis Robinson ed., 4th ed. 2015) (defining vintner as a wine producer or merchant). Due to their rapid rise in wine exports during the 20th century, countries established because of European colonization are referred to as “New World Wine” countries. OXFORD COMPANION TO WINE, *supra*, at 501. On the other hand, countries in Europe are referred to as “Old World Wine” countries because they began their wine operations approximately around the fourth century. *Id.*

⁵ See Kevin J. Fandl, *Regulatory Policy and Innovation in the Wine Industry: A Comparative Analysis of Old and New World Wine Regulations*, 34 AM. INT'L L. REV. 279, 282 (2018) (providing an overview of New World wine).

⁶ See Suzanne Mustacich, *World Wine Crop Drops Dramatically*, WINE SPECTATOR (Nov. 11, 2021), <https://www.winespectator.com/articles/world-wine-crop-drops-dramatically> [<https://perma.cc/PJ3L-BRMR>] (reporting that France, Italy, and Spain comprise almost half of the world's wine production and continue to be the leading producers in the European Union (E.U.)). Competition in the production of wine is fierce. See *id.* (noting that the southern hemisphere is gaining a larger market share of the wine market after recording higher yields). For example, actors involved in the Old World wine market have turned to violent protests to combat globalization. See TYLER COLMAN, *WINE POLITICS: HOW GOVERNMENTS, ENVIRONMENTALISTS, MOBSTERS, AND CRITICS INFLUENCE THE WINES WE DRINK* 18 (2008) (describing violent strikes and demonstrations in France). In 2005, French vignerons from the Languedoc region—reeling from low prices caused by overproduction—attacked a Chilean wine distillery and destroyed one million liters of wine. *Id.* at 55.

⁷ See Fandl, *supra* note 5, at 282 (comparing Chile's laissez-faire open regulatory system, France's traditionally strict regulatory policies, and the United States' intermediate approach); see also Nisha Chittal, *Why Is Wine Still So Confusing?*, VOX (Mar. 4, 2020), <https://www.vox.com/the-goods/2020/3/4/21152752/understanding-wine-complicated-learning-education> [<https://perma.cc/DT5D-EQK2>] (criticizing the lack of consistency in wine regulations). The differing approaches have resulted in disagreement between Old World and New World countries, with the E.U. previously

the one hand, European countries typically have strict winemaking practice regulations.⁸ The European Union (E.U.) promulgates stringent rules for wine-growing quality, production, and technique processes.⁹ E.U. member states must conform to such regulations, even if not in their best interests.¹⁰ Although a broad generalization of European wine policies, their overarching principle can be distilled: control prices by emphasizing quality through government intervention.¹¹ On the other hand, newer producers such as the United States and Chile favor rapid growth to compete globally.¹² New World countries' liberal approach focuses on a "free market" system, with wine laws placing emphasis on consumer protection.¹³

Since taking office, President Biden adopted an aggressive stance on anti-trust and consumer protection laws, ordering the Federal Trade Commission to increase enforcement.¹⁴ On July 9, 2021, Biden issued an executive order

accusing non-European producers of taking advantage of the reputation and notoriety of quality European wines, claiming that producers lose out on billions of dollars a year. Stephen M. Jurca, Note, *What's in a Name? Geographical Indicators, Legal Protection, and the Vulnerability of Zinfandel*, 20 IND. J. GLOB. LEGAL STUD. 1445, 1459 (2013). For example, some American sparkling wine producers had previously attempted to label their wines "Champagne," although it is a protected geographical region in France. *Id.* at 1446. Another notable labeling difference is that New World wine producers such as the United States label their wine according to grape varietals, rather than the area where the wine was produced. See Chittal, *supra* (comparing wine labels).

⁸ See Giulia Meloni & Johan Swinnen, *The Political Economy of European Wine Regulations*, 8 J. WINE ECON. 244, 244 (2013) (describing the European Union's wine market regulations as burdensome).

⁹ See, e.g., Commission Regulation 538/2011, 2011 O.J. (L 147) 6 (EU) (establishing protected designations of origin); Commission Delegated Regulation 2019/934, 2019 O.J. (L 149) 7 (EU) (establishing authorized oenological practices); see also *Oenological*, OXFORD COMPANION TO WINE, *supra* note 4, at 519 (defining oenology as the "study of wine" and referring to it as a "synonym of winemaking"). Since 1962, the E.U. has implemented over two thousand regulations in the wine sector. Meloni & Swinnen, *supra* note 8, at 245.

¹⁰ See Meloni & Swinnen, *supra* note 8, at 245 (providing the example that nations in the E.U. often destroy large amounts of wine to conform with E.U. standards).

¹¹ See, e.g., Commission Regulation 1308/2013, 2013 O.J. (L 347) 706 (EU) (implementing vineyard planting authorizations to restrict supply); see also Fandl, *supra* note 5, at 332 (detailing that French farmers united their lobbying efforts to protect grape quality and restrict competition).

¹² See, e.g., 27 U.S.C. § 4.25(e)(1)(i) (defining American Viticultural Area (AVA) as a delineated grape-growing region but not requiring producers to comply with specific oenological practices); see also Fandl, *supra* note 5, at 332 (explaining that a few elites with significant governmental influence controlled the Chilean wine market). For example, instead of limiting the quantity of grapes that could be planted and wine produced, the Chilean government repealed planting and production restrictions. Fandl, *supra* note 5, at 333–34.

¹³ Fandl, *supra* note 5, at 335.

¹⁴ Jim Tankersley & Cecilia Kang, *Biden's Antitrust Team Signals a Big Swing at Corporate Titans*, N.Y. TIMES (July 24, 2021), <https://www.nytimes.com/2021/07/24/business/biden-antitrust-amazon-google.html> [<https://perma.cc/3JGU-UBEM>]; see also Rebecca Klar, *Biden Administration Boosts Support for Antitrust Efforts*, THE HILL (Mar. 29, 2022), <https://thehill.com/policy/technology/600270-biden-administration-boosts-support-for-antitrust-efforts/> [<https://perma.cc/S566-EVCY>] (outlining President Joe Biden's budget proposal that includes a significant increase in Federal Trade Commission (FTC) and Department of Justice (DOJ) funding). President Biden has formed an aggres-

aimed at promoting competition in the adult beverage industry.¹⁵ Among other things, the executive order directed the U.S. Treasury Department (Treasury) to conduct a report concerning unnecessary wine regulations that may restrain competition without serving any legitimate tax, consumer protection, or competition goals.¹⁶ The Treasury released its Competition Report on February 9, 2022, which included recommendations from the Department of Justice, the Federal Trade Commission (FTC), and the Alcohol and Tobacco Tax and Trade Bureau (TTB).¹⁷ Although the Competition Report's focal point is on anticompetitive conduct stemming from monopolistic mergers, the Treasury concluded that several winemaking practice regulations inflicted an unjustified regulatory

sive antitrust team, including Lina Khan, chair of the Federal Trade Commission. Tankersley & Kang, *supra*. The executive order is part of the Biden Administration's concerted effort to increase competition and long-term growth in the economy by mobilizing dozens of federal agencies. *Two Years Later: A Survey of President Biden's Executive Order on Promoting Competition in the American Economy*, HOGAN LOVELLS (Sept. 1, 2023), <https://www.engage.hoganlovells.com/knowledgeservices/news/two-years-later-a-survey-of-president-bidens-executive-order-on-promoting-competition-in-the-american-economy> [https://perma.cc/KUG7-UADK].

¹⁵ Exec. Order No. 14036, 86 Fed. Reg. 36987 (July 9, 2021). The executive order describes President Biden's broad antitrust policy. See Tankersley & Kang, *supra* note 14 (reporting that the executive order contains seventy-two initiatives across a wide range of industries); see also Tara L. Reinhard & David P. Wales, *Biden's Broad Mandate Has Altered the Antitrust Landscape, Making Merger Clearance Process Less Predictable*, SKADDEN (Jan. 19, 2022), <https://www.skadden.com/insights/publications/2022/01/2022-insights/regulation-enforcement-and-investigations/bidens-broad-mandate-has-altered-the-antitrust-landscape> [https://perma.cc/8CLJ-SSBG] (anticipating that the FTC will increase antitrust enforcement).

¹⁶ Exec. Order No. 14036, *supra* note 15.

¹⁷ U.S. TREASURY DEP'T, COMPETITION IN THE MARKET FOR BEER, WINE AND SPIRITS (Feb. 2022), <https://home.treasury.gov/system/files/136/Competition-Report.pdf> [https://perma.cc/VND6-VVHT] [hereinafter COMPETITION REPORT]. The Competition Report stated that one of the largest issues confronting the liquor industry today is the three-tier distribution system. See *id.* at 11 (describing antitrust concerns at the state level); see also Dave McIntyre, *Smaller Wine, Beer and Spirits Operations Hope Biden's Executive Order Will Make It Easier to Reach Consumers*, WASH. POST (Sept. 3, 2021), <https://www.washingtonpost.com/food/2021/09/03/biden-executive-order-wine-competition/> [https://perma.cc/H6BB-6LLL] (noting that consolidation from the largest producers and retailers has inhibited competition in the liquor industry). As a result of the three-tier system, a wine producer is required to sell their wine to a wholesale distributor—then, the distributor sells the wine to retailers, such as grocery or liquor stores. See Kevin C. Quigley, Note, *Uncorking Granholm: Extending the Nondiscrimination Principle to All Interstate Commerce in Wine*, 52 B.C. L. REV. 1871, 1882 (2011) (summarizing the regulatory framework of three-tier distribution systems and offering policy justifications). In-depth discussion of the three-tier distribution system is beyond the scope of this Note—nevertheless, the Competition Report “encouraged” individual states to scrutinize the effect that the distribution system might have on smaller producers and competition. See COMPETITION REPORT, *supra*, at 5 (providing conclusions of the investigation). Some policy justifications for the distribution system include ensuring the payment of taxes and minimizing the diversion of alcoholic beverages. See RICHARD MENDELSON, FROM DEMON TO DARLING: A LEGAL HISTORY OF WINE IN AMERICA 117 (2009) (detailing state liquor laws).

burden on producers.¹⁸ As a result, the Treasury ordered the TTB to consider eliminating unnecessary winemaking practice regulations.¹⁹

To a large extent, two competing policies exist for wine regulatory schemes: economic safeguards for producers and consumer protection.²⁰ First, designating geographical indicators that align to quality control regulations provide producers monopolistic protection, thereby ensuring that wines command a higher price.²¹ Second, the same quality designations protect the consumer by limiting fraud and providing relevant information for purchasing decisions.²² Despite the comparatively liberal approach of the United States, the Treasury's finding of an unjustified regulatory burden begs the question: are wine regulations in the United States aimed at protecting consumers, or are they enacted to satisfy special interests that stifle competition?²³

This Note argues that U.S. wine laws, although serving limited quality control and consumer protection goals, obstruct smaller wine producers from

¹⁸ See COMPETITION REPORT, *supra* note 17, at 63 (suggesting that the Alcohol and Tobacco Tax and Trade Bureau (TTB) should review the existing regulatory framework). The U.S. Treasury Department (Treasury) highlighted several wine regulations that affect competition, including labeling and permit requirements, along with specific mandated bottle sizes. *Id.* at 53; see 27 C.F.R. §§ 4.32 (implementing labeling regulations for wine), 4.40 (requiring certificates of label approval), 4.71 (specifying wine container requirements).

¹⁹ COMPETITION REPORT, *supra* note 17, at 63. The Competition Report "encourages" the TTB to reexamine its wine labeling laws. *Id.* at 4. Recognizing the regulatory barriers resulting from compliance costs, the Treasury suggested that the labeling rules should be primarily concerned with consumer protection and "public health." *Id.* at 63. Further, the Competition Report mentions that future rulemaking should encourage simple and clear legislation to "promote compliance." *Id.* Although not noted in the Treasury's report, three wine conglomerates dominate the industry: E&J Gallo, Constellation Brands, and the Wine Group. See *id.* (refraining from mentioning the top wine producers in the U.S.); Chittal, *supra* note 7 (providing an overview of the U.S. wine market); see also Brian Rose, Comment, *No More Whining About Geographical Indications: Assessing the 2006 Agreement Between the United States and the European Community on the Trade in Wine*, 29 HOUS. J. INT'L L. 731, 741 (2007) (noting the incredible level of consolidation). The portfolio of Constellation Brands includes popular California wine brands Robert Mondavi and Barefoot Wine. Chittal, *supra* note 7. The French government, in an effort to minimize costs of production, recently approved modifications to existing laws that are expected to reduce costs for producers, such as eliminating the use of colored stickers that indicated tariffs had been paid. Tom Mullen, *France Is Changing Key Wine Regulations*, FORBES (July 3, 2019), <https://www.forbes.com/sites/tmullen/2019/07/03/france-is-changing-key-wine-regulations/?sh=54a2934b9b63> [<https://perma.cc/VJ8X-FEPV>]. French wine unions, including the wine union of Burgundy, have pushed back, arguing that the change will increase opportunities for fraud and counterfeiting. *Id.*

²⁰ See Michael Maher, Comment, *On Vino Veritas? Clarifying the Use of Geographic References on Wine Labels*, 89 CALIF. L. REV. 1881, 1885–86 (2001) (describing the fundamental goals of wine regulation).

²¹ See *id.* (noting the benefits of established wine region reputations and product differentiation).

²² See *id.* (explaining that geographical indicators provide information to minimize confusion).

²³ See Rachel M. Perkins, Note, *Wine Wars: How We Have Painted Ourselves into a Regulatory Corner*, 12 VAND. J. ENT. & TECH. L. 397, 424–25 (2010) (arguing that state regulations are aimed at protecting businesses rather than advancing legitimate state interests or protecting consumers).

competing in the market.²⁴ Part I of this Note discusses the wine policies, regulatory frameworks, and consumer protection laws of Old World and New World countries.²⁵ Part II of this Note juxtaposes economic protectionism and consumer protection in the international wine sector.²⁶ Part III suggests that wine regulations in the United States must be revised at the legislative and administrative agency level to comply with current competition policy.²⁷

I. OLD IS NEW: A COMPARATIVE VIEW OF WINE REGULATORY FRAMEWORKS

The European Union is the largest wine-producing region in the world, despite significant government intervention.²⁸ Domestic governments have a wide array of tools at their disposal: taxes and subsidies, import restrictions, quality regulations, and production and labeling laws.²⁹ For the most part, governments tax wine to increase tax revenue and decrease consumption.³⁰ The amalgam of wine regulations—in Europe and throughout the world—have a far-reaching impact beyond the final product.³¹

This Part conducts a comparative analysis of Old World and New World wine regulatory frameworks in the context of red wine, providing an overview of regulations in namesake regions.³² Section A of this Part outlines the comparatively strict policies and regulations in the European Union, specifically regarding the regions of Bordeaux in France, Barolo in Italy, and Rioja in Spain.³³ Section B then examines the divergent approaches of Napa Valley in California, Maipo Valley in Chile, and the Barossa Valley in Australia.³⁴

²⁴ See *infra* notes 238–262 and accompanying text.

²⁵ See *infra* notes 28–168 and accompanying text. This Note’s argument primarily focuses on the antitrust policies of the United States, but examines foreign regulatory structures to illustrate the diversity of regulations and their underlying policies. See *infra* notes 28–237 and accompanying text.

²⁶ See *infra* notes 169–237 and accompanying text.

²⁷ See *infra* notes 238–262 and accompanying text.

²⁸ Giulia Meloni, Kym Anderson, Koen Deconinck & Johan Swinnen, *Wine Regulations*, 41 APPLIED ECON. PERSP. & POL’Y 620, 622 (2019).

²⁹ *Id.* at 620–21. In Champagne, France, for example, producers may only harvest grapes by hand. *Id.* at 624.

³⁰ *Id.* at 630.

³¹ See *id.* at 642–43 (concluding that an analysis of the wine sector provides insight into the study of government interventions). Wine regulations implicate issues such as public health, economics and taxation, public and special interests, and agricultural policies. *Id.*

³² See *infra* notes 35–168 and accompanying text.

³³ See *infra* notes 35–113 and accompanying text.

³⁴ See *infra* notes 114–168 and accompanying text.

A. The Old World Wine Wall

Europe's wine regulations vary both within and between regions and countries.³⁵ The following subsections provide an overview of European wine policies, regulatory frameworks, and consumer protection laws.³⁶

1. Better Together: The European Union

The European Union operates under a notion of collective identity—yet, the twenty-seven member states have different cultures, politics, and market economies.³⁷ But the goals of European wine regulation are congruent: a focus on quality and economic protectionism.³⁸ The overarching policy of the European Union regarding the wine sector is set forth by the Common Agricultural Policy (CAP)—the E.U.'s body of law managing agricultural products.³⁹ The E.U. aims to foster self-sufficiency in the agricultural sector by implementing its economic policies.⁴⁰ In the wine sector, the E.U. provides support through subsidies, tax breaks, and import controls.⁴¹ Because the E.U. produces and

³⁵ Compare Margaret Ritzert, Note, *Champagne Is from Champagne: An Economic Justification for Extending Trademark-Level Protection to Wine-Related Geographical Indicators*, 37 AIPLA Q.J. 191, 218 (2009) (describing the unique production regulations in Champagne, France), with Colman, *supra* note 6, at 21 (outlining grape restrictions in the Bordeaux, France geographical appellation).

³⁶ See *infra* notes 37–113 and accompanying text.

³⁷ See Gregory P. Lubkin, *Is Europe's Glass Half Empty or Half Full? Alcoholic Beverage Taxation and the Development of a European Identity*, 3 COLUM. J. EUR. L. 357, 358, 367–68 (1997) (comparing the wine economies of E.U. member states).

³⁸ See Julian M. Alston & David Gaeta, *Reflections on the Political Economy of European Wine Appellations*, 7 IT. ECON. J. 219, 219–20 (2021) (conceptualizing the notion of a collective reputation built through quality controls); Sarah A. Hinchliffe, *Trademarks, GIs, and Commercial Aspects of Wine Distribution Agreements*, 10 J. FOOD L. & POL'Y 107, 120 (2014) (noting that France is extremely protective of its wine sector).

³⁹ See Treaty of Rome art. 39, Mar. 25, 1957, 298 U.N.T.S. 11, 30–34 (creating the Common Agricultural Policy (CAP)); see also Lubkin, *supra* note 37, at 367 (explaining the CAP's connection to wine policy). The CAP is a compilation of overlapping rules, and its goal is to regulate agricultural production in a consistent and equitable manner. Lubkin, *supra* note 37, at 367. The CAP outlines its basic objectives: to “increase agricultural productivity,” assure a fair quality of life for the European agricultural population, stabilize markets, and ensure the supply of products at “reasonable prices.” Treaty of Rome, *supra*; see also *Regulation of the Wine Industry in Selected Foreign Countries*, LIBR. CONG. (1993) [hereinafter *Wine Regulation Summary Report*] (describing the objects of the Common Wine Policy).

⁴⁰ See Lubkin, *supra* note 37, at 367 (asserting that member states consider wine consumption as essential to their agricultural sectors).

⁴¹ See Alston & Gaeta, *supra* note 38, at 230 (discussing how the E.U. provided the wine industry 1.2 billion Euros in 2019). Even with massive government subsidies, the E.U.'s agricultural policies have sometimes led to detrimental consequences for wine producers. See Leo Cendrowicz, *How Europe Is Drowning in Wine*, TIME (July 3, 2007), <https://content.time.com/time/business/article/0,8599,1639674,00.html> [<https://perma.cc/H6YQ-DZVK>] (detailing the E.U.'s response to overproduction). In 2007, a significant portion of the E.U.'s wine budget consisted of “subsidies and quotas” for farmers, leading to an overproduction of cheap wine. *Id.* As a result, the E.U. collected unsold wine to regulate prices, creating the so-called “wine lake.” *Id.* The E.U. destroyed the additional wine

consumes more wine than any other region in the world, the government regards their support as essential.⁴²

In addition, the E.U. has its own wine regulatory framework that includes a classification system.⁴³ The E.U. and individual member states have established a wine quality hierarchy system, wherein higher quality wines contain a geographical indication, and lower quality wines do not.⁴⁴ Within their framework, the E.U. imposes regulations on oenological practices, quality control, wine labeling, and marketing.⁴⁵ Domestic legislation runs parallel to the E.U.'s

or spent additional funds to convert it into distillate. *Id.* On the demand side, the E.U. has also faced obstacles leading to decreased wine consumption—including former President Donald Trump's export tariffs, the COVID-19 pandemic, and Brexit. See Adam Sage, *Vineyards Across Europe Drowning in Surplus Wine*, THE TIMES (Apr. 18, 2020), <https://www.thetimes.co.uk/article/vineyards-across-europe-drowning-in-surplus-wine-63kj566d8> [<https://perma.cc/MKA4-8HEH>] (contemplating whether another wine lake will materialize and reporting that millions of liters of unsold wine will be converted to distillate to avoid flooding the market); Eddy Wax, *Europe Braces for Return of Wine Lakes as Coronavirus Dampens Demand*, POLITICO (Apr. 27, 2020), <https://www.politico.eu/article/coronavirus-europe-braces-for-return-of-wine-lakes-as-coronavirus-dampens-demand/> [<https://perma.cc/8VCM-HSYD>] (warning that winegrowers in the E.U. have requested emergency governmental distillation following the COVID-19 pandemic). In addition to stockpiling unsold wine, the E.U. proposed that farmers destroy roughly 200,000 hectares of grape vines across the continent—a suggestion that small growers described as a “declaration of war.” Stephen Castle, *The E.U. Wants Farmers to Tear Up Vines to Drain the Wine Lake*, N.Y. TIMES (Aug. 3, 2007), <https://www.nytimes.com/2007/08/03/business/worldbusiness/03iht-wbwine.5.6979546.html> [<https://perma.cc/W65V-FVCS>].

⁴² See Seth Stroud, Note, *Old World Regulations and New World Flexibility: Countering the Effects of Climate Change on Wine*, 13 KY. J. EQUINE, AGRIC. & NAT. RES. L. 217, 237 (2021) (noting that E.U. member states combine to comprise of the highest producing wine region in the world). Italy, France, and Spain are the three biggest wine producers globally. See Sybille de La Hamaide, *Growers See Good Wine Vintage for Europe, Stable Volumes Despite Droughts*, REUTERS (Sept. 16, 2022), <https://www.reuters.com/world/europe/growers-see-good-wine-vintage-europe-stable-volumes-despite-droughts-2022-09-16/> [<https://perma.cc/8766-AGGE>] (announcing the expected wine production of the E.U. in 2022).

⁴³ See Molly Torsen, *Apples and Oranges (and Wine): Why the International Conversation Regarding Geographical Indications Is at a Standstill*, 87 J. PAT. & TRADEMARK OFF. SOC'Y 31, 44 (2005) (describing the “Protected Designation of Origin” and “Protected Geographical Indication” categories). This Note focuses on the national laws of individual European countries, but the system of geographical indications in the E.U. is relevant. See generally Alston & Gaeta, *supra* note 38, at 234 (analyzing the economic consequences of geographical indications in the wine industry). The lowest tier of wines, typically referred to as table wine, does not require a geographical indicator; for example, they are simply labeled *Vino de Tavolo* (Italy) or *Vin de Pays* (France). *Id.* at 224. Table wines are subject to limited regulations concerning quality control and oenological practices. Jeffrey A. Munsie, A Brief History of the International Regulation of Wine Production, at 29 (Mar. 2002) (unpublished manuscript) (on file with the Harvard Library Office for Scholarly Communication). The intermediate category of E.U. designations are labeled “Protected Geographical Indication” (PGI) wines. Alston, *supra* note 38, at 223. Although PGI wines are subject to additional rules concerning production and quality control, each state regulates their intermediate wines differently. *Id.* The highest quality wines are labeled “Protected Designation of Origin” (PDO) wines and they are typically subject to stringent regulations. *Id.*

⁴⁴ Alston & Gaeta, *supra* note 38, at 223.

⁴⁵ See Hinchliffe, *supra* note 38, at 122 (summarizing wine legislation in each category); see also Alston & Gaeta, *supra* note 38, at 239 (describing technological regulations such as grape varietal and yield restrictions).

classification system: although member states must meet minimum designations, they typically have more stringent regulations.⁴⁶ The two primary elements of wine regulatory systems—in the E.U. and member states—are (1) geographical indications and (2) technological or production process regulations.⁴⁷ The two elements are inextricably linked; to receive the quality mark of a geographical indication, winemakers must conform to the relevant wine-making requirements.⁴⁸ In Europe, the emphasis of geographical indicators is on quality, but the regulations have an incidental effect of protecting consumers.⁴⁹ That is, although the laws were initially enacted to support producers, they serve the dual purpose of protecting product names and providing consumers with relevant information.⁵⁰

2. Bordeaux, France

The French wine regulatory system is complex—but, to a large degree, it inspired current wine regulations for all of Europe.⁵¹ Several events impacted French wine policy: a phylloxera outbreak in the 1870s, Algerian competition, the power dynamics of winegrowers, and problems with fraud and adultera-

⁴⁶ See Alston & Gaeta, *supra* note 38, at 223 (highlighting that France imposes additional regulations than the minimum prescribed by the E.U.). Further, although the E.U. has established its own nomenclature for its agricultural geographical indications, their framework allows member states to utilize their own traditional acronyms used in classification systems to avoid confusion. *Id.*

⁴⁷ See *id.* at 235 (analyzing the elements and economic consequences of the E.U.'s wine policy).

⁴⁸ See *id.* (explaining the connection between geographical indications and process regulations); see also Stacy D. Goldberg, Comment, *Who Will Raise the White Flag? The Battle Between the United States and the European Union Over the Protection of Geographical Indications*, 22 U. PA. J. INT'L ECON. L. 107, 145 (2001) (asserting that geographical indicators help products by emphasizing their origin and reputation).

⁴⁹ See Lisa Barriger, Comment, *Global Warming and Viticulture: The Ability of Wine Regions to Adapt in Differencing Regulatory Schemes*, 19 PENN ST. ENV'T L. REV. 311, 327 (2011) (noting that E.U. regulations are aimed at producing only the finest quality wines). For example, Regulation 1308/2013 establishes a control mechanism for planting authorizations and dictates the maximum area under vine in the European Union. Council Regulation 1308/2013, 2013 O.J. (L 347) 1 (EU). Although commentators have noted that limiting the quantity of grapes grown directly correlates with wine quality, proscribing their quantity also tends to drive up the price of wine due to limited supply. Alston & Gaeta, *supra* note 38, at 243. More recently, in 2020, the Italian government adopted "tighter yield restrictions" in order to adapt to the deteriorating market conditions during the COVID-19 pandemic. See *id.* at 252 (arguing that the adjustment was solely for economic reasons, rather than to enhance wine quality).

⁵⁰ See Alessandro Stanziani, *Information, Quality, and Legal Rules: Wine Adulteration in Nineteenth Century France*, 51 BUS. HIST. 268, 269 (2009) (arguing that most wine regulations in France were adopted to benefit certain groups of producers, whereas consumer health and access to information remained in the background). Some critics argue that adulteration and counterfeiting measures instituted in France were not particularly harmful to health—as such, protecting public health was only an additional consequence of the regulations. See *id.* (assessing whether adulteration laws protected consumers or secured the income of producers).

⁵¹ See Colman, *supra* note 6, at 22 (emphasizing that the French system became a wine regulatory model throughout the E.U.).

tion.⁵² In short, these difficulties led to an increasing number of low-quality wine in the French market.⁵³ As a result of the overproduction and fearing unfair competition, winegrowers were acutely concerned with the reputation of their geographical indicators.⁵⁴

Today, quality is of the utmost importance to the French and the primary goal of its wine regulatory framework.⁵⁵ The foundation of French wine regulation is its quality designation system, the Appellation d'Origine Protégée (AOP), which recently replaced the long-standing Appellation d'Origine Contrôlée (AOC) categorization.⁵⁶ The French government created the AOC/AOP

⁵² See Munsie, *supra* note 43, at 11–12 (detailing the growth of wine regulation in France prior to the formation of the European Economic Community). During the late nineteenth century, phylloxera—an insect that consumes the roots of vineyards—devastated wine regions across Europe. Zachary Mike, Note, *Terroir and Tannins: How to Amend 27 C.F.R. to Bring French-Style Quality to the American Wine Consumer*, 20 J. INT'L BUS. & L. 153, 157 (2021). The effect of the phylloxera outbreak led to a redevelopment of winegrowing techniques. *Id.* In the Midi region of France, winegrowers were infuriated due to plummeting prices and an oversupply of grapes. See Colman, *supra* note 6, at 17–18 (explaining that wine riots in Languedoc, France, led to a violent revolution where French troops killed six protestors). An excess of Algerian wine, too, was available at low prices, further driving down the price of French wine. *Id.* at 17. Additionally, in Bordeaux and Champagne, two wine-regions with wines commanding exorbitant prices due to their quality, winegrowers were faced with a deteriorating reputation due to fraudulent wines being sold on the market. See *id.* (comparing problems in different French wine regions). As a result, the French government enacted strict wine labeling regulations. Maher, *supra* note 20, at 1885.

⁵³ Colman, *supra* note 6, at 17.

⁵⁴ See Stanziani, *supra* note 50, at 280 (providing the rationale for state intervention).

⁵⁵ See *Wine Regulation Summary Report*, *supra* note 39, at 35 (asserting that France's wine reputation is unparalleled globally, and is a result of quality control regulations). The government's emphasis on quality can be traced back to 1935, when the Duke of Burgundy, Philippe II le Hardi, issued an edict banning the planting of gamay grapes, instead favoring the use of the pinot noir varietal. See STEFAN K. ESTREICHER, *WINE: FROM NEOLITHIC TIMES TO THE 21ST CENTURY* 59–60 (2006) (recounting the “golden age” of Burgundy, France). Many believe that such grape variety restrictions, typical throughout France, are largely responsible for French wine notoriety. See David S. Burick, Comment, *Is It Only Champagne if It Comes from Champagne? An Analysis of Transnational Geographical Indication Law in the Context of Sparkling Wine*, 26 U.S.F. INTELL. PROP. & TECH. L.J. 1, 3 (2021) (illustrating that certain grape varietals are ideal for the unique soil conditions in Champagne, France).

⁵⁶ See LEO A. LOUBERE, *THE WINE REVOLUTION IN FRANCE: THE TWENTIETH CENTURY* 122 (1990) (indicating that the 1935 Wine Statute that established the Appellation d'Origine Contrôlée (AOC) system was “revolutionary”). The French government created the AOC system in 1935, with the so-called Statut de Vin, or Wine Statute. *Id.* at 128. The Institut National des Appellations d'Origine (INAO) renamed the system in 2012, but the underlying regulations are identical. See *In re AOP LLC*, No. 85009094, 2013 WL 6056585, at *3 (P.T.A.B. July 12, 2013) (noting that the system remains identical despite the name change). France has three tiers of quality regulations: the Appellation d'Origine Protégée (AOP) corresponds to the highest quality wines, the Vins Délimité de Qualité Supérieure is the intermediate classification, and lower-quality table wines are controlled by the Vin de Pays category. Munsie, *supra* note 43, at 14–15. The AOP system has two goals: to improve quality through regulatory controls and protect geographical appellations against fraud. Colman, *supra* note 6, at 22. Notably, the French also instituted the first legal definition of wine under the “Griffe” law, defining wine as “the exclusive product of the fermentation of fresh grapes or grape juice.” MICHEL MENJUCQ & LAURENT GOUIFFÈS, *THE GRAPES OF DISPUTE RESOLUTION: ARBITRATION AND WINE*

system to combat rampant fraud in the wine industry—attempting to prevent lower-quality wines from undercutting other producers simply by using a well-regarded appellation on the label.⁵⁷ Primarily, the AOP delineates geographical appellations—the areas of production.⁵⁸ Different regulations apply depending on the appellation, such as the authorized grape varieties that may be grown.⁵⁹ For example, in the Pessac-Léognan sub-region of Bordeaux, chateau owners are only permitted to grow six different red-grape varieties.⁶⁰ Further, the AOP system has broad authority to control winemaking practices: it regulates minimum and maximum alcohol content, the number of vines per acre, and growing and fermenting techniques.⁶¹ To receive the prestigious AOP designation, a wine must conform to every requirement.⁶² At the same time the AOC/AOP system was created, France established its quasi-governmental wine regulatory body, the Institut National des Appellations d’Origine (INAO).⁶³ The INAO maintains the standards of wine classifications, prosecutes domestic violations, and forms international trade agreements.⁶⁴

467 (2020). Although the definition has evolved, there are typically two elements required for a beverage to be considered wine: (1) a product consisting entirely of grapes, (2) that transformed through “alcoholic fermentation.” *Id.*

⁵⁷ See Colman, *supra* note 6, at 17–18 (outlining the different solutions considered by the French government at the time).

⁵⁸ *Id.* at 22.

⁵⁹ See *id.* at 21 (describing that wines that label geographical appellations may only contain specified grape varieties).

⁶⁰ See *id.* at 41 (summarizing the restrictive geographical appellations of Bordeaux). Once harvested, the grapes must attain a minimum percentage of natural sugar. *Id.* But recently, because of climate change concerns, the Bordeaux Wine Council recommended that additional grape varieties with a higher heat resistance be allowed. See Roger Voss & Kathleen Buckley, *Bordeaux Aims to Protect Its Future with New Grape Varieties*, WINEMAG (Feb. 8, 2021), <https://www.winemag.com/2021/02/08/bordeaux-grape-varieties-news> [<https://perma.cc/8544-DSWY>] (reporting climate change concerns after increased temperatures have increased the alcohol content of Bordeaux wines). As a result, the INAO approved six additional grape varieties—totaling twenty approved grape varieties in the region of Bordeaux. *Id.*

⁶¹ See Stanziani, *supra* note 50, at 286 (explaining that the regulations are not only concerned with the final product, but with the process as well). For example, the fifty-seven appellations in Bordeaux traditionally regulate the yield of wines in the area. See Colman, *supra* note 6, at 45 (noting that the logic behind yield restrictions is that reducing the supply of grapes creates scarcity value).

⁶² Colman, *supra* note 6, at 42.

⁶³ See *id.* at 60 (describing the organization as a “parapublic” entity). The central objective of the INAO is to connect high-quality wines with their area of origin. *Id.* In 2006, the organization approved a major reform, essentially dividing the traditional system into dual categories. *Id.* at 66. Although higher-quality wines will remain subject to the same restrictive regulations, a lower-quality tier can introduce new winemaking and marketing techniques, including labeling wines according to grape varieties. *Id.*

⁶⁴ See Kevin H. Josel, *New Wine in Old Bottles: The Protection of France’s Wine Classification System Beyond Its Borders*, 12 B.U. INT’L L.J. 471, 473–74 (1994) (describing the INAO).

In terms of wine labeling, the French are similarly demanding—a description of Bordeaux regulations, although intricate, is illustrative.⁶⁵ Along the Gironde River lies the Bordeaux region, the preeminent wine region in the world.⁶⁶ Bordeaux encompasses fifty-seven geographical appellations but is recognized for its six distinguished AOP's: Margaux, Pauillac, St. Julien, St. Émilion, Pomerol, and Sauternes.⁶⁷ Chateaus on the left and right banks of the Gironde create different blends, mostly with cabernet sauvignon on the left, and merlot on the right.⁶⁸ A Bordeaux wine label must contain seven items: the wine's AOP certification, volume, alcohol percentage, lot identification number, bottling specifications, country of origin, and quality terminology—either *vin de Bordeaux* or *grand vin de Bordeaux*.⁶⁹ By displaying the Bordeaux name on their label, producers can sell their wines at a higher price, and consumers are assured of the quality of the wine that they purchase.⁷⁰ Bordeaux not only represents the highest quality French wine; it demonstrates the tension between tradition and innovation in the legal frameworks of Old World and New World wines.⁷¹

3. Barolo, Italy

Considered “The King of Wines, the Wine of Kings,” Barolo wines carry Italy's Denominazione di Origine Controllata e Garantita (DOCG) classification—designating it one of the highest quality wines grown in the country.⁷²

⁶⁵ See Colman, *supra* note 6, at 49 (providing overview of Bordeaux regulations). Bordeaux is recognized for trophy wines that typically sell for several hundred dollars per bottle. See *id.* at 37 (quoting a wine critic that recognizes Bordeaux as the “touchstone for quality”); OXFORD COMPANION TO WINE, *supra* note 4, at 89 (noting that Bordeaux produces the most “trophy” wines globally). The region, nonetheless, also produces bulk table wine. Colman, *supra* note 6, at 37.

⁶⁶ See Eric Asimov, *A Museum Bridges the Divide Between Two Bordeaux*, N.Y. TIMES (Feb. 15, 2018), <https://www.nytimes.com/2018/02/15/dining/wine-museum-bordeaux-la-cite-du-vin.html> [<https://perma.cc/K2N5-KFJF>] (calling Bordeaux the greatest and most prestigious wine-growing region in the world).

⁶⁷ See ERICA FARMER, CODIFYING CONSENSUS AND CONSTRUCTING BOUNDARIES: SETTING THE LIMITS OF APPELLATION D'ORIGINE CONTRÔLÉE PROTECTION IN BORDEAUX, FRANCE 128 (2014) (providing a geographical summary of Bordeaux).

⁶⁸ See *id.* (comparing the blends of the wines on the left and right banks of the Gironde River).

⁶⁹ See Colman, *supra* note 6, at 49 (listing Bordeaux labeling requirements). Optional items include the name of the producer, the wine's vintage (i.e., the year the grapes were harvested), and label art. *Id.*

⁷⁰ See Zachary, *supra* note 52, at 153 (recounting Napoleon III's proclamation that classified Bordeaux wines).

⁷¹ See Eric Asimov, *How Climate Change Impacts Wine*, N.Y. TIMES (Oct. 14, 2019), <https://www.nytimes.com/interactive/2019/10/14/dining/drinks/climate-change-wine.html> [<https://perma.cc/9TVJ-JDZA>] (reporting that Bordeaux is introducing new grape varieties as a result of climate change). Despite the French reputation of adhering to long-standing conventions, the IMAO has become increasingly flexible to be able to adapt to modern difficulties. *Id.*

⁷² See KERIN O'KEEFE, BAROLO AND BARBARESCO, THE PRIDE OF PIEMONTE I (2014) (describing Barolo wines as Italy's most noble). President Thomas Jefferson was known for his fondness of

Barolo wines illustrate the success of Italy's wine policy, but also show its limitations.⁷³ The French and Italian wine industries are frequently equated; yet, their policies were initially incompatible.⁷⁴ Whereas the French emphasized quality by limiting production, Italians attempted to boost their wine industry by planting new vines.⁷⁵ Although late to the party, the Italian government created its wine classification in an attempt to improve the country's viticulture practices.⁷⁶ Following regulatory changes necessary to comply with the CAP, the Italian wine sector underwent radical changes: grape-growers decreased, premium wines increased, and wine co-operatives combined through mergers.⁷⁷

Italians grow grapes in practically every region of the country, which requires its geographical appellation system to be flexible.⁷⁸ On the scale of hierarchical classifications, Piedmont is recognized for producing intermediate and higher quality wines designated DOC (Denominazione di Origine Controllata) or DOCG.⁷⁹ Initially, the Italian government introduced the DOC system to

Nebbiolo wine, the traditional grape varietal of Barolo wines. *See id.* at 30 (noting that Jefferson served bottles of Nebbiolo as President). The phrase "the King of Wines, the Wine of Kings" is attributed to Barolo's connection with the House of Savoy, the Italian royal dynasty. *Id.* at 33. Barolo wines are produced in Piedmont, in the northwestern region of Italy. *Id.* at 1.

⁷³ *See* Tomer Broude, *Taking "Trade and Culture" Seriously: Geographical Indications and Cultural Protection in WTO Law*, 26 U. PA. J. INT'L L. 623, 665–66 (2005) (highlighting that some producers abandoned the classification system, instead choosing not to be constrained in their wine production processes).

⁷⁴ *See* Munsie, *supra* note 43, at 19–20 (recounting Italian and French disagreements that occurred while shaping E.U. wine policy).

⁷⁵ *See id.* (comparing French and Italian wine policies in the 20th century).

⁷⁶ *See* O'Keefe, *supra* note 72, at 39–40 (depicting Italian wine troubles); Munsie, *supra* note 43, at 16–17 (explaining how the Italian government transformed the country's wine culture after World War I); *Viticulture*, OXFORD COMPANION TO WINE, *supra* note 4, at 802 (describing viticulture as the "science and practice" of grape growing). Following World War I, vineyards throughout Italy were in ruins. O'Keefe, *supra* note 72, at 40. At the time, both production and demand were down as the fascist leadership sought to decrease grape production and consumers were impoverished. *Id.* Nevertheless, in the 1960s, the Italian government attempted to rebound. *See* Munsie, *supra* note 43, at 17 (observing the country's policy changes). Their efforts were successful, with production meeting demand and "prices rising sharply." *See* Eugenio Pomarici, Alessandro Corsi, Simonetta Mazzarino & Roberta Sardone, *The Italian Wine Sector: Evolution, Structure, Competitiveness and Future Challenges of an Enduring Leader*, 7 IT. ECON. J. 259, 261–62 (2021) (recognizing that the Italian wine sector transformed its industry post-World War II). The remodeled wine classification system now limited overproduction of low-quality wines and increased exports. *Id.*

⁷⁷ Pomarici et al., *supra* note 76, at 265; *Co-operatives*, OXFORD COMPANION TO WINE, *supra* note 4, at 206 (defining co-operatives as joint ventures of wine producers that combine their winemaking and production resources). Some researchers argue that the modernization positioned Italy as a key player in the global wine market. Pomarici et al., *supra* note 76, at 282.

⁷⁸ Pomarici et al., *supra* note 76, at 266 (describing Italian viticulture according to regions and geography).

⁷⁹ *See* O'Keefe, *supra* note 72, at 1 (discussing Barolo designations). The intermediate category, DOC, stands for the Denominazione di Origine Controllata. *Id.* The highest quality wines are denoted DOCG: Denominazione di Origine Controllata e Garantita. *Id.* Piedmont produces fifteen DOCG wines—many of them Barolo. *Id.* Some wine critics have given praise to the DOCG's rigidly controlled system, describing that wine producers in California and Mexico have attempted to create

distinguish quality wines and lower caliber wines.⁸⁰ As with the French AOP system, the Italian DOC designates geographical appellations—each appellation promulgates rules concerning oenological practices, from permitted grape varietals to alcohol content restrictions.⁸¹ Later, the Italian government created the DOCG system to establish a higher degree of quality wines.⁸² Accordingly, production process regulations are more rigorous and wines must be approved by regulators performing taste tests.⁸³ Finally, the wine Consortium is the regulatory body that designates wine regions and promulgates production regulations to ensure the distinctiveness of a certain wine.⁸⁴

Consumer protection laws in Italy increased following the so-called “Methanol Scandal,” where authorities charged eleven individuals with manslaughter for the adulteration of wine that killed almost two dozen people.⁸⁵

wines of the same caliber as Barolo’s with Nebbiolo grapes, but have largely failed to do so. *See id.* at 3 (describing the inability of international producers to match Barolo flavor complexity).

⁸⁰ Munsie, *supra* note 43, at 33. Because France traditionally dominated the high-end of the wine market, Italian producers aimed their production at the lower tier market segments. *See* Pomarici et al., *supra* note 76, at 260 (presenting an economic analysis of Italy’s wine sector). Although the official DOC system was introduced in the late twentieth century, the first Italian geographical appellations were created by Cosimo III de’ Medici, who issued an edict establishing four viticultural regions in Tuscany—“Carmignano, Chianti (the Chianti Classico of today), Rufina-Pomino, and Valdarno di Sopra.” *See* IAN D’AGATA, ITALY’S NATIVE WINE GRAPE TERROIRS 11 (2019) (discussing Italian wine history). Nevertheless, Italy used the French AOC system as a template for its modern wine appellation regulations. *Id.* at 20.

⁸¹ Munsie, *supra* note 43, at 33; *Varietal*, OXFORD COMPANION TO WINE, *supra* note 4, at 774 (describing varietal as a descriptor for wines labeled for their “dominant grape variety”). In 2009, Italy’s Minister of Agriculture approved 170 areas within Barolo. O’Keefe, *supra* note 72, at 5.

⁸² Munsie, *supra* note 43, at 34.

⁸³ *Id.* Some critics argue that the Italian geographical indication system does not guarantee quality. *See* D’Agata, *supra* note 80, at 22 (asserting that Italian wines are rarely denied DOC or DOCG status). Further, a common critique of Old World wine regulatory systems is that they are too restrictive—a complaint with which some Italian producers agree. *See* Broude, *supra* note 73, at 665–66 (discussing “Super Tuscans”). For example, to meet DOC and DOCG restrictions, wines produced in Tuscany—typically Chianti wines—are required to use specific grapes such as sangiovese grapes. *Id.* In an innovative adjustment, some winegrowers dispensed with quality designations and created “Super Tuscan” wines. *See id.* (recognizing Super Tuscan wines as international, high-end wines, despite their lack of DOC or DOCG designations).

⁸⁴ Carlotta Gori & Veronica Alampi Sottini, *The Role of the Consortia in the Italian Wine Production System and the Impact of E.U. and National Legislation*, 3 WINE ECON. & POL’Y 62 (2014).

⁸⁵ *See* Roberto Suro, *Italy Acting to End the Sale of Methanol-Tainted Wine*, N.Y. TIMES (Apr. 9, 1986), <https://www.nytimes.com/1986/04/09/world/italy-acting-to-end-the-sale-of-methanol-tainted-wine.html#:~:text=After%20France%20and%20West%20Germany,before%20they%20can%20be%20exported> [<https://perma.cc/7N58-45VY>] (describing investigation and prosecution). The adulterated wine blinded dozens more. *See* O’Keefe, *supra* note 72, at 46 (describing the incident); *see also* Don A. Schanche, *Death Toll Stands at 18: Italy Jolted by Poisoning, Halts All Exports of Wine*, L.A. TIMES (Apr. 9, 1986), <https://www.latimes.com/archives/la-xpm-1986-04-09-mn-3528-story.html> [<https://perma.cc/B4R3-CPN7>] (labeling the poisoning as the “worst tainted-wine scandal in history”). The adulteration in 1986 concerned winemaking processes, where producers introduced methyl and wood during the fermentation process in an attempt to increase the wine’s alcohol content. Suro, *supra*. Vintners manufactured the wine in Piedmont and labeled it Barbera—another renowned wine

Following the scandal, Italian wine consumption plummeted as officials across Europe seized Italian wines.⁸⁶ In response, the Italian government issued an edict requiring Italian wines to be verified and approved before being exported, strengthening their consumer protection laws.⁸⁷ Additionally, the Italian government increased the punishments for adulterating wine and upgraded its inspection routines.⁸⁸ Today, quality control and wine labeling laws are similar to that of other Old World countries.⁸⁹

The “renaissance of Barolo” coincides with the prosperity that followed periods of poverty, communism, and social unrest.⁹⁰ Italy’s wine laws adapted, and as a result, the wine sector continues to fuel the region’s economy.⁹¹

4. Rioja, Spain

From Francisco Franco’s authoritarian regime to the current democratic government of King Juan Carlos, the Spanish wine system has ebbed and flowed.⁹² Today, Rioja—Spain’s preeminent red wine region—is distinguished, largely as a result of its quality control regulations.⁹³ In 1925, the Spanish gov-

appellation in Italy. O’Keefe, *supra* note 72, at 46. The adulterated wines had not obtained DOC status, leading some in the industry to comment that such adulteration could not have occurred under DOC’s inspection processes because of the increased supervision at each level of processing. See Schanche, *supra* (quoting an Italian Federation of Wine Producers and Exporters spokesman).

⁸⁶ See Suro, *supra* note 85 (outlining governmental responses). The Italian government assured the United States that the tainted wine did not reach its borders. *Id.* At the time, exports to the United States were scrutinized rigorously because the United States had strict quality control regulations. Schanche, *supra* note 85.

⁸⁷ Suro, *supra* note 85.

⁸⁸ See Schanche, *supra* note 85 (reporting that the government submitted an emergency bill to the Italian Parliament).

⁸⁹ See Munsie, *supra* note 43, at 35 (comparing European wine regulations). Wine labels containing the DOC and DOCG titles are required to specify the wine name, producer, region, alcohol percentage, and commune. *Id.* DOCG wines—denoted as such with an official strip seal—must specify their vintage. *Id.* Indicating vintage year on DOC wines is discretionary. *Id.* Some optional categories include quantity of bottles produced and nutrition facts. *Id.*

⁹⁰ O’Keefe, *supra* note 72, at 41. Barolo producers survived despite the conscription of farmers, destruction of vineyards, and establishment of sharecropping. *Id.*

⁹¹ *Id.*

⁹² See Estreicher, *supra* note 55, at 131–32 (detailing the history of Spanish wine).

⁹³ See Kal Raustiala & Stephen R. Munzer, *The Global Struggle Over Geographic Indications*, 18 EUR. J. INT’L L. 337, 346 (2007) (noting that the Rioja geographical indications allows consumers to distinguish the renowned wine from foreign imitations); see also Christian L. Wright, *The Napafication of an Ancient Spanish Wine Region*, N.Y. TIMES (Aug. 28, 2005), <https://www.nytimes.com/2005/08/28/travel/the-napafication-of-an-ancient-spanish-wine-region.html> [<https://perma.cc/GMY8-JVQK>] (describing Rioja wines as world-famous). Rioja updated its Denominación de Origen (DO) legislation in 2017, introducing changes such as larger typefaces on wine labels and additional regional categories. See Amanda Barnes, *What You Need to Know About Rioja’s New Regulations*, SEVEN FIFTY DAILY (May 9, 2018), <https://daily.seventy.com/what-you-need-to-know-about-riojas-new-regulations/> [<https://perma.cc/6W83-FZNC>] (quoting the Director of the Consejo Regulador DOCa Rioja as stating that the region is “constantly improving” and implementing higher quality standards). The new regional categories are Viñedos Singulares, Vinos de Municipio, and Vinos de Zona. *Id.* The

ernment demarcated Rioja as a wine region, officially instituting the country's first wine quality control measure.⁹⁴ Subsequent legislation established the Instituto Nacional de Denominaciones de Origen—a quasi-governmental regulatory body—and the Denominación de Origen and Denominación de Origen Calificada (DOC) systems.⁹⁵ Rioja and Priorat stand alone as Spain's two highest quality regions in Spain, denoted by their DOC status.⁹⁶

Sometimes, domestic wine law is challenged as a violation of European Union supranational legislation.⁹⁷ In 1992, in *Delhaize v. Promalvin*, the Court of Justice of the European Union (ECJ) held that a Rioja regulation that restricted the volume of wine exports violated E.U. Community law.⁹⁸ Article 34 of The Treaty Establishing the European Community prohibits “quantitative restrictions on exports” to other E.U. member states, or any measure imposing similar results as such restrictions.⁹⁹ Spain argued that their export restriction,

update also permits the chardonnay and sauvignon blanc varieties to be used in Rioja white wines. *Id.* Instead of labeling sparkling wines as Cava, the Spanish equivalent of Champagne or Prosecco, Rioja vintners may label the wines “Espumosos de Calidad de Rioja.” *Id.* Finally, the new legislation adjusted the bottle aging period classifications. *Id.*

⁹⁴ See Mike DeSimone & Jeff Jenssen, *Will Rioja Wine Increase Its Market Share?*, FORBES (Feb. 15, 2019), <https://www.forbes.com/sites/theworldwineguys/2019/02/15/will-riojas-new-marketing-campaign-and-geographic-indications-increase-market-share/?sh=797d74763a5f> [<https://perma.cc/HT7D-E4GK>] (describing Rioja's history, geographic designations, and terminology); Hinchliffe, *supra* note 38, at 127 (providing overview of Rioja's regulations).

⁹⁵ Hinchliffe, *supra* note 38, at 127. The Denominación de Origen system is comparable to the AOP/AOC system in France—whereas the AOC has designated geographical appellations such as the Loire Valley and Alsace, the DO has delimited regions such as Priorat. See Jordi Ustrell, *Spanish Wine Labels: DO vs. DOCA and DOQ*, WINETRAVELER, <https://winetraveler.com/spain/wine-regions-of-spain-information-do-doca-doq/> [<https://perma.cc/9NYT-E93D>] (detailing the legal aspects of receiving the various designations). The DO system is the intermediate classification category. See *id.* (explaining the different classifications). Although different abbreviations exist—such as DOCA or DOQ in Catalonia—due to regional dialects, the Denominación de Origen Calificada (DOC) denotes the highest quality wines in Spain. *Id.* Every individual DO—the established regions—regulate quality control and oenological practices differently. *Id.*

⁹⁶ See Hinchliffe, *supra* note 38, at 127 (noting that the DOC is reserved for the most prestigious wine regions in Spain). Rioja achieved DOC status in 1992, and the Instituto Nacional de Denominaciones de Origen granted Priorat DOC status in 2003. *Id.* Among other requirements, for DOC status, a wine region must be officially designated a DO region for at least ten years. Ustrell, *supra* note 95.

⁹⁷ See, e.g., Case C-47/90, *Delhaize v. Promalvin*, 1992 E.C.R. I-3669, I-3669 (examining whether a Rioja regulation violated an E.U. treaty).

⁹⁸ See *id.* at I-3711. The holding was narrow—the domestic regulation was discriminatory because it capped exports yet allowed for bulk wine sales within Rioja. *Id.*; see also Case C-388/95, *Kingdom of Belgium v. Kingdom of Spain*, 2000 E.C.R. I-3123, I-3157 (noting that the regulation procured a special advantage for the region of production). The Court of Justice of the European Union (ECJ) held that such discrimination violated Article 34 of the treaty by impeding the free movement of goods. See Monica D. Mohan, Note, *Out With the Old, in with the New: An Analysis of Economic Trends Beyond New World Wine Innovation*, 39 SUFFOLK TRANSNAT'L L. REV. 81, 106, n.35 (2016) (describing Rioja case law).

⁹⁹ The Treaty Establishing the European Community, Dec. 24, 2002, O.J. (C 325) 33 (2002), art. 34 [hereinafter EC Treaty].

Royal Decree No. 157/88, altered the quality of Rioja wines.¹⁰⁰ The court rejected their argument, holding that bottling within the region of production did not impart the wine with special characteristics.¹⁰¹

Despite the *Delhaize* decision, the Spanish government did not repeal the bottling regulation.¹⁰² Because the regulation was still in force, the Belgian government wrote to the European Commission and then initiated treaty-infringement proceedings against Spain.¹⁰³ In 2000, in *Kingdom of Belgium v. Kingdom of Spain*, the ECJ accepted “new information” presented by the Italian and Portuguese governments—who joined as interveners, supporting Spain—and ruled in favor of Spain, effectively reversing *Delhaize*.¹⁰⁴ The ECJ agreed with Spain that the bottling regulation intended to preserve the prominent Rioja reputation and quality.¹⁰⁵ First, the ECJ described that designations of origin guarantee that Rioja wines originate in the specified region and display certain characteristics, thereby ensuring a quality product.¹⁰⁶ Second, the ECJ agreed with Spain, Italy, and Portugal that wine bottling was a crucial production process that may harm the quality of wine because it involves complex oenological procedures.¹⁰⁷ Finally, although the court recognized that the bottling regulation restricted trade, it concluded that the regulation was both “necessary and proportionate” to preserve the Rioja reputation.¹⁰⁸

¹⁰⁰ *Delhaize*, 1992 E.C.R. at I-3710.

¹⁰¹ *Id.*; see Royal Decree No. 157/88 Laying Down the Rules Governing Designations of Origin and Controlled Designations of Origin for Wines and Regulations Implementing it, B.O.E. 1988, 47 (Spain) [hereinafter Royal Decree No. 157/88]. Under Article 36 of the EC Treaty, laws concerning a designation of origin that restrict exports may be justified if the restrictions “were essential in order to preserve essential characteristics acquired by the wine.” *Delhaize*, 1992 E.C.R. at I-3709. Therefore, if the bottling regulation did in fact modify the taste of the wine, the exception would have applied. *Id.*

¹⁰² See *Kingdom of Belgium*, 2000 E.C.R. at I-3159 (providing legal and factual background of *Delhaize*).

¹⁰³ *Id.*

¹⁰⁴ See *id.* at I-3165 (examining justifications for the bottling regulation).

¹⁰⁵ *Id.* at I-3171. Because the regulation was deemed necessary for the objective of preserving the reputation of Rioja wines, the ECJ concluded that the restriction was the least restrictive measure to attain it. *Id.*

¹⁰⁶ See *id.* at I-3164 (accepting Spain’s argument and describing the link between designations of origin and their corresponding reputation).

¹⁰⁷ See *id.* at I-3167 (rejecting the argument that bottling is merely filling empty containers). Instead, bottling involves “filtering, clarifying, cooling,” among additional procedures. *Id.* The regulation properly prescribed rules typically followed by producers and prevented oxidation reduction issues that might occur during transportation. *Id.*

¹⁰⁸ *Id.*

5. Globalization: An Impetus for Change

Wine production and consumption has been part of European culture for millennia.¹⁰⁹ Old World wines still continue to command the global market, despite increasing global competition.¹¹⁰ Many commentators attribute the acclaim of French, Italian, and Spanish wines to their strict quality control regulations.¹¹¹ Notably, European governments not only impose onerous oenological requirements, they prosecute counterfeiters vigorously.¹¹² Others have criticized the rigorous regulations, arguing that their inflexibility have allowed the resurgence of more modern and exciting wines being produced in the United States, Chile, and Australia.¹¹³

B. The Wine Revolution: A New World

In addition to the interplay of business and winemaking innovations, scholars have recognized the regulatory environment of New World countries as a vital factor in their wine sector growth.¹¹⁴ Subsection 1 presents the United States' wine regulatory framework in the context of California wine law.¹¹⁵ Subsection 2 outlines Chile's development from a high degree of government intervention to a more liberal approach.¹¹⁶ Finally, Subsection 3 discusses Australian wine, which is known for a supportive governmental scheme.¹¹⁷

1. Napa Valley, United States

Alcohol policy in the United States has vacillated, fluctuating from conservative to liberal approaches.¹¹⁸ Prohibition marked the early twentieth century—it was illegal to produce or sell wine, along with all other alcoholic bev-

¹⁰⁹ See OXFORD COMPANION TO WINE, *supra* note 4, at 338 (noting that wine was part of the cultural identity of Ancient Greece); see also Stroud, *supra* note 42, at 224 (identifying that the main attribute that all European wine countries share is significant governmental regulation and guidelines).

¹¹⁰ Lubkin, *supra* note 37, at 367.

¹¹¹ See Fandl, *supra* note 5, at 280 (explaining that quality control regulations permit Old World countries to maintain high prices for wine).

¹¹² See *French Police Foil Counterfeiters Passing Off Cheap Plonk as Classy Bordeaux*, THE GUARDIAN (July 1, 2022), <https://www.theguardian.com/world/2022/jul/01/french-police-foil-counterfeiters-passing-off-cheap-plonk-as-classy-bordeaux> [<https://perma.cc/LH6B-KXYD>] (detailing the criminal investigation and arrests concerning a Bordeaux fraud operation).

¹¹³ See Fandl, *supra* note 5, at 280 (noting that the regulatory environment in Europe may hinder Old World countries from implementing innovative winemaking practices); Stroud, *supra* note 42, at 224 (describing New World wines as entrepreneurial and progressive).

¹¹⁴ Fandl, *supra* note 5, at 280–81.

¹¹⁵ See *infra* notes 118–146 and accompanying text.

¹¹⁶ See *infra* notes 147–158 and accompanying text.

¹¹⁷ See *infra* notes 159–168 and accompanying text.

¹¹⁸ See Fandl, *supra* note 5, at 327 (comparing New World wine policies).

erages.¹¹⁹ But Prohibition was short lived, with the Twenty-First Amendment marking its conclusion after fourteen years.¹²⁰ The U.S. government established its alcohol regulatory framework shortly thereafter, yet initial regulations were temporary, as President Ronald Reagan advocated for governmental deregulation.¹²¹ The wine policies of today have three distinct, but intertwined goals: (1) protect consumers; (2) collect tax revenue; and (3) stop unfair competition.¹²² Because of the discrete interests—further complicated by the varying incentives of the federal and state governments—some critics argue that liquor policies are inadequate, and primarily based on protectionism and benefiting producers.¹²³

¹¹⁹ See U.S. CONST. amend. XVIII (prohibiting the production and sale of alcohol throughout the United States), *repealed by id.* amend. XXI; Munsie, *supra* note 43, at 43 (labeling the period after the Eighteenth Amendment as Prohibition). During Prohibition, many vineyards either closed, shifted their operations to produce other grape products (e.g., unfermented juices or jams), or received governmental exceptions to produce limited wines for other purposes than intoxication. Munsie, *supra* note 43, at 43–44. Nevertheless, most wineries went bankrupt and were forced to cease operating. See *id.* (estimating that close to 90% of commercial wineries were shut down).

¹²⁰ See Volstead Act, 41 Stat. 305 (1919) (the congressional statute enforcing prohibition), *repealed by* U.S. CONST. amend. XXI (1933).

¹²¹ See, e.g., Exec. Order No. 12291, 46 Fed. Reg. 13193 (Feb. 17, 1981) (instructing federal agencies to reconsider the effects of onerous regulations).

¹²² See Mendelson, *supra* note 17, at 125 (describing federal liquor laws and their objects). The Federal Alcohol Administration (FAA) Act grants the Secretary of the Treasury the authority to regulate the interstate commerce of alcohol. See *Wawszkiewicz v. Dep't of Treasury*, 670 F.2d 296, 297 (D.C. Cir. 1981) (providing the FAA's regulatory framework). In turn, the Secretary delegated plenary power to fulfill such objectives to the Bureau of Alcohol, Tobacco, and Firearms (ATF), the predecessor to the TTB. *Id.* at 298 n.4. As of 2002, the TTB is the pertinent regulatory agency in charge of overseeing “the regulation of interstate commerce in alcoholic beverages.” See *Bronco Wine Co. v. Jolly*, 95 P.3d 422, 459 n.43 (Cal. 2004) (describing the transfer of functions from the ATF to the TTB). Subsequent references to the ATF are limited to instances where the ATF was responsible for administering the FAA Act, prior to 2002 (e.g., enacting or litigating to uphold a specific regulation). See *id.* (noting that the ATF adopted the wine regulation at issue). Some FAA Act provisions could be considered as being motivated by tax purposes or consumer safety. See Mendelson, *supra* note 17, at 129 (evaluating the FAA Act). For example, the federal government created an oversight system to regulate the cellar treatment of wine, including the use of wine treatment materials. *Id.* at 129–30. Although the control system protects consumers, it also ensures that tax liability accrues—wines that do not complete fermentation are “unmerchantable” and do not accrue taxes. *Id.* at 129. Compared to Europe's focus on quality, U.S. geographical delineations merely denote the wine's origin. See 27 C.F.R. § 4.25(e) (2012) (describing American Viticultural Areas as geographical delineations that do not ensure quality); Munsie, *supra* note 43, at 45 (noting that AVAs do not differentiate between quality and table wines).

¹²³ Compare *Granholt v. Heald*, 544 U.S. 460, 484–85 (2005) (stating that the Twenty-First Amendment does not provide states the authority to implement discriminatory laws against out-of-state producers), with *Perkins*, *supra* note 23, at 424 (arguing that state regulation is aimed at protecting businesses rather than advancing legitimate state interests or protecting consumers). In the period after Prohibition, which coincided with the Great Depression, some states placed a high priority on economic protectionism in order to stimulate their economy. Mendelson, *supra* note 17, at 121–22. As a result, some states introduced discriminatory—but constitutional—laws, such as higher license fees or wine blending requirements on out-of-state grapes. See *id.* at 122 (summarizing Twenty-First

The United States' wine regulatory framework consists of both federal and state law.¹²⁴ At the federal level, the Federal Alcohol Administration (FAA) Act grants the Treasury's Alcohol and Tobacco Tax and Trade Bureau the authority to regulate the bottling and labeling of wine.¹²⁵ Congress enacted the FAA Act following Prohibition, which serves as the primary regulatory scheme that controls wine distribution, production, and sale.¹²⁶ Importantly, the FAA Act protects consumers by proscribing the interstate commerce of wine that may deceive the consumer through false or misleading statements.¹²⁷ Additionally, it prohibits anti-competitive behavior, such as producers exerting control over retailers.¹²⁸

In 1978, the Bureau of Alcohol, Tobacco, and Firearms created its own appellation system, with certain wine growing regions to be designated "American Viticultural Areas" (AVAs).¹²⁹ Although the AVA system established appellations similar to Bordeaux, Barolo, and Rioja, it did not incorporate quality control regulations.¹³⁰ In terms of wine labeling, American wines differ from European countries and typically include four categories of information: the

Amendment case law). Today, such discriminatory laws have been deemed unconstitutional by *Granholm*, 544 U.S. at 493.

¹²⁴ See Mendelson, *supra* note 17, at 130 (describing liquor regulation following the enactment of the 21st Amendment as truly concurrent); see also *Wawszkiewicz*, 670 F.2d at 304 (determining that wine labeling regulations did not satisfy the FAA Act's requirements).

¹²⁵ 27 U.S.C. § 203; see also David Sheeren, Recent Developments in Alcoholic Beverage Labeling Regulation, at 4 (Apr. 2011) (Student Paper, Harvard Law School) (on file with the Harvard Library Office for Scholarly Communication) (outlining the FAA Act's objectives). Although Congress delegated the power to enact such regulations to the Secretary of the Treasury, the Secretary has in turn authorized the TTB to carry them out. See Ritzert, *supra* note 35, at 201 (describing the origins of the FAA Act). The TTB has authority over wines consisting of more than 7% and less than 24% alcohol. 27 U.S.C. § 211(a)(6). The TTB is tasked with protecting consumers by ensuring the quality and identity of wine. See *id.* § 203 (assigning regulatory authority to the Secretary of the Treasury). To achieve that goal, wine labeling standards are promulgated to ensure quality and provide consumers with accurate information. See Mendelson, *supra* note 17, at 133 (summarizing provisions and purposes of the FAA Act).

¹²⁶ Fandl, *supra* note 5, at 329.

¹²⁷ See 27 U.S.C. § 205(e) (setting forth wine labeling requirements).

¹²⁸ *Id.* § 205(a).

¹²⁹ See 27 C.F.R. § 4.25(e)(2) (defining viticultural area as a delimited wine-growing region with distinguishing features).

¹³⁰ See *id.* (lacking quality regulations connected to appellations); Mendelson, *supra* note 17, at 145 (highlighting that the statute does not include farming or oenological restrictions). But see Alston & Gaeta, *supra* note 38, at 236 (emphasizing that California producers introduce their own winemaking restrictions such as prescribing maximum yields, in order to enhance quality). The TTB approved the Napa Valley AVA in 1981. Mendelson, *supra* note 17, at 150. Smaller AVAs within Napa Valley were later created to reflect differences in wine geography. *Id.* Napa County AVAs include "Carneros, Yountville, Oakville, St. Helena, Calistoga," and eleven others. *Id.* Although there are limited quality controls, the TTB enforces wine labeling requirements scrupulously, effectively protecting the reputation of designated regions by preventing fraudulent competition. Zachary, *supra* note 52, at 165.

wine's grape, area, vineyard, and vintage.¹³¹ A simple illustration: the label of the top wine in the Judgment of Paris included the grape varietal (cabernet sauvignon), geographical area (Montelena in Napa Valley), vineyard (Stag's Leap Wine Cellars), and vintage (1973).¹³² The TTB regulates the four separate categories according to the federal alcohol code, which outlines wine labeling requirements.¹³³

Because the Twenty-First Amendment provides states wide discretion to regulate liquor, states construed it as providing them *carte blanche* to create their own regulatory frameworks.¹³⁴ At the state level, some states, including California, have stricter wine labeling regulations.¹³⁵ For example, a wine produced in a sub-region of Napa Valley—such as Carneros or Yountville—may label the wine using the sub-region's name, but must also include the “Napa Valley” designation on the label.¹³⁶ California has incorporated the federal AVA requirements and their ratios into its state law.¹³⁷ Additionally, wines produced or sold in California must meet federal regulatory standards to advertise the name “Napa.”¹³⁸

In 2004, in *Bronco Wine Co. v. Jolly*, the California Supreme Court rejected a constitutional challenge to a California statute that proscribed the use of “Napa” on labels of wine grown outside the prominent wine region.¹³⁹ At

¹³¹ See Jeff Ikejiri, Comment, *The Grape Debate: Geographic Indicators vs. Trademarks*, 35 SW. L. REV. 603, 619–20 (proposing that wine labels should require additional nutritional information). Wine labeling regulations require American wines to state the name of the bottler or packer and the address of the place where the wine was bottled or packed. 27 C.F.R. § 4.35(a); see also *Sociedad Anonima Viña Santa Rita v. U.S. Dep't of Treasury*, 193 F. Supp. 2d 6, 8–9 (D.D.C. 2001) (refusing to issue an injunction to plaintiff who sued the Treasury for allegedly infringing on their trademark of “Viña Santa Rita” by designating the Santa Rita Hills area of California as an AVA).

¹³² Steinmetz, *supra* note 1; 101 *Objects That Made America: America in the World*, *supra* note 3.

¹³³ 27 C.F.R. § 4. If a wine is labeled by a single grape varietal, it must consist of at least 75% of that grape. *Id.* § 4.23(b). Additionally, when a label indicates a specific AVA, a minimum of 85% of the grapes must have been grown within its boundaries. *Id.* § 4.25(e)(3)(ii). Vintners may use the term “Estate bottled” to indicate that 100% of the grapes used were grown at its vineyard, and every step of the finishing process—crushing, fermenting, bottling—occurred there. *Id.* § 4.26(a). Similarly, the wine label may include the year of harvesting, i.e., the vintage, if a minimum of 95% of the grapes were harvested that year. *Id.* § 4.27(a)(1).

¹³⁴ See Mendelson, *supra* note 17, at 121 (describing state regulations). In other words, states believed that the Twenty-First Amendment provided them wide latitude to create their unique liquor regulatory frameworks. *Id.*

¹³⁵ See *Bronco Wine Co. v. Jolly*, 95 P.3d 422, 457 (Cal. 2004) (allowing California to impose additional specifications not required by federal wine labeling laws such as prohibiting “grandfathering” clause on nonconforming labels).

¹³⁶ CAL. BUS. & PROF. CODE. § 25240(a) (West 2023). If a producer violates the requirement, the Department of Alcoholic Beverage Control may “suspend or revoke” the producer's liquor license. *Id.* § 25240(b).

¹³⁷ *Id.* § 25241(b).

¹³⁸ *Id.* § 25241(a)–(c).

¹³⁹ *Bronco Wine Co.*, 95 P.3d at 457. The plaintiff, Bronco Wine Company, marketed three of its wine labels with a variation of the word Napa: Napa Ridge, Napa Creek Winery, and Rutherford

issue was whether the FAA Act preempted a more restrictive California wine labeling statute.¹⁴⁰ In doing so, the court highlighted the interplay of federal and state legislation that constitute the wine regulatory framework in the United States.¹⁴¹

Two categories predominantly drive wine consumer protection laws: labeling and public health.¹⁴² But commentators and researchers hold opposing views on whether wine constitutes a public health issue.¹⁴³ The Alcoholic Beverage Labeling Act requires wine to prominently display a warning label.¹⁴⁴ Additionally, the Food and Drug Administration (FDA) has encouraged the TTB to impose ingredient labels on alcoholic beverages, but they have refused to do so.¹⁴⁵ Some critics have argued that, as a department within the Treasury, the TTB is incapable of understanding public health issues because their expertise is in collecting revenue.¹⁴⁶

Vintners—Rutherford being a sub-region in Napa. *Id.* at 424. Yet, the grapes used in Bronco's wines were not grown in Napa; they were grown in Lodi, California. *Id.* An individual violates the California statute when they include the word "Napa" or variations of it, such as its sub-regions, because doing so tends to deceive consumers regarding the wine's origin. *Id.* at 426. In short, the wines were Napa-named, but not Napa grown. Mendelson, *supra* note 17, at 152.

¹⁴⁰ *Bronco Wine Co.*, 95 P.3d at 424; *see also* 27 U.S.C. §§ 201–219 (regulating liquor at the federal level); BUS. & PROF. § 25241 (regulating Napa wine labeling). Bronco brought additional constitutional claims, but the California Supreme Court rejected them all. *Bronco Wine Co.*, 95 P.3d at 457. The statute did not violate (1) the Fifth Amendment's takings clause; (2) Article I's Dormant Commerce Clause; (3) or Bronco's First Amendment right to free speech. *Id.* at 428. A central issue in the case was the FAA Act's grandfathering clause that allowed producers to continue using the Napa label if it was in effect prior to the FAA Act's enactment. *Id.* at 452. But the court held that the FAA Act did not preempt the more stringent California law because it did not preclude states from adopting more stringent regulations. *See id.* at 457 (concluding that Congress did not include express preemption language, nor was preemption considered in the legislative history).

¹⁴¹ *See Bronco Wine Co.*, 95 P.3d at 457 (describing the concurrent federal and state regulatory scheme of wine labeling).

¹⁴² *See* Mendelson, *supra* note 17, at 139 (summarizing and assessing wine policy regarding consumer protection). Despite the possibility of the French Paradox—which attributes the French citizens' lower incidence of heart disease to higher red wine consumption—being accurate, the U.S. government prohibits the wine industry from promoting the benefits of wine. 27 C.F.R. § 4.64(i); *see also* Lawrence M. Fisher, *Here's to the Benefits of Red Wine, but Don't Advertise Them*, N.Y. TIMES (Nov. 25, 2006), <https://www.nytimes.com/2006/11/25/business/media/heres-to-the-benefits-of-red-wine-but-dont-advertise-them.html> [<https://perma.cc/5C2J-BEQJ>] (remarking that a news report on the French Paradox boosted wine sales in the United States).

¹⁴³ *Compare* Fisher, *supra* note 142 (noting the potential health benefits of resveratrol, a compound found in wine that has been linked to positive health benefits), *with* Mendelson, *supra* note 17, at 162–63 (describing the death of Daniel Tsevat after having an "extreme asthmatic reaction" from sulfites found in a German wine, leading the Food and Drug Administration (FDA) and ATF to require identification of sulfites with a warning label).

¹⁴⁴ 27 U.S.C. § 213; Mendelson, *supra* note 17, at 163 (describing the government warning label and its obligations).

¹⁴⁵ Mendelson, *supra* note 17, at 167.

¹⁴⁶ Robert G. Laforge, *Misplaced Priorities: A History of Federal Alcohol Regulation and Public Health Policy* 306–07 (1987) (Ph.D. dissertation, Johns Hopkins University) (ProQuest) (highlighting

2. Maipo Valley, Chile

In 1992, Chile joined Italy and France as the top three exporters of wine to the United States.¹⁴⁷ Initially, restrictive legislation constrained Chile's wine growing industry, leading some scholars to argue that producers could not compete globally—even against countries producing lower quality wines such as South Africa.¹⁴⁸ At the time, the Chilean government not only regulated the planting of vines, but taxed the industry heavily.¹⁴⁹ Nevertheless, in 1974, marked by the beginning of General Augusto Pinochet's regime, the government repealed its controls and provided winegrowers large tax breaks.¹⁵⁰ Today, the wine sector considers Chile's wine regulatory framework as one of the most liberal globally and recognizes the city of Santiago as a wine capital of the world, joining Bordeaux and Napa.¹⁵¹

Two regulations are responsible for most of Chile's wine regulation today: Law No. 18,455 and Decree No. 464.¹⁵² The former concerns production processes; the latter delineates geographical appellations.¹⁵³ Similar to Bordeaux, Chile demarcates wine regions, sub-regions, zones, and areas.¹⁵⁴ For

the political forces involved in alcohol regulation and describing the ATF's "failure" to consider public health issues).

¹⁴⁷ Nathaniel C. Nash, *Chilean Wineries Outgrow the Jug*, N.Y. TIMES (Apr. 4, 1992), <https://www.nytimes.com/1992/04/04/business/chilean-wineries-outgrow-the-jug.html> [<https://perma.cc/L35F-66BM>].

¹⁴⁸ Tim Knowles & Liz Sharples, *The History and Development of Chilean Wines*, 14 INT'L J. WINE MKTG. 7, 11–12 (2002). The country's main wine producers held a considerable amount of power and were able to lobby the government to restrict competition. WILLIAM K. CROWLEY, CHILE'S WINE INDUSTRY: HISTORICAL CHARACTER AND CHANGING GEOGRAPHY 90 (2000). As a result, the government enacted the so-called "Second Organic Law on Alcohol," which restricted the planting of new vineyards and the maximum amount of wine yields. *Id.* The law limited production and impaired the wine industry's growth. *Id.*

¹⁴⁹ Knowles & Sharples, *supra* note 148, at 11–12.

¹⁵⁰ Nash, *supra* note 147. General Augusto Pinochet implemented free market doctrines with the help of a group labeled the "Chicago Boys"—University of Chicago alumni who studied under Milton Friedman, a fierce advocate of free markets. See Jeanette Kripas, *The Relationship of Globalization and the Development and Success of the Chilean Wine Industry* 31–33 (Jan. 1, 2008) (M.A. thesis, Marshall University) (ProQuest) (describing the Chilean wine market before, during, and after Pinochet's dictatorship). Other factors that contributed to Chile's expeditious growth included cheap labor and foreign investment. *Id.* at 29; see *Wine Regulation Summary Report*, *supra* note 39, at 32 (noting that low labor and land costs allowed Chile to produce better quality wines at cheaper prices). Baron von Rothschild and Robert Mondavi, prominent French and American vintners, expanded into Chile to grow their wine empires. Nash, *supra* note 147.

¹⁵¹ See Crowley, *supra* note 148, at 87 (attributing Chile's international wine acclaim to the overhauled wine policies).

¹⁵² Fandl, *supra* note 5, at 335; see Law No. 18,455, *Fija Normas Sobre Produccion, Elaboracion y Comercializacion de Alcoholes Etilicos, Bebidas Alcoholicas y Vinagres*, Diario Oficial [D.O.] (Oct. 31, 1985) (Chile); Decree No. 7, *Modifica Decree No. 464, De 1994, Del Ministerio de Agricultura, Que Establece Zonificacion Viticola Y Fija Normas Para Su Utilizacion*, Diario Oficial [D.O.] (Mar. 10, 2015) (Chile).

¹⁵³ See Fandl, *supra* note 5, at 335 (summarizing Chile wine legislation).

¹⁵⁴ *Id.* at 335–36.

example, the “Valle Central” region encompasses the Maipo Valley sub-region, which embraces Puente Alto, a prominent Maipo sub-zone.¹⁵⁵ Further, the Decree regulates wine labeling—if a wine label describes a place, vintage, or grape varietal, 75% of the wine must come from the category described.¹⁵⁶ The Servicio Agrícola y Ganadero—Chile’s agricultural and livestock service—is responsible for enforcing the country’s quality control laws.¹⁵⁷ In regards to winemaking practices, Chile, by custom, has unique vinification processes, including hand-picking grapes to determine quality and discontinuing the use of chemical herbicides.¹⁵⁸

3. Barossa Valley, Australia

From France to Australia, the syrah grape—or shiraz, as it is known in the “Land Down Under”—traveled across the globe to become the country’s premier wine varietal.¹⁵⁹ Australian wine, typically known for its dominance at both ends of the quality spectrum in producing commodities (Yellow Tail) and critic favorites (Penfolds), has evolved over the past twenty years.¹⁶⁰ So have their wine policies.¹⁶¹

¹⁵⁵ *10 Best Wine Travel Destinations of 2019, Maipo Valley, Chile*, WINE ENTHUSIAST (Jan. 8, 2019), <https://www.winemag.com/top-10-wine-travel-destinations-2019/maipo-valley-chile/> [<https://perma.cc/9SVL-8TPJ>].

¹⁵⁶ Decree No. 7, *supra* note 152; see Fandl, *supra* note 5, at 335 (outlining regulations).

¹⁵⁷ Fandl, *supra* note 5, at 335–36.

¹⁵⁸ Knowles & Sharples, *supra* note 148, at 15–16; *Vinification*, OXFORD COMPANION TO WINE, *supra* note 4, at 795 (defining vinification as the “practice of transforming grapes to wine”). Due to the country’s lack of fungal diseases and insects, Chile produces a large quantity of organic wines. Knowles & Sharples, *supra* note 148, at 16. As a result, producers use natural fertilizers and avoid nearly every chemical agent. *Id.*

¹⁵⁹ See Olivia Mason, *Shiraz: The Story of an Australian Legend*, DECANTER (Dec. 2, 2019), <https://www.decanter.com/sponsored/shiraz-story-australian-legend-427784/> [<https://perma.cc/XXS5-QRE7>] (describing the origin story of Australian wine).

¹⁶⁰ See Eric Asimov, *Australian Wine Today: Fresh, Crunchy and ‘Smashable’*, N.Y. TIMES (Mar. 21, 2019), <https://www.nytimes.com/2019/03/21/dining/drinks/australian-wine/html> [<https://perma.cc/B8N6-DG2D>] (comparing the wine evolution of Australia to that of the United States). Consumers view Yellow Tail as an inexpensive wine that is known for its accessible approach towards consumers. Mike Desimone & Jeff Jenssen, *Yellow Tail Celebrates 20 Years of Growth and Innovation*, FORBES (Dec. 23, 2021), <https://forbes.com/sites/theworldwineguys/2021/12/23/yellow-tail-celebrates-20-years-of-growth-and-innovation/?sh=3dd03ed659dc> [<https://perma.cc/F7UD-D9CF>]. Today, it is the top imported wine in the United States. *Id.* On the other hand, Penfolds produces limited amounts of its top-tier, renowned wines. *World’s Most Expensive Wine: Penfold’s Debuts \$168,000 Bottle Enclosed in Glass*, HUFFPOST (June 28, 2012), https://huffpost.com/entry/worlds-most-expensive-wine_n_n_1634523 [<https://perma.cc/5HYW-JHKU>]; see also Neil Gough, *Treasury Wine Says Buyout Firm Matches K.K.R.’s \$3.2 Billion Bid*, N.Y. TIMES (Aug. 10, 2014), <https://archive.nytimes.com/dealbook.nytimes.com/2014/08/10/treasury-wine-says-buyout-firm-matches-k-k-r-s-3-2-billion-bid> [<https://perma.cc/54ZP-N927>] (reporting that the owner of Penfolds rejected a \$2.8 billion bid from a private equity group for the company).

¹⁶¹ See David K. Aylward, *The Road to Innovation: Experiences in the Australian Wine Industry* (2006) (noting that Australia is at the forefront of innovation and growth in the global wine industry).

The *Wine Australia Act 2013* implemented Australia's wine regulatory framework.¹⁶² In 2014, the Australian government created the Australian Grape and Wine Authority: a regulatory body aimed at protecting the prestige of Australian wine, both domestically and abroad.¹⁶³ Instead of constraining the wine sector with legal barriers, Australia supports their wine industry aggressively.¹⁶⁴

Under its geographical indication system, Australia protects four categories of terms, including Australian Geographical Indications (Australian GIs).¹⁶⁵ Wines that include Australian GIs on their label must consist of a minimum of 85% grapes from the region.¹⁶⁶ If the threshold is not met, the law states that the wine is not considered as having originated in the region, so labeling it as such is “false” and a violation of Section 40ZD of the *Wine Australia Act*.¹⁶⁷ Australia makes a distinction between “false” and “misleading” labels—wine labels are considered misleading if they are likely to deceive an individual regarding the wine's origin.¹⁶⁸

II. VEILED PROTECTIONISM IN THE WINE SECTOR

As detailed in Part I of this Note, wine market regulations aim to protect the producer, consumer, or both.¹⁶⁹ Relatedly, the FTC concluded in its 2021 report that state and federal laws regulating the liquor industry imposed an un-

¹⁶² *Wine Australia Act 2013* (Cth).

¹⁶³ AUSTL. GRAPE & WINE AUTH., WINE AUSTRALIA FOR AUSTRALIAN WINE PRODUCERS (2016) (compliance guide presenting Australian wine regulations).

¹⁶⁴ See Mohan, *supra* note 98, at 103–04 (describing the Australian government as innovative and supportive); Aylward, *supra* note 161 (labeling Australia's support, coordination, and infrastructure as “critical factors” in the country's global success).

¹⁶⁵ See *Wine Australia Act 2013* (Cth), ss 40ZC–D, (listing the four categories in a register of protected geographical indications).

¹⁶⁶ *Wine Australia Regulations 2018* (Cth), s 25. Australia makes unique distinctions in their wine labeling regulations. See *id.* (promulgating grape varietal regulations). For example, when wines consist of multiple grape varieties, wine labeling regulations require producers to list the varieties in descending order. *Id.* A simple illustration: If a wine consists of three grapes in a 70-20-10 ratio, the wine must be labeled in that order—e.g., Semillon Chardonnay (70-20) or Semillon Chardonnay Sauvignon Blanc (70-20-10), but not Semillon Sauvignon Blanc (70-10). See *id.* (setting forth rules for listing varietals).

¹⁶⁷ *Wine Australia Act 2013* (Cth), ss 40ZD. Penalties may include imprisonment for up to two years. *Id.*

¹⁶⁸ *Id.*; see also *Register of Protected GIs and Other Terms*, WINE AUSTRALIA, <https://www.wineaustralia.com/labelling/register-of-protected-gis-and-other-terms> [<https://perma.cc/K2L9-GPPU>] (interpreting Sections 40ZC and 40ZD of the *Wine Australia Act 2013*).

¹⁶⁹ See *supra* notes 20–23 and accompanying text. See generally Meloni et al., *supra* note 28, at 621 (providing an international and historical comparative analysis of wine regulations). In France, for example, the government created the AOP system to safeguard domestic producers from international trade in response to growing pressure from wine producers. STEFANO CASTRIOTA, WINE ECONOMICS 216 (2020).

justified regulatory burden.¹⁷⁰ That is, some wine regulations fail to provide a legitimate public health, taxation, or competition goal.¹⁷¹ The antitrust issues outlined are not new—in 2003, the FTC released a report regarding anti-competitive barriers in wine e-commerce.¹⁷² Both reports contain similar language: it is unwarranted for states to restrain competition, without demonstrating harm, by restricting the quantity of choices that consumers have.¹⁷³ Both reports highlight persistent antitrust issues in the wine industry: barriers to entry, unequal access to distribution, and rivalry among existing competitors.¹⁷⁴

The United States' federal and state governments have their own agendas in regulating wine—some goals are identical, but others diverge.¹⁷⁵ Because of the competing interests, state regulations must comply with other constitutional provisions and federal interests, such as the Dormant Commerce Clause and the

¹⁷⁰ COMPETITION REPORT, *supra* note 17, at 63. The FTC highlighted three distinct categories that affect competition in the wine industry: (1) state regulation, specifically the three-tier distribution system; (2) federal regulations that impose an unjustified regulatory burden; and (3) TTB underenforcement of FAA Act Trade Practice regulations. *Id.* at 61–63.

¹⁷¹ *Id.* at 63. The FTC highlighted container size requirements as a potential barrier to competition because producers must adhere to sizes required by the Treasury. *Id.* at 48–49; see 27 C.F.R. § 4.71 (specifying required wine bottle design, fill, headspace, and capacity). Although the FTC acknowledged that certificates of label approval allow the TTB to ensure that producers are in conformance with the FAA Act, they noted that other comparable labeling regimes do not mandate pre-approval. COMPETITION REPORT, *supra* note 17, at 49.

¹⁷² See FED. TRADE COMM'N, POSSIBLE ANTICOMPETITIVE BARRIERS TO E-COMMERCE: WINE 2 (July 2003), https://www.ftc.gov/sites/default/files/documents/reports/possible-anticompetitive-barriers-e-commerce-wine/winereport2_0.pdf [<https://perma.cc/GDK3-ZB7B>] (researching and summarizing state policies and interests). The FTC detailed how states crafted individual three-tier distribution systems following the enactment of the Twenty-First Amendment, and highlighted goals such as collecting taxes efficiently and preventing alcohol sales to minors. *Id.* at 5–6. Further, the FTC provided an in-depth discussion of how government regulations are adopted to protect economic interests, even though they are initially justified on behalf of consumers. *Id.* at 5. For example, some of the regulations preventing the direct shipment of wine were considered to have gone beyond the minimum amount necessary to meet the goal of taxation. *Id.* at 38. Finally, the FTC did not make conclusions as to the legitimacy of the purported goals advanced by states, but they compared how some states adopted less restrictive means to achieve such goals. *Id.* at 27.

¹⁷³ COMPETITION REPORT, *supra* note 17, at 3; FED. TRADE COMM'N, *supra* note 172, at 2.

¹⁷⁴ COMPETITION REPORT, *supra* note 17, at 1; FED. TRADE COMM'N, *supra* note 172, at 14. In economics, these categories are part of “Porter’s Five Forces” and economists can use them to determine the competitiveness of a certain industry. Castriota, *supra* note 169, at 85–86. Economists have evaluated how such factors are prevalent in the wine sector. *Id.* at 87. Among barriers to entry are restrictive government policies and advantages of currently existing firms, which include scarcity of available land and control throughout the distribution chain. *Id.* Additionally, they have noted that small wineries face an uphill battle when trying to sell to distributors who often prioritize large producers in an attempt to maximize profits. *Id.* at 90.

¹⁷⁵ Compare 15 U.S.C. § 1 (outlawing restraint of commerce which includes a conspiracy to fix the price of liquor), with TENN. CODE ANN. § 57-3-201 (West 2018) (imposing residency requirements for liquor licenses). Congress largely regulates liquor, wine, and beer under its commerce power, and state governments do so under Section 2 of the Twenty-First Amendment. *Granholm v. Heald*, 544 U.S. 460, 487 (2005).

Sherman Antitrust Act.¹⁷⁶ In other words, states must view the Twenty-First Amendment as a single component within a “unified constitutional scheme.”¹⁷⁷ As a result, the United States Supreme Court has previously struck down state wine laws because they amount to economic protectionism in violation of the Commerce Clause.¹⁷⁸ Although primarily assessing laws concerning the distribution and taxation of wine, rather than quality control or consumer protection regulations, the Court has been clear in recognizing the national policy favoring competition.¹⁷⁹ In doing so, the Supreme Court established a framework to determine whether state laws serve a legitimate goal.¹⁸⁰ This Note argues that this framework should be considered by the TTB when enacting wine regulations.¹⁸¹ In the interest of promoting competition, the federal government should reevaluate wine laws that are superfluous and carry no legitimacy, and only continue to promulgate regulations with permissible consumer protection issues.¹⁸²

This Part discusses purported policy justifications for wine regulation across the globe.¹⁸³ Section A of this Part details the rationale of economic protectionism and consumer protection in the wine sector.¹⁸⁴ Section B then evaluates how the policy justifications correspond or conflict with antitrust laws, specifically in the United States.¹⁸⁵

¹⁷⁶ See *Tenn. Wine & Spirits Retailers Ass’n v. Thomas*, 139 S. Ct. 2449, 2462 (2019) (noting that an alternative approach would allow states to use their Twenty-First Amendment power to violate, among other things, the Bill of Rights). The Supreme Court has acknowledged that laws enacted under the Twenty-First Amendment must be considered in light of other constitutional amendments, including, but not limited to, the Equal Protection Clause, the Import-Export Clause, and the Ex Post Facto Clause. *Id.* See generally U.S. CONST. art. 1, § 10, cl. 1.

¹⁷⁷ *Tenn. Wine & Spirits Retailers Ass’n*, 139 S. Ct. at 2462.

¹⁷⁸ See, e.g., *Cal. Retail Liquor Dealers Ass’n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 110 (1980) (holding that Congress retains considerable authority over liquor under the Commerce Clause).

¹⁷⁹ *Id.*

¹⁸⁰ See *Tenn. Wine & Spirits Retailers Ass’n*, 139 S. Ct. at 2469 (noting that Section 2 of the Twenty-First Amendment would not protect discriminatory state laws).

¹⁸¹ See *infra* notes 238–262 and accompanying text. Currently, the TTB is only required to demonstrate that there is a “rational basis” for their decision in enacting a regulation. *Wawzkievich v. Dep’t of Treasury*, 670 F.2d 296, 301 (D.C. Cir. 1981). If a TTB regulation is challenged, a reviewing court then applies the “arbitrary and capricious” standard and will only overturn the agency decision if the lower court abused their discretion. *Id.*; 5 U.S.C. § 706(2)(A). Comparatively, a Dormant Commerce Clause analysis consists of two elements—whether the state law has discriminated against out-of-state products, and if so, whether it is “narrowly tailored and advances a legitimate local purpose.” *Tenn. Wine & Spirits Retailers Ass’n*, 139 S. Ct. at 2461.

¹⁸² See *State Impediments to E-Commerce: Consumer Protection or Veiled Protectionism? Hearing Before the Subcomm. on Com., Trade, and Consumer Prot. of the H. Comm. on Energy & Com.*, 107th Cong. 8 (2002) (statement of Robert Atkinson, Vice Pres., Progressive Pol’y Inst.) (arguing for Congress to “resist the protectionist pleadings” of consumer protection interest groups). In 2003, the House Committee on Energy and Commerce inquired on consumer protection features in the wine industry and how they interact with competition. *Id.* at 17–22.

¹⁸³ See *infra* notes 186–237 and accompanying text.

¹⁸⁴ See *infra* notes 186–222 and accompanying text.

¹⁸⁵ See *infra* notes 223–237 and accompanying text.

A. Government Impediments: Protecting the Status Quo or the Public Good?

Although policy strategies differ internationally, economic protectionism of producers and consumer protection are the most evident, that are further influenced by culture, history, and political lobbying.¹⁸⁶ As with their quality control regulations, the policy approach taken by New World and Old World wine countries differs.¹⁸⁷ Subsection 1 outlines the culture and politics of economic protectionism in the wine sector.¹⁸⁸ Subsection 2 discusses the public health and labeling transparency objectives of wine regulations.¹⁸⁹

1. Resistance to Innovation: Economic Protectionism

The market regulation of wine across the globe depends on the underlying regulatory policies of individual countries.¹⁹⁰ Whereas Europe is considered a

¹⁸⁶ Castriota, *supra* note 169, at 216. Some economists have argued that politics is the simple explanation for the complex system of wine distribution in the United States. *Id.* at 225. For example, wine is part of the “national identity” in France, and wine producers have broken out in riots on multiple occasions when suffering economic hardship. *Id.* at 211. In comparison, temperance supporters in the United States have long considered wine to be problematic and have lobbied consistently to restrict consumption. *Id.* at 212. The two governments, then, have differing incentives and goals when formulating wine market policies. Munsie, *supra* note 43, at 54–55; *see also* Raustiala, *supra* note 93, at 365 (asserting that geographical indicators are motivated by political interests and that European governments have implemented increased standards to protect their producers from competition). Some scholars have criticized France’s regulatory system, describing it as too stringent, and have suggested that their failure to adapt and implement innovative winemaking practices has decreased their overall market share. Munsie, *supra* note 43, at 53–54. And in terms of political lobbying, wine organizations—such as the Wine Wholesalers Association—have lobbied Congress to pass regulations that would benefit producers. *See* Robert D. Atkinson, *The Revenge of the Disintermediated: How the Middleman Is Fighting E-Commerce and Hurting Consumers*, PROGRESSIVE POL’Y INST., at 8 (2001) (proposing that Congress resist protectionist lobbying efforts). Robert Atkinson of the Progressive Policy Institute argues that some anti-competitive practices in the wine sector are disguised as consumer protection laws. *Id.* at 4. Atkinson presents different solutions to policymakers and first argues that the government should not intervene in a free-market economy because the marketplace will necessarily determine “winners” and “losers.” *Id.* at 16. The role of the government, he asserts, should be limited to ensuring an equal playing field. *Id.* He then explains the downsides of political lobbying and suggested that policymakers should decline protectionist requests designed to stifle competition. *Id.* at 17. Finally, Atkinson calls for the FTC and DOJ to take an aggressive stance against anti-competitive practices and to increase enforcement and prosecution. *Id.*

¹⁸⁷ Compare Eugenio Pomarici & Roberta Sardone, *E.U. Wine Policy in the Framework of the CAP: Post-2020 Challenges*, 8 AGRIC. & FOOD ECON. 1, 14 (2020) (describing how the E.U. Commission has shifted towards a liberalization of the wine sector but has received dissenting views from wine-producing countries that are concerned with the financial impacts), with JULIEN CHAISSE, FERNANDO DIAS SIMÕES & DANNY FRIEDMANN, *WINE LAW & POLICY: FROM NATIONAL TERROIRS TO A GLOBAL MARKET* 176 (2021) (noting that Australian wine policy has a large focus on public health and restricting the excessive consumption of liquor).

¹⁸⁸ *See infra* notes 190–208 and accompanying text.

¹⁸⁹ *See infra* notes 209–222 and accompanying text.

¹⁹⁰ *See* Castriota, *supra* note 169, at 216 (describing French and European wine policy).

staunch supporter of farmers and producers, New World countries emphasize public safety.¹⁹¹ The European Union, in enacting the Common Agricultural Policy, has made a conscious effort to support prices and subsidize producers in order to promote their agricultural industry.¹⁹² At the domestic level, scholars have suggested that Old World wine countries initially established quality control measures to protect producers from international competition.¹⁹³ In the early twentieth century, the competition came from Algerian colonies and within Europe.¹⁹⁴ Today, the competition comes from the rising demand of international producers.¹⁹⁵ To support their argument, commentators highlighted the objectives included in the recitals of legislation, which predominantly refer to economic goals.¹⁹⁶

The primary vehicle for economic protectionism comes from appellation systems, which benefit producers in multiple ways—by establishing quality and raising prices, restricting the supply of wine, and defending against free-riders.¹⁹⁷ The European Commission explicitly stated that geographical indicators are crucial to the European economy due to their impact on thousands of employees at every stage of the production process.¹⁹⁸ Yet, more recently, the E.U. passed legislation to increase competition in the European wine market.¹⁹⁹ Still, scholars have criticized new statutes and argued that strategies to prop up prices are ineffective because they have no impact on the production of New World wine.²⁰⁰

¹⁹¹ Compare European Commission Memorandum MEMO/03/160, Why Do Geographical Indications Matter to Us? (July 30, 2003) (detailing the impact of protecting geographical indicators on thousands of farms and employees across the European Union), with *Tenn. Wine & Spirits Retailers Ass’n v. Thomas*, 139 S. Ct. 2449, 2464 (2019) (noting that state liquor laws must be enacted to protect public “health, morals, and safety”).

¹⁹² Munsie, *supra* note 43, at 19.

¹⁹³ See Hinchliffe, *supra* note 38, at 120–21 (detailing government subsidies in the wine industry and potential barriers to trade).

¹⁹⁴ Castriota, *supra* note 169, at 216. Historians and individuals in the wine industry consider the enactment of the AOC system in France largely to be a result of Algerian competition. *Id.*

¹⁹⁵ Craig S. Smith, *A Wine of Character, but How Many Miles to a Gallon*, N.Y. TIMES (Oct. 6, 2005), <https://nytimes.com/2005/10/06/world/europe/a-wine-of-character-but-how-many-miles-to-a-gallon.html> [<https://perma.cc/SPN5-FYRV>]. For example, the increased wine production in Australia and Chile contributed to a French wine surplus. *Id.*

¹⁹⁶ Castriota, *supra* note 169, at 218.

¹⁹⁷ Alston & Gaeta, *supra* note 38, at 235, 245; see also Castriota, *supra* note 169, at 211–12 (discussing how European policymakers aimed to assure good returns for wine producers). Some studies have found, nevertheless, that yield restrictions do not necessarily increase the quality of wine. Alston & Gaeta, *supra* note 38, at 243. Yet, in theory, yield restrictions limit grape production and thereby increase profits for producers. *Id.* at 245.

¹⁹⁸ European Commission Memorandum MEMO/03/160, *supra* note 191, at 1.

¹⁹⁹ Council Regulation 491/2009, 2009 O.J. (L 154) 2 (EC). Importantly, new measures eliminated subsidies to farmers that previously encouraged the destruction of excess wine, thereby placing downward pressure on the incentive to grow low-quality grapes. *Id.*

²⁰⁰ Castriota, *supra* note 169, at 219. Economists are wary of state intervention, arguing that government employees are frequently “incompetent or corrupt.” *Id.* at 214. Additionally, governments

Additionally, legislators are confronted with protectionism in regards to wine labeling.²⁰¹ In the United States, the FTC has found that wine labeling may constitute a barrier to entry for small businesses and new producers.²⁰² The regulatory scheme, requiring pre-approval of labels and dozens of certificate requirements, has proven to be burdensome.²⁰³ On the other hand, European countries have made their position clear.²⁰⁴ Recently, Ireland passed legislation that would require extensive health warning labels on alcoholic beverages, alerting consumers that ““alcohol causes liver disease”” and correlates with certain cancers.²⁰⁵ France, Italy, and Spain firmly opposed the measure, worried that the E.U. Health Directorate General or other countries might follow in Ireland’s footsteps.²⁰⁶ Wine industry lobbies argued that the “anti-European” regulation attacks the core of the European economy.²⁰⁷ Every wine country faces different issues, which affects how policy makers craft their regulatory framework, but regulatory bodies that are addressing antitrust issues took issue with legislation that primarily serves to fix prices by regulating supply.²⁰⁸

2. The Danger of Wine: Consumer Protection

Consumer protection, too, is at the forefront of wine law policy.²⁰⁹ As previously mentioned, legislators identified public health and labeling trans-

will often support the interests of powerful lobbying groups, even when such interests are detrimental to the public. *Id.*

²⁰¹ COMPETITION REPORT, *supra* note 17, at 48. The FTC noted that some labeling regulations can be considered arbitrary or unnecessarily strict. *Id.* at 46. Because of the large number of alcohol label approval applications that the TTB receives—195,706 during the fiscal year 2021—many producers complain that the current process is inefficient and slow. *Id.*

²⁰² *Id.* at 48.

²⁰³ *Id.*; see 27 C.F.R. § 4.50(a) (requiring label approvals before wine can be sold in the United States). The FTC suggested that Congress and the TTB reevaluate several of these restrictive labeling requirements. COMPETITION REPORT, *supra* note 17, at 63.

²⁰⁴ See Shawn Pogatchnik, *The E.U. Booze Industry Is Up in Arms Over Irish Health Warnings. Why?*, POLITICO (Jan. 23, 2023), <https://www.politico.eu/article/explainer-eu-alcohol-industry-ireland-health-label> [<https://perma.cc/H3F3-GXGD>] (reporting on the backlash from European wine lobbies as a result of an Irish health warning label law that would require importers to warn against excessive consumption of alcohol).

²⁰⁵ *Id.*; see Public Health (Alcohol) Act 2018 § 12(1) (Act No. 24/2018) (Ir.), <https://www.irishstatutebook.ie/eli/2018/act/24/enacted/en/html> [<https://perma.cc/GE2D-G93J>] (lacking the proposed health labeling requirements).

²⁰⁶ Pogatchnik, *supra* note 204; Stephen Murphy, *Wine Wars: How ‘Absurd’ Cancer Labels Have Pitched Ireland Against Europe*, SKY NEWS (Feb. 25, 2023), <https://news.sky.com/story/wine-wars-how-absurd-cancer-labels-have-pitched-ireland-against-europe-12819307> [<https://perma.cc/F7BZ-UWQS>].

²⁰⁷ Pogatchnik, *supra* note 204.

²⁰⁸ See Andrea Minuto Rizzo, *Competition Policy in the Wine Industry in Europe*, 14 J. WINE ECON. 90, 91 (2019) (compiling recent interventions in the wine sector by national competition authorities).

²⁰⁹ Maher, *supra* note 20, at 1885.

parency as important factors when crafting wine regulations.²¹⁰ Some commentators, nevertheless, argue that regulations are more concerned with protecting oligopolies than minimizing the effects of unrestricted alcohol sales.²¹¹ Additionally, health professionals criticize the current system in the United States, arguing that decisions which affect consumers' health should not be delegated to unqualified experts.²¹²

In the United States, the intent of the FAA Act is simple—Congress explicitly aimed to prohibit “unfair and deceptive” practices that might injure producers and consumers.²¹³ In effect, the wine labeling regulations provide consumers the necessary information to be aware of what they are purchasing.²¹⁴ Transparency and disclosure are paramount and provide no excep-

²¹⁰ See Mendelson, *supra* note 17, at 139–40 (asserting that the importance of public health and labeling transparency matters cannot be understated). Taxation is another important goal of wine regulation and has had a direct effect on cellar treatment regulations. *Id.* at 129. Because liquor smuggling and theft was prevalent during the Prohibition era, the government desired and implemented provisions dealing with winery security. *Id.* Among such regulations, the TTB regulates the materials and processes that may be used during cellar treatment of wine in order to ensure that wine is merchantable. 26 U.S.C. § 5382. Although the cellar treatment framework might be considered burdensome, it serves a taxation goal—if the wine is not suitable for sale, no taxes are collected. See Mendelson, *supra* note 17, at 129 (explaining the cellar treatment framework). The Treasury also orders that wineries document and keep comprehensive records of the entire production process. *Id.* at 130.

²¹¹ Michael A. Pasahow, Note, Granholm v. Heald: *Shifting the Boundaries of California Reciprocal Wine Shipping Laws*, 21 BERKELEY TECH. L.J. 569, 574 (2006); see also Susan Lorde Martin, *Wine Wars—Direct Shipment of Wine: The Twenty-First Amendment, The Commerce Clause, and Consumers' Rights*, 38 AM. BUS. L.J. 1, 5–6 (2000) (describing the large political contributions made by industry groups). In 2005, in *Granholm v. Heald*, the Supreme Court invalidated a discriminatory three-tier distribution regulation because the purported justifications for the law—such as minors purchasing alcohol through the internet and tax collection issues—were considered “mere speculation” and pretextual. 544 U.S. 460, 492 (2005). Although not the focus of this Note, it is helpful to consider the policy justifications offered by states in favor of their distribution systems. See Quigley, *supra* note 17, at 1882 (describing three-tier distribution systems and their underlying policies). The FTC has summarized state rationales for the system: (1) limiting wholesalers simplifies tax collection; (2) prohibiting integration restrains organized crime from acquiring control of alcohol distribution; (3) providing additional oversight limits the sale of alcohol to minors; and (4) increasing the price of alcohol promotes temperance. FED. TRADE COMM'N, *supra* note 172, at 6; see also Quigley, *supra* note 17, at 1882 (providing insight into three-tier distribution system).

²¹² Laforge, *supra* note 146, at 306.

²¹³ *Adolph Coors Co. v. Brady*, 944 F.2d 1543, 1547 (10th Cir. 1991). Today, the FAA Act prohibits deceiving consumers or using statements that are likely to do so. 27 U.S.C. § 205(e)–(f). Courts have noted that, initially, federal legislation focused on collecting revenue and supporting tax laws. *Bronco Wine Co. v. Jolly*, 95 P.3d 422, 431 (Cal. 2004). Later, as a result of widespread issues concerning “adulteration and misbranding,” states began to exercise their police power and passed wine labeling legislation. *Id.*

²¹⁴ See Labeling of Flavored Wine Products, 65 Fed. Reg. 59718, 59723 (Oct. 6, 2000) (to be codified at 27 C.F.R. pt. 4) (explaining the purposes of the FAA Act and the statutory obligations of avoiding consumer deception).

tions—the FAA Act and its labeling regulations apply to all wine sold in the United States, both foreign and domestic.²¹⁵

Regarding public health specifically, regulatory agencies have engaged in a lively debate about permissible ingredients, production processes, and health warning labels.²¹⁶ Although the TTB is responsive to suggestions that might have a positive impact on consumer health, individuals from both the health and wine industry criticize them for doing too little or too much.²¹⁷ On the one hand, the FDA and medical professionals argue that the TTB lacks the ability to make and implement public health recommendations due to its standing as a tax-collecting agency.²¹⁸ On the other, wine lobbyists are defensive of any warnings that might paint wine in a bad light.²¹⁹ Neither group is pleased with the TTB's choice to take the middle ground and require only minimal health warnings for wine.²²⁰ Other discussions include temperance promoters that argue for lower consumption due to the alleged detrimental effects of alcohol.²²¹ Regardless of the positions taken by health experts, the United States government has taken the position that laws that serve a public health purpose are typically justified even if they hinder competition.²²²

B. Antitrust: The National Policy Towards Competition

Economists highlighted differences that exist between Old World and New World wine countries in their production, distribution, and consumption poli-

²¹⁵ See 27 U.S.C. § 205(e) (regulating unfair competition in the liquor industry). Imported wine must be pre-approved before it is released by the U.S. Customs and Border Protection agency. 27 C.F.R. § 27.1.

²¹⁶ Mendelson, *supra* note 17, at 158, 162. For example, the TTB regulates the use of chemicals or additives, such as sulfites, during fermentation. 27 C.F.R. § 24.176. The TTB might also control the types of processes, such as distilling wine through the use of a “spinning cone column” to reduce alcohol content or certain flavors of wine. *Id.* § 24.248.

²¹⁷ Mendelson, *supra* note 17, at 171–72.

²¹⁸ *Id.* at 161, 167. There has been a long-standing debate regarding the requirement of ingredient and nutrition facts on wine labels. *Id.* at 167. The FDA has urged the TTB to adopt increased protections, but the wine industry has opposed any regulations that might decrease consumer's level of consumption and affect wine sales. *Id.* at 172.

²¹⁹ See *id.* at 160 (describing the wine industry's efforts to improve wine's image).

²²⁰ *Id.* at 172.

²²¹ Brief for the U.S. Alcohol Pol'y All. & Pub. Health Rschs. & Advocs. as Amici Curiae Supporting Petitioner, at *2–3, *Tenn. Wine & Spirits Retailers Ass'n v. Blair*, 139 S. Ct. 783 (2019) (No. 18-96). For example, the U.S. Alcohol Policy Alliance argues that public health evidence establishes that restricting access to alcohol reduces harmful health consequences. *Id.* at *3. Imposing additional regulations that could have an incidental effect on less consumption, they argue, diminishes binge drinking. *Id.* at *4; see also Elyse Grossman & James F. Mosher, *Public Health, State Alcohol Pricing Policies, and the Dismantling of the 21st Amendment: A Legal Analysis*, 15 MICH. ST. U. J. MED. & L. 177, 198 (2011) (summarizing the public health evidence that has been presented to courts).

²²² See COMPETITION REPORT, *supra* note 17, at 63 (suggesting changes to the regulatory framework based on public health concerns).

cies.²²³ They also suggested that the wine sector necessarily leads to monopolistic rather than “perfect” competition due to factors such as information asymmetries and unequal access to distribution channels.²²⁴ As a result, governments intervened through regulation in order to promote the goal of competition.²²⁵

On several occasions, the United States Supreme Court held state wine laws unconstitutional after determining that they do not advance a legitimate purpose.²²⁶ In 1980, in *California Retail Liquor Dealers Ass’n v. Midcal Aluminum*, the Court held that California’s wine-pricing system violated the Sherman Antitrust Act.²²⁷ The California statute, a part of its three-tier distribution system regulatory framework, required wholesalers to sell wines at a certain price—which constitutes “resale price maintenance,” a practice that illegally restrains trade.²²⁸ The Court struck down the law, reiterated the national policy favoring competition, and emphasized the power of Congress to override discriminatory state liquor laws under its federal commerce power.²²⁹ Importantly, the Court considered California’s purported objectives in maintaining prices to be unsubstantiated because there was no evidence that the scheme protected small retailers or encouraged alcohol temperance.²³⁰ As a result, the Court did not balance any legitimate state interests—as they deemed that there

²²³ Castriota, *supra* note 169, at 211. For example, the French and other consumers across Mediterranean countries consumed wine daily and likely would react negatively towards a Prohibition-style ban. *Id.* As a result, the wine sector is a large portion of the European economy and involves many people at all stages of production and distribution. European Commission Memorandum MEMO/03/160, *supra* note 191, at 1. Nevertheless, in the United States, consumers typically consumed beer and the temperance movement exerted significant political influence. Castriota, *supra* note 169, at 211–12.

²²⁴ Castriota, *supra* note 169, at 83. Economists noted that there is a significant information asymmetry that exists between producers and buyers. *Id.* As such, consumers rely on external sources such as prices or reviews in wine guides to select a product. *Id.*

²²⁵ *Id.* at 229.

²²⁶ See, e.g., *Granholm v. Heald*, 544 U.S. 460, 461 (2005) (striking down discriminatory distribution laws that provide in-state wineries an economic advantage); *Tenn. Wine & Spirits Retailers Ass’n v. Thomas*, 139 S. Ct. 2449, 2476 (2019) (severing provisions from a Tennessee statute that required individuals and corporations to be state residents for two years before obtaining a winery license).

²²⁷ 445 U.S. 97, 113–14 (1980). The plaintiff, a wine distributor, argued that the resale price maintenance scheme restrained trade and therefore violated the Sherman Antitrust Act. *Id.* at 100; see 15 U.S.C. § 1 (making illegal every contract “in restraint of trade”). The Sherman Act prohibits “resale price maintenance,” unless the statute concerns an industry that receives a special antitrust immunity. *Cal. Retail Liquor Dealers Ass’n*, 445 U.S. at 102–03. To enjoy a special antitrust immunity, the restriction must be “clearly articulated,” “affirmatively expressed as state policy,” and “actively supervised” by the state promulgating the regulation. *Id.* at 105 (quoting *City of Lafayette, La. v. La. Power & Light Co.*, 435 U.S. 389, 410 (1978)). Here, the state did not actively supervise resale price maintenance—instead, private parties enforced the prices. *Id.* Because California was not involved in monitoring the market conditions, the Supreme Court reasoned that antitrust policy preempted the anticompetitive scheme. *Id.* at 105–06.

²²⁸ *Cal. Retail Liquor Dealers Ass’n*, 445 U.S. at 99–100.

²²⁹ *Id.* at 113–14.

²³⁰ *Id.*

were none—against the “undoubted” federal interest of promoting competition.²³¹ Four years later, in 1984, in *Bacchus Imports, Ltd. v. Dias*, the Supreme Court invalidated a discriminatory state liquor tax and reasoned that laws constituting “mere economic protectionism” will not receive the same level of deference as laws that are a valid exercise of state police power.²³²

Similarly, the Supreme Court recently struck down a liquor license law that imposed durational-residency requirements because it was considered a blatant violation of federal law.²³³ In 2019, in *Tennessee Wine & Spirits Retailers Ass’n v. Thomas*, the Court held that unwarranted state protectionism violates the Commerce Clause even though the Twenty-First Amendment allows states to impose restrictions that advance a public health or safety objective.²³⁴ The dissent noted that individual states have a legitimate purpose in aiming to reduce alcohol consumption.²³⁵ Nevertheless, the majority struck down the regulations because the link between durational requirements were implausible—Tennessee provided only limited evidence to support their claim.²³⁶ Regardless of the policy reasons that exist at the federal or state level, the Supreme Court has refused to accept unwarranted justifications and thereby elevated the standard to permissibly place a burden on competition.²³⁷

III. PROMOTING COMPETITION

As the Federal Trade Commission concluded, some wine regulations place an undue burden on the American wine market.²³⁸ Unnecessary regula-

²³¹ *Id.* The Supreme Court noted that the federal competition policy is not necessarily more substantial than the purported state interest of preserving small retail establishments. *Id.* Nevertheless, the goals of the Sherman Act prevailed because California did not provide any evidence that the pricing scheme advanced that interest. *Id.*

²³² *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 276 (1984). The tax at issue levied a \$20 excise tax on liquor, but provided an exemption for okelehaio and pineapple fruit wine, two locally produced beverages. *Id.* at 265. The Hawaiian state legislature explicitly showed that the purpose for the tax was to promote the local wine industry, so the Court did not need to determine whether a discriminatory purpose existed. *Id.* at 270–71.

²³³ *Tenn. Wine & Spirits Retailers Ass’n v. Thomas*, 139 S. Ct. 2449, 2476 (2019). The Court determined that the residency requirement “blatantly favors” Tennessee residents because individual applicants were required to have resided in Tennessee for ten consecutive years. *Id.* at 2456. Additionally, if the entity seeking a license is a corporation, the corporation would be unable to receive a license unless all its stockholders were Tennessee residents. *Id.*

²³⁴ *Id.* at 2474. Although states have leeway in crafting regulations under the police power, the Court stated, there must be a demonstrable connection between the protectionist measure and the legitimate interest. *Id.*

²³⁵ *Id.* at 2482 (Gorsuch, J., dissenting). The dissent argued that the residency requirement should have “easily” survived. *Id.*

²³⁶ *Id.* at 2474 (majority opinion).

²³⁷ *See id.* (rejecting Tennessee’s “protectionist measures”); *see also* *Swedenburg v. Kelly*, 232 F. Supp. 2d 135, 147 (S.D.N.Y. 2002) (doubting whether a state enacted a liquor law to promote temperance or for protectionist reasons).

²³⁸ COMPETITION REPORT, *supra* note 17, at 63.

tions fail to serve a legitimate purpose, inhibit competition, and result in exclusionary behavior.²³⁹ As noted, producers must comply with a wide array of regulations ranging from labeling requirements to oenological regulations and distribution mechanisms.²⁴⁰ As a result, newer producers that are driving innovation and reacting to future problems such as climate change are shut out of the market.²⁴¹ By requiring producers to comply with regulations that serve no public health or informational purpose, these regulations harm the economy and consumers.²⁴²

Part II of this Note presented the underlying rationale of wine laws and illustrated the discord between and within countries.²⁴³ Objectives have shifted, but wine regulations have not adapted to today's market.²⁴⁴ In order to abide by current antitrust law and executive policies, federal legislators and relevant agencies must take action to remove regulatory barriers.²⁴⁵ The benefits of following the FTC's suggestion and modernizing the wine regulatory framework will not only provide small businesses with an equal playing field, but will also provide consumers more choices at lower prices.²⁴⁶

Therefore, Congress and the TTB should address inconsistencies in the FAA Act and eliminate unnecessary economic safeguards that inhibit competition.²⁴⁷ Further, the TTB should apply a higher standard to determine whether current regulations should remain or future ones should be enacted.²⁴⁸

In its Competition Report, the FTC suggested that Congress amend the FAA Act and the Internal Revenue Code, which sets forth some winemaking production standards, to eliminate unjustified regulations that do not serve a legitimate purpose.²⁴⁹ In order to serve their delegated duty, the TTB should

²³⁹ *Id.* at 1.

²⁴⁰ See *supra* notes 28–168 and accompanying text.

²⁴¹ See Asimov, *supra* note 71 (detailing the response from Bordeaux appellation authorities as a result of climate change and comparing their experiential efforts to Napa Valley, where grape restrictions do not exist).

²⁴² COMPETITION REPORT, *supra* note 17, at 63.

²⁴³ See *supra* notes 186–222 and accompanying text.

²⁴⁴ See Munsie, *supra* note 43, at 54–55 (detailing the evolution of wine regulations and policies).

²⁴⁵ See COMPETITION REPORT, *supra* note 17, at 2 (concluding that some objectives of the FAA Act and President Biden's executive order are not being fulfilled).

²⁴⁶ See Castriota, *supra* note 169, at 231 (describing that the economic strategy of New World countries supports lower wine prices).

²⁴⁷ See *infra* notes 250–262 and accompanying text.

²⁴⁸ See *infra* notes 250–262 and accompanying text.

²⁴⁹ COMPETITION REPORT, *supra* note 17, at 52. The FTC noted that production standards are set forth in a range of federal laws, including the Internal Revenue Code and TTB regulations that dictate the “[f]inishing of [w]ine.” *Id.* at 51. Although providing a list of ingredients to the Treasury allows them to categorize wines for taxation purposes, the TTB previously eliminated some requirements based on the premise that doing so allows new entrants to enter the market quicker. *Id.*

only implement regulations that are legitimate rather than frivolous.²⁵⁰ Currently, the TTB has wide discretion when crafting regulations.²⁵¹ Courts give “considerable weight” to the TTB’s interpretation regarding FAA Act administration, and as such, provide the TTB substantial deference unless their interpretation clearly conflicts with the statute.²⁵² Even though the TTB has considerable expertise in crafting regulations pursuant to the FAA Act, the agency should minimize statutory requirements that do not conform with the FAA Act’s stated purpose and objectives.²⁵³ As the FTC noted, further rulemaking should ensure an equal playing field in the wine industry and avoid providing deep-pocketed entities a further advantage.²⁵⁴

Courts have applied two separate legal frameworks to either TTB regulations or state wine laws to determine their constitutionality—a “Section 2” Twenty-First Amendment analysis or the *Central Hudson* test.²⁵⁵ When a state wine law is challenged for being allegedly discriminatory against interstate commerce, courts apply a “Section 2” analysis.²⁵⁶ If a law facially discrimi-

²⁵⁰ See ALCOHOL & TOBACCO TAX & TRADE BUREAU, STRATEGIC PLAN FY 2018–2022, at 7 (2018) (aiming to facilitate commerce by issuing permits in a timely manner and modernizing labeling program).

²⁵¹ See *Wawszkiewicz v. Dep’t of Treasury*, 480 F. Supp. 739, 744 (D.D.C. 1979) (providing the ATF “broad discretion” to fulfill the FAA Act’s requirements). In 1981, in *Wawszkiewicz v. Department of Treasury*, the District Court for the District of Columbia ordered the ATF—the predecessor to the TTB—to revise a wine labeling regulation. *Id.* at 747. The regulation concerned the required percentage of grapes grown in a viticultural area. *Id.* at 745. At the time, the ATF permitted producers to label wines according to grape varietal if at least 51% of the wine consisted of that grape. *Id.* at 742. Additionally, producers could label their wines according to viticultural area, such as Napa, if at least 75% of the grapes were grown in that area. *Id.* The “sophisticated” wine consumers challenged the regulation on the basis that the promulgated regulations were inconsistent with the FAA Act—the regulations would allow producers to mislead consumers. *Id.* at 741.

²⁵² *Id.* at 743.

²⁵³ See *id.* at 745 (determining that the statutory language of the FAA Act is “clear and direct” but concluding that the ATF had exercised their discretionary judgment in ensuring adequate disclosure on wine labels).

²⁵⁴ See COMPETITION REPORT, *supra* note 17, at 63 (arguing for a reduction of excess regulations).

²⁵⁵ See, e.g., *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 491 (1995) (holding that an ATF regulation that prohibited the display of alcohol content on beer labels violated the First Amendment by infringing on commercial speech); *Wine & Spirits Retailers Ass’n v. Thomas*, 139 S. Ct. 2449, 2474 (2019) (applying a Section 2 analysis to durational residency requirement). In 1995, in *Rubin v. Coors Brewing Co.*, the Supreme Court held that a beer labeling law was not narrowly tailored to serve the legitimate governmental interest in protecting public health and safety. 514 U.S. at 491.

²⁵⁶ *Tenn. Wine & Spirits Retailers Ass’n*, 139 S. Ct. at 2474. In short, Section 2 of the Twenty-First Amendment grants individual states the power to regulate alcohol, as long as state laws do not run afoul of federal interests—including constitutional provisions. *Id.* at 2469. For example, in 1976, in *Craig v. Boren*, the Supreme Court held that an Oklahoma law that made a gender-based distinction on the drinking-age for “nonintoxicating” beer violated the Equal Protection Clause. 429 U.S. 190, 210 (1976). But Section 2 is not only constrained by the United States’ Constitution—the Court has also concluded that Congress’ commerce power, federal antitrust legislation, federal regulation of the airwaves, and federal alcohol export laws might conflict and preempt state laws. See *Tenn. Wine &*

nates against nonresidents, a court then considers whether the law advances a legitimate nonprotectionist rationale—such as public health—that justifies such discrimination.²⁵⁷ But the Supreme Court has made clear that “unsupported assertions” will not shield laws that predominantly advance a protectionist purpose.²⁵⁸ Similarly, the Supreme Court applied *Central Hudson* to determine whether TTB regulations satisfy First Amendment scrutiny.²⁵⁹ In doing so, courts are instructed to assess whether the challenged regulation directly advances a substantial governmental interest.²⁶⁰ If so, the regulation will be struck down only if it is more extensive than necessary to satisfy the purported interest.²⁶¹

Spirits Retailers Ass’n, 139 S. Ct. at 2469 (providing that Section 2 does not shield all state liquor laws). In applying a Section 2 analysis, a court first evaluates whether the state law facially discriminates against out-of-state residents. *Id.* at 2474. Then, a court considers whether the law can be saved by Section 2. *Id.* In other words, if the state law can be justified on public health, safety, or other legitimate rationales, it will be considered constitutional. *Id.* The Supreme Court did not clarify what level of scrutiny they apply to determine whether there is a “legitimate” justification. *See id.* (noting that “unsupported assertions” will be insufficient to defend a facially discriminatory law).

²⁵⁷ *Tenn. Wine & Spirits Retailers Ass’n*, 139 S.Ct. at 2474.

²⁵⁸ *Id.* In 2019, in *Tennessee Wine & Spirits Retailers Ass’n v. Thomas*, the petitioner—the Tennessee Wine and Spirits Retailers Association—advanced several arguments to justify Tennessee’s durational-residency requirements, claiming that the law was linked to public health or safety. *Id.* at 2475–76. First, the Association claimed that requiring liquor retailers to be residents would make it easier to serve process on them if they were sued in state court. *Id.* at 2475. The Court rejected that argument, noting that a less restrictive alternative, such as requiring a designated agent in-state, was possible. *Id.* Then, the Association argued that the durational requirement would protect against “undesirable residents” from operating a liquor store. *Id.* The Court likewise noted that less discriminatory means existed—in fact, Tennessee already required applicants to pass criminal background checks. *Id.* Finally, there was limited, if any, evidence that the law would encourage “responsible alcohol consumption,” an interest the Court recognized as legitimate. *Id.* at 2475–76. The dissent argued that the law should easily survive because it advanced several legitimate goals; notably, that the law would assist state regulatory oversight. *Id.* at 2482 (Gorsuch, J., dissenting). The dissent acknowledged that the durational requirement restricted competition, but would not have struck down the law because such alcohol moderation was a permissible objective allowed under the Twenty-First Amendment. *Id.* at 2483. Further, the dissent argued that diminishing liquor use is a legitimate public health benefit that can be accomplished by reducing competition through the subsequent increase in liquor prices. *Id.* at 2484.

²⁵⁹ *Rubin*, 514 U.S. at 482–83. In 1995, in *Rubin v. Coors Brewing Co.*, a beer brewing company sued the ATF, arguing that a regulation promulgated under the FAA Act violated the First Amendment. *Id.* at 478–79. The regulation did not permit beer producers to display the product’s alcohol content on their label, information considered commercial speech. *Id.* at 478. As such, the Supreme Court applied the *Central Hudson* test to determine whether the regulation, which constrained commercial speech, survived constitutional scrutiny. *Id.* at 482. In contrast, the TTB regulations that were flagged by the FTC in the Competition Report do not infringe on producer’s freedom of speech and thus do not implicate the First Amendment. *See* COMPETITION REPORT, *supra* note 17, at 46 (primarily highlighting regulatory procedures, such as labeling approvals, as anticompetitive barriers).

²⁶⁰ *Rubin*, 514 U.S. at 482. In *Rubin*, the Supreme Court determined that the federal interest in safeguarding citizens’ “health, safety, and welfare” was sufficiently substantial to satisfy *Central Hudson*. *Id.* at 485. Nevertheless, because other alternative measures that were deemed less burdensome to First Amendment protections existed—such as capping the permissible alcohol content of beers—the Court invalidated the ATF’s regulation. *Id.* at 490–91.

²⁶¹ *Id.* at 482.

The TTB, as a federal regulatory agency, is not required to meet the more exacting Section 2 or *Central Hudson* standards—but the tests can serve as a guideline to ensure TTB regulations do not run afoul of federal antitrust policy.²⁶²

CONCLUSION

As demonstrated by the variation in regulatory frameworks, there is no one-size-fits-all approach in the international wine market. Old World countries are fiercely protective of their wine sector due to its large market share of the European economy. On the other hand, New World countries provide limited state intervention and emphasize consumer protection. Nevertheless, most regulatory frameworks place a burden on competition by requiring smaller producers and new entrants to comply with a host of regulations. In the United States, President Biden and the Federal Trade Commission determined that many of those regulations are unjustified and fail to advance a legitimate purpose. Although wine policies vary by country, legislators should be concerned with laws that advance economic protectionism to the detriment of consumers. Going forward, Congress and the Alcohol and Tobacco Tax and Trade Bureau must spotlight the objectives of President Biden's executive order and eliminate anticompetitive laws.

ANDRES SOLIS

²⁶² See *Cal. Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 114–15 (1980) (curtailing a state's power to place a burden on competition by rejecting inadequate evidence that a regulation served a legitimate state interest).