



14 October 2016

Mr David Pullen
Indirect Tax and Not-for-profit Unit
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600
Email: wetrebate@treasury.gov.au

Dear Mr Pullen

Cider Australia appreciates the opportunity to comment on proposals in the consultation paper *Wine Equalisation Tax Rebate: Tightened Eligibility Criteria* and welcomes the genuinely consultative approach to stakeholder engagement adopted by the Government.

Cider Australia released a position paper in August 2016 calling for WET rebate eligibility to be restricted to cider made from 100% Australian juice. We believe this is the most practical and efficient way to bring the WET rebate back to its stated policy intent. The position statement is at *Attachment A*.

In relation to the consultation paper and subsequent stakeholder meetings led by the Assistant Minister for Agriculture and Water Resources, Senator the Hon Anne Ruston, Cider Australia supports the approach put forward by the Government to tighten eligibility criteria. The following comments outline Cider Australia's view in more detail.

Rebatable wine

Cider Australia strongly supports reforms to remove the WET rebate on sales of bulk and unbranded wine, subject to the proposed higher eligibility threshold for cider and perry that would enable the use of kegs with a nominal volume of 50L¹. The legislation should be drafted to ensure that slight overfilling of a 50L kegs does not render a sale a 'bulk' sale. An estimated two-thirds of the volume sold by Cider Australia members is in 30L or 50L kegs and this is cider made from Australian grown fruit that benefits rural and regional communities.

Note that some flavoured cider products sold in kegs falls under the definition of a fruit wine rather than 'cider' or 'perry' and Cider Australia would support also applying a 50L eligibility threshold to these products.

¹ Note that the total volume in a 50L keg may be slightly more than 50L – i.e. one keg producer indicates the variation is plus or minus 200mL.

Eligible producer

Cider Australia does not support the proposed limiting of eligibility for the rebate to those producers who own or have a long term lease over a winery, in line with views expressed by smaller wine makers. Doing so would prevent many craft cider producers from accessing the WET rebate.

It is encouraging that the Government is now exploring an alternative approach to redefining eligibility based on owning 85% of the fruit at the time of crushing. This approach is supported and should largely address Cider Australia's concerns about the WET rebate being paid on cider made from imported concentrate.

Cider Australia has no concerns with bringing forward the introduction of tighter eligibility criteria.

WET rebate cap

The Australian cider industry is embryonic and at a similar stage of development to the wine industry in the 1970's. Sweeter styles were in vogue and the use of eating or sultana grapes were common in the production of wine. We are now only beginning to see the cultivation of purpose grown cider fruit, which is required to develop a world-class industry with significant export potential in the future. The WET rebate provides incentives for investment, innovation and export growth that are crucial to support this exciting time of growth.

Cider Australia does not support any reduction in the WET rebate cap while cider labelling laws require reform. Reducing the cap in the absence of adequate consumer information leads to an even more uneven playing field and could be disastrous for the industry. There is market failure and producers that use Australian grown fruit do not have the ability to effectively differentiate and market their product. The key changes needed to labelling laws are:

- align the inconsistent definitions of cider in WET legislation and the Australian New Zealand Food Standards Code (Standard 2.7.3)
- mandate a minimum juice content in cider of 50% (in line with the US)².

Cider Australia also believes that the Government should implement and assess the impact of reforms to tighten the definitions of rebatable wine and eligible producer before making any changes to WET rebate cap. Cider Australia suspects that 'fixing' WET leakages will lead to significant budget savings and potentially deliver the \$180M in savings that have been included in the forward estimates. Precluding the need to scale back the WET rebate cap and put at risk the future development of the cider industry.

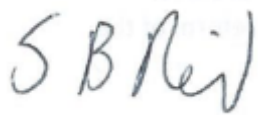
Cider Australia supports a cellar door 'top up' such as that raised by the wine industry and discussed at stakeholder consultation meetings. While Cider Australia would prefer to see the

² For a full analysis of cider definitions around the globe see *Attachment B*.

WET rebate retained at its current level, if that did not occur this measure would go some way towards sustaining incentives to invest in the cider industry in regional Australia.

Please get in touch on 0434 734 797 or president@cideraustralia.org.au if you require further information.

Yours sincerely

A handwritten signature in black ink that reads "S Reid". The letters are cursive and slightly slanted.

Sam Reid
President

ATTACHMENT A

CIDER AUSTRALIA POSITION STATEMENT ON WET REFORM

AUGUST 2016

Cider Australia welcomes the opportunity to work with the Federal Government on redefining eligibility criteria for the WET rebate.

Cider Australia believes small and medium sized 'craft' cider and perry producers whose activities directly support rural and regional communities across Australia should continue to be eligible for the WET rebate. On this basis:

- Only cider and perry made from 100% Australian apple and pear juice should be eligible for the WET rebate given its production directly benefits rural and regional Australia, and cider and perry made from imported juice concentrate should not be eligible. Savings from this reform should be allocated to activities that promote cider tourism and exports.
- reforms should be made to the WET rebate scheme to close loopholes in line with its stated policy intent, however, in relation to the definition of a bulk sale 'bulk' should be defined as a single container exceeding 51 litres at the time of the dealing. Branded cider is commonly sold in 30L and 50L kegs which is more efficient and sustainable than lower capacity alternatives and should be encouraged.

Cider Australia does not support a reduction in the \$500,000 WET rebate cap due to the potential adverse impacts of this measure on cider market development.

Cider Australia believes it would be unfair to reduce support for cider producers, either through reducing the WET rebate cap or tightening eligibility, when inadequate and poorly enforced labelling laws prevent those same producers from competing on a level playing field with producers that use substantially imported ingredients.

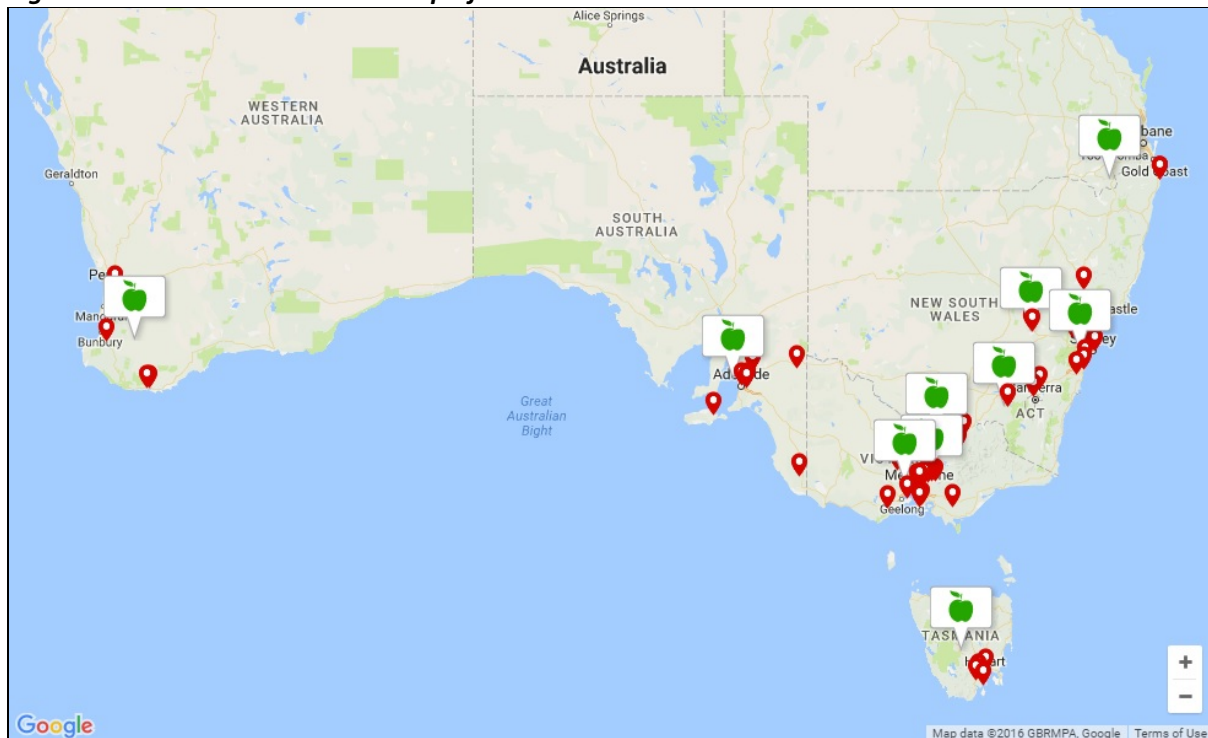
BACKGROUND

Cider Australia represents the interests of the craft cider and perry (also called pear cider) industry in Australia. We have more than 80 member organisations including cider makers, Australian agricultural producers, manufacturers and distributors. Our primary concern is to build a sustainable category through maintaining and improving the quality of ciders produced and marketed in Australia.

Cider Australia defines "Australian craft cider" as cider or perry that is made from 100% Australian grown apple and pear juice³. There are craft cider producers in all of Australia's apple and pear growing regions areas as well as a limited number in urban areas (see figure 1 – the locations of Cider Australia members are shown in red and key cider producing regions in green).

³ Similarly, "International craft cider" is cider and perry made with juice from the UK, New Zealand, or France etc, where the origin of the juice in the cider aligns with the country of origin indicated on the label.

Figure 1: Cider Australia's cider map of Australia



Source: www.cideraustralia.org.au/what-is-cider/australian-cider-map/

The Wine Equalisation Tax (WET) rebate is crucial to the viability of the domestic craft cider industry and the growers and local communities it supports. Continued development of the cider category relies on the quality, diversity and innovation brought about by small and medium sized producers as production evolves and matures in line with consumer demand.

The stated policy intent of the WET rebate is **“to support small wine producers in rural and regional Australia”**. Cider Australia believes the WET rebate is achieving this goal where it is directed to craft cider producers. The craft cider industry supports rural and regional Australia by using local fruit (with various levels of involvement in the fruit supply chain), investing in and using local infrastructure, and supporting local employment and tourism with many businesses having a cellar door facility and featuring in local tourist trails. The production of craft cider in urban areas also supports regional agriculture by using regionally grown fruit.

Cider Australia understands that a substantial portion of the WET rebate is being paid to unintended recipients. To ensure the WET rebate scheme remains sustainable, Cider Australia has supported, and continues to support, reforms to the WET rebate to close loopholes in line with its stated policy intent.

Historically, Cider Australia's position on WET rebate reform has been aligned with that of the Winemakers' Federation of Australia (WFA) and Wine Grape Growers Australia. Cider is a fruit wine, and the cider industry mirrors the wine industry from fruit growing, production and manufacturing through to sales and distribution. However, with the focus now on redefining eligibility for the WET rebate, some important differences between grape wine and cider become relevant and warrant a differentiated policy response.

PROPOSED REFORMS TO WET REBATE

The Federal Government announced the following reforms to the WET rebate in its May 2016 Budget:

- rebate cap to be reduced from \$500k to \$350k on 1 July 2017 and to \$290k on 1 July 2018
- immediate amendments to associated producer provisions to help deter artificial business structuring and multiple rebate claims
- tightened eligibility criteria from 1 July 2019 to limit access to the WET Rebate to:
 - packaged, branded wine which is for sale to domestic consumers; and
 - 'wine producers' with a significant interest in a winery (ie. own a winery or have long term lease over a winery).

The Government indicated that further consultation on implementing the tightened eligibility criteria is required and that this will begin in the coming months. As part of this, the Government will release an implementation paper and hold meetings with stakeholders in major wine producing regions.

The projected savings of the reforms is \$300m over 4 years, of which \$50m over 4 years would be committed to the Australian Grape and Wine Authority to promote wine tourism and exports.

CURRENT WFA POLICY

In its 22 June 2016 report on Board outcomes, WFA advocates the following:

- Retention of the WET rebate cap at \$500,000, believing that the reduction in the cap will have far greater negative impacts on the industry than the Government believed when it implemented the measure in the 2016 Budget.
- the eligibility criteria as announced in the Budget will exclude a significant part of the wine sector that invest in the industry and make an important contribution to regional Australia.

WFA's policy on eligibility remains as it was pre-election:

- Stop the WET rebate going to unintended recipients and shut down the schemes (set up to illegitimately claim the rebate)
- Keep the WET rebate within the original policy intent
- Phase out the WET rebate on bulk and unbranded wine over four years
- Abolish the separate New Zealand rebate scheme
- Encourage consolidation by introducing transitional rebate measures for merged businesses.

OUR POSITION

Reforming WET but not labelling laws is illogical

Cider Australia believes it would be unfair to reduce support for cider producers, either through reducing the WET rebate cap or tightening eligibility for the rebate, when inadequate

and poorly enforced labelling laws prevent those same producers from competing on a level playing field with producers that use substantially imported ingredients. Juice from Australian grown fruit is estimated to cost up to six times more than the comparable amount of imported juice concentrate, providing a significant disincentive for cider producers to use Australian fruit and support Australian industry and regional agricultural communities.

Reducing the WET rebate whilst at the same time not strengthening the labelling laws is disingenuous and could prove catastrophic to craft cider producers and the economies of apple and pear growing regions around Australia. Addressing this market failure by strengthening food labelling standards should be a necessary prerequisite to any major reforms to the WET rebate.

Cider Australia notes that integrity in labelling is not such an issue for the wine industry because it has its own comprehensive wine labelling laws.

Origin of juice is relevant

The origin of the juice in cider is an important factor considering the importance of the WET rebate for many rural and regional communities. Unlike grape wine, Australian cider is made from imported juice concentrate as well as Australian grown fruit (fresh, cold stored or juice concentrate⁴).

Cider Australia estimates that over 85% of cider that is 'Made in Australia'⁵ is actually made from imported juice concentrate. This means that less than 15% of the cider produced in Australia is directly supporting rural and regional orchardists and associated businesses. Few direct benefits arise from the production of cider from imported juice concentrate. However, all cider producers are currently eligible to claim the WET rebate regardless of the origin of the juice.

Definition of 'eligible producer'

Cider Australia believes that the eligibility of cider producers to claim the WET rebate should be directly tied to the use of 100% Australian apple and pear juice. This would effectively target the policy intent of the WET rebate given that craft cider production (using 100% Australian grown fruit) has substantial direct and indirect economic benefits for rural and regional Australia.

Compared to less precise indicators of 'real investment in the industry', for example ownership of production equipment, vines/orchards, stock and cellar door operations⁶, Cider Australia's proposal to tie WET rebate eligibility to the use of 100% Australian juice would also be simpler, more transparent, easier to comply with and easier to enforce.

⁴ Though not common practice, Australian grown fruit can be concentrated to enable cider production to continue across the year and potentially between years.

⁵ Under the new Australia New Zealand Food Standards Code rules on country of origin labelling, 'Made in Australia' simply means that the cider is fermented in Australia and implies nothing about the origin of the juice.

⁶ Cider Australia understands that a group of large wine makers have canvassed eligibility criteria that would require WET rebate recipients to meet at least 3 of the following criteria: own or have a long term lease and operation of: > 5 ha. of vineyard; a winemaking facility; a bottling facility; a cellar door facility; stainless steel tanks and/or oak barrels > 50 kL; and own stock with a value >\$300k at FY end.

With respect to any proposals that seek to tie eligibility to ‘real investment in the industry’, Cider Australia notes the challenges involved in establishing criteria appropriate to all producers given the differences between the grape wine, cider, fruit wine (not including cider) and mead industries. Similar to the wine industry, the cider industry is diverse and has a wide range of businesses with operations spanning various parts of the production chain. For example, some cider producers own orchards but contract out their cider production, some buy juice but ferment their own cider on site, some do everything, and some simply own the cider brand.

To be true to the policy intent of the WET rebate, the definition of an eligible producer must continue to include producers that are heavily invested in supporting regional agriculture, infrastructure and tourism. Adopting prescriptive eligibility criteria related to ‘investment’ and ‘ownership’ could be disastrous for the cider industry and rural and regional communities across Australia if it were to make ineligible for the rebate any craft cider business that uses 100% Australian fruit.

In Cider Australia’s view, as long as a cider is made from 100% Australian apple and pear juice, its production will benefit rural and regional Australia and thus should be eligible for the WET rebate.

Definition of a ‘bulk sale’

Cider Australia supports reforms to the WET rebate to close loopholes in line with its original policy intent including phasing out the rebate on bulk and unbranded sales. While Cider Australia has not seen a formal Government proposal on the threshold for a ‘bulk sale’ or ‘packaged product’, a number of wine industry bodies have stated publicly that the Government will propose ‘bulk’ to be a container of more than five litres, in line with the position of WFA. Such a low threshold would exclude many craft cider producers from eligibility and lead to several distortions in the cider industry.

Cider Australia advocates that ‘bulk’ should be defined as a single container exceeding 51 litres at the time of the dealing. It is a common and highly efficient practice within the cider industry to sell branded cider in 30L and 50L kegs. In terms of efficiency and sustainability, packaging in glass bottles costs up to 3 times more than reusable kegs. Furthermore, packaging cider and perry in kegs is not in any way indicative of a lower quality product. If the definition of rebatable cider and perry were to exclude branded products sold in 30L and 50L kegs, many producers would change to less efficient and more costly packaging with producers and consumers bearing the cost.

Cider Australia understands that there is also growing interest in the wine industry in on-premise dispensing of wine from bulk containers (10, 20, 30 and 50L) as marketing and the technology to produce and use these evolves.

No reduction in cap

Cider Australia, like WFA, does not support a reduction in the WET rebate cap as it would be a serious disincentive to growth, investment and innovation in the category.

Cider Australia has two further reasons for objecting to the proposed cap reductions that are unique to the cider industry:

1. Inadequate labelling laws, as noted above, are preventing small and medium sized cider producers from competing on level playing field with producers that use substantially imported ingredients. The rebate should not be cut without reforms to strengthen integrity in cider labelling laws.
2. The group of cider producers most affected by the proposed cap reductions are medium sized producers who are at, or approaching, the \$500,000 rebate cap⁷. Many of these medium sized producers are likely to be craft producers that use 100% Australian fruit. These producers are purchasing a significant share of the Australian juice market and their continued viability and growth has a crucial bearing on the economic welfare of orchardists and regional and rural communities. In addition, it is these producers who are most influential in marketing craft cider to consumers and driving innovation and value add in the category. A cap reduction would severely constrain growth in this sector of the cider category.

Cider Australia does not support reduction of the WET rebate cap due to the significant potential adverse impacts of this measure on cider market development. Instead, eligibility criteria should be amended so that cider made from 100% Australian apple and pear juice is eligible for the WET rebate and cider made from imported juice concentrate is not eligible.

Consultation on the reforms

The Government has indicated it will hold meetings with stakeholders in major wine producing regions. Ideally, **one or more meetings should also be held in apple and pear growing regions** so that producers can put the relevance of the cider industry to the Government.

⁷ Cider Australia understands that most small producers (which make up the majority of cider producers in total numbers) claim well below both the current \$500,000 rebate cap and the proposed lower caps, and are unlikely to be impacted in the short term. Large producers would receive a reduced rebate under the reforms, but have a much greater capacity to offset this reduction than medium sized producers.

ATTACHMENT B

CIDER AUSTRALIA'S PROPOSED DEFINITION OF CIDER

There are two different definitions for cider and perry used in Commonwealth legislation. Thus, many products defined as cider and perry under tax law are not similarly defined under food standards, and vice versa.

Narrowing the definition of cider and perry in Standard 2.7.3 of the Australia New Zealand Food Standards Code would more closely align what is stated on the label with consumer expectations about the product, industry practices and the regulatory approach in comparable international markets.

Cider Australia's proposes that cider/perry be defined as a food prepared from the complete or partial fermentation of the juice of must of apples/pears and no more than 25% of the juice or must of pears/apples, and must not contain:

- a) **any flavours other than apple and/or pear** (ie. fruits and fruit flavours (natural or artificial) other than apple and/or pear, vegetables and vegetable flavours (natural or artificial), grains, cereals, honey and spices)
- b) **alcohol specifically to increase ABV, except where necessary for the production of cider**⁸
- c) **less than 50% by weight of apple and/or pear juice and juice products.**

means a food prepared from the complete or partial fermentation of the juice or must of apples and no more than 25% of the juice or must of pears. It may contain

The intention of (b) is to not permit alcohol additions, but recognises that some widely accepted additives and processing aids may contain alcohol (such as apple/pear aromas). Cider Australia could assist in defining the list of permitted alcohol additions.

In relation to naming products, a blend of cider/perry with other fruit (for example quince) should be labelled 'cider & quince' or 'cider with quince' or similar, but never 'quince cider'. Products that do not meet the 75:25 juice ratio should indicate the product contains both ingredients and be labelled 'apple and pear' cider or similar.

Cider Australia has informally consulted with New Zealand on the proposed definition and New Zealand has indicated general support for the proposals.

Table 1 provides a comparison of cider definitions in key cider producing countries.

⁸ 'where necessary for the production of cider' is a term borrowed from UK Custom's Notice 162.

Table 1: International comparison of cider product classification (note this information is incomplete and unverified)

| Country | Instrument | ABV* | Labelling requirement | Production method | Juice % (fresh and equiv.) | Juice type | Water | Sugar | Added alcohol | Additives to colour and flavour | Added CO2 (g/l) |
|---------------------------|------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|-------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|-------|-------|----------------------------------------------|------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| Australia | WET | Cider: 1.15-8% If 8-22% is fruit or vegetable wine | No | Complete or partial fermentation | No | Apple and pear only If >8% and contains other juice is defined as fruit or vegetable wine | Yes | Yes | No ethyl alcohol added from any other source | No flavours (such as lemon or blackcurrant) or anything that may add colour (such as caramel or cochineal) | Yes |
| Australia and New Zealand | FSANZ (Standard 2.7.3) | | ABV, std drinks and restrictions on claiming a product is non-intoxicating' or 'non-alcoholic'. | Complete or partial fermentation of fruit, vegetable, grains, cereals. | No | 75:25 and 25:75 ratio for cider and perry, but can add other fruit and vegetable juices | Yes | Yes | Yes | Vegetable juice and vegetable juice products; honey; spices | Yes |
| US | Internal Revenue | Cider (a form of still wine): 0.5-7% If above 7% is taxed like wine Legislation is before Parl to increase permitted ABV from 7 to 8.5%. | [must be able to identify tax class from label??] Food and Drug Admin. responsible for cider labelling. Alcohol and Tobacco Trade and Tax Bureau | ? | Apple juice or equiv.⁹ > 50% vol. finished product | Apple only. Legislation is before Parl to permit pear. | Yes | Yes | ? | No other fruit or artificial product which imparts a fruit flavour other than apple | Still wine : <3.92 If above this is taxed like champagne Legislation is before Parl to increase permitte |

⁹ 'equivalent' means reconstituted to original brix of the juice prior to concentration.

| Country | Instrument | ABV* | Labelling requirement | Production method | Juice % (fresh and equiv.) | Juice type | Water | Sugar | Added alcohol | Additives to colour and flavour | Added CO2 (g/l) |
|--------------------------|----------------------------------|---------|---------------------------------------------------------|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| | | | responsible for fruit wine labelling. | | | | | | | | d carbonation level |
| Republic of South Africa | Liquor Products Act 1989 | 2.5-15% | Yes – must put category of beverage on the label | 'Generally accepted production processes' only | No | Apple to pear juice ratio 75:25 and 25:75 for cider and perry | Yes | Only if added: (i) before alcoholic fermentation only to such an extent that not more than 20 per cent of the fermentable sugars are derived therefrom; or (ii) after completion or termination of alcoholic fermentation to sweeten the final product and to a maximum of 100 g/l, calculated as reducing sugar | Only spirit derived from apples or pears | Yes some permitted (ie caramel) | Yes |
| UK | Alcoholic Liquor Duties Act 1979 | 1.2-8.5 | Voluntary Code | Fermentation of apple or pear juice | 35% apple or pear juice by volume of minimum 1033 degrees specific gravity in pre-fermentation mixture and in the final product | 75:25 and 25:75 ratio for cider and perry | Yes | Yes | No | Colours to make straw/gold/golden brown. No herbs or spices, or fruit juices other than apple or pear, or for flavours of any type other than those specified in section 25. | If (1) above three bars or more at 20°C, or (2) contained in a closed bottle with a 'mushro |

| Country | Instrument | ABV* | Labelling requirement | Production method | Juice % (fresh and equiv.) | Juice type | Water | Sugar | Added alcohol | Additives to colour and flavour | Added CO2 (g/l) |
|-------------------------|-----------------------------------------|--------------------------------|----------------------------------------|-------------------------------------|-------------------------------------------------|--------------------------------|-------|-------------|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| | | | | | | | | | | | om shaped stopper' held in place by a tie or fastening , is taxed like champagne. |
| Ireland | Finance Act 2003 | 1.2-15 | | Fermentation of apple or pear juice | | Apple or pear | | | No | No other beverage or substance which imparts colour or flavour and which, by such addition in the opinion of the Commissioners significantly alters the character of the product (this is interpreted to exclude the addition of all other fruit juices or fruit flavours apart from apple and pear) | |
| Germany | | Min 5 | | | [Minimum 95% juice content] | | | Yes (limit) | | Caramel | |
| Spain (Asturias) | | | | | [Minimum 50% juice content] (100% juice) | | | | | | |
| France (see | Stricter rules for 'cidre' (ie. max 10% | Min 1.5 (or 3 for sweet cider) | Yes (cannot be sold as 'cider' if does | Exclusively from the fermentation | [Min 50% juice] | Apple or apple and pear juices | Yes | No | | Cochineal and caramel | |

| Country | Instrument | ABV* | Labelling requirement | Production method | Juice % (fresh and equiv.) | Juice type | Water | Sugar | Added alcohol | Additives to colour and flavour | Added CO2 (g/l) |
|-----------------------------------------------------------------------------------------------------------------|-------------------------------------|---------|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|-------------------|-------|-------|---------------|---------------------------------|------------------------------------------------|
| http://www.info-cidre.com/ | concentrate and no other additives) | | not meet definition) | of apple or apple and pear juices | May add up to 50% concentrate | | | | | | |
| Denmark | Regulation of Fruit Juice | Min 0.4 | | | Min 15% of final product | Apple and/or pear | Yes | Yes | No | | |
| Sweden | | | | | Min 15% of final product | | | | | | |
| European Cider and Fruit Wine Association (AICV) – lobbies on EU regulation (represents 10 EU member countries) | Code of Practice | 1.2-8.5 | | Cider and perry are derived by the fermentation of the juices of apples or pears, respectively, without at any time adding distilled alcohol | | | | | No | No | No artificial carbonation for draught products |