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Savannah Billingham-Hemminger

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RESOLVING DISPUTES BEFORE THEY DECANT: AN ALTERNATIVE DISPUTE RESOLUTION SYSTEM FOR GROWERS AND WINE PRODUCERS

Savannah Billingham-Hemminger*

I. INTRODUCTION

When you sit down to drink a glass of wine, there is more in it than fermented juice—there is a journey. This journey involves multiple parties such as the grape grower, the wine producer, the wholesaler, and the retailer.¹ This journey is important because there is a vast legal edifice that shapes the story of what is in the bottle, including the price. These legal disputes, categorized under wine law, can increase the production cost and in turn cause the price to go up for consumers.²

Generally, wine law is a niche market that, while small, has many moving parts and covers a broad range of topics and instruments.³ Within the international realm, wine law can cover treaties and trade, but in the national arenas, it spans from employment concerns to contracts, and intellectual property to healthcare issues.⁴ In the U.S., lawyers in this industry typically deal with contract disputes.⁵ The disputes

*Savannah Billingham-Hemminger is a third year law student at Pepperdine Caruso School of Law. She is currently Editor-in-Chief of the Pepperdine Dispute Resolution Law Journal. Volume XX.

¹ Katie Eigel, *How Wine is Made: From Grapes to Glass*, WINE FOLLY (Sep. 10, 2019), <https://winefolly.com/review/how-wine-is-made-in-pictures/>.

² See Zoe Wood, *Wine Prices to Rise as Bad Weather Brings Worst Harvest for 50 Years*, THE GUARDIAN (Mar. 9, 2018, 11:35 EST), <https://www.theguardian.com/business/2018/mar/09/wine-prices-to-rise-as-bad-weather-brings-worst-harvest-for-50-years> (showing how the increase of production cost causes an increase in the price of the bottle).

³ Thomas H. Schmitz, *Welcome to IWLA*, AIDV INT'L WINE LAW ASS'N (2016), <https://www.aidv.org/index-en.html>.

⁴ See *id.*

⁵ See *Wine Law*, DICKENSON PEATMAN & FOGARTY (2018), <https://www.dpf-law.com/practices/wine-law/>; *Wine*, COBLENTZ PATCH DUFFY & BASS LLP (2018), <https://www.coblentzlaw.com/industry/wine/>.

arise most often in relationships between grape growers and wine producers.⁶ There is no uniform way to address these disputes, which can impact the wine industry nationally if left unaddressed.

The impact on the wine industry is important because of the robust size of the market—the U.S. being the fourth largest producer of wine in the world.⁷ Out of this production, roughly 80% of bottles produced stay within the American economy for purchase and consumption.⁸ Furthermore, the demand for these wines has increased over time, with wine controlling about 18% of the U.S. alcohol consumption market,⁹ and a growing demand for premium or ultra-premium wines by consumers.¹⁰ Additionally, the consumer preferences in the U.S. tend to be focused on fruit-forward, consistent wines, which often come from the “New World” growing regions such as the U.S. and Australia.¹¹ As a result, grape growers, particularly in Washington, Oregon, California, and New York, are trying to increase production while also maintaining their commitment to quality in order to meet consumer demand.¹² Striking this balance puts strain on the various parties involved from grape to bottle in order to create an efficient process with little excess costs.

Because of the bifurcation of wine production and grape growing, each bottle of wine produced involves at least two organizations’ intensive involvement and processes.¹³ With an increase in hands involved from grape growers to the bottle, the

⁶ See *Grape Supply, Winemaking and Contract Law: The Perfect Blend*, MELLOR OLSSON, <http://www.mellorolsson.com.au/news/grape-supply-winemaking-and-contract-law-the-perfect-blend> (last visited Jan. 26, 2019) [hereinafter *Grape Supply*].

⁷ *California Wines Profile*, WINE INSTITUTE (2017), https://www.wineinstitute.org/files/Wine_Institute_EIR-CA_Wine_Profile_2018_Wine_Institute.pdf.

⁸ Rachel E. Goodhue, Richard D. Green, Dale M. Heien, & Philip L. Martin, *California Wine Industry Evolving to Compete in 21st Century*, 62 CAL. AGRIC. 12, 13 (2008), accessible at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.491.8268&rep=rep1&type=pdf> [hereinafter Goodhue, *California Wine Industry*].

⁹ Julian M. Alston, James T. Lapsley, & Olena Sambucci, *Chapter 8. Grape and Wine Production in California*, at 21 ARE UPDATE (2018), https://s.giannini.ucop.edu/uploads/giannini_public/a1/1e/a11eb90f-af2a-4deb-ae58-9af60ce6aa40/grape_and_wine_production.pdf.

¹⁰ “Premium” wines in this 1995–2006 study were bottles between \$3 and \$7 while “Ultra-Premium” were bottles above \$14. Rachael E. Goodhue, Richard D. Green, Dale M. Heien, & Philip L. Martin, *Current Economic Trends in the California Wine Industry*, 11 AGRIC. & RES. ECON. UPDATE 1, 3 (2008) (accessible at https://www.agmrc.org/media/cms/v11n4_2_A0F001EC0D0A3.pdf) [hereinafter Goodhue, *Current Economic Trends*].

¹¹ See Goodhue, *California Wine Industry*, *supra* note 8, at 13–14. See also *The Guide to Old World Wine vs. New World Wines*, VINEPAIR, <https://vinepair.com/wine-101/guide-old-world-vs-new-world-wines/> (last visited Jan. 26, 2019) and Madeline Puckette, *The Real Differences Between New World and Old World Wine*, WINE FOLLY (Aug. 21, 2012), <https://winefolly.com/review/new-world-vs-old-world-wine/>, for a description of “New World” growing regions including the U.S. and how they generally involve bolder fruit flavors and a higher alcohol content than “Old World” growing regions. Oftentimes there is a preference for one or the other due to the general stylistic differences. *Id.*

¹² See Rob McMillan, *State of the Wine Industry 2018*, SILICON VALLEY BANK 1, 40–41 (2018), <https://www.svb.com/globalassets/library/images/svb-2018-wine-report.pdf>.

¹³ Alston, *supra* note 9, at 17. Often, these grape growers often cooperate with a local organization to facilitate the grape selling process. *Id.* See e.g., NAPA VALLEY GRAPE GROWERS, <https://napagrowers.org/industryissues>

number of potential disputes naturally rises as well. Due to the trend described above, wine producers hold significantly more bargaining power than grape growers because they determine the demanded grape quality and price points.¹⁴ This imbalance occurs because grape contracts are typically short, have insufficient detail, and lack legal advisement on the side of the grape grower due to the limited excess cash flow in such a capital-intensive industry.¹⁵ Many are not even written contracts because a relationship was previously formed or the expense of doing so is deemed to be unnecessary—resulting in unprotected parties.¹⁶

With the unique balance of the relationship between grape-growers and wine-producers, the industry in the U.S., specifically in California, should implement a dispute resolution mechanism in an effort to create efficient, uniform, and expedient outcomes. This mechanism can be used nationwide; however, this paper focuses on California as a starting point because it is the largest producer of wine in the U.S. (81%)—one of the largest producing countries in the world.¹⁷ As a comparative example, Australia’s Code of Conduct¹⁸ is used to determine the scope, power, and extent of this mechanism.¹⁹ Finally, its other implications will be analyzed because the idea can have further applications to other volatile industries such as the California Processed Fruit and Vegetable Industry.²⁰

(last visited Jan. 26, 2019); SONOMA COUNTY WINEGRAPE COMMISSION, <https://sonomawinegrape.org/> (last visited Jan. 26, 2019).

¹⁴ See *Grape Supply*, *supra* note 6, for an explanation of the tension that can be put on contractual relationships and potential imbalance of negotiation power.

¹⁵ See Cary Blake, *8 Keys to a Better Wine Grape Grower Contract*, WESTERN FARM PRESS (May 22, 2013), <https://www.westernfarmpress.com/orchard-crops/8-keys-better-wine-grape-grower-contract> (discussing how 95% of prepared contracts are by the attorneys on the side of the winery rather than the grape grower). See also Jane Firstenfeld, *Mediation for Wine Industry Disputes*, WINES AND VINES ANALYTICS (Feb. 7, 2011), <https://www.winesandvines.com/news/article/83772/Mediation-for-Wine-Industry-Disputes> (noting in an interview that often the parties don’t have the budgetary means for legal expenses that may arise).

¹⁶ Rachel E. Goodhue, Dale M. Heien, Hyunok Lee, & Daniel A. Sumner, *Contract Use Widespread In Wine Grape Industry*, 56 CAL. AGRIC. 97, 99 (2002), accessible at <http://calag.ucanr.edu/Archive/?article=ca.v056n03p97> [hereinafter Goodhue, *Contract Use Widespread*].

¹⁷ *California Wines Profile*, WINE INSTITUTE (2019), https://www.wineinstitute.org/files/WI.EIR_WineProfile.2019.WI_.pdf.

¹⁸ *Dispute Resolution: Disputes over Winegrape Price*, WINE INDUSTRY CODE, http://www.wineindustrycode.org/Dispute_Resolution.html (last visited Jan. 26, 2019).

¹⁹ *Id.*

²⁰ Mahlon G. Lang, *The California Processed Fruit and Vegetable Industry: Information for Mediators Bargaining Disputes Between Growers and Processors* 3 (CENTER FOR COOPERATIVES 1999), <http://sfp.ucdavis.edu/files/143775.pdf>. See also Washington Wine Industry Foundation, *Getting Paid: Tools for Washington Grape Growers* 1, 22 (WASHINGTON WINE FOUNDATION 2015), http://washingtonwinefoundation.org/wp-content/uploads/2015/12/GettingPaid_FINAL_lowres.pdf (noting how growing grapes is one of multiple agriculture activities that is impacted, but also covered by statutory protections).

II. SIGNIFICANCE OF TOPIC

As the fourth largest producer of wine in the world,²¹ the U.S. produced over 806 million gallons of wine in 2016.²² Of that, California alone produced over 680 million gallons, resulting from around 600,000 acres of wine grapes.²³ As the largest wine-producing state, it celebrates the most developed market in the U.S. with its roots going back to some 400 years ago.²⁴ However, it is a younger industry than others around the world, especially compared to France, which is shown by the fact that a majority of today's U.S. grape varieties were imported from France and other European countries in the late 1800s.²⁵ While grapes can grow in many environments, where they are grown and picked is of utmost importance.²⁶ The French refer to the area in which grapes grow as "terroir"; it is the land, climate, soil, sun exposure, and many other factors in an area that they believe are determinative of quality in the resulting wine.²⁷ Thus, the higher quality of wine a producer wants to make, the more important it is to purchase grapes from a specific region, or in the U.S.'s case, American Viticultural Area (AVA).²⁸

AVAs are listed on labels when at least 85% of the grapes used in the wine were grown in that AVA, amongst other federal requirements.²⁹ AVAs are generally small geographic regions due to the fluctuating factors that can determine the preferred growing conditions—varying even within a mile span.³⁰ As an example, California has nearly 140 AVAs that span over 58 counties.³¹ While American consumers do

²¹ *California Wines Profile*, *supra* note 17.

²² *US / California Wine Production*, WINE INSTITUTE (July 12, 2017), <https://www.wineinstitute.org/resources/statistics/article83>.

²³ *See California Wines Profile*, *supra* note 17; *California Grape Acreage Report, 2017 Summary* (USDA 2018),

https://www.nass.usda.gov/Statistics_by_State/California/Publications/Specialty_and_Other_Releases/Grapes/.

²⁴ KEVIN ZRALY, *WINDOWS ON THE WORLD COMPLETE WINE COURSE 76* (Sterling, 2014 ed.).

²⁵ *See id.* at 77–80. *See also* 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, 91 (2016) (noting that appellations, including AVAs, are not just regulations to promote wine, but also a way to "preserve and defend" the product and quality). Mohan mentions later that the wine rules and regulations affect economic interests by means of wine production, channels, and sales. *Id.* at 97.

²⁶ *Grapes*, AGMRC AGRICULTURAL MARKETING RECOURSE CENTER (April 2019), <https://www.agmrc.org/commodities-products/fruits/grapes>.

²⁷ Brian Rose, *No More Whining About Geographical Indications: Assessing the 2005 Agreement Between the United States and the European Community on the Trade in Wine*, 29 *HOUS. J. INT'L L.* 731, 733–34 (2007).

²⁸ *See Appellation of Origin & American Viticultural Areas*, WINE INSTITUTE, <https://www.wineinstitute.org/resources/avas> (last visited Oct. 24, 2018).

²⁹ *See id.* *See also* 27 C.F.R. §4.25. Appellations of Origin under Title 27 of the Code of Federal Regulations for further requirements to put the AVA on the label (accessible at https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=33fc0c0194b58b6fe95208945b5c637a&rgn=div5&view=text&node=27:1.0.1.1.2&idno=27#se27.1.4_125).

³⁰ Tere Williams, *What Is An AVA & What Is It For?*, Celebrations Wine Club (2019), <https://www.celebrationswineclub.com/what-is-an-ava-and-what-is-it-for/>.

³¹ *See Appellation of Origin*, *supra* note 28.

not rely on this geographic indication in the U.S. nearly as much as in other countries, it remains an important ability for wine producers to have this designation on their bottles.³²

These designations were not taken seriously by “Old World” countries until the so-called “Judgement of Paris” changed the world’s mind—particularly about Napa Valley.³³ This event was a blind tasting where French judges unknowingly chose a California wine as their favorite amongst various French wines.³⁴ Since then, the U.S. wine industry has grown dramatically,³⁵ and in California specifically, more wineries have started and more grapes than ever are being grown.³⁶

As discussed earlier, there is a lack of uniformity across not only the global industry, but even regional industry as to wine dispute resolution.³⁷ Further, with the extreme volatility of grapes when they are being sold,³⁸ it is important to have an expedient option for disputes arising during the contract. This is especially significant in California with the rise of wildfires and their effect on grapes, referred to as “smoke taint”.³⁹ The smoke taint disputes relate directly back to the contract and therefore could be assisted with an alternative dispute resolution mechanism.⁴⁰ Therefore, a uniform system of dispute resolution can transform the U.S. wine industry to address common issues arising out of the vast contractual relationships, while also increasing the efficiency and balancing power between the grower-producer relationship.⁴¹

³² See *id.* See also Rose, *supra* note 27, at 733; Mohan, *supra* note 25, at 91.

³³ Gideon Rachman, *The Globe in a Glass*, THE ECONOMIST (Dec. 16, 1999), <https://www.economist.com/special-report/1999/12/16/the-globe-in-a-glass>.

³⁴ Maria Godoy, *The Judgement of Paris: The Blind Taste Test that Decanted the Wine World*, NPR (May 24, 2016), <https://www.npr.org/sections/thesalt/2016/05/24/479163882/the-judgment-of-paris-the-blind-taste-test-that-decanted-the-wine-world?t=1541794917130>; see Mohan, *supra* note 23, at 98–99.

³⁵ See Godoy, *supra* note 34.

³⁶ Goodhue, *Current Economic Trends*, *supra* note, at 8. See also Katy Steinmetz, *How America Kicked France in the Pants and Changed the World of Wine Forever*, TIME (May 24, 2016), <http://time.com/4342433/judgment-of-paris-time-magazine-anniversary/>.

³⁷ See Washington Wine Industry Foundation, *supra* note 20, at 16 (outlining that when not paid, the list of options in order of formality include: referring to the contract, sending an invoice, calling/send letters, notice of lien, demand letter from a lawyer, and finally litigation).

³⁸ *Id.* at 22 (remarking that two days can make a huge difference in the price of produce).

³⁹ See Michael Alberty, *California Winery Blames ‘Smoke Taint’ from Wildfires in Canceling Rogue Valley Grape Contracts*, THE OREGONIAN, Oct. 1, 2018; Henry Lutz, *100-Point Napa Valley Winemaker Sued in Smoke Taint Dispute*, NAPA VALLEY REGISTER, Apr. 12, 2018; Esther Mobley, *Smoke Dispute Puts Grape Growers at Risk*, S. F. CHRON., Oct. 6, 2018, at A1.

⁴⁰ See Alberty, Lutz, Mobley, *supra* note 39.

⁴¹ See Simon Somogyi, Amos Gyau, Elton Li, & Johan Bruwer, *Enhancing Long-Term Grape Grower/Winery Relationships in the Australian Wine Industry*, 22 INT’L J. OF WINE BUS. RES. 27 (2010), <https://www.emeraldinsight.com/doi/full/10.1108/17511061011035189>.

III. BACKGROUND

A. Typical Process of Grape Growing and Selling

It is common practice in California, and all over the world, to have separate entities growing the grapes and producing the wine.⁴² As a result, wine producers typically contract their grapes from particular growers in the desired region of their grape.⁴³ As discussed earlier, this is important for labeling because such geographical categorization is indicative of an expected quality and is required by law.⁴⁴ However, this is also a limitation because there is no international uniformity in geographic or qualitative labeling.⁴⁵

For example, while the U.S. uses AVAs, Italy has a tiered system consisting of “DOCG,” “DOC,” and “IG,” which are government guarantees of printed origin.⁴⁶ In France there is a similar tiered system of appellations of origin called “AOC.”⁴⁷ Further, the EU has a geographical indication scheme that started in 1989 in which all EU countries must comply.⁴⁸ However, there is still variation between EU countries and other countries. In fact, there was even a twenty-two year “wine war” over such lack of uniformity between the U.S. and the EU.⁴⁹ As a third comparison, Australia’s classification system is legislative-heavy, strictly regulated by statutes based upon region or sub-region, much like the U.S.⁵⁰ The Wine Australia Corporation Act requires that when labeling a bottle, the origin of all the grapes used in the bottle should be included on the label in order to conform with all other countries’ labelling requirements.⁵¹ While different countries have different statutory requirements, many have some form of geographical labelling obligation that represents at least a majority of the grapes’ origins in any given bottle.⁵²

The labelling requirements make grapes very important when a winery chooses to contract with a grower.⁵³ The timing of contracts varies from relationship to relationship.⁵⁴ Some grape growers have an oral contract with a wine producer as

⁴² See *id.*

⁴³ See *Grape Purchase Agreement*, OKLA. ST. UNIV. (2014), <http://www.grapes.okstate.edu/PDFs/2014/grape-purchase-agreement/view>. See also *Grape Supply*, *supra* note 6.

⁴⁴ See *Appellation of Origin*, *supra* note 28. See e.g., Peter Mitham, *Elouan Wines Draw Ire in Oregon Over Labeling*, WINES & VINES (Sept. 18, 2018), <https://www.winesandvines.com/news/article/203507/Elouan-Wines-Draw-Ire-in-Oregon-Over-Labeling>.

⁴⁵ Rose, *supra* note 27, at 731–33 (2007). See also Mitham, *supra* note 44.

⁴⁶ Madeline Puckette, *Looking for Good Wine? Start with the Appellation*, WINE FOLLY (Apr. 8, 2015), <https://winefolly.com/review/looking-for-good-wine-start-with-the-appellation/>.

⁴⁷ Rose, *supra* note 27, at 743–44.

⁴⁸ *Id.* at 743–44.

⁴⁹ *Id.* at 731.

⁵⁰ *Geographical Indications*, WINE AUSTRALIA, <https://www.wineaustralia.com/labelling/register-of-protected-gis-and-other-terms/geographical-indications> (last visited Jan. 2, 2019). See Mohan, *supra* note 25, at 93.

⁵¹ *Wine Australia Corporation Act 1980* (Cth) pt VIA div 2 (Austl.).

⁵² See Rose, *supra* note 27, at 742–46; Puckette, *supra* note 46; *Geographical Indications*, *supra* note 50.

⁵³ See discussion *supra* Part III.A.

⁵⁴ See Goodhue et. al., *supra* note 8, at 99.

part of a previous discussion or a developing relationship.⁵⁵ Some are renewable written contracts referred to as “evergreen” contracts in the industry.⁵⁶ Sometimes the contracts and relationships are made quickly as a replacement for any issues that arise with a current grape grower.⁵⁷ The point is that there is no industry expectation, and written contracts alone are not necessarily standard practice.⁵⁸ When written contracts exist, there is typically a description of the expectation of the grape quality, or what the grapes have to be like in order for performance to be fulfilled.⁵⁹ What is less likely, but also sometimes included, is a method to measure the grapes’ quality to determine that they meet the described expectation.⁶⁰ There are a few types of methods that are commonly chosen to do this.⁶¹

However, whenever produce is involved, there is always a concern of volatility because of shelf-life depreciation.⁶² As a result, when disputes arise, it puts the grower in unfair positioning because the growth of grapes has a degree of uncontrollable behavior that impacts “quality” and the amount of compensation they can receive.⁶³ Another example of a more serious dispute relates to environmental issues that could or have affected the grape product before being given to the producer.⁶⁴ This has become a pertinent issue with wildfires in California, and is a highly debated topic regarding its effect on grapes.⁶⁵ With many things that could seemingly go wrong, it is important to have a way to resolve issues when terms of the contract have changed due to a perceived lesser quality of the grape or a change in price.⁶⁶

⁵⁵ See Goodhue et. al., *supra* note 16, at 99.

⁵⁶ Blake, *supra* note 15; Carol K. Ritter, *Grape Purchase Agreements: Why a Handshake Still Matters*, LAKE COUNTY WINEGRAPE COMMISSION SEMINAR SERIES (Mar. 13, 2014), <https://www.lakecountywinegrape.org/wp-content/uploads/2013/10/Momentum-March-13-Carol-Kingery-Ritter.pdf>.

⁵⁷ See Ritter, *supra* note 56 (mentioning that no contract can account for mother nature, and therefore suggesting the consideration of the grower’s response to such issue).

⁵⁸ Goodhue et. al., *supra* note 16, at 98–100. See also Washington Wine Industry Foundation, *supra* note 20, at 8.

⁵⁹ Ritter, *supra* note 56; Goodhue et. al., *supra* note 16, at 99.

⁶⁰ See Ritter, *supra* note 56; Goodhue et. al., *supra* note 16, at 98–99.

⁶¹ Goodhue et. al., *supra* note 16, at 99.

⁶² Melvin Cheah, *The Producer’s Lien: An Often Overlooked Legal Remedy in Grape Contract Disputes*, DICKENSON, PEATMAN & FOGARTY: LEX VINI (Apr. 6, 2011, 4:47 PM), <https://www.dpf-law.com/blogs/lex-vini/the-producers-lien-an-often-overlooked-legal-remedy-in-grape-contract-disputes/> (explaining that oftentimes it is already turned into wine by the time a lien can be utilized in foreclosure proceedings); David Balter, *Grape Grower’s Liens - Their Uses and Limitations*, CONTRA COSTA LAWYER (Oct. 1, 2013), <http://cclawyer.cccba.org/2013/10/grape-growers-liens-their-uses-and-limitations/>.

⁶³ Janice Fuhrman, *Who Rules in Napa? The Wine Makers or the Grape Growers?*, DECANTER (Jan. 16, 2009), <https://www.decanter.com/features/who-rules-in-napa-the-wine-makers-or-the-grape-growers-246864/>.

⁶⁴ Kerana Todorov & Cyril Penn, *Large Wineries Are Rejecting Smoke Exposed Lake and Mendocino County Grapes*, WINE BUSINESS (Sept. 20, 2018), <https://www.winebusiness.com/news/?go=getArticle&dataid=203607>; See McMillan, *supra* note 12, at 39.

⁶⁵ See Todorov & Penn, *supra* note 64; Alberty, *supra* note 39; see also Lutz, *supra* note 39.

⁶⁶ This solution addresses the main disputes that arise in contracts: non-payment or lesser payment due to an alleged breach of contract based upon the agreed “quality” expected by the wine producer.

B. How Disputes are Currently Resolved

The way in which the current dispute resolution system works varies between counties, contracts, and wineries.⁶⁷ It also depends on preferences of the parties involved in the disputes, and the decisions they make during the process.⁶⁸ Generally, the options below appear to be the most viable for grape growers.

When planned for ahead of time, growers can prepare themselves to utilize grower's or producer's liens in order to ensure payment from the buyer.⁶⁹ In California, there is a statutory lien available to all growers,⁷⁰ however, all too often growers waive this right in the contract—unaware of its purpose.⁷¹ The lien functions as any other by allowing judicial foreclosure, which often takes months, but takes priority over many other security interests.⁷² If it is not waived, the grower must not be paid, deliver the grapes, and then proceed with a judicial foreclosure on the grapes.⁷³ Not only does this take a while, but sometimes the repossessed product is a processed version of the grapes such as juice or even wine.⁷⁴ They can try to get a preliminary injunction to prevent any destruction of the wine during the process, but this is not guaranteed.⁷⁵ Processed grapes further complicate things because of licensing issues involved in selling wine in California.⁷⁶ Thus, when the returned product is wine, the grower must have some licensing in order to sell it for return. It is even more difficult, however, when the grapes, juice, or wine is sold to a third party, or already mixed with grapes from another winery.⁷⁷ This common outcome can prove to be very difficult in receiving any remuneration from exercising the lien.⁷⁸

Some parties prepare careful contracts to avoid these issues through adding a provision dealing with disputes regarding the grapes. For example, a common approach is using a certified or authorized “weigher” of the grapes who utilizes reports such as the National Agricultural Statistics Service's crush report to determine characteristics.⁷⁹ The weigher looks at whatever characteristics were specified in the contract and uses these reports to measure those desired

⁶⁷ Compare Firstenfeld, *supra* note 15, with *Dispute Resolution: Disputes over Winegrape Price*, *supra* note 17.

⁶⁸ Firstenfeld, *supra* note 15.

⁶⁹ See Cheah, *supra* note 62. See also Balter, *supra* note 62.

⁷⁰ CAL. FOOD & AGRIC. CODE § 55631 (West 2017).

⁷¹ Balter, *supra* note 62.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* See *Bronco Wine Co. v. Frank A. Logoluso Farms*, 214 Cal. App. 3d 699, 703 (1989) (mentioning how grapes from different contracts were mixed together after receipt and the wine sold was as one “undifferentiated product of good quality”). While this was not a major issue in the case, had the party invoked the grower's lien, it may have been a problem.

⁷⁸ Ritter, *supra* note 56, at 13.

⁷⁹ Blake, *supra* note 15; see also *Washington Wine Industry Foundation*, *supra* note 20, at 13 (explaining the process in which weight is used to determine the fulfillment of the grower's obligation).

characteristics such as brix (sugar in the grape), tonnage, and other aspects based on varietal, the type of grape grown.⁸⁰ This is usually a good route for grape growers when utilized, however, it is still relatively uncommon to include such details in the contract and adds costs.⁸¹

The last, but what would often be the first considered solution, is turning to the courts. This is generally not a preferred method for participants in the winemaking industry due to the expense, duration, and complexity of the process.⁸² Lawyers are a form of gatekeeper to ensure that parties are aware of the expense of lawsuits and will suggest other methods first.⁸³ As a result, there is a lack of case law regarding these disputes, however, some does exist.⁸⁴

One way in which alternative dispute resolution has been introduced is in one county where a man started a mediation practice helping with disputes that arise during the contract between grape growers and wine producers.⁸⁵ He is a lawyer and grape grower himself, so he understands that litigation is not optimal when disputes arise.⁸⁶ However, this is a specific example that does not exist in many areas.

Overall, while there are different options for grape growers, there is no clear and obvious choice for dispute resolution. Furthermore, there is a lack of uniformity that adds confusion into the mix of often stressful situations.⁸⁷ The U.S., and especially California, would benefit from a dispute resolution mechanism that addresses the needs of such a volatile industry. The first place to look for this is within the Australian Code of Conduct.

IV. PROPOSED SOLUTION FOR RESOLVING DISPUTES

A. *A Breakdown of the Dispute Resolution System in Australia*

One solution that has been created to avoid the problems experienced between grape growers and wine producers in Australia is the Australian Code of Conduct (the Code).⁸⁸ The Code was launched in December 2008 with the intention to: “. . . establish a common Australian winegrape supply contract framework and secondly,

⁸⁰ Ritter, *supra* note 56, at 8, 10.

⁸¹ See, e.g., *Grape Purchase Agreement*, *supra* note 43; Blake, *supra* note 15.

⁸² See Firstenfeld, *supra* note 15 (noting that grape growers often don't have the budget for court proceedings, and that litigators who are aware of this act as gatekeepers of the court by suggesting alternative resolution methods first).

⁸³ See *Grape Supply*, *supra* note 6.

⁸⁴ See *Bronco Wine Co.*, 214 Cal. App. 3d at 703; *Allied Grape Growers v. Bronco Wine Co.*, 203 Cal. App. 3d 432 (1988) (holding in favor of the grape grower in a case revolving around downgrading grapes to pay less); *Leonhart v. California Wine Ass'n*, 5 Cal. App. 19 (1907).

⁸⁵ Firstenfeld, *supra* note 15.

⁸⁶ See *id.* (noting that when it comes to mediation working, “. . . grape contracts spring most readily to mind. . .”).

⁸⁷ See Cheah, *supra* note 62; Balter, *supra* note 62; Firstenfeld, *supra* note 15; *Grape Supply*, *supra* note 6.

⁸⁸ *Introduction, WINE INDUSTRY CODE*, http://www.wineindustrycode.org/online_code.html (last visited Jan. 26, 2019) [hereinafter *Code of Conduct*].

to provide a dispute resolution system to manage disagreements which exist over price or quality assessments.”⁸⁹ Written by the Wine Grape Grower’s Association (WGGA) and the Winemakers’ Federation of Australia (WFA), the Code of Conduct is similar to the structure of international arbitration where parties are signatories and therefore consent to the dispute resolution system in place.⁹⁰ It encapsulates uniformity and efficiency in that it creates a framework contract structure, a dispute resolution mechanism, and relies on consistent proceedings, such as a base of approved expert witnesses to be used.⁹¹

Part two of the Code covers winegrape purchase agreements, often the root of the problem.⁹² It sets out the minimum clauses and elements necessary for a proper agreement between two signatories.⁹³ Each element listed suggests the basic things needed in the contract and generally is written with the suggestion that each element be an agreement between the parties.⁹⁴ The main requirement throughout is that each side specifies or clearly identifies items such as: payment terms, price notification, price adjustment provisions, tonnage, winegrape standards, etc.⁹⁵ Such a framework assures that both parties consider every detail of the agreement they are getting into with the confidence that it is fair and will simply resolve things.

Part three of the Code discusses the details of the Dispute Resolution procedure.⁹⁶ The provisions address the three main ways that contract disputes arise in the process of selling grapes to producers: (1) Disputes Over Winegrape Price, (2) Disputes Over Downgrades and Rejections in the Vineyard, and (3) Disputes Over Downgrades and Rejections at the Weighbridge.⁹⁷ Each of these has an outlined structure roughly along the lines of giving notice of dispute then waiting on a response and potential settlement.⁹⁸ If these good-faith discussions do not resolve the dispute, then they must jointly select an independent expert, and if they cannot do so, one is appointed by the Committee.⁹⁹ Within a markedly short period of time, the expert makes a determination based upon party submissions, research, and investigation, unless more time is necessary.¹⁰⁰ The decision by the expert is agreed to be binding, unless some “manifest error or proven misconduct” took place, and the

⁸⁹ See *Code of Conduct*, *supra* note 88, at 2.

⁹⁰ See *id.*

⁹¹ See *id.*

⁹² See *id.* at 6.

⁹³ See *id.* at 6–9.

⁹⁴ The various elements covered in the framework include: pricing methods, price notification, price adjustment, terms of payment, tonnage and vineyard details, winegrape standards, assessment, and harvest, delivery and freight, title in winegrapes, force majeure, assignment and sale of vineyard, professional advice, reasonable time, variations, and failure to comply clause. See *Id.* at 6–9.

⁹⁵ See *id.* at 6–7.

⁹⁶ See *id.* at 10.

⁹⁷ See *id.* at 10–13.

⁹⁸ See *id.* at 11.

⁹⁹ See *id.* at 11.

¹⁰⁰ See *id.* at 11.

costs of the process are split.¹⁰¹ Furthermore, the Code provides for confidentiality procedures typical of commercial arbitration, and includes an agreement to not initiate legal proceedings for disputes arising out of the listed issues.¹⁰²

Because the Code was created in 2008, it is important to note any growing pains that it experienced over the years and learn from them. Fortunately, the Committee writes annual reports on admission of signatories, goals reached, goals failed, any issue arising in the process, and any proposed changes for the Code.¹⁰³ Because of the similarity of the U.S. and Australian systems,¹⁰⁴ addressing the Committee's previous concerns preemptively will help the proposed solution to succeed. Therefore, various reports will be utilized throughout the explanation of the proposed mechanism to note additional or derogating ideas from the Australian Code.¹⁰⁵

B. Expedited Dispute Resolution Mechanism

There are several notable parts to the Australian system that should be considered for a solution in the U.S. wine market. The idea is similar: to create a national agreement to be signed and consented to, only enforceable upon its signatories. Due to lack of uniformity across international borders, in addition to continuing issues,¹⁰⁶ this would need to remain national.¹⁰⁷ While wine is produced in every state in the U.S.,¹⁰⁸ the agreement would likely be created by various associations from important states in the industry such as California, Oregon, Washington, and New York. This group should include representatives of each that would sit on a committee overseeing the execution. The agreement itself should include a preamble purpose, set of best practices, set of rules and procedures, a list of neutral experts, and a recognition of the ability and power of the committee to enforce the agreement.

¹⁰¹ See *id.* at 10–11.

¹⁰² See *Code of Conduct*, *supra* note 88, at 10, 13. See also Rule 26 in *JAMS Comprehensive Rules & Procedures*, JAMS ADR, (July 1, 2014), <https://www.jamsadr.com/rules-comprehensive-arbitration/#Rule-26> (showing the use of confidentiality in U.S. arbitrations).

¹⁰³ See, e.g. Code Administration Committee, *Annual Report – 2013-14*, WINE INDUSTRY CODE 1, 7 (Sept. 2014), [http://www.wineindustrycode.org/AWICoC%20Annual%20Report%202013-14%20\(SEP%202014\)%20v4.pdf](http://www.wineindustrycode.org/AWICoC%20Annual%20Report%202013-14%20(SEP%202014)%20v4.pdf).

¹⁰⁴ See Mohan, *supra* note 25, at 93.

¹⁰⁵ See generally *Code of Conduct*, *supra* note 88. The current Australian Code of Conduct may have minor modifications in its current form from its initial form due to minor changes as agreed upon by the Committee. Any changes made are noted in the annual reports. See *Annual Reports*, WINE INDUSTRY CODE, <http://www.wineindustrycode.org/Reports.html> (last visited Feb. 18, 2019).

¹⁰⁶ See Mohan, *supra* note 25, at 100–05 (analyzing the various Old World and New World regulatory schemes and their impact on the dynamics of the wine industry); Rose, *supra* note 27, at 733–34 (introducing the conflict that has continued between the U.S. and the European Community relating to origin).

¹⁰⁷ See Rose, *supra* note 27, at 732–33.

¹⁰⁸ Madeline Puckette, *50 States of Wine (Map)*, WINE FOLLY (Sept. 5, 2016), <https://winefolly.com/update/50-states-of-wine-infographic/>.

1. Purpose & Best Practices

The spirit and purpose of the agreement should revolve around the general advancement of the industry and amicable relationships between grape growers and wine producers. With this in mind, the best practices of the industry section regarding wine grape purchase agreements should be included. This section would give suggestions for discussions of contracts and provide a guideline for signatories to create a fair negotiation process. It would also allow for parties to develop a solid contract between the two parties without expensive legal advice, which would further relationships and reduce the likelihood of dispute. While this would not necessarily be a legally binding structure for agreements, the incentives to utilize the guide would be higher than potential disadvantages in using it because it would allow both parties to feel protected and on equal footing. To aid in the process, the proposed best practices section should contain a sample contract or sample provisions that can be used or modeled from.

The Australian Committee did not originally have a template but noted in one of their annual reports that a template contract incorporating the Code principles would be beneficial to both parties.¹⁰⁹ On the other hand, there should also be room for flexibility in the agreement process so that parties maintain autonomy in their negotiations and preexisting contracts can come into play. The current allowance for this in the Australian Code is that derogations from the provisions can occur when necessary if provisions are clearly specific, agreed, and confirmed in writing, and cannot include a unilateral amendment allowance.¹¹⁰ To allow flexibility, the sample contract should include practical tips in each provision indicating which terms are commonly negotiated or not. The key requirement would be that the contract remain in the spirit and purpose of the best practices.

2. Rules & Procedures

Rules and procedures for the dispute resolution process should be considered next. For such a consideration, it is important to not only involve what the Code has already included, but also to review the annual reports that the Committee of the Code publishes in order to consider what the Committee itself has determined to be issued within the Code.¹¹¹ The current rules and procedures under the Australian Code includes a notice, response, appointing an independent expert, and a binding determination of the expert all on a particular timeline depending on what type of dispute it is.¹¹² One issue that they bring up in the 2014 through 2018 annual reports

¹⁰⁹ Code Administration Committee, *Annual Report – 2013-14*, WINE INDUSTRY CODE 1, 7 (Sept. 2014), [http://www.wineindustrycode.org/AWICoC%20Annual%20Report%202013-14%20\(SEP%202014\)%20v4.pdf](http://www.wineindustrycode.org/AWICoC%20Annual%20Report%202013-14%20(SEP%202014)%20v4.pdf).

¹¹⁰ See *Code of Conduct*, *supra* note 88, at 9.

¹¹¹ See *Annual Reports*, *supra* note 103.

¹¹² See *Code of Conduct*, *supra* note 88, at 11–13.

is a repeated “major failing in the effectiveness of the Code.”¹¹³ This is because during these years, there were only three additional signatories to the Code.¹¹⁴ This raises the question as to why other growers or producers are not interested in signing. Further, during the 2012–2013 annual report, wineries approached the Committee to explain reasons why wineries were not becoming signatories.¹¹⁵ Some of the reasons included: their concern over indicative pricing and payment terms; signing is seen as a low priority; wineries do not have or want written contracts, especially when others in their region are not signatories; they are already practicing the code or are part of the Griffith region code; they are not comfortable with the third party dispute resolution; or they were given legal advice to not sign because of preexisting contracts.¹¹⁶ These reasons suggest greater incentives are needed to encourage joining, especially if there is already a contract in play.

The rules and procedures for the proposed dispute resolution mechanism should follow the Australian Code in that any disputes arising in conjunction with the wine-grape price or the alleged failure to produce wine grapes with the particular specifications should be submitted into the dispute resolution procedures set forth.¹¹⁷ The incentive here would be that the uniformity of the process will allow for a more expedient and cost-effective mechanism than other alternatives.¹¹⁸ This should also incentivize those with preexisting contracts in that signing on would give the parties options that they may not have had before. Different from the Australian Code, contracts that already have a dispute resolution clause in it could either modify their contract or utilize a grandfather clause to allow signatories an additional year before the mechanism takes effect on that contract.¹¹⁹ This option would be different from the Australian Code but would provide an easier route for signatories with contracts already in place.¹²⁰

¹¹³ Code Administration Committee, *Annual Report – 2013–14*, WINE INDUSTRY CODE 1, 12 (Sept. 2014), [http://www.wineindustrycode.org/AWICoC%20Annual%20Report%202013-14%20\(SEP%202014\)%20v4.pdf](http://www.wineindustrycode.org/AWICoC%20Annual%20Report%202013-14%20(SEP%202014)%20v4.pdf); Code Administration Committee, *Annual Report – 2014–15*, WINE INDUSTRY CODE 1, 7 (Sept. 2015), <http://www.wineindustrycode.org/Annual%20report%202014-15%20August%2018.pdf>; Code Administration Committee, *Annual Report – 2015–16*, WINE INDUSTRY CODE 1, 8 (Nov. 2016), <http://www.wineindustrycode.org/AWICAC%20Annual%20Report%2015-16.pdf>; Code Administration Committee, *Annual Report – 2016–17*, WINE INDUSTRY CODE 1, 6 (Sept. 2017), <http://www.wineindustrycode.org/AWICOC%20Annual%20Report%2016-17.pdf>; Code Administration Committee, *Annual Report – 2017–18*, WINE INDUSTRY CODE 1, 6 (Sept. 2018), <http://www.wineindustrycode.org/AWICOC%20Annual%20Report%202017-18.pdf>.

¹¹⁴ See *Annual Report – 2013–14*, *supra* note 113, at 12; *Annual Report – 2014–15*, *supra* note 113, at 7; *Annual Report – 2015–16*, *supra* note 113, at 8; *Annual Report – 2016–17*, *supra* note 113, at 6; *Annual Report – 2017–18*, *supra* note 113, at 6.

¹¹⁵ Code Administration Committee, *Annual Report – 2012–13*, WINE INDUSTRY CODE 1, 8 (Sept. 2013), <http://www.wineindustrycode.org/AWICAC%20Annual%20Report%2012-13.pdf>.

¹¹⁶ Code Administration Committee, *Annual Report – 2012–13*, *supra* note 115.

¹¹⁷ See *Code of Conduct*, *supra* note 88, at 10–13.

¹¹⁸ See Firstenfeld, *supra* note 15 (noting the expense of litigation that grape growers often cannot afford).

¹¹⁹ See *Code of Conduct*, *supra* note 88, at 10–13.

¹²⁰ See *id.*

The path of a dispute, once it has arisen, would begin by a letter submitted by one party to the other party.¹²¹ This letter would include an outline of the dispute and the preferred outcome. Within a week, the other side would be expected to respond with either an acceptance of the outcome or an alternative preferred outcome. These exchanges would be recorded with the Committee referenced above. If no resolution comes about within 30 business days, then the parties are expected to initiate proceedings by trying to agree on an independent expert to step into the case. The independent expert would come from a list procured by the Committee that involves individuals experienced in the wine industry and disputes of this sort.¹²² This would ensure a sense of neutrality and competence in the dispute resolution process. The independent expert would also follow a set of rules and procedures in terms of time limits, discovery abilities, and determination. Like typical arbitration clauses, parties would be bound by the Independent Expert's decision. The only exception to its binding nature would be misconduct or evident error. Finally, each part would split the costs equally.¹²³

The Australian Code has different procedures based upon which type of dispute is occurring.¹²⁴ The major differences are with the time period in which these disputes need to be settled.¹²⁵ While not immediately important, this is an aspect that would need to be agreed upon by the Committee members representing the proposed American Code.¹²⁶

A code like this cannot function, however, without some sort of recompense for breach. Breach of the proposed American Code would be made known in the form of a complaint submitted to the committee. A copy would be given to the signatory that is alleged to have breached, and they are expected to respond. Much like in the dispute resolution process, if a complaint is not resolved, the Committee may make a determination regarding the breach. Signing the Code would allow the Committee to remedy or penalize if there is a finding of breach and dismiss the complaint if there is not. The most extreme penalty would be removal from the proposed Code. This process would be considered serious and should be justified by the breach committed. Such a determination would require a two-thirds majority agreement of the Committee. This decision could be challenged by a showing of misconduct or error on behalf of the Committee.

3. Committee of the Proposed Code

The Committee itself would agree to meet annually and discuss the disputes, review reports on the industry, and compile relevant information from the year that

¹²¹ See *id.* to compare the proposed process with the Australian Code process.

¹²² One great example of an expert is Richard Keenan who already speaks about mediation options in Sonoma County. Firstenfeld, *supra* note 15.

¹²³ See *Code of Conduct*, *supra* note 88 to compare the proposed process with Australian Code process.

¹²⁴ See *id.* at 11–13.

¹²⁵ See *id.*

¹²⁶ See *id.*

will aid in the continuous improvement of the proposed American Code. A Code Secretariat would be appointed as the head of the Code with responsibilities of recording and maintaining the reports put forth by the Committee. Generally, this Code and the Committee would function similarly to the Australian Code but with minor modifications based upon the experience recorded in the Australian Committee Annual Reports.¹²⁷

V. COUNTER-ARGUMENTS AND POTENTIAL ISSUES

A. *Why Add an Additional Dispute Mechanism*

As of right now, there are many different ways that grape growers and wine producers in California choose to resolve disputes. There is no uniformity or precedent across the market, and no obvious path to choose. Additionally, with such a unique industry, there are several small groups and organizations that subscribe to their regional resources.¹²⁸ The numerous options are an issue because no precedent is being formed and predictability is no longer something that grape growers can rely on.¹²⁹ As a result, disputes can take unexpected twists and turns. Thus, if there was something that all organizations, such as the Napa Valley Grape Growers,¹³⁰ regionally advertised and agreed to, it could create the uniformity necessary to allow relationships between distant parties to succeed.

B. *Injunctive Relief*

In issues of such volatile nature like with produce, courts can provide interim relief in the proper circumstances. While this is an expedited process of the court, it is mostly a step in a much larger process.¹³¹ The main way that this remedy functions is to keep the party who purchased the grapes from transferring them to a third party.¹³² Once the grapes are transferred to a third party, it is extremely difficult to utilize judicial remedies to repossess the product (in lieu of payment).¹³³

¹²⁷ See the various Annual Reports by the Code Administration Committee, *supra* note 113.

¹²⁸ NAPA VALLEY GRAPE GROWERS, <https://napagrowers.org/industryissues> (stating that “NVG is committed to preserving and promoting Napa Valley vineyards, which to us means protecting Napa County agriculture for future generations, farming for quality and with a deep respect for land, and actively working to maintain our County’s agricultural heritage.”) (last visited Feb. 18, 2019).

¹²⁹ See Firstenfeld, *supra* note 15 (discussing limited options for the grape grower for efficient dispute resolution); Balter, *supra* note 62 (explaining the producer’s lien as an option for growers). See also Lisa Palmer, *Vineyards Take Action as Climate Change Threatens Wines and Livelihoods*, THE GUARDIAN: SUSTAINABLE BUSINESS BLOG (Oct. 3, 2013 12:42 pm), <https://www.theguardian.com/sustainable-business/blog/vineyards-climate-change-threat> (noting the unpredictability that is to come along with climate change issue in the wine world).

¹³⁰ NAPA VALLEY GRAPE GROWERS, *supra* note 128.

¹³¹ Balter, *supra* note 62.

¹³² *Id.*

¹³³ *Id.*

However, this function is very limited and does not necessarily produce results that put the seller in the same position that he was in before.

C. *Grower's Lien*

As mentioned earlier, grower's liens, also referred to as producer's liens, are a viable option for growers if planned for ahead of time.¹³⁴ However, the lien is often waived in the contracting process because smaller grape growers are unaware of its necessity.¹³⁵ The lien is effective in most states and allows for growers to have a secured interest on the grapes above most other interests.¹³⁶ This benefit of the interest arises in the case of bankruptcy, where the grower will be first in line to recover this interest.¹³⁷ It is a way to notify the wine producer's banker and guarantee payment first for the product, no matter the form it is in.¹³⁸ A lien remains an effective remedy in that with the proposed American Code, the goal would be to include the language necessary in the contract to create the right to a lien in cases of non-payment — as suggested by the Washington Wine Foundation.¹³⁹ This lien aids in the scenario where the wine producer does not pay at all, rather than the scenario where there is a dispute about the contract price. Although an additional protection like this is important, it does not provide the complete protection that the American Code could offer.

D. *Other Limitations*

In looking at the Australian Code, it is important to remember the original goals of the Committee and those results. A year after its implementation in 2009, the Code had three signatories making up 25% of the crush that year.¹⁴⁰ They only had one report of a dispute, which they noted was successful, but they also evaluated ways in which they could discuss and improve.¹⁴¹ However, as previously mentioned, the signatories had grown to forty-one by 2017, but the Committee deemed this a “failing in the effectiveness of the Code” because it was not an

¹³⁴ *Id.*; Cheah, *supra* note 62.

¹³⁵ Ritter, *supra* note 56. *See also* Cheah, *supra* note 62.

¹³⁶ *See* Washington Wine Industry Foundation, *supra* note 20, at 20–21; Cheah, *supra* note 62.

¹³⁷ Cheah, *supra* note 62.

¹³⁸ Washington Wine Industry Foundation, *supra* note 20, at 20.

¹³⁹ *Id.* at 9.

¹⁴⁰ Code Administration Committee, *Australian Wine Industry Code of Conduct Annual Report – 2009*, WINE INDUSTRY CODE 1, 7 (Sep. 30, 2009), <http://www.wineindustrycode.org/AWICAC%20Annual%20Report%2008-09.pdf>.

¹⁴¹ Code Administration Committee, *supra* note 140, at 7–8 (noting that parties wanted an informal early dispute resolution system in the form of intervention by the secretariat). In the interview with Richard Keenan, he noted that oftentimes parties want to have an informal conversation, and that “parties that reach a solution together are more committed to it and have more satisfaction” in terms of the results. Firstenfeld, *supra* note 15.

increase.¹⁴² While parts of this new code have taken into account the reasons put forth in the 2012-13 Report, there is no data that suggests these steps will create more incentive.¹⁴³ Further, even if there was data, the U.S. and Australian markets are not the same. Thus, the desired results of implementing the American Code are not guaranteed.

VI. IMPACT AND CONCLUSION

A. *Impact on the U.S.*

With a dispute resolution mechanism as described above, the impact on the wine industry alone would be substantial.¹⁴⁴ It would put growers and producers at an even bargaining level and solve disputes quickly and cheaply.¹⁴⁵ With the lower dispute costs, producers can continue to competitively price their quality products.¹⁴⁶ The onslaught of wildfires in major growing regions, particularly California, suggests that the ramifications of faster and cheaper dispute resolution will become increasingly important because the consumer ultimately pays the price for any additional incidental costs.¹⁴⁷ Further, there are many concerns regarding impending climate change effects on growing regions being felt internationally.¹⁴⁸ Many big-name countries in wine are being impacted¹⁴⁹ and California is no different. When these climate issues occur, they affect the grape production and the characteristics that can be produced.¹⁵⁰ Because the characteristics of the grape are often the turning point of an agreement between grower and winery, an inability to fulfill obligations will likely cause an increase in disputes within the contractual realm.

B. *Implications on Other Perishable Goods to be Sold to Processors*

The proposed Code is important because the wine industry is continually growing each year.¹⁵¹ Studies from 1995-2006 have shown a marked increase in U.S. wine sales from below 120 million cases to a little more than 170 million

¹⁴² Code Management Committee, *Australian Wine Industry Code of Conduct Annual Report – 2016–17*, WINE INDUSTRY CODE 1, 6 (Sept. 2017), <http://www.wineindustrycode.org/AWICOC%20Annual%20Report%2016–17.pdf>.

¹⁴³ Code Management Committee, *Australian Wine Industry Code of Conduct Annual Report – 2012–13*, WINE INDUSTRY CODE 1, 8 (Sept. 2013), <http://www.wineindustrycode.org/AWICAC%20Annual%20Report%2012–13.pdf>.

¹⁴⁴ See *supra* Part II. See generally Firstenfeld, *supra* note 15.

¹⁴⁵ See generally Firstenfeld, *supra* note 15.

¹⁴⁶ Mohan, *supra* note 25, at 83, 99, 104.

¹⁴⁷ Wood, *supra* note 2. See Todorov & Penn, *supra* note 64; Alberty, *supra* note 39; Lutz, *supra* note 39. See also Rose, *supra* note 27, at 735.

¹⁴⁸ See Palmer, *supra* note 129.

¹⁴⁹ See *id.*

¹⁵⁰ See *id.*

¹⁵¹ Goodhue, *Current Economic Trends*, *supra* note 8, at 3.

cases.¹⁵² Furthermore, the total revenue from wine has gone from \$5,656 million in 1995 to \$14,645 million in 2006.¹⁵³ The noted difference in volume and revenue is also due to the change in the American palate to prefer higher quality wines.¹⁵⁴

If a dispute mechanism such as this is implemented, it would reduce any price fluctuations that could be passed on to the consumer as a result of an expensive dispute resolution process.¹⁵⁵ Expensive issues as such may not set “Big Wine” companies back as much;¹⁵⁶ however, the growers can be massively impacted by such costs and go bankrupt.¹⁵⁷ By increasing the efficiency, uniformity, and expedient resolution process that would reduce costs by first and foremost preventing disputes, but also by ensuring a predictable dispute resolution process in the case that issues do still arise.¹⁵⁸ Increasing the efficiency, uniformity, and expediency of the resolution process would reduce costs mainly by preventing disputes, but also by ensuring a predictable dispute resolution process in the case that issues do still arise.

Furthermore, if there is success with a dispute resolution mechanism, there are opportunities for other industries to incorporate a similar system. An example would be the California processed fruit and vegetable industry, which has similar relationships, and therefore, could benefit from a similar structure.¹⁵⁹ With the implementation of such a system, the disparity in the relationship between growers and producers/processors would rebalance, promoting policies of fair and good faith business.

C. Conclusion

An old industry like that of wine is bound to experience unexpected changes and unique innovations. There have been many changes in the journey of a bottle in terms of quality, style, process, labelling, and importing, but the next frontier for change should be the legal front.¹⁶⁰ Wine is now a big, international industry, and the legal aspects have not kept up to step. Creating a dispute resolution mechanism on a national scale is an incremental step in this process. By implementing the proposed American Code, grape growers and wine producers alike can benefit from smoother relationships, stronger contracts, and efficient dispute resolution that allows the consumer to decant the wine rather than the issues.

¹⁵² *Id.* at 3.

¹⁵³ *Id.* at 4.

¹⁵⁴ *Id.* at 3.

¹⁵⁵ Wood, *supra* note 2. See Rose, *supra* note 27, at 735.

¹⁵⁶ See *Our Brands*, THE WINE GROUP, <https://thewinegroup.com/our-brands/> (last visited Feb. 18, 2019); *Portfolio*, E.&J. GALLO WINERY, <http://www.gallo.com/portfolio/> (last visited Feb. 18, 2019).

¹⁵⁷ See Firstenfeld, *supra* note 15 (noting that, in recent years, Richard Keenan has seen many defaults, foreclosures, and bankruptcies within the grape growing and wine producing communities—resulting in more disputes).

¹⁵⁸ See Mohan, *supra* note 25, at 104.

¹⁵⁹ See Lang, *supra* note 20.

¹⁶⁰ See Mohan, *supra* note 25, at 104–105.