

National Interest Analysis [2014] ATNIA 4

with attachment on consultation

**Protocol to the 2007 World Wine Trade Group Agreement on Requirements for
Wine Labelling Concerning Alcohol Tolerance, Vintage, Variety, and Wine Regions**

Done at Brussels on 22 March 2013

(Signed for Australia on 30 April 2013)

[2013] ATNIF 12

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Protocol to the 2007 World Wine Trade Group Agreement on Requirements for Wine Labelling Concerning Alcohol Tolerance, Vintage, Variety, and Wine Regions

Done at Brussels on 22 March 2013

(Signed for Australia on 30 April 2013)

[2013] ATNIF 12

Nature and timing of proposed treaty action

1. The proposed treaty action is to ratify the World Wine Trade Group (WWTG) *Protocol to the 2007 Agreement on Requirements for Wine Labelling Concerning Alcohol Tolerance, Vintage, Variety, and Wine Regions* (the Protocol), in accordance with its Article 7.2. The Protocol was concluded in Brussels on 22 March 2013 and signed by Australia on 30 April 2013. Pursuant to Article 7.3, the Protocol will enter into force for Australia on the first day of the second month following the date of ratification.

2. Article 7.3 of the Protocol also provides that the Protocol will enter into force generally on the first day of the second month following the date the depositary receives the second instrument of ratification, acceptance or approval by a signatory State. Following from such instruments being deposited by Georgia and New Zealand, the Protocol entered into force on 1 November 2013.

3. Article 13.1(a) of the *2007 WWTG Agreement on Requirements for Wine Labelling* [2012] ATS 17 (the 2007 Wine Labelling Agreement), which entered into force for Australia on 1 June 2012, obligated the Parties to negotiate towards an additional agreement on wine labelling. The Protocol is a result of these negotiations. The Protocol is intended to complement the *WWTG Agreement on Mutual Acceptance of Oenological Practices* [2005] ATS 10, which entered into force for Australia on 1 March 2005, and the *2007 WWTG Agreement on Requirements for Wine Labelling*. The Protocol provides for labelling obligations that are outside the scope of these earlier Agreements.

Overview and national interest summary

4. The WWTG is an informal grouping of industry representatives and government officials from eight wine producing countries (Argentina, Australia, Canada, Chile, Georgia, New Zealand, South Africa and the United States).

5. The purpose of the Protocol is to facilitate trade in wine between the Parties by obligating Parties to accept each other's wine labelling requirements for alcohol content labelling accuracy, wine vintages, grape varieties and wine regions. The Winemakers' Federation of Australia and the Wine Australia Corporation have actively supported the negotiation of this Protocol.

6. WWTG markets account for over 39 per cent of Australia's wine exports, with sales of wine to WWTG markets worth \$742 million in the 2011-12 financial year.

Reasons for Australia to take the proposed treaty action

7. Representatives of the Australian Government and wine industry participate in the WWTG. The WWTG is an informal group with a mutual interest in facilitating the international trade in wine and eliminating trade barriers. Australia played a significant role in negotiating the Protocol as part of the Australian Government's efforts to improve access for Australian wines in global markets. Australia is a major beneficiary of the Protocol as many of the WWTG participants currently do not recognise Australia's labelling requirements for vintage, variety and wine region claims. The Protocol will address long-standing trade irritants for Australian wine exporters.

8. Australian winemakers currently need to make different blends of wines for different markets in order to meet the relevant requirements for vintage, variety or regional label claims in the importing country. Once in force, the Protocol will make it easier to market a single blend of wine to all Parties to the Protocol, significantly reducing costs for winemakers.

9. The Protocol will facilitate trade in wine between Parties by providing a consistent approach to wine labelling. Australian winemakers will not be required to modify their current labelling practices, but the Protocol means that existing Australian labelling requirements on alcohol tolerance, vintage, variety, and wine regions will be recognized by other Parties.

Obligations

10. The primary obligations of the Protocol are contained in Article 4. This article sets out the labelling parameters that the Parties have agreed to accept with respect to trade of wine between Parties. Each of the provisions listed in Article 4 specify that Parties shall permit the import and sale of wine which complies with the exporting Party's domestic laws, regulations, and requirements relating to the particular provision (i.e., alcohol tolerance, vintage, variety and wine regions) within the parameters outlined below.

11. Article 6 provides that where an importing party adopts or maintains labelling laws, regulations and requirements that are less restrictive than the provisions specified in the Protocol, exporters shall not be prevented from labelling in accordance with the relevant importing Party's laws, regulations and requirements.

12. Article 4.1 obliges parties to permit the importation and sale of wine if the alcohol tolerance does not exceed +/- 1.0 per cent alcohol by volume. Alcohol tolerance is the deviation between the labelled alcohol content and the measured alcohol content.

13. This obligation does not apply to fortified wines in Australia, New Zealand and Canada. The Australia New Zealand Food Standards Code Standard 2.7.1 requires the alcohol content stated on fortified wine labels to be accurate within 0.5 per cent alcohol by volume.

- Standard 2.7.1 requires that non-fortified wines within Australia be labelled with the alcohol content accurate within 1.5 per cent alcohol by volume. As the +/-1.5 per cent alcohol tolerance required in Australia is more flexible than the +/- 1.0 per cent

specified in Article 4.1 of the Protocol, Australia will continue to permit imports of wine labeled in accordance with Standard 2.7.1 (as provided for in Article 6 of the Protocol).

- Article 4.1 provides Australian exporters certainty about the alcohol tolerance required by importing Parties. Exporters meeting the Protocol tolerance of +/- 1.0 per cent will also meet Australia's domestic requirements.

14. Article 4.2 deals with labelling provisions relating to grape variety. This article obliges Parties to permit the importation and sale of wine which is labelled as being of a single grape variety, if at least 75¹ per cent of the wine so labelled is obtained from grapes of that variety. This Article also obliges Parties to permit the importation and sale of wine which is labelled as being of multiple grape varieties if at least 85 per cent of the wine is obtained from grapes of those varieties, each variety listed is in greater proportion in the wine than any variety that is not listed, and the varieties listed are in descending order of their proportions in the wine.

- The Wine Australia Corporation Regulations 1981 require a minimum of 85 per cent of wine to be derived from the named variety for wine produced in Australia. The Regulations provide that when more than one variety is listed, at least 85 per cent of the wine must be obtained from grapes of those varieties, each variety listed is in greater proportion in the wine than any variety that is not listed, and the varieties listed are in descending order of their proportions in the wine. Wines exported from Australia will therefore meet the requirements of Parties to this Protocol.
- Australia does not regulate grape variety labelling claims with respect to imported wines (beyond the consumer protection provisions of the Australian Consumer Law).

15. Article 4.3 deals with labelling provisions relating to wine regions. This Article obliges Parties to permit the import and sale of wine which is labelled with a single wine region if at least 75 per cent of the wine is obtained from grapes grown in the named wine region. This Article also obliges Parties to permit the import and sale of wine which is labelled with up to three wine regions provided that at least 85 per cent of the wine is obtained from grapes grown in those regions, the wine derived from grapes grown in each region listed on the label is in greater proportion than wine derived from grapes grown in any region that is not listed, the regions listed are in descending order of the proportions of the grapes from those regions in the wine, and the regions are within the same country.

- The Wine Australia Corporation Regulations 1981 requires a minimum of 85 per cent of wine to be derived from the named wine region for wine produced in Australia for a single geographical indication registered in Australia; and a minimum of 95 per cent of wine to be derived from the named wine regions for wine produced in Australia that is labelled with up to three geographical indications

¹ Except in the case of Canada where at least 85 per cent of the wine so labelled must be obtained from grapes of that variety.

registered in Australia. Wines exported from Australia will therefore meet the requirements of Parties to this Protocol.

- Australia does not regulate the percentage of wine derived from specified wine regions with regard to the labelling of imported wines (beyond the consumer protection provisions of the Australian Consumer Law).

16. Article 4.4 deals with labelling provisions relating to vintage (year of growth or harvest of grapes used in wine). This Article obliges Parties to permit the import and sale of wine which is labelled with a vintage if at least 85 per cent of the wine is derived from grapes of that vintage.

- The Wine Australia Corporation Regulations 1981 requires a minimum of 85 per cent of wine to be derived from the named vintage year for wine produced in Australia. Wines exported from Australia will therefore meet the requirements of Parties to this Protocol.
- Australia does not regulate vintage labelling claims with respect to imported wines (beyond the consumer protection provisions of the Australian Consumer Law).

Implementation

17. Entry into force of the Protocol would require an amendment to the Wine Australia Corporation Regulations 1981 to provide that the regulations relating to the use of a registered geographical indication are consistent with the Protocol. The Department of Agriculture is in consultation with the Attorney-General's Department on this matter.

18. The Protocol will require Australia to amend the Wine Australia Corporation Regulations 1981 to allow wine to be imported into Australia that is labelled with a regional labelling claim, where less than 100 per cent of the wine is derived from fruit grown within the region on the label. These amendments will also ensure that if any Parties choose to apply to have their wine regions added to Australia's *Register of Protected Geographical Indications and Other Terms* in the future, the regulations will provide rules that are consistent with the requirements of the Protocol and the rules for Australian geographical indications. Australia's existing alcohol tolerance parameters, specified in the Australia New Zealand Food Standards Code Standard 2.7.1, are more flexible than the alcohol tolerance parameters of other Parties to this Protocol (with the exception of New Zealand, which maintains the same alcohol tolerance requirements as Australia). In practice, this means that Australia already recognises the alcohol tolerance, claims of the Parties. The existing wine labelling regulations will continue to apply for wine produced and/or sold in Australia.

19. There is currently an inconsistency in labelling requirements between Article 4(3) of the Protocol and Australia's domestic wine legislation regarding geographical indications. Sections 40D and 40F of the *Wine Australia Corporation Act 1980* specify rules relating to "false" and "misleading" descriptions and presentations, respectively, of geographical indications in wine labelling. Currently, these provisions might be breached if a wine is labelled with a registered geographical indication, or multiple registered geographical indications, registered in Australia and less than 100% of the wine was made from grapes from the specified region. In contrast, the Protocol requires Australia to permit the importation and sale of wine which is labelled with a single wine region recognised by the exporting Party to be a single delimited grape growing area

(that is, a geographical indication) if at least 85 per cent of the wine is obtained from grapes grown in that area (Article 4.3(b)). There are also similar rules where wine is labelled with multiple wine regions (Article 4.3(d)). While no signatory countries currently have GIs, or single, delimited regions, registered in Australia, Australian legislation provides a process to allow for this. Therefore, the Department of Agriculture is seeking amendments to ensure that Australia's domestic legislation does not prevent the importation of wine that complies with Article 4.3 (b) and 4.3 (d) of the Protocol.

20. The Australian Government Solicitor has advised that this could be achieved through amendments to the Wine Australia Corporation Regulations 1981.

21. No other legislative amendments would be required in order to implement the Protocol.

22. The Agreement is not expected to have any regulatory impacts on business or the not-for-profit sector. The existing wine labelling Regulations will continue to apply for wine produced and/or sold in Australia.

Costs

23. There are no foreseeable costs associated with this Protocol for Australia (including for the Australian Government, the State and Territory Government or the Australian wine industry).

24. Although there are no annual membership costs or fees, the Australian Government Department of Foreign Affairs and Trade and the Department of Agriculture, Fisheries and Forestry are expected to incur minor costs in attending future meetings of the WWTG or the Council of Parties established under the 2007 Wine Labelling Agreement. These costs will be met in the normal course of portfolio budgetary requirements.

Regulation Impact Statement

25. The Office of Best Practice Regulation, Department of Finance and Deregulation, has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

26. Article 17 of the 2007 Wine Labelling Agreement provides that any Party may propose amendment to the Wine Labelling Agreement by submitting the text of the proposed amendment to the depositary. This provision is incorporated into this Protocol by virtue of its Article 3.1. Amendments shall be subject to acceptance by the Parties and entry into force on the 30th day, after the depositary has received instruments of acceptance from all the Parties. Any such amendment would be subject to Australia's domestic treaty-making process, including tabling in Parliament and consideration by the Joint Standing Committee on Treaties (JSCOT).

Withdrawal or denunciation

27. Article 18 of the 2007 Wine Labelling Agreement provides that a Party may withdraw from the Wine Labelling Agreement by providing written notification to the depositary. This

provision is also incorporated into this Protocol by virtue of its Article 3.1. The depositary shall promptly communicate the notification to the Parties. Withdrawal shall take effect six months after the date the depositary receives the notification, unless the notification specifies a later date. The withdrawal shall not take effect if the notification is withdrawn prior to the expiry of the six months, or where a later date is specified, the occurrence of that date.

28. Any termination of the Protocol to the 2007 Wine Labelling Agreement by Australia would be subject to Australia's domestic treaty-making process, including tabling and consideration by JSCOT.

Contact details

Food Trade and Quarantine Section

Agriculture and Food Branch

Office of Trade Negotiations

Department of Foreign Affairs and Trade

ATTACHMENT ON CONSULTATION

Protocol to the 2007 World Wine Trade Group Agreement on Requirements for Wine Labelling Concerning Alcohol Tolerance, Vintage, Variety, and Wine Regions, done at Brussels on 22 March 2013

[2013] ATNIF 12

CONSULTATION

States and Territories

29. There is no impact on State or Territories as a result of this Protocol.
30. The Protocol was included on the Schedule of Treaties provided to the Commonwealth-State/Territory Standing Committee on Treaties (SCOT) for the first time in May 2012. A briefing on the scope, objectives and expected regulatory impacts of the Protocol was provided to SCOT at that time. The Protocol was also included on the Schedule of Treaties provided to SCOT in October 2012.
31. No concerns have been raised by the States or Territories.

Industry

32. Australian Government participation in negotiations for the Wine Labelling Agreement was carried out in close consultation with the Winemakers' Federation of Australia (WFA). The WFA has confirmed its support for the Protocol.
33. The WFA was regularly consulted on the potential objectives and scope of the proposed protocol in the five years prior to commencement of negotiations (between January 2007 and March 2012). During these consultations, the WFA outlined its key objectives and priorities for the future protocol. Once negotiations commenced in March 2012, the WFA was consulted prior to, and during each of the negotiation sessions. Consultation with the WFA primarily took the form of face-to-face meetings and teleconferences. The priorities outlined by the WFA have been reflected in the Protocol text.
34. The WFA actively participates in the industry sessions and joint government/industry sessions of the World Wine Trade Group (WWTG). As part of this participation, the WFA advocated the Australian wine industry's priorities for the draft Protocol and was able to gain the support of industry representatives from each of the WWTG countries. This active industry engagement helped to progress agreement of the Protocol.
35. In February 2012, August 2012 and February 2013 wine industry leaders were directly briefed on the proposed Protocol through the Wine Industry Market Access Group coordinated by the WFA.

Consumer groups

36. The Protocol will not alter the labelling requirements for imported or domestically produced wine sold in Australia. For this reason, consumer groups have not been consulted on this Protocol.