National Interest Analysis [2010] ATNIA 27

with attachment on consultation

Agreement on Requirements for Wine Labelling,
done at Canberra on 23 January 2007

[2007] ATNIF 7

Regulation Impact Statement

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Agreement on Requirements for Wine Labelling,
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Nature and timing of proposed treaty action

1. The proposed treaty action is to bring into force for Australia the World Wine Trade Group (WWTG) *Agreement on Requirements for Wine Labelling* (the Wine Labelling Agreement). The Wine Labelling Agreement was concluded in Canberra on 23 January 2007. It is proposed that Australia lodge its instrument of ratification, acceptance or approval to bring the Agreement into force for Australia.

2. Pursuant to Article 19 of the Wine Labelling Agreement, the Agreement will enter into force on the first day of the month following the date of deposit of the instrument of ratification.

Overview and national interest summary

3. The WWTG is an informal grouping of industry representatives and government officials from seven wine producing countries (Australia, the United States, New Zealand, Chile, Canada, Argentina and South Africa). On 23 January 2007, Australia along with other WWTG countries signed the Wine Labelling Agreement. The purpose of the Wine Labelling Agreement is to accept common labelling and to minimise unnecessary labelling-related trade barriers with the objective of facilitating international trade in wine among the WWTG. A key provision of the Wine Labelling Agreement will allow Australian and other WWTG winemakers to harmonise the placement of four mandatory items of information on wine labels in a way that is acceptable in all major wine markets.

4. The information required on wine labels in Australia is currently regulated by State and Territory governments under Uniform Trade Measurement Legislation (UTML). The Commonwealth has constitutional responsibility for weights and measures (s.51(xv) of the Constitution). Prior to 2008, the Commonwealth chose not to enact comprehensive trade measurement legislation and this responsibility remained with the States and Territories by default. However, on 13 April 2007 the Council of Australian Governments (COAG) decided that a new national system of trade measurement regulation should be introduced.

5. From 1 July 2010, this information will be regulated by the Commonwealth. For the ratification of the Wine Labelling Agreement to proceed, amendments to the UTML first needed to be made. As of 1 July 2009, all State and Territory governments had completed amendments to the UTML. From 1 July 2010, the Wine Labelling Agreement will be implemented in Australia through new Commonwealth National Trade Measurement Regulations 2009 (the Regulations). An interim provision has been made in the Regulations to exempt certain wine containers from labelling requirements, consistent with the Wine Labelling Agreement. This exemption will ensure continuation of the wine industry’s current ability to label in conformity with the Wine

Labelling Agreement. It is noted that the explanatory statement to the Regulations indicates that it is intended that detailed provisions relating to wine container labelling will be inserted into those Regulations following ratification of the Wine Labelling Agreement.

6. The purpose of the Wine Labelling Agreement is for countries that are Parties to the Wine Labelling Agreement to harmonise their requirements for the placement on wine labels of four common mandatory items of information: product name, net contents, actual alcohol content and country of origin. The provisions of the Wine Labelling Agreement will allow individual wine producers to develop a common label approach that is acceptable in all WWTG markets and in all major international wine markets. The Wine Labelling Agreement advocates a "single field of vision" approach to wine labelling, whereby the four mandatory items of information are deemed to comply with domestic labelling requirements if they are presented together in any single field of vision.

7. WWTG markets alone accounted for over 37 per cent of Australia's wine exports, with sales of bottled wine to WWTG markets worth $0.93 billion in 2008. If the European Union market (which already applies a single field of vision approach to wine labelling) is added to the WWTG markets, all Australia's major wine markets would accept the single field of vision approach.

8. Estimates by the Australian wine industry and the Australian Bureau of Agricultural and Resource Economics (ABARE) indicate that the single field of vision approach to labelling could save on labelling costs, helping to increase the competitiveness, volume and value of Australian wine exports.

9. If ratified, the Wine Labelling Agreement would allow:

a) WWTG members that have ratified or acceded to the Wine Labelling Agreement, to use the single field of vision wine labelling on imports in standard size wine containers into Australia; and

b) Australia to use the single field of vision wine labelling on both domestic and export wines, thereby reducing the need for multiple labels for domestic and international markets.

Reasons for Australia to take the proposed treaty action

10. The rapid expansion of wine production in Australia over the past decade, combined with a small domestic market, required the Australian industry to focus on increasing its exports. At the same time, global wine production expanded faster than demand as a growing number of competitors entered the market; the industry became more capital intensive; and domestic and international wine markets became increasingly competitive. This led to a significant decline in world wine prices and the erosion of profit margins for the Australian industry.

11. In order to ensure its continued profitability, the Australian wine industry has to maintain a competitive export orientation that is dependent on continued innovation, product targeting, quality improvement and cost reduction.

12. To progress its interests internationally, Australian government and industry representatives participate in the WWTG. This is an informal group with a mutual interest in facilitating the international trade in wine and breaking down trade barriers. Australia played an active role in developing the Wine Labelling Agreement through its representatives on the WWTG and has been a strong supporter of its early entry into force. Australia is also a signatory of the International Office for Vine and Wine (OIV), which comprises 43 countries and has voted resolutions supporting single field of vision wine labelling.

13. As a signatory to the Wine Labelling Agreement, the Australian government has indicated its intention and consent to become bound by the Agreement. By not ratifying the Wine Labelling Agreement, the Australian Government may suffer political consequences in its relations with other WWTG participants. This could impact on the ability of Australia to drive future WWTG initiatives and potentially impact on the confidence that other WWTG members place in Australia's commitment to the trade facilitation objectives of the WWTG. It could lead to uncertainty for the WWTG and impact adversely on the prospects of the WWTG developing future trade enhancing agreements.

14. Australia is also a signatory to the 1955 International Organisation of Legal Metrology (OIML) Convention and participates with other OIML member states in drafting guidelines to assist trade measurement labelling harmonisation. Internationally, it is clear that, in the case of wine labelling, many Parties to the Wine Labelling Agreement have subordinated OIML Recommendation 79 (requiring the volume statement to be on the principal display panel - the front of packaging) to other local requirements. The Wine Labelling Agreement's single field of vision approach to labelling, which departs from the OIML Recommendation 79, is important because it allows harmonisation with labelling practices in major wine export markets including the United States, Canada, New Zealand and the European Union.

15. The Wine Labelling Agreement will facilitate trade in wine between WWTG member countries by providing a consistent approach to wine labelling. Harmonisation of labelling requirements will make the Australian wine industry more efficient and reduce the industry's cost of production.

16. These savings arise because currently most export markets have different requirements for the placement of information on the wine product label compared to domestic market requirements. Thus, wineries are required to print separate wine product labels according to each

importing country's requirements for the placement of mandatory product information. The expense of producing separately labelled wine products for different markets is further exacerbated by the need to maintain separate buffer stocks for each market.

17. In 2005, the Australian wine industry estimated that the single field of vision approach could save approximately $25 million in labelling costs, helping to increase the competitiveness, volume and value of Australian wine exports. Such savings represent approximately four per cent of the cost of production, in addition to marketing and distribution benefits. In 2006, the ABARE undertook an assessment of the proposed savings and confirmed that industry's estimates are correct. The ABARE assessment also noted the Wine Labelling Agreement may offer proportionally greater benefits to small wineries.

18. The Australian Government is committed to improving access for Australian wines in global markets and works closely with the Australian wine industry to identify and remove tariff and non-tariff trade barriers and harmonise import requirements. Implementation of the Wine Labelling Agreement would provide significant benefits to our wine producers and presents no discernable consumer detriment or health and safety issues. Conversely, the competitive position of Australian industry would be eroded if the Wine Labelling Agreement is ratified by other WWTG participants and not by Australia.

19. In addition, there will be a clear benefit to consumers who will be able to easily locate key items of information on the bottle in a single field of vision and easily compare different wines.

20. Wine is an important Australian industry, contributing significantly to a number of regional economies and directly employing some 28 000 people in both winemaking and grape growing[1] with further downstream employment in retail, wholesale, hospitality and tourism industries. The Australian wine industry is comprised of approximately 8 000 wine grape growers[2] supplying over 2 300 wineries. In 2008, the total vineyard area reached 173 000 hectares. Wine grapes are grown in all states of Australia.

21. Australia exports wine to 130 countries and accounts for eight per cent of global wine exports, in volume terms. In 2008 wine exports totalled 699 million litres with an estimated value of $2.5 billion. These export volumes account for more than sixty per cent of Australian wine sales and make Australia the world's fourth largest wine exporter. This contrasts with Australia's wine production accounting for only five per cent of total world production. Approximately half of Australia's wineries export to overseas markets.

Obligations

22. The Wine Labelling Agreement is an outcome of obligations under the WWTG Agreement on Mutual Acceptance of Oenological Practices done at Toronto on 18 December 2001 (Article 6(2)) by which the Parties agreed to enter into negotiations for an agreement on wine labelling.

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[1] 2006 Census

[2] Winegrape Grower's Australia media release 5/10/2007 available at: http://www.wgga.com.au/news/view.asp?view=5 accessed 2 July 2009.

23. The primary obligation of the Wine Labelling Agreement is contained in Article 6. This article provides that, once the Wine Labelling Agreement is ratified, accepted or approved Australia is obligated to permit wine producers to use a single field of vision approach to wine labelling. According to this approach, domestic labelling requirements will be met where four key common mandatory items of information are displayed together on a standard size wine container. This labelling requirement will apply to:

a) Australian wine produced for domestic consumption in any State and Territory; and

b) Australian wine exports to WWTG Parties that have ratified, accepted or approved the Wine Labelling Agreement.

24. The effect of Article 6 is also that Australia is obligated to accept wine from other WWTG countries that have signed and ratified, accepted or approved the Wine Labelling Agreement and which use a single field of vision approach to wine labelling which complies with our domestic labelling requirements, provided this information is not displayed on the base or the cap of the wine container (Article 10(3b)). Other obligations of the Wine Labelling Agreement are outlined below.

25. Article 3 does not limit the rights and obligations of Parties under the Marrakesh Agreement Establishing the World Trade Organization done on 15 April 1994 and associated WTO Agreements and does not preclude the Parties from concluding wine labelling agreements with third countries. For example, Australia - European Community Agreement on Trade in Wine (EC Wine Agreement), done on 1 December 2008 (yet to enter into force) contains some provisions on labelling. The labelling provisions in the EC Wine Agreement are compatible with those of the Wine Labelling Agreement, covering different areas of labelling. There is no interaction or incompatibility between the two Agreements.

26. Article 5 specifies that all information on a label shall be clear, specific, accurate, truthful and not misleading to the consumer. Australia is also obligated to allow information on a wine label provided it is consistent with our labelling laws and that information may be repeated on a label whether mandatory or voluntary. Importantly, Article 5 specifies that no Party shall require wine making practices to be disclosed on a label.

27. Article 9 specifies a range of type size requirements for the presentation of the four items of common mandatory information that Australia must permit on wine containers. These size requirements are consistent with Australia’s current requirements.

28. Article 10 provides that Australia cannot restrict the placement of mandatory information, apart from the restriction in Article 10(2)(b) on display of such information on the base or the cap of a wine container.

29. Article 11 provides the specifications for the presentation of the four items of common mandatory information on wine containers. These specifications are as follows:

a) country of origin - “product of”, “wine of” or the name of the country of origin, used as either an adjective or a noun in conjunction with the word “wine” are allowable for country of origin;

b) product name - the term “wine” is allowed as the product name;

c) net contents - to be stated using the metric system, millilitres or litres and their abbreviations can be used. The single field of vision approach applies only to specified wine containers and in addition to Article 15, the Parties need to provide their requirements concerning the display of net contents to the depositary; and

d) actual alcohol content – is to be indicated in percentage terms to a maximum of one decimal point and can be expressed by alcohol/volume (eg. 12.3% alc/vol or alc 12.3% vol).

30. Article 12 provides that a wine cannot be labelled as *icewine* unless it is made exclusively from grapes naturally frozen on the vine. The Australian Wine and Brandy Corporation (AWBC) will need to include this term in the future on the register of protected names.

31. Article 15 obligates Australia to notify the depositary on ratification of the Wine Labelling Agreement of its laws, regulations and requirements in relation to wine labelling and a contact point for such information. Australia is also obligated to notify the depositary of any proposals to change these laws, regulations and requirements within 60 days after such changes become final.

Implementation

32. To enable Australia to ratify the Wine Labelling Agreement, an amendment was needed to existing regulations under State and Territory UTML. This was to allow the volume statement to appear other than on the principal display panel or for an exemption made under the existing provisions of the regulations. The Australian Government consulted with the States and Territories on this issue throughout negotiations concerning the Wine Labelling Agreement. The Ministerial Council for Consumer Affairs (MCCA) has responsibility for the UTML within which this labelling matter falls until the Commonwealth assumes sole responsibility from 1 July 2010. Members of COAG and MCCA indicated support for the change in labelling requirements for wine containers at meetings on 23 March 2008 and 23 May 2008 respectively after a COAG regulation impact statement was drafted and circulated to the States and Territories for their agreement.

33. Now that the amendments have been made to State and Territory regulations, the single field of vision approach to wine labelling complies with current domestic labelling requirements. Therefore wine producers and importers are currently able to use it on standard size wine containers in Australia and for wine exports to WWTG countries and Europe.

34. No other legislative amendments will be required to implement the Wine Labelling Agreement, although further enabling legislation will need to be incorporated into the Regulations. Interim provisions apply in those regulations from 1 July 2010 exempting certain wine containers mentioned in the Wine Labelling Agreement from the requirements of the Regulations. However, it is intended that should the Wine Labelling Agreement be ratified, approved or accepted, this will enable inclusion of the specific provisions of this Agreement in the Regulations, as indicated in the explanatory statement to that instrument.

35. To ensure that consumers are not confused by the new labelling arrangements the Winemakers’ Federation of Australia (WFA) volunteered to implement a monitoring system and conduct an education process for consumers. As a result of this process WFA has notified all

producers of the changes via the WFA website and newsletter. The AWBC is also preparing a fact sheet for its website.

36. In addition, the WFA Packaging Committee has a standing agenda item on wine labelling at which any complaints are to be registered. The AWBC has also been requested to log all complaints concerning the regulatory system. Although the South Australia legislation was put in place in November 2007, to date WFA have received no complaints regarding the change or changes in other State and Territory jurisdictions.

Costs

37. As noted above, it has been estimated that the single field of vision approach could save approximately $25 million in labelling costs for Australian wine industry, thereby helping to increase the competitiveness, volume and value of Australian wine exports.

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

39. There are no costs associated with the Wine Labelling Agreement for States and Territories. The WFA has and will incur some minor costs associated with an education campaign for consumers and with registering any complaints with the labelling system through its Packaging Committee. The AWBC will incur minor costs in developing a fact sheet for their website to inform consumers and logging any complaints concerning the volume statement.

Regulation Impact Statement

40. The Australian Government has prepared a Regulation Impact Statement (RIS) which is attached.

Future treaty action

41. In relation to any future treaty action that may be required, Article 13 of the Wine Labelling Agreement obliges the Parties to continue discussing the following matters with a view to concluding an additional agreement on labelling within three years from the closing of the period for signature of the Agreement as specified in Article 13(1):

(a) labelling requirements concerning information on alcohol tolerance, vintage, variety and wine regions;

(b) labelling requirements concerning the linking of National Mandatory Information or voluntary information or both; and

(c) any other relevant trade facilitating matters concerning labelling requirements such as type size, presentation of net contents, multiple languages and *icewine*.

42. Article 17 provides that any Party may propose amendment to the Wine Labelling Agreement by submitting the text of the proposed amendment to the depositary. Amendments shall be subject to acceptance by the Parties. Any such amendment would constitute a treaty action

and would therefore 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

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

44. Any termination of the 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

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CONSULTATION

Commonwealth Agencies

45. Approval for Australia to sign the Wine Labelling Agreement has been received from the following relevant Australian Government agencies: Department of the Treasury; Attorney-General's Department; Department of Agriculture, Fisheries and Forestry; Department of Foreign Affairs and Trade; Department of Innovation, Industry, Science and Research. The Prime Minister has been informed of the process to sign the Wine Labelling Agreement.

46. Several ministers noted the need to continue to consult with the States and Territories to resolve the issue of the amendment to the State and Territory UTML. All States and Territories were consulted throughout this process and have now amended their relevant legislation.

State and Territory Governments

47. In June 2001 the Department of Agriculture, Fisheries and Forestry, wrote to the Premiers and Chief Minister of all States and Territories concerning the proposal to develop a multilateral agreement on wine labelling. At the same time, the Department of Innovation, Industry, Science and Research consulted with the Trade Measurement Advisory Committee (TMAC), formed by the Ministerial Council on Consumer Affairs, whose functions include oversight of the national review of trade measurement legislation.

48. In June 2003, Mr Vaile, the then Minister for Trade wrote to all Premiers and Chief Ministers to encourage support for the proposed Wine Labelling Agreement. Following Mr Vaile's letter, the Department of Foreign Affairs and Trade consulted with all State and Territory governments including regulatory authorities on the principles of the proposed Wine Labelling Agreement.

49. The first briefing provided to the Commonwealth-State/Territory Standing Committee on Treaties (SCOT) meeting was on 31 May 2004 and included a presentation by the Department of Foreign Affairs and Trade and the Department of Agriculture, Fisheries and Forestry.

50. In mid-2004, the Department of Foreign Affairs and Trade contacted the Secretariat of MCCA and proposed placing the wine labelling issue on the agenda for the Council's next meeting.

51. At its meeting of August 2004, MCCA considered a paper relating to possible changes to Australia’s labelling requirements for wine containers in the event that firm agreement was reached in the WWTG and agreed to form a Standing Committee of Officials of Consumers Affairs (SCOCA) Working Party to report back within three months. South Australia, New South Wales, Tasmania, Victoria, Queensland and Western Australia agreed to participate on the Working Party to further examine the matter. The commencement of the SCOCA Working Party’s consideration of this issue was delayed, pending receipt of clarifying information it had sought from the industry, further assessment of that information and confirmation of a firm position from the Department of Foreign Affairs and Trade and the WWTG.

52. In September 2004, the Department of Foreign Affairs and Trade and the Department of Agriculture, Fisheries and Forestry addressed a joint Working Party of TMAC considering this issue. At that time, TMAC expressed the view that it was strongly opposed to changing the legislation concerned with volume content labelling. The Commonwealth Government continued to discuss the matter with TMAC.

53. In September 2005, MCCA noted a paper and the work undertaken by the SCOCA Working Party in considering this matter. The Working Party had requested that further work in relation to consumer benefits, confirmation of industry proposed cost savings and Australia’s obligations in adhering to international trade measurement standards.

54. In December 2006, the Australian Government provided SCOCA with a dossier of information addressing concerns which had been raised by the Working Party in relation to the ”single field of vision” approach to wine labelling. At this meeting members indicated general support for the change in labelling requirements for standard wine containers.

55. The dossier was also sent by the then Minister for Trade to State and Territory Consumer Affairs and Primary Industries ministers for their information and consideration. State and Territory minister’s responses expressed general support for the proposed amendments to the UTML.

56. Following Australia’s signing of the Wine Labelling Agreement in January 2007, a progress report was provided to the SCOCA meeting in April 2007 and in June 2007 both the draft RIS and National Interest Analysis were provided to them for their consideration.

57. At the 26 March 2008 COAG meeting it was agreed to ask MCCA to expedite ratification of the Wine Labelling Agreement. MCCA agreed at its 23 May 2008 meeting that States and Territories should enable the necessary changes to the UTML to allow for ratification of the Wine Labelling Agreement.

58. South Australia amended its UTML commencing from 22 November 2007, enabling the information required under the Wine Labelling Agreement to be viewed together in a single field of vision.

59. In December 2008, Queensland implemented the Queensland Trade Measurement Amendment Legislation allowing the requirements of the Wine Labelling Agreement to come into force. It was agreed through the MCCA process that the Queensland regulations be used as a

template for the other states to amend their legislation. Northern Territory and Victoria followed in December 2008 in also finalising the required amendments to their legislation.

60. Amendments to the UTML took effect on 1 February 2009 in New South Wales, in June 2009 in the Australian Capital Territory and Tasmania and on 1 July 2009 in West Australia. The UTML in all States and Territories has now been amended to allow for the Wine Labelling Agreement to be ratified.

Industry

61. Maintaining and increasing international market share is of great importance to continued wine industry viability. Hence, the Australian wine industry is highly supportive of the single field of vision approach for labels as it will provide considerable cost savings and make the labelling of standard size wine containers more efficient.

62. Australian Government participation in negotiations for the Wine Labelling Agreement have been carried out in close consultation with the WFA and the industry's statutory marketing authority - the AWBC. WFA and AWBC have actively supported and provided input into the negotiations for the Wine Labelling Agreement and both have confirmed their support for the text of this Agreement. Wine industry leaders have also been directly briefed through the AWBC's International Trade Advisory Committee.