

# NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

## SUMMARY PAGE

### **Agreement on Trade in Wine between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland**

*(London, 18 January 2019)*

**[2019] ATNIF 9**

**[2019] ATNIA 9**

#### **Nature and timing of proposed treaty action**

1. The proposed treaty action is the entry into force of the *Agreement on Trade in Wine between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland* ('the Agreement'), signed in London on 18 January 2019.
2. The Agreement will ensure that the beneficial conditions for wine trade – provided for by Australia's Trade in Wine Agreement with the European Union (EU) ('EC-Australia Wine Agreement')<sup>1</sup> – continue to apply between Australia and the United Kingdom (UK) ('the Parties'), post-Brexit.
3. Timing for the entry into force of the Agreement will depend on the terms of Brexit, which remain uncertain. The UK is set to leave the EU on 29 March 2019 (UK time). The current Withdrawal Agreement on the future EU-UK relationship proposes a Brexit transition period which would run from 29 March 2019 until 31 December 2020, possibly longer. During this transition period, the UK would remain bound by obligations stemming from EU-third country agreements as if it remained an EU Member State. Australia's treaties with the EU would continue to apply to the UK for the duration of this transition period, and this Agreement would not enter into force until the transition period ends.
4. However, the Withdrawal Agreement has not been approved by the UK and EU Parliaments and a 'no-deal' scenario, whereby the UK leaves the EU without a Withdrawal Agreement or other measures in place, remains possible. In the event of a 'no-deal' Brexit, this Agreement will need to enter into force on the date the UK formally leaves the EU to avoid any legal gaps for Australia.

#### **Overview and national interest summary**

5. The Agreement will ensure ongoing access to the UK market for Australian wine-makers following the UK's withdrawal from the EU. It also aims to provide a platform for further facilitation and promotion of wine between the UK and Australia.

---

<sup>1</sup> *Agreement between Australia and the European Community on Trade in Wine* done at Brussels on 1 December 2008 ([2010] ATS 19).

6. The Agreement largely mirrors the rights and obligations provided for under the EC-AU Wine Agreement, subject to some technical changes necessary for replicating those provisions in a bilateral Australia-UK context. Under the Agreement, Australia and the UK will continue to accept each other's authorised winemaking techniques and simplified wine certification and labelling arrangements. The Agreement also provides for ongoing reciprocal recognition of each Party's geographical indications (and other terms) in relation to wine.

### **Reasons for Australia to take the proposed treaty action**

7. The UK is Australia's top wine export market by volume and third largest market by value. In the 12 months to December 2018, Australia exported 246 million litres of wine to the UK, with a value of \$389 million. The UK is also an important hub for Australian wine exports to Europe. Approximately 80 per cent of wine shipped to the UK is unpackaged (bulk), which is bottled in market and distributed across the EU. The value of unpackaged wine exports to the UK grew by 27 per cent to \$214 million in the 12 months to December 2018.
8. The Agreement will ensure that Australia's wine exports to the UK can continue uninterrupted, and with minimal technical barriers, post-Brexit. In doing so, it underlines the strong commitment of Australia and the UK to the promotion and facilitation of wine trade between the two countries and will help maintain a mutually beneficial trade relationship.

### **Obligations**

9. Article 2 of the Agreement incorporates the obligations provided for in the EC-AU Wine Agreement (hereinafter referred to as 'incorporated' provisions), including the Protocol, Annexes and Consolidated Exchange of Letters, subject to some technical modifications provided for in this Agreement. The obligations provided for under the EC-AU Wine Agreement are set out in the National Interest Analysis for that treaty.<sup>2</sup>
10. By virtue of Article 4, all references to EU laws and regulations will be read as references to the substance of those laws, as transposed into UK law as at the date on which the UK leaves the EU or the date the UK ceases to be bound by the relevant EU legislation following the expiration of any Brexit transition period. The Agreement further provides that the commitments described in the Declarations made by the parties to the EC-AU Wine Agreement, shall apply with the same effect to the Parties to this Agreement as if the Declarations had been concluded between the Parties and subject to the provisions of the Agreement. These declarations are non-binding.
11. Incorporated Article 5 requires the Parties to authorise the importation into and marketing in their territory of wines produced in accordance with the winemaking practices or processes and compositional requirements outlined in the Agreement. Incorporated Articles 6-11 also set out a process for modifications or additions to the list of permitted oenological practices, processes or compositional requirements. Incorporated Article 10 allows disputes about these matters to be subject to a binding arbitration.

---

<sup>2</sup> [2009] ATNIA 2, available at: <http://www.austlii.edu.au/au/other/dfat/nia/2009/2.html>

12. Incorporated Article 12(2) requires the Parties to prevent, where wines produced in their territory are exported and marketed outside their territory, the use of protected names provided for in the Agreement. Australia will be required to prevent, for wines produced in Australia, use of UK geographical indications (incorporated Article 12(1)(a)(I)); traditional wine expressions of the UK (incorporated Article 12(1)(a)(III)); certain categories of wines and sales descriptions (incorporated Article 12(a)(IV)), as well as references to the UK (incorporated Article 12(1)(a)(II)). The UK will be required to prevent, for wines produced in the UK, use of Australian geographical indications listed in incorporated Annex II, Part B (incorporated Article 12(1)(b)(I)) and references to 'Australia' or other names to indicate Australia (incorporated Article 12(1)(b)(II)).
13. Consistent with their obligations under the EC-AU Wine Agreement, the obligation on Australia and the UK to prevent misuse of geographical indications extends to wine imported from third countries (incorporated Article 13(1)).
14. Incorporated Articles 19-25 impose further obligations regarding the presentation and description of wine. Incorporated Article 19 provides generally that wine may not have false or misleading labelling. Incorporated Article 20 contains particular types of wine descriptions which may be used on labels, depending on whether the wine bears an authorised geographical indication. These rules are supplemented by the requirements for terms used to describe certain product types and production methods set out in incorporated Annexes VII and VIII. There are also rules about describing wines by reference to vine varieties (incorporated Article 22) and, for Australian wines, with a geographical indication (incorporated Article 24).
15. Australia may continue to use the quality wine terms listed in incorporated Annex V to describe Australian wines (incorporated Article 23). These are commercially important terms used for Australian fortified wine including 'cream', 'ruby', 'tawny' and 'vintage'.
16. Incorporated Article 26 is a "stand still" provision which prohibits Australia and the UK from introducing more onerous labelling requirements than those in force as at the date of signature of the Agreement.
17. Incorporated Article 27 requires that the UK authorise the importation of wine, originating in Australia, if accompanied by the simplified certification provisions outlined in the Agreement. Australia is required to provide the certification to the UK via the authorised competent body. It also requires that both Parties will not impose more restrictive certification requirements for wine originating from each other's territories.
18. Incorporated Article 30 provides for the establishment of a Joint Committee to see to the proper functioning of the Agreement. Upon entry into force of this Agreement, any decisions adopted by the Joint Committee established under the EC-AU Wine Agreement immediately before it ceases to apply to the UK, shall, to the extent to which those decisions relate to the Parties to this Agreement, be deemed to have been adopted by the Joint Committee established under this Agreement (Article 7(2)). However, it will be open to the Joint Committee to subsequently make decisions which are different to, revoke or supersede those decisions deemed to have been adopted (Article 7(3)).

## **Implementation**

19. Australia's obligations under the Agreement will be implemented under the *Wine Australia Act 2013* and the *Wine Australia Regulations 2018*.
20. The *Wine Australia Regulations 2018* will need to be amended to declare the Agreement as a 'prescribed wine-trading agreement' for the purposes of Section 4(1) of the *Wine Australia Act 2013*. With this declaration, the UK will be recognised as an agreement country under Section 4(1) of the *Wine Australia Act 2013*. As such, provisions applicable to agreement countries under both the *Wine Australia Act 2013* and *Wine Australia Regulations 2018* will apply to wine trade between Australia and the UK.

## **Costs**

21. There will be administrative costs associated with amending the *Wine Australia Act 2013* and the *Wine Australia Regulations 2018* to enable the entry into force of the Agreement. These will be absorbed within existing budgets. There are no expected costs to business.

## **Future treaty action**

22. The Parties may agree, in writing, to amend the Agreement (Article 9(1)). Amendments would enter into force on a mutually determined date. The Joint Committee may also decide that the incorporated Annexes, Protocol, or Letters should be amended, and the Parties may adopt the Joint Committee's decision, subject to any applicable procedures (Article 9(2)).
23. Any amendments to the Agreement, including the Annexes, Protocol or Letters, will be subject to Australia's domestic treaty processes.

## **Regulation Impact Statement**

24. The Office of Best Practice Regulation has been consulted and confirmed that a Regulation Impact Statement is not required.

## **Termination**

25. Incorporated Article 44(2) provides that either Party may terminate the Agreement by giving one year's written notice to the other Party. Termination by Australia would be subject to Australia's domestic treaty-making requirements.

## **Contact details**

Food, Wine and Taxation  
Agricultural Policy Division  
Department of Agriculture and Water Resources

## **ATTACHMENT ON CONSULTATION**

### **Agreement on Trade in Wine between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland**

*(London, 18 January 2019)*

**[2019] ATNIF 9**

**[2019] ATNIA 9**

#### **CONSULTATION**

26. Wine Australia, the statutory authority responsible for control of the export of wine from Australia and the Winemakers' Federation of Australia (WFA), the national peak industry body for Australia's winemakers, were informed of the Agreement. The Agreement was discussed in meetings with WFA and wine industry stakeholders. The signature of the Agreement was welcomed. The impact on the Australian wine industry is limited as the Agreement largely preserves existing conditions for wine trade provided for under the EC-AU Wine Agreement, which has been in force since 1 September 2010.
27. Both WFA and the Australian Wine and Brandy Corporation (now known as Wine Australia) were consulted on the EC-AU Wine Agreement at the time of its development. Both organisations actively supported and provided input into the EC-AU Wine Agreement negotiations.
28. State and Territories were consulted on the development of the EC-AU Wine Agreement and raised no issues with it being ratified. The Agreement incorporates the obligations provided for in the EC-AU Wine Agreement with some technical modifications in order to replicate these rights and obligations in a bilateral context.