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NEW ZEALAND WINEGROWERS

SECTORAL AND GOVERNMENT INTERACTION IN THE INTERNATIONAL REGULATION OF WINE

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The Wine & Law Program is based on the idea that Wine Law can and should be apprehended and analyzed through a historic, geographic, economic and even political context. While asserting the constraints of legal methodology, research in wine law should enhance interactions among humanities, social sciences and even natural sciences in order to successfully respond to the different needs of a demanding and culturally interesting sector (winegrowers, distributors, policy-makers, administration, and civil society)

SECTORAL AND GOVERNMENT INTERACTION IN THE INTERNATIONAL REGULATION OF WINE

John Barker

Abstract:

As the wine sector has become progressively globalized, multi-national and international institutions have become an increasingly important site for developing the rules that define and govern wine. Within these institutions, competing geographical perspectives and technological challenges to the existing understanding of wine are mediated.

There is no single institution but a complex web of organisations and agreements involved in this process. The main actors are governments (through both officials and research institutions) and sectoral organisations. The interests of these two groups are often closely aligned around protection of national/commercial interests and promotion of improved conditions of trade. While governments ultimately have decision-making power in this context, sectoral organisations play an integral role in developing the agenda and coordinating activities across institutions. Through these activities, sectoral organisations seek to influence the rules export destinations as well as in their own domestic regulatory environment.

This paper explores the interaction between the sector and government across the web of institutions using two case studies specifically related to rules regarding oenological practices: the World Wine Trade Group Mutual Acceptance Agreement on Oenological Practices; and the OIV-led initiative regarding winemaking additives in China.

1. GLOBALIZATION AND THE RE-SCALING OF WINE LAW

It is well recognised that the wine sector has been the subject of a progressive globalization for more than a century.¹ Law has been a central element in this process. As the geography of wine production and trade has altered, the regulation of wine also been re-sited and re-

¹ By “globalization”, I mean ongoing processes of change that extend and intensify political, economic, social and cultural interaction and interconnectedness. See for example: Kelly, P. 1999: The geographies and politics of globalisation. Progress in Human Geography, 233, 379-400.

scaled. A “web” of international and multi-national institutions has evolved that powerfully influences the regulation of wine in producing and consuming states at all levels. These institutions have been both venues for and the subjects of contests over access to markets, over regions, over new technologies, over the very idea of “wine”, that are thrown up by the changes in the wine sector.

Historically, the regulation of wine was predominantly a national or regional matter. The establishment of the *Office International du Vin* in 1924 created the first modern international institution dedicated to wine-related matters. Its founding objects reflected concerns about phylloxera, fraud and prohibitionism that affected multiple countries and to some extent arose from the extension of economic and social ties between those countries. Similarly, a set of agreements offering rudimentary protection to indications of source and appellations of origin² indicated an attempt to exert control over legal problems affecting wine at an international scale.

The creation of the European Economic Community in 1958 and the subsequent agreement for the establishment of an EEC common market organisation for wine began a process of consolidation of the various legal regimes for wine across Europe. This would eventually produce a powerful trading bloc that could use regulation as a means to protect its producers and promote its regulatory vision. At the same time, it shifted a significant part of the control over the structure and content of wine regulation away from the member states individually.

The arrival of the WTO and its ancillary agreements effected a significant change in the regulation of the wine industry at all levels. The presence of the WTO altered the focus of key regulatory contests, realigning the roles of existing institutions such as the OIV and Codex Alimentarius, and raising the stakes on the outcome of any particular dispute. The WTO agreements compelled existing national and regional based wine regulatory regimes to engage with an overarching international regulatory regime and a set of product non-specific governance mechanisms. At the same time, these agreements undercut historical regulatory roles of the state in wine-related matters through their emphasis on equivalence and transparency in regulatory matters.

The (re-)emergence of non-European production and exports coincided with installation of a free trade regulatory philosophy through the WTO. Producers in these countries were united by their difficulties with the EU regulatory framework and the view that they were insufficiently represented in the OIV. The result was the creation of a new, hybrid organisation – the World Wine Trade Group - focused specifically on facilitating trade

² Paris Convention for the Protection of Industrial Property (1883); Madrid Arrangement for the Repression of False or Deceptive Indications of Source on Goods (1891); Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958).

through mutual acceptance. At the same time, the EU and its allies used the WTO TRIPs Agreement and a series of bilateral wine agreements to embed the concept of the geographical indication in the international regulatory framework.

The result of these shifts in regulatory geography is a highly complex web of institutions affecting the regulation of wine that operates from the local to the international level. The main actors within this web of institutions are governments (through both officials and research institutions) and industry representatives. While governments ultimately have decision-making power in this context, industry representatives play an integral role in developing the agenda and coordinating activities across institutions. Through these activities, industry representatives seek to influence the rules of export destinations as well as in their own domestic regulatory environment.

This paper sets out the web of international and multi-national institutions that are relevant to the aspect of one key element wine law; the regulation of oenological practices. It explains how they operate in relation to one another and presents the case study of winemaking additives in China to illustrate how industry and governments in wine producing countries interact through this web of institutions to create improved trade outcomes. In the case of oenological practices, the collective result has been a progressive convergence between the major wine producing countries and a combined pressure upon developing markets to regulate in a similar way.

2. THE 'WEB' OF INSTITUTIONS

2.1 The International Organisation of Vine and Wine

Any description of international organisations in the wine sector must start with the OIV as the first and still the only international inter-governmental organisation specifically dedicated to the products of the grape vine. The OIV describes itself as is “an intergovernmental organisation of a scientific and technical nature of recognised competence in the field of vines, wine, wine-based beverages, grapes, raisins and other vine products.”³ It operates under an international agreement dated 3 April 2001 which sets out its objectives and activities and specifies how it will conduct its operations.

The OIV was originally formed in 1924 as the *Office International du Vin* by an agreement between France, Greece, Hungary, Italy, Luxembourg, Portugal, Spain and Tunisia. While created and based in Europe, membership of the OIV expanded post WWII to include non-European wine-exporting countries such as Argentina (1953), Australia (1978), USA (1984) and New Zealand (1994). In response to concerns voiced by non-European wine producing countries, a review of OIV operations was undertaken resulting in the replacement of the

³ <http://www.oiv.int/oiv/info/enpresentation> (accessed 26.2.12)

1924 Agreement and the creation of the International Vine and Wine Organisation as a new entity in 2001.

The OIV currently has 44 members and 12 observers. However, its geographical coverage of the wine sector is limited due to the fact that the major producing and consuming countries of USA, China and Canada are not members. The European Union attends as an invited observer but cannot vote in its own right.⁴

The missions of the OIV are:

- to inform its members of measures whereby the concerns of producers, consumers and other players in the vine and wine products sector may be taken into consideration;
- to assist other international organisations, both intergovernmental and non-governmental, especially those which carry out standardization activities;
- to contribute to international harmonisation of existing practices and standards and, as necessary, to the preparation of new international standards in order to improve the conditions for producing and marketing vine and wine products, and to help ensure that the interests of consumers are taken into account.⁵

The 2001 Agreement specifies a number of activities for the OIV, including:

- promotion and guidance of scientific and technical research and experimentation;
- preparing recommendations in relation to: the conditions for grape production, oenological practices, definition and/or description of products, labelling and marketing conditions, methods for analyzing and assessing vine products;
- preparing proposals relating to: guaranteeing the authenticity of vine products, protecting geographical indications, scientific and technical criteria for recognizing and protecting new vitivinicultural plant varieties
- contributing to the harmonisation and adaptation of regulations by its members or, where relevant, to facilitate mutual recognition of practices within its field of activities;
- informing members of scientific or technical developments;
- protecting of the health of consumers and food safety; and
- facilitating cooperation between members.⁶

The OIV is structured around a General Assembly of all members, where decisions are made on a consensus basis. An Executive Committee exercises some delegated functions of the General Assembly in between plenary meetings. Scientific and technical matters are considered within the Scientific and Technical Committee (CST) which is comprised of four

⁴ Although Member States are required to vote in accordance with the decisions of the European parliament on certain matters.

⁵ Article 2.1, Agreement Establishing the International Organisation of Vine and Wine, 3 April 2001.

⁶ Article 2.2, Agreement Establishing the International Organisation of Vine and Wine, 3 April 2001.

Commissions and two Sub-Commissions covering: Viticulture; Oenology; Law and Economy; and Safety and Health; Methods of Analysis; and Table Grapes, Raisins and Unfermented Grape Products. Each of the Commissions is further sub-divided into Expert Groups. Decisions on scientific and technical matters must proceed through an 8 step process ensuring consideration by the relevant Expert Groups and Commissions, the CST itself and, ultimately, the General Assembly.

As an inter-governmental organisation, it is government representatives who are the main participants. However, governments will also appoint scientific experts to work in the Expert Groups and sometimes exercise decision making powers as Expert Delegates. Experts will be drawn from research institutions as well as from with industry representative bodies within a member country. Industry is also able to participate through the observership of FIVS.

In fulfillment of its obligations, the OIV undertakes a wide range of tasks, guided by a 3-year Strategic Plan. These include: publication of databases and lists relating to such matters as geographical indications and grape vine varieties; publication of a peer-reviewed journal, the *Bulletin de l'OIV*; support for the annual World Congress of Vine and Wine; and preparation of authoritative publications compiling the recommendations of the OIV in relation to topics covered by its 4 Commissions.

In the area of winemaking, the OIV has three important publications: the *International Code of Oenological Practices*, which sets out definitions and conditions of use for products and oenological practices; the *International Oenological Codex*, which sets out specifications for products that may be used in the production of wine; and the *Compendium of International Methods of Analysis of Wine and Musts* which sets out the methods of analysis and other matters relating to substances that may be used or present in wine.

Despite the reference to “standards” within its mission, the OIV is not itself an international standard-setting organisation in WTO terms. Rather, the decisions of the OIV contained in these publications are recommendatory in nature. OIV members can choose whether to adopt them or not. Nevertheless, OIV recommendations have a broad influence.

They are used in many countries as a reference point in developing their own regulations. The European Union, for example, directly adopts OIV methods of analysis for wine⁷ and explicitly bases its list of permitted oenological practices on OIV recommendations.⁸ Permissible grape variety names include those listed in the OIV’s International List of grape varieties and their Synonyms.⁹ For wines imported from non-EU countries, OIV-

⁷ Article 120g, Council Regulation (EC) No. 1234/2007

⁸ Article 120f(a), Council Regulation (EC) No. 1234/2007

⁹ Article 62, Commission Regulation (EC) No. 607/2009

recommended oenological practices can be used instead of the practices listed for EU member states.¹⁰ References to the OIV and its publications are also included in international agreements relating to wine, such as the agreements between EU and Australia,¹¹ South Africa,¹² Canada¹³ and Chile¹⁴.

The OIV is an observer to a number of international organisations, including: the World Intellectual Property Organisation and Codex Alimentarius; and it has a working relationship with WHO, FAO and the WTO. The OIV is especially active and influential in Codex Alimentarius, presenting itself as akin to a vertical committee for Codex.¹⁵ It participates in a number of the Committees of Codex. Within the Codex Committee on Food Additives it regularly offers an OIV perspective on additives that might be used in wine production. The OIV's *Code of Practice for the Prevention and Reduction of Ochratoxin A Contamination in Wine* was adopted directly and Codex is considering its proposal to review its Standard for Fresh Grapes in light of an OIV proposal. The relationship with Codex helps to ensure that its role is not superseded by the development of wine standards in Codex.

2.2 The World Trade Organisation

The World Trade Organisation (WTO) is the body responsible for administering the system of rules for international trade established at the conclusion of the Uruguay Round of General Agreement on Tariffs and Trade (GATT) negotiations (1986-1993). The WTO was established by the contracting parties to GATT through series of multi-lateral agreements signed at Marrakech in 1994 (the WTO agreements). There are currently 158 member countries in the WTO.

The WTO agreements deal with a broad range of matters related to international trade. The WTO agreements do not specify exact regulatory mechanisms. Instead, members have the freedom to regulate for themselves in accordance with certain fundamental principles. These principles include transparency, non-discrimination and minimising trade restrictiveness, aimed at reducing state protectionism by way of legislation.¹⁶

A number of the WTO agreements are of direct relevance to the wine industry. These are the agreements on: Agriculture; Trade Related Aspects of Intellectual Property; Origin of

¹⁰ Article 158a(2), Council Regulation (EC) No. 1234/2007

¹¹ Agreement between the European Community and Australia on trade in wine, 30 January 2009

¹² Agreement between the European Community and the Republic of South Africa on trade in wine, 28 January 2002

¹³ Agreement between the European Community and Canada on trade in wines and spirit drinks, 16 September 2003

¹⁴ Agreement on Trade in Wines, 30 December 2002

¹⁵ Codex Alimentarius Commission, Thirty-fifth session, Roma (Italy), 2 - 7 July 2012, CAC /35 INF/5/REV, Communication from OIV

¹⁶ http://www.wto.org/english/thewto_e/whatis_e/what_stand_for_e.htm (accessed 25.2.13)

Goods; Sanitary and Phytosanitary Measures; and Technical Barriers to Trade. The latter two agreements are of considerable importance to the regulation of winemaking practices.

2.1.1 *The Agreement on Sanitary and Phytosanitary Measures*

The Agreement on Sanitary and Phytosanitary Measures (the SPS agreement) deals with measures taken by member countries to protect the health of humans, animals and plants. Such measures are permitted provided they are consistent with the provisions of the SPS agreement.¹⁷ The principle applications of the SPS agreement with regard to wine are in the area of quarantine regulations (i.e. plant health) and measures where winemaking processes or additives are regulated from the point of view of human health.

SPS measures must be based on scientific principles and may not be applied without sufficient scientific evidence,¹⁸ except on a provisional basis.¹⁹ SPS measures may only be applied to the extent necessary to protect human, animal or plant life or health.²⁰ Moreover, they must not discriminate between members where identical or similar conditions prevail or be used as a disguised trade barrier.²¹

WTO members are required to base their SPS measures on international standards where they exist,²² and where this has been done, such standards will be deemed to conform to the requirements of the SPS agreement.²³ Members may introduce measures that provide for a higher level of protection than is set by international standards, provided this can be 'scientifically' justified in accordance with the SPS risk assessment and determination criteria.²⁴ Members are required to treat another member's SPS measures as 'equivalent' to their own if it can be demonstrated that the other members' measures achieve the appropriate level of SPS protection.²⁵

Members are required to play a 'full part' within certain international standardizing institutions,²⁶ of which the Codex Alimentarius Commission is of relevance to the wine industry. A Committee on Sanitary and Phytosanitary Measures monitors the process of international harmonisation and coordinates efforts with the relevant standardizing institutions. Governments and their appointed scientific experts participate in the SPS

¹⁷ Article 2.1, SPS Agreement

¹⁸ Article 2.2, SPS Agreement

¹⁹ Article 5.7, SPS Agreement

²⁰ Article 2.2, SPS Agreement

²¹ Article 2.3, SPS Agreement

²² Article 3.1, SPS Agreement

²³ Article 3.2, SPS Agreement

²⁴ Article 3.3, SPS Agreement

²⁵ Article 4, SPS Agreement

²⁶ Article 3.4, SPS Agreement

Committee. Industry is not generally able to participate and must work through its government to ensure that its views are represented in the SPS Committee.

2.1.2 *The Agreement on Technical Barriers to Trade*

The Agreement on Technical Barriers to Trade (the TBT agreement) requires WTO members to ensure that technical regulations do not create unnecessary obstacles to international trade and that imported products are treated no less favorably than local products in respect of these regulations.²⁷

Technical regulations in this sense mean any mandatory regulations relating to “product characteristics or their related processes and production methods, including the applicable administrative provisions” and may also include regulations relating to “terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method”.²⁸ The scope of the TBT Agreement therefore covers the majority of measures relating to winemaking and labelling practices and processes that are not health-related.

Such regulations must not be “more trade restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create”.²⁹ Legitimate objectives are specified to include: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing the risks of non fulfilment, relevant areas of consideration include: available scientific and technical information, related processing technology or intended end-uses of products.³⁰

The TBT agreement requires that members base their standards on existing international standards unless this would be inappropriate or ineffective to fulfill “legitimate objectives”.³¹ Members must notify members of technical regulations which significantly affect the trade of other members. If those regulations are based on existing international standards they will be rebuttably considered not to create an unjustified obstacle to international trade.³² Members are also required to participate in international harmonising and standardizing activities.

Procedures for assessment of conformity with standards (e.g. certification) must allow suppliers of products from other WTO members to access the market on conditions no less

²⁷ Article 2.2, TBT Agreement

²⁸ Annex 1(1) TBT Agreement

²⁹ Article 2.2, TBT Agreement

³⁰ *ibid.*

³¹ Article 2.4, TBT Agreement

³² Article 2.5, TBT Agreement

favourable than for local suppliers. Such procedures must not create unnecessary obstacles to trade.³³

A Committee on Technical Barriers to Trade is established for the purpose of allowing members to consult on implementation of TBT measures.³⁴ The TBT Committee has been the scene of numerous complaints related to wine making rules, particularly complaints by non-EU wine exporting countries about aspects of the EU winemaking regulations. As with the SPS Committee, industry is generally not able to participate.

2.1.3 *Dispute Resolution*

The WTO agreements are enforced through the WTO's dispute settlement procedure. The procedure encourages parties to a dispute to settle the matter between themselves and provides for an initial period of consultation in order to achieve this. If consultation is not successful, a panel is established to hear the dispute and make recommendations to the Dispute Settlement Body (DSB), which must then adopt or reject the panel report.

An appeal may be made on points of law to a separate appellate body before the report is submitted to the DSB. The unsuccessful party must then implement the decision of the DSB within a given timeframe. If the unsuccessful party fails to do so then it must enter into arbitration with the successful country or countries to determine 'mutually acceptable compensation' (e.g. beneficial tariff reductions). If this fails, the successful country may impose sanctions in the same sector as the dispute involves (or in certain circumstances a different sector dealt with under the same agreement).

Not all disputes involving the WTO agreements are referred to the DSB. In fact, the decision to take a dispute to the DSB is a highly political and strategic decision. It may depend upon a wide range of contingent factors including the comparative political power of the parties, the importance of the subject of the dispute and the state of other negotiations that may be ongoing between the parties. In some respects, the DSB is as much about achieving a bargaining position as it is about deciding whether or not an infringement of the WTO rules has occurred.

The preliminary consultation procedure has been invoked at least once in relation to winemaking practices. In 2002, Argentina issued a request for consultation in relation to regulations that restricted the use of malic acid as an acidity regulator for wine.³⁵

³³ Article 5.1

³⁴ Article 13

³⁵ European Communities – Measures Affecting Imports of Wine: Request for Consultations by Argentina, WT/DS263/1, G/L/558, G/TBT/D/25, 12 September 2002. See also Mendelson, R. and Gehring, K., 2004 Regulation of Oenological Practices and the WTO Agreement on Technical Barriers to Trade, *International Wine Law Association Bulletin*, 32, 42-52.

Interestingly, non-compliance with OIV recommendations was given as one of the grounds of the request. The matter did not proceed to the establishment of a panel because the EU amended its regulations to allow the use of malic acid by Argentina.

2.3 The Codex Alimentarius Commission

The requirement in both the SPS and the TBT agreements that relevant measures must take into account scientific principles and relevant international standards has elevated the status of such standards and the institutions in which they are developed. The standard-setting organisation of primary significance in the case of winemaking additives is the Codex Alimentarius Commission (Codex).

Codex is an international inter-governmental organisation founded in 1962 by the World Health Organisation and the Food and Agriculture Organisation with the purpose of implementing the joint FAO/WHO Food Standards Programme. Membership of Codex is open to all member nations and associate member nations of the FAO and the WHO. Each member is entitled to have four representatives to Codex plus alternates and advisors who may represent industries or interested parties within those nations. Decisions of Codex are taken by majority vote, with one vote allowed per member. There are currently 187 members of Codex (including the European Union) and 219 observers.

The key function of Codex is to prepare food standards and codes of practice which are compiled in the Codex Alimentarius. The Codex Alimentarius comprises general principles and standards, definitions, codes, commodity standards, methods and recommendations which can be broadly divided into two categories. The first category contains requirements of general application to all foodstuffs. These general requirements cover matters such as hygiene, labelling, additives, contaminants and residues, irradiation, international trade and import/export inspection and certification systems. The second category contains specific standards for a range of commodities. This second category does not include specific standards for wine. Each major topic in the Codex Alimentarius has its own committee (e.g. Food Additives, Labelling etc.).

Codex does not have specific powers to enforce adoption of, or compliance with, the standards that it establishes. Consequently, its standards are recommendatory rather than regulatory. However, because of the direct reference in the SPS Agreement to Codex as a standard-setting organisation and the benchmarking references in both the SPS and TBT Agreement to international standards, Codex is highly influential at various regulatory levels.

Codex standards provide a benchmark against which national regulatory measures must be justified. Many countries base their own laws on Codex standards, both in the specific

details and in terms of general principles such as the adoption of HACCP systems. Codex standards are used as points of reference by the NAFTA, Mercosur and APEC groupings.

In the matter of winemaking practices, the Codex General Standard for Food Additives (GSFA) lists additives (but not processing aids) that are considered suitable for use in foods in conformance with the Standard. Grape wine is defined in the GSFA according to the definition contained in the OIV's *Code of Oenological Practices*.

Wine is excluded from the provisions of the GSFA dealing with permitted additives for use in food in general, since this would effectively allow unrestricted access to all food additives for the production of wine. Instead, there are two product-specific sections (14.2.3 & 14.2.4) dealing with additives permitted for wine as well as fortified and sparkling. These contain very few winemaking additives – just 4 for standard wine and 2 for fortified and sparkling wine.

2.4 The World Wine Trade Group

The World Wine Trade Group (WWTG) is “an informal group of government representatives with a mutual interest in facilitating the international trade in wine and avoiding the application of obstacles to international trade in wine.”³⁶ The WWTG government representatives meet alongside and together with a parallel group of industry representatives, known as the WWTG Industry Section. As well as participating in discussions with governments, the WWTG Industry Section undertakes its own initiatives and operates under its own strategic plan.³⁷ In practice, the name WWTG is generally used to refer to both government and industry sections collectively.

The WWTG first met in 1998 as a group of non-European wine producing countries (Australia, Argentina, Brazil, Canada, Chile, New Zealand, South Africa and the United States) with mutual interests. The meeting took place against a background of high tension in the geopolitics of wine around issues such as:

- the emergence of non-European producers as significant exporters;
- the negotiation of agricultural issues in the then forthcoming Seattle round of the WTO;
- the initiation of a review of the OIV;
- new EU wine regulations; and
- the series of negotiations with the EU and non-EU countries on wine-related issues.³⁸

The EU / non EU axis of tension was evident in the original name of the group - the “New World Wine Producers Group”. The initial function of the WWTG was simply to exchange

³⁶ <http://ita.doc.gov/td/ocg/wwtg.htm> (accessed 25.2.13)

³⁷ See: <http://www.wwtg-gmcv.org/> (accessed 25.2.13)

³⁸ <http://www.wwtg-gmcv.org/p/history.html> (accessed 25.2.13)

information, particularly with regard to bilateral negotiations between individual group members and the EU. However, these discussions evolved fairly rapidly towards more formal arrangements to facilitate trade within the group, and this shift in focus was reflected in the change to the group's current name.

The WWTG now has 8 members: Argentina, Australia, Canada, Chile, Georgia, New Zealand, South Africa, and USA. A number of other countries have participated from time to time, including Mexico, Brazil, Uruguay, Peru, China and Japan. The WWTG has no Secretariat; instead the Chair rotates among the member countries on an annual basis. Meetings are usually held twice a year with a plenary session in a member country and an inter-sessional meeting in Brussels. Government and industry convene both jointly and in parallel during these meetings.

The WWTG has proved to be an effective forum for:

- sharing up-to-date information between members on international wine trade developments;
- promoting positive engagement between government and industry within member countries; and
- establishing new trade-facilitating approaches to wine regulation;
- developing common industry positions on trade issues of mutual interest or concern.

The WWTG serves a different function than the OIV in that it is exclusively focused on facilitating trade and does not fulfill any scientific or technical function. The core of the WWTG is in the two treaties and one memorandum of understanding that have been signed by the members: the Agreement on Mutual Acceptance of Oenological Practices (MAA);³⁹ the Agreement on Requirements for Labelling;⁴⁰ and the Memorandum of Understanding on Certification Requirements.⁴¹

The WWTG directly addresses oenological practices through the MAA. The MAA avoids the difficulties inherent in harmonizing the regulations of multiple countries around a single standard. Within the boundaries of a basic definition of wine, the parties agree that wine made in accordance with oenological practices of one party may be imported into any other party regardless of the rules applying to wine making in the importing party. This agreement recognizes the legitimacy of different approaches to making and regulating and also ensures that the introduction of new technologies is not likely to create disruptions in trade. The MAA provides for a Council of the Parties and a Committee of Experts to be convened in the case of a dispute, although these provisions have never been invoked.

³⁹ <http://ita.doc.gov/td/ocg/oenological.htm> (accessed 27.2.13)

⁴⁰ <http://ita.doc.gov/td/ocg/WWTGlabel.pdf> (accessed 27.2.13)

⁴¹ <http://ita.doc.gov/td/ocg/2011%20WWTG%20MOU.pdf> (accessed 12.2.13)

The WWTG actively seeks to extend its approach to trade facilitation in the wine sector to developing markets. One important initiative is the establishment of a Wine Regulators Forum (WRF) within the Sub-Committee on Standards and Conformance of the Asia-Pacific Economic Cooperation (APEC). The WWTG has been in dialogue with APEC since 2002 and the WRF was established in 2008. Meetings of the WRF have since been held in San Francisco in 2011 and Auckland in 2012 which regulators and industry representatives from numerous Asia-Pacific economies have attended.⁴²

2.5 FIVS

The *Fédération Internationale des Vins et Spiritueux*, now known solely by its acronym FIVS, is the key international non-governmental organisation for the wine sector. Founded in 1951, FIVS' membership is drawn from all parts of the alcoholic beverages sectors, combining producers, distributors, importers, exporters, and trade associations from the beer, wine and spirits industries.

FIVS' operations are intended "to promote a successful global alcohol beverage industry, operating on the principles of corporate social responsibility, sustainability, and focused on consumer interests, in an environment free from trade-distorting factors of all kinds."⁴³ It undertakes the following activities:

- acting as a clearinghouse for the exchange of information in the alcohol beverage sector and as a forum for members to discuss and work on areas of common interest;
- developing and representing consensus positions before governments;
- interacting with international organisations to represent consensus views and to keep members informed; and
- supporting national associations when requested.⁴⁴

FIVS is particularly active on wine sector issues and it has a separate committee, the Wine Category Committee, to address wine specific issues. Its membership includes companies and/or major wine industry organisations from both European and non-European wine producing countries, including the European Union as a whole, France, Germany, Italy, Switzerland, Hungary, Belgium, the Netherlands, Russia, Georgia, United Kingdom, Australia, Chile, Canada, South Africa, New Zealand and the USA.

In effect, it brings together the so-called "old world" and "new world" blocs of the wine industry in a single forum. Interestingly, participants from these two blocs are able to find many areas of common interest. This is in part due to the fact that both EU and non-EU producers are looking towards developing markets in Asia and the regulatory issues

⁴² <http://www.wwtg-gmcv.org/p/apec-initiative.html> (accessed 25.2.13)

⁴³ <http://fivs.org/wm/about.htm> (accessed 25.2.13)

⁴⁴ *ibid.*

encountered these markets. It is also in part due to the convergence of the regulatory issues faced across different markets in areas such as health, the environment and new technologies.

One of the most significant features of FIVS is the role that it plays in sharing information between members and coordinating responses on regulatory issues. It maintains an up-to-date database (www.fivs-abridge.com) of regulatory requirements in various markets. It also keeps members updated through regular meetings, email updates and telephone conference calls/webinars. These cover topical issues and will provide a venue to discuss common approaches or strategic initiatives across the majority of the industry in relation to specific issues. FIVS initiatives are often government-facing, for example letters to regulatory authorities about use of sulphur dioxide as a biocide or advertising bans in Norway.⁴⁵ But equally there are a range of principles and tools developed for the use of industry directly, such as FIVS-Abridge, the Greenhouse Gas Calculator or Good Fining Practice Guidelines for Wine.⁴⁶

Another highly significant feature of FIVS is its role as a vehicle for industry participation in international inter-governmental organisations. FIVS has 8 committees formed to provide information about, and where necessary to represent FIVS within, the international organisations of greatest significance to its membership. FIVS has the status of Observer to the OIV, the World Intellectual Property Organisation, the Codex Alimentarius Commission and the International Legal Metrology Organisation. It also acts as an industry liaison with the WTO, the World Health Organisation, Organisation for Economic Cooperation and Development, and the World Customs Organisation.

FIVS' most active observership is in relation to the OIV where it regularly contributes to Expert Group and Commission meetings. This relationship is particularly important for industries whose governments are OIV members to have a voice distinct from government and to allow industry in non-OIV members such as USA and Canada to have an opportunity to participate.

2.6 Bilateral wine agreements

From the mid-1980s to the late 2000s, the EU pursued agreements on wine, either as stand-alone agreements or as an element of a wider trade agreement, with many non-EU wine producing countries. Over this period, agreements were concluded with a number of countries including: Australia (1998, 2008), Canada (2003), Chile (2002), South Africa (2002), Switzerland (2002) and the USA (1984, 2005). For the major non-EU producers, these agreements traded off improved access to the EU market for the surrender of EU

⁴⁵ <http://fivs.org/resources/virtualLibrary.htm?a=report&start=0&documentIds=1359> (accessed 25.2.13)

⁴⁶ *ibid.*

geographic indications that were being used by their industry in a generic way. In some cases, industry was very closely involved with government in the negotiation of these agreements on the non-EU side.

It is not necessary for present purposes to go into the details of these agreements other than to note that they provide a direct, but not always harmonious, vehicle for interaction on wine regulation between the EU and non-EU wine producing countries. In the matter of oenological practices, the general form of these agreements was that each party agreed to allow imports of wine made according to the oenological practices permitted in the other party at the time of signing as specified in an annex to the agreement. A process was specified for incorporation of new practices not listed in the annex. A joint committee of the parties was established to provide for periodic consultation on and, if necessary, updating of the agreement.

2.7 How they all fit together: the case of oenological practices

Figure 1 sets out the web of institutions relevant to the regulation of oenological practices and the links between them. The WTO and its SPS and TBT Committees hold the most authoritative position because they establish the “rules of the game” back up with an enforcement mechanism – albeit one that has rarely been invoked in relation to wine.

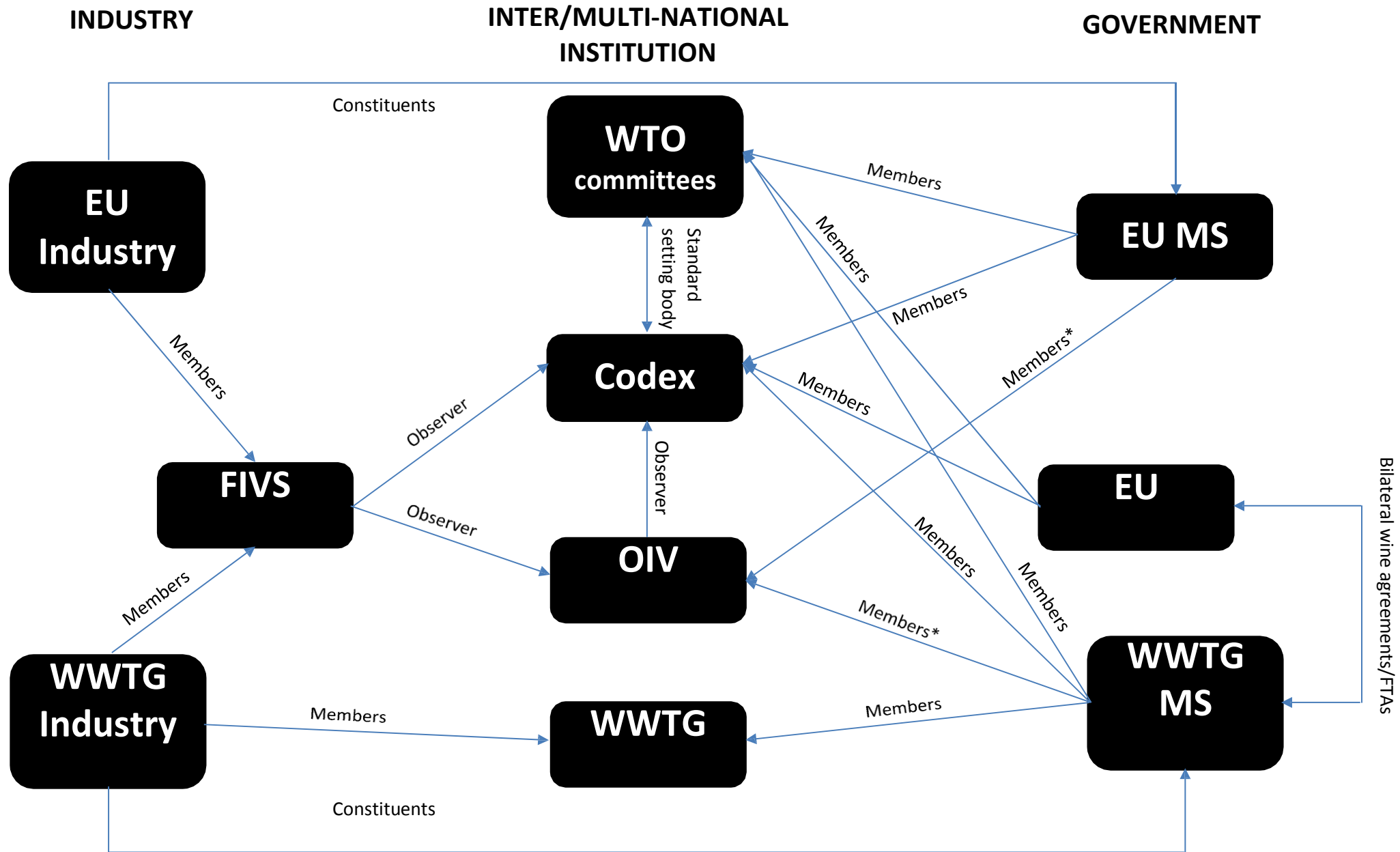
The WTO elevated the status of Codex, making it the benchmark against which technical and SPS measures are justified. However, Codex does not have a commodity standard for wine or more than a very few wine additives listed in the GSFA. This has in turn served to elevate the significance of OIV’s observership to Codex. Historically, Codex has refrained from making standards affecting wine in deference to the OIV,⁴⁷ although this position appears to be changing with both the OIV itself and Codex member countries proposing the inclusion of new additives for wine in the GSFA. It must also be remembered that the OIV is not a voting member of Codex and fulfills no more than an advisory role; in contrast to Codex member governments.

The OIV brings together many, but not all, of the major interests in the wine sector. The OIV is nevertheless highly important because of its status as the only inter-governmental organisation that focuses specifically on scientific and technical issues relating to wine. It provides a venue where new additives, processes and definitions for wine can be considered in depth and over time. In some cases, these are highly contested – as for example the recent debate around the issue of dealcoholisation – and such contests do not necessarily play out across the now rather stereotyped fault line of “old world” versus “new world”.

⁴⁷ Codex Alimentarius Commission, Thirty-fifth session, Roma (Italy), 2 - 7 July 2012, CAC /35 INF/5/REV, Communication from OIV

In addition to its relationship with Codex and its international standing, a part of the significance of the OIV lies in the fact that its recommendations are taken up by a number of countries and particularly in EU legislation and bilateral agreements. This offers an opportunity for both EU Member States and non-EU countries to have a voice in the development of EU rules. While it is an inter-governmental organisation, industry representatives can also interact with the OIV through their governments, as experts or through the observership of FIVS.

The major wine interests that are absent from the OIV – the USA and Canada – participate in the WWTG. So while USA and Canadian governments do not interact with the OIV, there is an overlap between those governments and governments that do participate in the OIV.



*not all MS are Members

FIGURE 1: Relationships between Industry, Government and Inter/Multi-National Organisations in the Regulation of Oenological Practices

The WWTG also brings together government and industry in a way that is unique within the web of institutions, allowing the industry to bring regulatory concerns directly to governments to be acted upon in a unified way. Contests between EU and non-EU countries led to the formation of the WWTG, and this group has been able to exert influence over global winemaking practices in several ways.

It has provided a point for the sharing of information about regulatory developments in this and other areas. It has coordinated positions of WWTG countries within the WTO TBT Committee, Codex and the OIV around winemaking practices. It has created an outreach initiative to developing markets in the Asia-Pacific that are currently not engaged on wine regulation issues. Most importantly, it established the MAA, which enshrined mutual acceptance rather than standardization as a key tool in developing the international trade in wine.

FIVS overlaps with both the WWTG and the OIV and in that respect can act as a marshaling point and a conduit for perspectives and initiatives between these institutions.

Finally, the suite of bilateral wine agreements (or parts of wider trade agreements) between the EU and non-EU countries has established a limited, list-based form of mutual acceptance of oenological practices that links back in most cases to the OIV as well as to a committee of the parties. These provide another avenue for communication and negotiation between diverse wine interests.

Overall, the web of institutions can be seen as providing a number of venues for government and industry to contest similar sets of legal issues. Government and industry will be represented in several organisations at the same time; and in many cases the participants will be the same individuals. This allows for strategies to develop that take into account the suite of organisations and the particular functions that each one serves.

So, for example, a given issue or idea might originate within a particular country and get taken up in FIVS, WWTG, OIV and Codex simultaneously. Each will provide a different outcome: FIVS may produce an industry position that it can advocate in OIV and Codex; the WWTG, at the behest of industry or government, may take it up through mutual acceptance in the case of a new oenological practice or coordination in the case of trade issue; the OIV may make a recommendation that becomes part of EU law and other law, that will in turn have resonance in Codex; individual countries with wine interests may propose its inclusion in Codex, which may in turn influence the rules of other countries.

It should be noted that, in this context, it is overly simplistic to attribute a homogenous interest or perspective to a single bloc (e.g. “old world” or “new world”) or even a single

country. Different countries may have different interests in respect of a particular issue, just as industry representatives and governments and even different parts of the same industry from the same country will have different interests and viewpoints. At the same time, the interests of participants from a range of countries and industries may coalesce around a particular issue. From this perspective, international institutions offer an opportunity to influence regulation in the domestic market as well as in export markets. But in all cases, the price of a successful regulatory outcome on a contested issue is compromise.

A final observation arising out of the interconnectedness of various interests across the web of institutions is that it has produced a high degree of convergence across EU and WWTG wine producing countries in the matter of oenological practices. In reality, the oenological practices contained in the OIV's *Code of Oenological Practices* and in EU regulations do not differ very significantly from those contained in the laws of WWTG countries. The major points of difference lie in the limits that are applied and in the way that processes (as opposed to additives) are recognized.

Notwithstanding the differences, because of the suite of wine bilateral agreements an EU producer can make wine according to EU practices largely without concern for the regulations in other major wine producing markets and vice versa. A producer in a non-EU country without a bilateral wine agreement can export wine to the EU by following OIV recommendations. A producer in a WWTG country can also make wine according to its own rules without being concerned about the rules in its WWTG partner markets. It is clear that points of conflict remain. However, a shift in dynamic towards encouraging the uptake of generally accepted oenological practices in developing markets is also noticeable, as illustrated by the following case study.

3. Case Study: Winemaking Additives in China

China is the world's 6th largest producer and 5th largest consumer of wine. It is widely seen as one of the most important developing markets for wine in the world. Consequently, when on 2 August 2010 China's Ministry of Health notified the WTO⁴⁸ of an update in the National Food Safety Standard - Standards for Uses of Food Additives (GB 2760) it generated considerable interest within the wine sector. The Standard GB 2760 specifies the principles for application of food additives, permitted food additives and conditions for their use in all foods including wine.

China had already revised different aspects of its wine regulation over previous years including the National Standard of the People's Republic of China: Wines (GB 15037-2006). Several countries had provided submissions on the revisions to that standard, and the standard itself expressly referenced OIV recommendations.

⁴⁸ policy.mofcom.gov.cn/spstbt/en/CHN308.doc (accessed 27.2.13)

When the notification was received, it very rapidly became apparent that the initial draft of the Standard included as winemaking additives only the four substances listed in 14.2.3 of the Codex GSFA. This was strictly justifiable to the extent that Codex represents the international benchmark for food regulation, but it presented a major barrier to trade because many more additives are accepted for use by the OIV and in the legislation of wine producing countries. It was evident that this was an issue that affected all non-Chinese wine producers alike and that there was therefore a strong common interest in addressing the matter collectively.

Urgent discussions were held between industry and government in wine producing countries and the matter was raised in the OIV, the WWTG and FIVS. Diplomatic representations were made both jointly and separately by a number of interested countries and, at the request of some of its members, the OIV.

A seminar on good winemaking practices was organised by the representatives of the European Union in China to which the OIV was invited as well as representatives of interested countries. Industry representatives from some countries also attended the seminar the capacity of expert advisors. The OIV offered to act as an interlocutor between the Chinese authorities and its members, although individual countries also maintained their own channels of communication to the Chinese authorities.

The response of Chinese authorities was that the draft Standard was not the final version and a revised list would be published in due course. However, it was clear that the final version of the Standard would not contain all additives in the OIV's *Code of Oenological Practices* and that applications to include additives omitted from the Standard would need to be made on a case by case basis.

When the final version was published on April 20, 2011, a significant number of OIV-recommended winemaking additives had been included. However, a number of important additives were still absent, such as isinglass, ascorbic acid, tartaric acid and oenological enzymes. The logic behind the inclusions and exclusions was not apparent.

In response, each of the wine-focused institutions played their respective roles in an effort that was not explicitly coordinated but gathered coherence from the high degree of complementarity in objectives and overlap in membership between interested parties. Building on its interlocutory role, the OIV created an internal Task Force to coordinate scientific and technical input into applications that needed to be made to the Chinese authorities. Responsibility for individual applications (and the scientific dossiers to support these) was allocated between interested OIV members.

Within FIVS, members were urged to encourage their governments to take responsibility for additives that required an application for inclusion in Standard GB 2760 either through the OIV process (for OIV members) or on their own initiative. Progress in discussions with Chinese authorities and preparation of applications at a government level was closely monitored within FIVS. The WWTG also monitored the issue closely, shared information, and invited Chinese authorities to participate in its meetings.

The USA, which is not an OIV member, undertook to prepare a number of applications of its own accord. This was not done in coordination with the OIV, although US government and industry were sufficiently aware of the OIV initiative to avoid duplicating applications for additives that were already under preparation.

At the time of writing, only a few applications were at the point of being accepted for consideration by the Chinese authorities, although applications for most of the major winemaking additives are in preparation.⁴⁹ It may be some time before this mobilization of institutions by government and industry in the interests of trade bears fruit. Nevertheless, it does provide an important example of the interaction between the participants in these institutions and the positive way that they can be utilized when interested are aligned.

4. CONCLUSION

This paper has explored the web of international and multi-national institutions that has evolved as an integral element of the globalization of the wine sector; using the regulation of oenological practices as an example. Within this web, each institution performs a distinct function. The principal actors in these institutions, governments and industry representatives, operate across these institutions to pursue their strategic objectives. Coalitions of interest can be built across groups of industry representatives, governments and even institutions. Similarly, conflicts can be contested in several venues at the same time. Understanding of this suite of institutions and relationships is an essential element of wine law in context because, in an increasingly interconnected world, there will be very few changes to domestic regulation of oenological practices that are not implicated in this international system.

⁴⁹ On 11 March 2013 the Chinese Government announce its intention to consult on further revisions to Standard GB 2760. It appears that several of the omitted oenological practices have been proposed for inclusion.