LOOKING TO THE FUTURE: MAKING WINE LAWS COMPATIBLE, THE CALIFORNIA PERSPECTIVE

Toward a Common Standard: New European Union Label Laws and Geographic Indicators of Origin

James B. Clawson
JBC International
Washington, DC

Compatibility of Wine Laws

International Types of Compatibility
• Harmonized
  • Reciprocal (WCO HTS)
  • Mandated (EC FTAs)
• Equivalency (New Zealand/EC Veterinary Agreement)
• Mutual Recognition (WWTG)
• Bilateral Agreement (U.S., Australia, Canada Wine Agreements with the EU)
• International Standards (CODEX/OIV/WWTG)
• International Agreements (WTO’s TRIPS/SPS/TBT)
• Alignment (APEC)
Impediments to Compatibility

• National Legal Systems
  • Code Based or Case Based
  • IPR Protection Schemes
• Market Controls
  • Composition and Production Methodologies
  • Consumer Protection
• Lack of Capacity
• National Priorities
• Market Protection
  • Health and Safety
  • Regulating Quality
  • Intellectual Property/Traditional Practices
• Competitive Economic Interests
  • Standards versus Technical Regulations

CALIFORNIA COMPATIBILITY

OBJECTIVES

• Agreements to Respond to Different Legal Systems
• Regulator Cooperation
• Limit Control of Market
• Winemaking Practices
  • Composition
  • Processes
  • Additives and Processing Aids
• Label Regulation
  • Health and Safety
  • Misleading Consumer
  • Fraudulent Practices
• Border Formalities
  • Import Tariffs
  • Import Licensing
  • Certification Documentation
  • Redundant Laboratory Testing
  • Revenue Stamps
• Eliminate
  • Foreign Inspections of Winery
  • Trade Distorting Subsidies
Responding to Objectives

Agreements and Regulator Cooperation

- WTO’s TBT and SPS Equivalency Agreements
- Standards and Technical Regulations
- Regulators’ Memoranda of Understanding
- Regulators’ Fora (WWTG and APEC)

Winemaking Practices

- Symmetrical Bilateral and Plurilateral Mutual Recognition Agreements

Responding to Objectives

Label Regulation

- Develop Legal Coherence Between Countries to Align Mandatory Technical Information
- Accurate and Not Misleading
- Let the Consumer Decide Quality (standards)
- Include in MAA or Equivalency Agreements
Responding to Objectives

**Border Formalities**
- Adopt Internationally Accepted Best Practices – e.g. Risk Assessment, AEO
- Assist Emerging and Developing Economies with Technical Assistance
- Mutual Acceptance for Testing and Certification
- Align Import Tariffs and Collect Revenue Electronically

Responding to Objectives

**Eliminate Unnecessary Border and Verification Formalities**
- Document Consularization
- Winery Inspections by Foreign Regulators
- Testing for Substances that Cannot Exist in Wine
- Redundant Testing
Align Intellectual Property Labeling Regulation

• Use Existing IPR Enforcement Mechanisms
  • Private Rights Not Public Rights
  • Compliance with TRIPS provisions
  • Resist Efforts to Create New IPR for Winemakers and Winegrape Growers, e.g. Traditional Terms and Traditional Specialty Guaranteed
  • Confirm that the Consumer is Being Mislead Before Restricting Label Terms
  • Monitor Fair Competition, Not Create Competitive Advantage for Certain Producers

CONCLUSION

• Making Wine Laws Compatible is Feasible
• Harmonization is Not the Answer
• International Agreements and Standards Allow for Equivalence and Mutual Acceptance
• Understand a Growing Market Opportunity Without Government Creating Competitive Advantages for Its Producers
• Good Will and Cooperation are Key