

EU-NZ Free Trade Agreement: Reform of Geographical Indications Law in New Zealand – Discussion Paper

Your name and organisation

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Responses to questions

	Section	Question
1	<i>Registration of geographical indications</i>	Are there products other than wines and spirits being produced in New Zealand that are labelled with a name that indicates the products have a characteristic that is essentially attributable to its geographical origin? Are any of these products being exported and, if so, to where, and what export revenues do these products generate for New Zealand producers?
		We understand that key export products of New Zealand include agricultural products (other than wines and spirits) with qualities attributable to their geographical origin, such as meat, dairy products, fruit etc.
2	<i>Registration of geographical indications</i>	Is the inability to register these names under the GIs Act causing any problems and, if so, what?
		We have no information on concrete instances where the inability to register such names under the GIs Act has caused specific problems at this stage.
3	<i>Registration of geographical indications</i>	What would be the advantages (or disadvantages) of extending the current registration regime to include GIs for food and beverages other than wine and spirits?
		Extending the current regime to include GIs for goods other than wines and spirits would allow those interested in GIs for such goods to obtain the benefit of registration currently only available to those interested in GIs for wines and spirits. The corresponding advantages include (1) certainty that registration will provide over the more generic protection available under the Fair Trading Act (FTA) and passing off for goods other than wines and spirits, (2) a GI application can be filed by “an interested person” and there is not the same concept of “ownership” as under the Trade Marks Act (TMA) for a registered trade mark which may lead to complications applied to GIs, and (3) a uniform regime for the GIs already registered under the GIs Act and those to be protected under the FTA.
4	<i>Location of enforcement provisions</i>	Do you agree with our preferred option (Option iii) of providing provisions for the enforcement of GIs within the GIs Act? If not, where should these provisions be and why?
		The Association agrees that there are relevant benefits in Option iii insofar as the inclusion of a specific enforcement regime in the GIs Act may contribute to more clarity and a better understanding.
5	<i>Civil enforcement</i>	Which option do you prefer for the court(s) to hear and determine the infringement of a registered GI, and why?
		The Association considers that enforcement of GIs should be dealt with by the same Court that has jurisdiction for the enforcement of registered trade marks and therefore prefers Option iii, namely, the High Court to hear and determine infringement of a registered GI.

	Section	Question
6	<i>Civil enforcement</i>	Do you agree with our preferred option (Option iii) to limit persons who may initiate civil action for the enforcement of GIs to “interested persons”? If not, who do you think should be able to take legal action and why?
		The Association agrees that Option iii appears to be a suitable solution out of the three listed options, i.e. “interested persons” as defined in section 18 of the consultation paper -any person who produces or trades in products that meet the defined requirements for the use of the GI. We understand that the plan is to include both individual producers and producer associations dedicated to the products covered by the GI into the definition of interested parties so that it is clear that the rights could also be enforced through a producer association.
7	<i>Civil enforcement</i>	What would be the advantages (or disadvantages) of providing the same remedies to address an infringement of GI as are provided under the Trade Marks Act for the infringement of a trade mark?
		The Association favours providing the same remedies to address the infringement of GIs that are provided under the TMA for the infringement of registered trade marks, including equivalent offence provisions to those under ss120-134 of the TMA.
8	<i>Civil enforcement</i>	What other remedies (other than those provided under the Trade Marks Act) should be adopted for addressing the infringement of a GI and why?
		No comments provided.
9	<i>Border protection measures</i>	Do you agree on basing the border protection measures for GIs on the Trade Marks Act? If not, what other measures should be adopted instead?
		The Association agrees that border protection measures should be based on the current border protection measures for registered trade marks under the TMA.
10	<i>Border protection measures</i>	If the border protection measures based on the Trade Marks Act were to be adopted for GIs, what changes (if any) should be made to those measures and why?
		The Association envisages that the border protection measures for GIs should essentially follow the current border protection measures for registered trade marks, save for the entitlement of a person to lodge a customs notice for a registered GI, as discussed in our answer to question 11 below.
11	<i>Border protection measures</i>	Do you agree with the preferred option of limiting persons who may lodge a notice with Customs to those persons who have an interest in the GI concerned? If not, who should be able to and why?
		The Association agrees with the proposition of limiting persons who may lodge a notice with Customs to interested persons who may be a producer who uses the GI, a producer body or registrant, and that the entitlement to lodge a Customs notice should be aligned with the rules on who should be able to take legal action through the courts (question 6 above).

	Section	Question
12	<i>Administrative enforcement</i>	What would be the advantages (or disadvantages) of providing the same investigative powers currently available to the Commerce Commission under the Fair Trading Act to the agency responsible for providing administrative enforcement of GIs? Are there any other investigative powers that should be provided instead?
		The Association considers that the investigative powers currently available to the Commerce Commission appear suitable also in the context of providing administrative enforcement of registered GIs. We're unaware of any specific gaps in this respect at this stage.
13	<i>Administrative enforcement</i>	What remedies should the courts be able to grant arising from administrative enforcement of GIs and why?
		The Association considers that the Courts should be able to grant in administrative enforcement the remedies usually available in administrative proceedings to address unfair trade practices.
14	<i>Other issues</i> Official GI logo	What would be the advantages (or disadvantages) for the GIs Act to provide for producers to use an official logo on their labels and packaging that verifies the GI has been registered?
		The Association considers that optional use of an official logo that verifies the existence and use of a registered GI would be helpful but would oppose any mandatory requirement to use such a logo.
15	<i>Other issues</i> Enduring GIs	Are any of the enduring GIs (ie 'New Zealand', 'North Island' and 'South Island') being used by New Zealand spirits producers? If so, who is using them? Please provide examples of use.
		The Association has no information in this respect at this stage and therefore provides no substantive comments on this specific question.
16	<i>Other issues</i> Enduring GIs	If the enduring GIs are not being used for spirits, what would be the advantages (or disadvantages) of repealing their protection under the GIs Act?
		Whereas the Association has no information about the specific scenario in New Zealand in respect of "enduring GIs", generally speaking, in case of an absence of use of New Zealand GIs for a prolonged period of time, it appears that repealing protection may be the most appropriate solution.
17	<i>Other issues</i> Costs	How might the costs to administer the GIs Act be recovered and from whom?

	Section	Question
		The Association considers that the current costs regime in the GI Act appear generally a suitable way of recovering costs connected with registration/maintenance of the registrations and this could be supplemented by official fees for administrative enforcement. However, the Association also agrees that it would not appear fair to place all the burden to bear the full costs of the administration of a system that will also protect more than 2000 EU GIs (without a participation of those EU GIs in the bearing of costs) only on current and future direct registrants and that a different funding solution should thereof be found to sustain the additional costs triggered by the inclusion of those treaty-based GIs (e.g. from a agriculture-related budget of the general state budget).
18	<i>Other issues</i>	Are there any other problems with the current GIs Act or proposed new GIs registration regime? What changes, if any, should be considered?
		We abstain from comments at this stage.