

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

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Thank you for the opportunity to make submissions in relation to the *EU-NZ Free Trade Agreement: Reform of Geographical Indications Law in New Zealand*.

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The comments provided herein have been prepared by and with the input of some of the Principals and senior practitioners within DCC who advise clients in relation to, and have significant experience with, geographical indications and certification trade marks. The comments represent personal views of the signatories to these submissions that may not necessarily be shared by DCC, DCC's clients, QANTM, or other members of the QANTM group.

## 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?
		<p>As we are advisers to industry participants, rather than industry participants ourselves, we are not in a position to specifically comment on this question.</p> <p>However, in the context of what is meant by the phrase "<i>the products have a characteristic that is essentially attributable to its geographical origin</i>", and in assessing submissions made by industry participants, we wish to record our view and concern that this phrase should not be interpreted so widely as to see the term 'geographical indication' used synonymously with, or as referred to, 'place of origin' or 'regionality'. Rather, we take this phrase to indicate that the relevant name can only be eligible for protection as a GI because the relevant products sold under that name meet two criteria:</p> <ol style="list-style-type: none"> <li>1. the relevant goods produced in that location have different characteristics from similar goods produced in other locations; and</li> <li>2. the different characteristics are the result of the unique combination of natural (soil composition, climate, biodiversity, geography) and/or human (local know-how, local growing/harvesting/processing techniques) factors associated with that location.</li> </ol> <p>The geographical indication regime in New Zealand should therefore not, in our view, be used as a de facto 'badge of origin' protection system, as to do so could undermine the integrity of the system at a national and international level.</p>

2	<p><i>Registration of geographical indications</i></p>	<p>Is the inability to register these names under the GIs Act causing any problems and, if so, what?</p>
	<p>As we are advisers to industry participants, rather than industry participants ourselves, we are not in a position to provide specific comments in relation to this question.</p> <p>However, as a matter of general principle, and as noted in the Discussion Paper, most countries that operate a geographical indications protection regime require, as a pre-requisite to protection, that the relevant name be recognised and/or protected as a geographical indication in the country of origin of the relevant product. This is also the basis on which the <i>Lisbon Agreement for the Protection of Appellation of Origin and Their International Registration</i> (which came into effect in signatory countries on 26 February 2020) operates — while neither New Zealand or Australia are signatories to this Agreement, other countries in the ASEAN region (such as Cambodia, Laos and Samoa) are members, as well as the European Union and a number of countries in Africa and South America. We also note that other ASEAN members such as Indonesia, Thailand and Vietnam already have their own sui generis GI registration schemes.</p> <p>In practice, this means that, if a name is not protected as a geographical indication in its country of origin (because, for example, there is no local geographical indication recognition scheme in that country), it cannot be protected as a geographical indication overseas.</p> <p>Given the increasing number of countries that are implementing geographical indications protection schemes (whether under the <i>Lisbon Agreement</i>, as a result of free trade agreements, or otherwise), New Zealand producers who use names that currently fall outside of the current GIs Act are potentially at a disadvantage because they cannot take advantage of geographical indication protection schemes in export countries when their competitors in those markets can do so.</p> <p>This may lead, for example, to a higher likelihood of misuse of those names by those who may know the names are not protected under the local scheme and could be a disadvantage in protection against counterfeiters and in copycat scenarios. It also means that these producers would not be able to benefit from the "esteem" associated with a protected geographical indication as part of their export marketing and promotion activities.</p>	

3	<p><i>Registration of geographical indications</i></p>	<p>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?</p>
	<p>As we are advisers to industry participants, rather than industry participants ourselves, we are not in a position to provide specific comments on the advantages and disadvantages of extending the current registration regime to include food and beverages other than wine and spirits.</p> <p>However, we reiterate our response to question 2 above that the lack of recognised geographical indication protection for New Zealand place names used in relation to products other than wines and spirits means that such names are unlikely to be able to protected as geographical indications internationally, and this may have consequences in export markets for New Zealand producers.</p> <p>We do, however, take the opportunity of this question to provide our comments on two potential future expansions of the geographical indications protection regime in New Zealand raised within the Discussion Paper.</p> <ol style="list-style-type: none"> <li>1. As to the comments in the Discussion Paper to the effect that "<i>any extension [of the GI right] would not necessarily need to be confined to GIs for food and beverages</i>", we recognise that a number of jurisdictions have expanded, or are taking steps to expand, the range of goods that are eligible for protection under their equivalent registered GI right scheme to include items such as handicrafts, pottery, textiles, wool products, and Indigenous artistic works. However, in our view, there are a number of questions as to how these goods fit within the concept of a GI more generally, particularly in relation to questions of connectivity of place, relevance of skill and the assessment of 'heritage', that mean that further detailed consideration of the place of non-agrarian products in a GI right scheme should take place before they are included in New Zealand's GI rights scheme.</li> <li>2. As to the possibility of using a geographical indications regime to protect Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs), including mātauranga Māori, taonga works, taonga species, products derived from taonga species and other taonga. We recognise and support the need for steps to be taken to protect TK and TCE from exploitation and misuse by third parties. We understand that discussions on protection of TK and TCE as part of a broader GI registration scheme are the subject of a report from the Waitangi Tribunal and consideration through the Te Pae Tawhiti, and that further discussions will be held in 2023 through hui with interested individuals, bodies and iwi. In our opinion TK and TCE protection should be considered in the context of its own protection in a regime best suited to it rather than conflated so as to be part of broader GI registration scheme.</li> </ol>	

<p><i>Location of enforcement provisions</i></p>	<p>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?</p>
<p>4</p>	<p>We agree with the preferred option of providing provisions for the enforcement of GIs within the GIs Act, and note that this is the approach taken in other jurisdictions such as Singapore under its <i>Geographical Indications Act</i>.</p> <p>As to Option 1, we agree with the statements in the Discussion Paper that the rights available under the Fair Trading Act are too limited to effectively serve the rights of GI holders and that it would cause unnecessary complication to amend that Act simply to add additional remedies in the GI context.</p> <p>We also note that separating the enforcement of the GI right from the Fair Trading Act is important because the provisions are, in our view, directed at different conduct — infringement of the GIs Act constitutes an infringement of a registered intellectual property right whereas the Fair Trading Act is directed at conduct that misleads or deceives consumers, and the two scenarios do not necessarily overlap. For example, an infringer may use the GI to refer to a "GI-style" product, which would be an infringement of the GI under the amendments to the GIs Act required under the EU-NZ FTA but, because of the context in which the term is used, may not necessarily reach the threshold for establishing misleading or deceptive for the purposes of the <i>Fair Trading Act</i>. It is therefore, in our view, inappropriate to continue to "deem" infringement of the GI as a breach of the <i>Fair Trading Act</i> given the expanded infringement requirements required under the EU-NZ FTA.</p> <p>We also note that separating the GI infringement claims from the <i>Fair Trading Act</i> claims would allow for claims regarding misuse of a GI right to be brought under both Acts (for example, that the misuse of a GI may constitute misleading conduct as to the nature of goods pursuant to section 10 of the <i>Fair Trading Act</i> or a false representation as to origin of goods under section 13 of the <i>Fair Trading Act</i>) and for different remedies to be available depending on the nature of the conduct.</p> <p>As to Option 2, we consider that deeming the misuse of a GI to be an infringement of a trade mark under section 89 of the <i>Trade Marks Act</i> has the potential to cause significant confusion amongst producers and the general public as it would effectively conflate GIs and trade marks.</p> <p>Despite the temptation in many instances to treat trade mark rights and GI rights as similar (in part because of the use of certification trade marks as a "de facto" GI protection scheme), they are, in law and practice, very different rights (trade mark rights being largely "private" rights signifying the commercial origin of the goods from one trader, whereas geographical indications are largely "collective" rights signifying the characteristics of a product rather than its commercial origin).</p> <p>Given the nascent nature of geographical indications recognition in New Zealand, we feel it is appropriate that two sets of rights remain separated from an enforcement perspective to highlight their differences — to conflate them at an enforcement level may, in our view, lead to geographical indications being seen as a "form of trade mark right" by the general public with the associated complications which this brings rather than its own form of intellectual property protection.</p>

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?
	<p>We consider that the High Court (Option III) should be specified as the Court to hear and determine the infringement of a registered GI.</p> <p>At a general level, the considerations involved in the assessment of whether an infringement of a registered GI has occurred are likely to be of similar complexity to the assessments made in determining whether an infringement of a registered trade mark has occurred (including on matters as to what constitutes a 'translation' or 'transliteration' of a registered GI), and it is therefore in our view appropriate that the same Court that hears and determines trade mark infringement matters should also determine matters involving the infringement of a registered GI.</p>	

	<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?
6		<p>We agree with the preferred option that the persons who may initiate a civil action for the enforcement of GIs be limited to "interested persons".</p> <p>The preferred approach is consistent with the approach taken in Singapore under its <i>Geographical Indications Act</i> which similarly allows an "interested party" (defined as "a producer of the goods, a trader of the goods, or an association of such producers or traders or of such producers and traders") to commence enforcement proceedings. We have also suggested a similar approach be taken in Australia in our submissions to consultations in that jurisdiction in 2020 regarding a possible new GI right resulting from a future AU-EU Free Trade Agreement.</p> <p>We agree that Option 1 brings significant risk that the GI enforcement provisions could be abused by commercial competitors, as well as raise issues about the appropriateness and availability of remedies in actions brought by persons without a direct connection to the registered GI right.</p> <p>We consider that Option 2 would be unworkable given the complications associated with the direct entry of the identified GI rights to the GI Register as part of the EU-NZ FTA, though this could perhaps be partially alleviated if the "European Union" was deemed as the Registrant for those rights.</p> <p>Finally, while the term "interested person" is currently used in the GIs Act, it is left undefined. To avoid confusion as to whether a person is an "interested person", we propose that a definition of "interested person" be included in the GIs Act and that this term be defined to include any of the following people with legal personality:</p> <ul style="list-style-type: none"> <li>(a) an incorporated association of producers, traders or growers in the goods protected under the Registered GI;</li> <li>(b) an industry body for the goods to which the Registered GI applies (whether from a production, trader or growing angle) — for example, New Zealand Winegrowers Incorporated in respect of wine GIs;</li> <li>(c) a regional or tourism organisation responsible for the promotion of the area that includes the GI;</li> <li>(d) a statutory body or authority established by a local government authority or national or foreign government that, as part of its functions, has a relevant connection with the goods to be protected under the Registered GI or the area that includes the GI;</li> <li>(e) a local, national or foreign government, or a department of such a government — for example, the "European Union" in the case of a GI protected under the NZ-EU FTA; and</li> <li>(f) a producer, trader or grower of the goods protected under the Registered GI.</li> </ul> <p>In circumstances where there is a listed Registrant for the Registered GI, and the action for enforcement of the Registered GI is intended to be brought by someone other than the Registrant, we believe that there should be a requirement that the Registrant of the GI should be made a defendant in the action (though not liable to costs if they do not participate in the proceedings) in much the same way as the owner of a registered trade mark is made a defendant to trade mark infringement proceedings under sections 102–104 of the <i>Trade Marks Act</i>.</p>

	<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?
7	<p>We note that the current remedies available for in connection with the civil enforcement of a registered trade mark are as follows:</p> <ol style="list-style-type: none"> <li>1. declarations of infringement;</li> <li>2. an injunction on terms the court sees fit;</li> <li>3. either damages or account of profits;</li> <li>4. "such additional damages as the justice of the case requires" having regard to all the circumstances, and particularly the flagrancy of the conduct and the benefit accruing to the infringer</li> <li>5. erasure or removal of the infringing sign from any goods, materials or objects in the possession of the infringer;</li> <li>6. destruction of goods/materials/objects containing the infringing sign;</li> <li>7. destruction or delivery up for destruction of counterfeit goods;</li> <li>8. delivery up (and disposal of) of infringing goods/materials/objects;</li> <li>9. disposal of infringing goods/materials/objects.</li> </ol> <p>We consider that these remedies (as well as additional remedies considered under the next question) address the mischief associated with the misuse of a registered GI and are therefore appropriately included in the GIs Act. They also have the advantage of:</p> <ol style="list-style-type: none"> <li>(a) being familiar to practitioners and the courts as a result of their use in trade mark infringement matters (as well as other intellectual property matters) and therefore are supported by a body of existing case law interpreting their scope (notably in the context of additional damages); and</li> <li>(b) allow New Zealand to comply with its obligations under international law and the EU-NZ FTA.</li> </ol> <p>We note that one of the stated disadvantages of including an award of damages is that it may not be possible to establish who has been injured and who should therefore receive compensation. We note that a similar concern arises in the context of the enforcement of a "collective" trade mark (defined by the <i>Trade Marks Act</i> as a mark that is capable of "<i>distinguishing the goods or services of members of the collective association that is the owner of the sign from those of persons who are not members of the collective association</i>"), and this is dealt with by section 107 of the <i>Trade Marks Act</i>, which states that:</p> <p style="padding-left: 40px;"><i>In claiming damages for infringement of a collective trade mark, the collective association that owns the collective trade mark (or the member or members taking action on behalf of that collective association) may take into account any damage or loss of profits sustained or incurred by any members as a result of the infringement.</i></p> <p>The inclusion of a similar provision in the GIs Act allowing for damages to be granted based on damage or loss of profits by legitimate users of the GI may alleviate some of the stated disadvantages of the use of damages as a remedy for infringement of a registered GI.</p>	

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?
	<p>We consider that the remedies referred to in the answer to the previous question are sufficient to address the infringement of a GI for the purposes of the GIs Act.</p> <p>To the extent that any other remedies may be required (such as corrective advertising), they are, in our view, appropriately available for a breach of the <i>Fair Trading Act</i> in an action brought for misleading and deceptive conduct and/or making false statements under sections 9, 10 and 13 of that Act, or are more appropriately provided for in the context of an administrative enforcement action.</p>	
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?
	<p>We agree that, in principle, basing the border protection measures for GIs on those in the <i>Trade Marks Act</i> is appropriate given these measures are well-established and understood by industry, including by those parties who deal with currently registered GIs in New Zealand.</p> <p>However, further information is required as to how the operation of these measures would be impacted by New Zealand's obligations with respect of GIs registered under the EU-NZ FTA. For example:</p> <ol style="list-style-type: none"> <li>1. while the owner of a registered trade mark (or their licensee) may record their trade mark with Customs, there is no requirement on trade mark owners to do so, and only a small proportion ultimately avail themselves of this opportunity. Is it intended that all of the GIs protected under the EU-NZ FTA would be the subject of border protection measures, or will this only apply where an "interested party" assumes responsibility for filing the Customs notice?</li> <li>2. the Notice under Section 137 of the Trade Marks Act requires that the trade mark owner provide a local address for service of notices, and limits the duration of the notice to five years. Would the same apply to a GI protected under the EU-NZ FTA?</li> <li>3. a person recording their trade mark with Customs is required to provide Customs with an indemnity covering "all loss, damages, costs and liability suffered or incurred" by Customs in administering that Notice. Would this also apply to a GI protected under the EU-NZ FTA?</li> </ol> <p>We anticipate that only those GIs for which an interested party assumes responsibility will be the subject of the border protection measures, but we consider this to be a point worth clarifying given the statements in the Discussion Paper to the effect that the EU-NZ FTA obliges New Zealand to not charge EU producers renewal fees and to provide administrative enforcement at no cost (see paragraph 113 of the Discussion Paper).</p>	

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?
	<p>We note that the application of border protection measures to goods that are in the same "product class" as a good protected by a GI means that many of the items that may be intercepted will be perishable foodstuffs.</p> <p>In these circumstances, consideration should be given as to whether the timeframes currently specified in the <i>Trade Marks Act</i> are appropriate or should be shortened to deal with the nature of the goods that will be the subject of such notices.</p>	
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?
	<p>Consistent with our response to question 6, we 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 (adopting the definition of "interested person" we suggested in our response to question 6).</p>	

<p><i>Administrative enforcement</i></p>	<p>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?</p>
<p>12</p>	<p>We understand that the references to the Commerce Commission and its powers in the Discussion Paper would seem to flow from the fact that, as currently drafted, an infringement of the GIs Act is deemed to be misleading or deceptive conduct under the <i>Fair Trading Act</i>, and therefore the Commerce Commission would be the logical investigative authority in those circumstances. However, as noted in our response to question 4 above, the expansion of the registered GI right as required by the EU-NZ FTA potentially encompasses conduct that would not be a breach of the <i>Fair Trading Act</i>, and the position in the <i>Fair Trading Act</i> and may lead to difficulties in assessing two sets of standards (the GIs Act standard and the <i>Fair Trading Act</i> standard) when assessing potential administrative enforcement. It also seems to result from the assumption (set out in footnote 27) that IP statutes include limitations on enforcement actions such that these actions can only be brought by IP owners and licensees.</p> <p>Instead, we note that, in Subpart 2 of Part 4 of the <i>Trade Marks Act</i>, the <i>Trade Marks Act</i> itself sets up a regime for imposing administrative (i.e. criminal) sanctions for certain conduct in relation to a trade mark. That regime includes:</p> <ol style="list-style-type: none"> <li>1. the ability for the Chief Executive of the Ministry of Business, Innovation, and Employment to appoint "enforcement officers" for the purposes of the <i>Trade Marks Act</i> (s 134A of the <i>Trade Marks Act</i>) with the function of gathering information relating to, and investigating, offences under the TMA (s 134C of the <i>Trade Marks Act</i>);</li> <li>2. the ability for enforcement officers to enter public places without a warrant for the purpose of investigating whether an offence has been committed (s 134D of the <i>Trade Marks Act</i>), and gives them the power to examine documents, seize items of significant relevance to the investigation and so on (s 134E of the <i>Trade Marks Act</i>);</li> <li>3. the ability for enforcement officers to apply for a search warrant to search a place on reasonable grounds (s 134F of the <i>Trade Marks Act</i>) and sets out the powers that can be granted under that warrant (s 134M of the <i>Trade Marks Act</i>); and</li> <li>4. the ability to apply for production orders to obtain documents for inspection (s 134X of the <i>Trade Marks Act</i>).</li> </ol> <p>Our view is that, given the current proposal is for certain aspects of the GIs Act to reflect equivalent provisions of the <i>Trade Marks Act</i> (including as to remedies and border enforcement), it seems to us more appropriate for the powers of any organisation conducting administrative enforcement of the GI Act to reflect the powers under the <i>Trade Marks Act</i> rather than the much broader powers provided to the Commerce Commission under the <i>Fair Trading Act</i>.</p> <p>We also note that, given the misuse of registered GI may also constitute conduct contrary to the <i>Fair Trading Act</i>, there would be nothing to prevent the Commerce Commission for using its powers under sections 47, 47G and 47K to investigate such conduct in addition to the investigations undertaken by the relevant body under the GIs Act.</p> <p>Finally, we also note that the Australia New Zealand Food Standards Code, which we understand is administered in New Zealand by the Ministry for Primary Industries (<b>MPI</b>), already includes certain provisions regarding the misuse of GIs. For example, Standard 2.7.5 of the Code effectively</p>

provides protection to GIs used for spirits. As a result, it may be appropriate that certain investigative and inspection powers available to MPI under the *Food Act 2014* should also be available to the agency responsible for the administrative enforcement of registered GIs given the clear overlap between Standard 2.7.5 and the GIs Act.

13	<i>Administrative enforcement</i>	What remedies should the courts be able to grant arising from administrative enforcement of GIs and why?
	<p>We consider that the courts should be able to grant the following remedies arising from administrative enforcement of GIs:</p> <ol style="list-style-type: none"> <li>1. Injunctions and interim injunctions restraining a person from engaging in a particular conduct — this is consistent with the idea of preventing the continuing misuse of the GI.</li> <li>2. A payment to the Crown (i.e. a fine) for engaging in the infringing activity — this is consistent with the criminal offences provisions of the <i>Trade Marks Act</i> (see section 125) and could be used to fund the operations of the administrative body and/or the operation of the GI protection system generally. It would be a matter of government policy as to the amount of the fine and how that fine is to be calculated (whether as a fixed sum, the payment of relevant profits or a combination of the two).</li> <li>3. Orders for delivery up and disposal of infringing goods and materials (see sections 126 and 128 of the <i>Trade Marks Act</i>), or, in the alternative, erasure of the infringing sign — consistent with the civil remedies provisions, this takes the infringing goods out of circulation.</li> <li>4. The ability to order corrective advertising — given that it may be difficult to identify all consumers who were affected by the infringing conduct, this would serve to alert consumers to the occurrence of the conduct as well as serve as a deterrent to future conduct (insofar as the esteem of the infringer will be damaged by the need to place the corrective advertisement).</li> </ol> <p>We do not believe that an administrative enforcement action in respect of a registered GI should include the ability of a court to order payment of compensation for any injury, loss or damage to another person — as noted in the Discussion Paper, it will be difficult for the agency enforcing the GI right to provide evidence of such loss or damage and it is therefore more appropriate that such remedies be available in the civil enforcement context only where parties closer to the 'loss or damage' are in a better position to provide the relevant evidence.</p>	

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?
	<p>As we are advisers to industry participants, rather than industry participants ourselves, we are not in a position to specifically comment on this question.</p> <p>However, as a matter of general principle:</p> <ol style="list-style-type: none"> <li>1. Given the nascent recognition of GIs in New Zealand, there may be some advantages in creating an official logo to recognise protected GIs as this may serve to better educate the public about GIs and the fact that New Zealand names also qualify for GI protection.</li> <li>2. Creating an official logo would require its own administration regime to deal with matters such as appropriate adoption and use (particularly given most of the users of such a logo would not be the Registrants themselves), policing of misuse and so on and therefore increase both the administrative burden and overall costs of administering the GIs Act.</li> </ol>	
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.
	<p>As we are advisers to industry participants, rather than industry participants ourselves, we are not in a position to comment on this question.</p>	
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?
	<p>As we are advisers to industry participants, rather than industry participants ourselves, we are not in a position to provide specific comments on the advantages and disadvantages of repealing the enduring GIs for spirits.</p> <p>However, consistent with our responses to questions 2 and 3 above, we note that the removal of the geographical indications "New Zealand", "North Island" and "South Island" for spirits would mean that it is unlikely that these names would be protectable as geographical indications internationally for spirits, and this may have consequences in export markets for New Zealand producers.</p>	

17	<i>Other issues</i> Costs	How might the costs to administer the GIs Act be recovered and from whom?
	<p>As advisors we are mindful of varying views as to how the costs of administration of the GIs Act can be recovered and from whom. We do not consider it appropriate to make specific comments in relation to the question other than as noted in our response to question 13.</p> <p>However, as a matter of comparison, we note that Singapore seems to adopt a similar "user pays" systems to that currently in place under the GIs Act, though we are unaware of how cost recovery works in that jurisdiction in connection with GIs required to be protected under the EU Singapore Free Trade Agreement.</p>	

<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?
<p>Consideration should, in our view, also be given to including the following matters as part of a GI registration scheme:</p> <ol style="list-style-type: none"> <li>1. Whether a 'Register of Interested Parties' should be held as part of the GI Register under which parties who have an interest in the Registered GI (because they are, for example, a producer of goods with which the Registered GI is used) (<b>Registered Interested Party</b>) can be registered and: <ol style="list-style-type: none"> <li>(a) be informed of any changes to the status of the Registered GI or the conditions under which the Registered GI is registered — this includes matters such as changes of ownership of the Registered GI, changes to conditions of use of the Registered GI, and any applications for removal of the Registered GI from the Register;</li> <li>(b) be entitled to take action to enforce the Registered GI Right against misuse by a third party;</li> <li>(c) be entitled to be registered as a subsequent holder of the Registered GI; and</li> <li>(d) be entitled to take action against the GI rights holder for failure to protect the Registered GI Right.</li> </ol> <p>A proposed Registered Interested Party must provide to the Registrar evidence of the nature of their interest and their connection with the products provided under the Registered GI in order to be registered on the Register of Interested Parties. A cost recovery fee could be charged for maintenance of the Register of Interested Parties, and it may be required that such interest be 'renewed' after a fixed period of time.</p> <p>In addition to protecting the interests of the Registered Interested Party, the Register of Interested Parties could also serve a 'public interest' function insofar as it would allow consumers and the general public to readily identify those who have been assessed as having a relevant interest in the Registered GI, which may assist the public in identifying those parties who are trading in legitimate goods.</p> </li> <li>2. Whether the power to substitute the Registrant of a registered GI under section 56 of the GIs Act be expanded to allow for substitution in circumstances where the Registrant no longer has a relevant interest in the Registered GI, is failing to promote, exploit or defend the Registered GI, or is interfering with, or attempting to interfere with, the legitimate use of the Registered GI by third parties — this would both ensure that Registered GI are continuing to be actively monitored and renewed as appropriate and ensure that the Registrant cannot abuse their power over the GI to prevent its legitimate use.</li> <li>3. Whether the GI Act should include provisions to prevent a Registrant from excluding third parties from using a Registered GI through imposing particular 'conditions of use' on the Registered GI. For example: <ol style="list-style-type: none"> <li>(a) whether it should be expressly stated that a person who meets the requirements for use of a registered GI (including as to 'conditions of use') should be entitled to use the registered GI automatically with the need for approval from the Registrant;</li> <li>(b) whether there should be a prohibition on imposing a 'condition of use' over the registered GI that would require the payment of a fee as a condition of use of the</li> </ol> </li> </ol>	

Registered GI (other than the reasonable cost of any certification or quality control processes required to certify the goods as meeting the relevant requirements); and

(c) whether there should be a requirement that, if the 'conditions of use' of the Registered GI require that the goods be certified as quality controlled as 'compliant', the certification be conducted by an independent third party or otherwise be the subject of an independent appeals process.

4. Whether the GI Act should include a provision to the effect that any failure to comply with the 'conditions of use' of the Registered GI (for example, incorrect self-assessment if the entitlement to use the Registered GI, or a failure to obtain required certification) should be deemed to be infringement of the registered GI and subject to action and liability accordingly.