

The Chair

Cabinet Economic Growth and Infrastructure Committee

Geographical Indications (Wine and Spirits) Registration Act 2006

Proposal

- 1 This paper recommends that Cabinet agree to the Ministry of Business, Innovation and Employment, working closely with the Ministry of Foreign Affairs and Trade and the Ministry for Primary Industries, commencing work towards implementing the Geographical Indications (Wine and Spirits) Registration Act 2006.

Executive Summary

- 2 The Geographical Indications (Wine and Spirits) Registration Act 2006 (**Act**) was enacted in 2006. The Act provides for a registration system for wine and spirits geographical indications (**GIs**), with any misuse of registered GIs constituting a contravention of the Fair Trading Act 1986.

- 3 The Act has not yet been implemented. 6(a), 6(e)(vi) and 9(2)(j)

- 4 6(a), 6(e)(vi) and 9(2)(j)

- 5 The New Zealand wine industry now considers that implementation of the Act should be a priority. They consider that implementation as useful for protecting and promoting their products and reputation in export markets, 9(2)(b)(ii) and 9(2)(ba)

- 6 This paper recommends that the Ministry of Business, Innovation and Employment (**MBIE**) commence work to implement of the Act. While officials have been unable to identify a problem with the misuse of GIs in New Zealand that the Act would address, there are trade-related reasons for work to commence on implementing the Act. In particular, the Ministry of Foreign Affairs and Trade considers that implementation would support New Zealand's interest in securing an FTA negotiation with the EU.

Background

What is a Geographical Indication?

- 7 A geographical indication (**GI**) is an indication (usually a regional name) used to identify the geographical origin of goods that have a given quality, reputation or other characteristic essentially attributable to their geographical origin. GIs have traditionally been used particularly in the European Union (EU) for agricultural goods and foodstuffs that have qualities that are claimed to be influenced by unique local characteristics like climate and soil. Well-known products claimed as GIs include Champagne, Scotch Whisky and Prosciutto de Parma (Parma Ham).

Protection of GIs in New Zealand

- 8 The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (**TRIPS**) sets out minimum standards for the protection of GIs. In New Zealand, these standards are met through the Fair Trading Act 1986, the common law tort of passing off, and the Trade Marks Act 2002.
- 9 In relation to wine, there is additional protection for GIs under the Wine (Specifications) Notice 2006 (**Notice**) issued by the New Zealand Food Safety Authority under truth in labelling requirements of the Wine Act 2003. The Notice requires that where a label includes information about the origin of wine at least 85% of the wine must be made from grapes grown in the stated area (**85% rule**).
- 10 In relation to spirits, additional protection for GIs is provided under standard 2.7.5 of the *Australia New Zealand Food Standards Code*. Standard 2.7.5 provides that a geographical indication must not be used in relation to a spirit, even where the true origin of the spirit is indicated or the geographical indication is used in translation or accompanied by expressions such as 'kind', 'type', 'style', 'imitation' or the like, unless the spirit has been produced in the country, locality or region indicated.
- 11 A single regulatory regime specifically designed for GIs (***sui generis* regime**) has never been implemented in New Zealand. The use of GIs by New Zealand producers is largely confined to the wine industry. Foreign producers, and especially foreign wine and spirits producers, also use GIs in the marketing of their products in New Zealand.

Background to the Geographical Indications (Wine and Spirits) Registration Act 2006

- 12 In 2004 there was a substantial risk that New Zealand wine exports would be blocked from the EU market because the EU considered they were not using "officially recognised" GIs on their labels. The EU's regulatory system for wine imports is complex and highly prescriptive, both in terms of technical standards and labelling requirements. Under the EU regime, the use of GIs on wine labels is necessary for other essential information, such as vintage and grape variety, to be able to be used in the marketing of wine.
- 13 The ban would have had a catastrophic impact on the New Zealand wine industry. At that time, the EU was the largest and most significant export market for New Zealand wine. Wine exports to the EU were returning around \$140 million in export earnings (approximately 46% of the total export earnings for wine).

- 14 The Government's response was to pass the Act. The intention behind the Act was to align our law more closely with our international obligations under the TRIPS Agreement¹ and to protect wine exports to the EU by bringing our registration system for wines and spirits GIs into conformity with EU requirements.
- 15 The Act would impose one main restriction in respect of wine labels. A person would only be able to use a registered wine GI in trade (i.e. on a label) if at least 85% of the wine was obtained from grapes harvested within the GI's registered boundary. This requirement duplicates the 85% rule currently required under the Wines (Specifications) Notice 2006. The Act would be administered by the Intellectual Property Office of New Zealand (IPONZ).

Why has the Act not yet been implemented?

- 16 Cabinet agreed in December 2007 to delay implementation of the Act. 6(a), 6(e)(vi) and 9(2)(j)

6(a), 6(e)(vi) and 9(2)(j)

- 17 6(a), 6(e)(vi) and 9(2)(j)

- 18 The wine industry supported delaying the Act's implementation 6(a), 6(e)(vi) and 9(2)(j)
9(2)(b)(ii) and 9(2)(ba)

- 19 Discussions with the EU over negotiating a wine agreement stalled after the European Commission failed to obtain a negotiating mandate from its Member States in 2008. The European Commission has since advised that it no longer negotiates bilateral wine agreements. A comprehensive free trade agreement with the EU is now the most likely means to address any outstanding market access issues for the wine industry. New Zealand is currently working to achieve a launch of negotiations on a free trade agreement with the EU in 2015.

- 20 The market access issue for New Zealand wine which the Act was developed to address was dealt with in the interim by the New Zealand Government developing an *Overseas Market Access Requirement (OMAR)*² that sets out 24 New Zealand wine GIs that may be used in the EU. This measure, however, still leaves some vulnerability as discussed below.

¹ The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) is an international agreement administered by the World Trade Organization. New Zealand is a Party.

² OMARs are instruments issued by the New Zealand Government that all exporters must comply with in order to gain access to certain markets.

Why is implementation being proposed now?

- 21 New Zealand is now in the preliminary stages of securing agreement to launch negotiations on a broad Free Trade Agreement with the EU that should cover the same core issues as would have been addressed in the bilateral wine agreement. Indicating a willingness to engage with the EU on GIs, including by implementing the Act, could assist in securing the launch of those negotiations (see below).
- 22 While New Zealand Wine (**NZWine**) supported the decision to delay implementation, it now considers implementation should be a priority. First, TRIPs and EU wine related negotiations are no longer viable; secondly exports have grown significantly, and consequently the value of NZ wine's reputation and the risk associated with its misuse have grown as well. Finally, a 2011 industry-commissioned review by PricewaterhouseCoopers (PwC) showed that future industry growth would involve Asian markets where misuse of label information generally was recognised to be a major problem in the alcoholic beverages sector.
- 23 The PWC review formed the basis for a new export/development strategy for the wine industry, which reaffirmed the central importance of GI development, registration and enforcement. The new strategy involved the use of GIs to give added focus to marketing authentic, distinctive, yet evolving, wine stories, and to protect the geographical aspects of "Brand New Zealand" from misappropriation or obstruction by offshore parties.
- 24 The value of wine exports to the EU has grown steadily from \$140 million in 2004 to around \$408 million in 2014. Over the same period, total export earnings have grown from \$303 million to around \$1.3 billion. New Zealand produces wine in a cool climate, leading to distinctive flavours that are the foundation for higher quality wines and which also results in lower yields and higher costs. In order to be sustainable, the industry operates in the premium and super-premium segments of the global wine market³. New Zealand wine's reputation is crucial to its success in such markets and GIs enhance this reputation by making it easier for the industry to differentiate its products from those sold at the commodity end of the market.
- 25 NZWine favours implementation of the Act as a means of safeguarding market access to the EU. It also sees implementation as useful for protecting and promoting their products in export markets, particularly in developing country markets such as China, 9(2)(b)(ii) and 9(2)(ba)

Comment

- 26 From a trade perspective, the Ministry of Foreign Affairs and Trade considers there would be a number of key benefits arising from the implementation of the Act which were absent from or not adequately addressed by the Covec report. Implementation would:
- support New Zealand's interests in launching an FTA negotiation with the EU;
 - facilitate sui generis GI protection in overseas markets which would provide the New Zealand wine industry with an important tool to help protect and enforce its GIs in those markets and, therefore, would support its overall export growth strategy;
 - assist in safeguarding market access for New Zealand wine in the EU market; and

³ Current prices for NZ wine are 7.34 pounds per bottle in the UK, which is 2 pounds higher than the UK average and 90p higher than next country, which is France.

- [REDACTED] S6(a)

27 MBIE considers that from a non-trade perspective, at this point in time there is not a compelling case for implementation to be a priority for the Government. While implementing the Act would impose new regulatory and business compliance costs on the New Zealand wine and spirits industry, there are unlikely to be any significant benefits that would be realised through its implementation. There does not appear to be any significant misuse of wine or spirits GIs in the New Zealand market that the implementation of the Act and registration of regional names as GIs would address. The small number of cases related to the misuse of GIs and regional names that have occurred have been effectively dealt with under the existing regulatory framework.

28 MBIE commissioned economic consulting firm Covec to analyse the costs and benefits of implementing the Act. Covec concluded that the costs and benefits of implementing the Act are finely balanced, and the costs and benefits would be likely to be small (\$1-4 million each, compared to the total export earnings of the New Zealand wine and spirits industries of around \$1.3 billion). While Covec could not identify any benefits in the domestic market from implementing the Act, it did identify potential future benefits in relation to export markets but these were uncertain and difficult to model. A copy of Covec's report is attached to this paper as **Appendix A**.

29 Implementing the Act will have resource implications for the Commerce and Consumer Affairs portfolio and MBIE. The Act as currently drafted requires amendment and regulations setting out the registration procedures need to be developed. There are likely to be opportunity costs for the Government from prioritising implementation of the Act over other Commerce and Consumer Affairs projects that are more likely to have a net beneficial impact on the economy.

30 There are also a number of potential risks should the Act not be implemented. These include:

- not responding in a timely manner to legitimate industry concerns which could undermine industry trade strategies and growth potential;
- having a negative impact on New Zealand's FTA aspirations with the EU; and

[REDACTED] 6(e)(vi) and 9(2)(j)

31 These benefits and risks are discussed in more details in the following **sections A to D**.

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A Implementation would support New Zealand's interest in securing FTA negotiations with the EU.

32 New Zealand is currently engaged in a bilateral "reflection process" to explore the trade and economic relationship with the EU, with a view to the possible opening of FTA negotiations. New Zealand is the *demandeur* in this regard; we are one of only six WTO members who do not have or are negotiating some form of preferential access to the EU market, and securing an FTA is a priority for the government. New Zealand is less of a priority for the EU, and it is clear that we will need to make the running in putting the case for why the EU should enter into FTA negotiations with us. GIs are of critical importance to the EU, and it has clearly signalled that this will be a key issue in any potential FTA negotiation with New Zealand.

33 The EU has indicated to New Zealand in the past that, without the Act in force, it considers that New Zealand's legal framework remains insufficient for ensuring compliance with TRIPS. Since the Act was passed, the EU has remained highly interested in when it will be implemented. The issue of the Act's implementation is a regular item on the agendas of the annual Agricultural Trade and wider Trade Talks with the EU.

34 New Zealand has previously explained to the EU that the reason the Act has not yet been brought into force is because it is not in New Zealand's interests to impose additional regulatory and business compliance costs on the New Zealand economy through implementation, when there is no domestic demand or support for its implementation. [REDACTED] 6(a), 6(e)(vi), and 9(2)(j)

35 [REDACTED] 6(a), 6(e)(vi), and 9(2)(j)

[REDACTED] On the other hand, implementation of the Act could signal to the EU that New Zealand is ready to engage on GIs and meet the EU's concerns about our legal framework and, thus, help pave the way to an EU-NZ FTA negotiation. The European Commission and certain influential EU member states (France, Italy and Spain) have identified the protection of GIs would be a key issue in any negotiations. [REDACTED] 6(a), 6(e)(vi), and 9(2)(j)

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B Implementation could facilitate sui generis protection in overseas markets

38 As discussed above, protecting its GIs in export markets is an important element in NZWine's overall strategy to grow export returns.

39 Many of New Zealand's key export markets for wine provide for some form of sui generis system, such as a registration regime, for granting protection to wine GIs. Being able to demonstrate that a New Zealand GI is officially recognised in New Zealand can assist the applicant to gain sui generis protection for its GI in other countries. Both China and the EU's sui generis systems for granting protection to GIs have this requirement as one of the necessary prerequisites to obtaining registration. Implementation of the Act and registration of New Zealand GIs would therefore facilitate the process of applying for sui generis protection in those markets. Sui generis protection in overseas markets is not the only tool at the industry's disposal, but without it the wine industry does not have the same range of enforcement tools as are open to its major competitors.

40 China is the world's 5th largest wine consumer and the biggest growth market with 67% growth. Post China FTA implementation, annual wine exports to China have grown significantly (\$17 million in 2011, around 2% of total export earnings). New Zealand's share of the imported wine market in China is nearly 1.6%, which makes New Zealand the 8th largest exporter of wine to China. China is one of the projected growth markets for New Zealand wines with a projected increase in wine exports of an additional NZ\$184 million per annum. China imports wine at the high or premium end of the spectrum which is where the New Zealand wine industry is pitching its wines. New Zealand wines are seen as premium products fetching high prices similar to wines from France. This makes NZ wines more susceptible to counterfeiting and passing off, and strengthens the case for tools to protect IP rights.

- 41 Once New Zealand has domestic GI legislation in place, there would be various options on how to proceed in order to gain increased protection for New Zealand GIs in the Chinese market. One option would be to register products with the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ)⁴ on a product-by-product basis; another is to sign a Memorandum of Understanding with China; and a third is to negotiate a “package framework” such as the China-EU Agreement. AQSIQ has recently confirmed that the absence of domestic GI legislation in New Zealand currently precludes New Zealand from taking any of the above options for GI protection in China. The OMAR list approach is not considered a satisfactory substitute to having relevant domestic legislation in place.
- 42 Sui generis protection of GIs in export markets should provide for more cost effective protection for New Zealand GIs than relying on consumer protection or unfair competition laws. The fact of GI registration can deter unauthorised traders from using a GI without permission, and can encourage them to cease use without further enforcement action. Recourse to general consumer and unfair competition laws to protect and enforce an unregistered GI in an overseas jurisdiction is complex, difficult, and comes with a degree of uncertainty. Further, in some markets like China, government agencies may take actions to enforce GIs on behalf of GI owners.
- 43 The current winegrowers that have GIs registered as trade marks (Gimblett Gravels and Waiheke Island) have stated a preference for registration under the Act and confirmed they had only used trade mark registration procedures in the absence of the GI Act.
- 44 The process of obtaining sui generis protection in export markets can, however, be costly, time consuming and uncertain due to a lack of international harmonisation.

C Implementation would assist in safeguarding market access for New Zealand wine in the EU market

- 45 In the EU, wines need to bear a “legitimate” GI on the label if they are to receive preferential treatment such as being able to use certain geographical names on the label. Without a New Zealand registration system, there is a risk that the EU could question the status of New Zealand GIs as legitimate for this purpose and New Zealand could find it difficult to justify our GIs in European eyes.
- 46 This issue is currently dealt with through the use of an OMAR, which includes a list of GIs prepared by the wine industry, but this was put in place as an interim measure until the Act could be implemented. 6(a), 9(2)(d) and 9(2)(g)(i)

⁴ AQSIQ is a ministerial administrative organ directly under the State Council of the People's Republic of China in charge of national quality, metrology, entry-exit commodity inspection, entry-exit health quarantine, entry-exit animal and plant quarantine, import-export food safety, certification and accreditation, standardization, as well as administrative law-enforcement.

47 In the EU, a number of compositional parameters and labelling terms are conditional upon a wine bearing a GI registered under the EU system. An example is the case of minimum alcohol levels which affects sweet and lower alcohol wine categories. New Zealand wines with less than 8.5% actual alcohol by volume are currently not permitted for export into the EU market. NZWine is currently engaged in a Primary Growth Partnership programme aimed at developing unique low alcohol or “lifestyle” wine to satisfy a growing demand in premium markets such as the EU. It is estimated that by 2023 this programme will see NZ\$263 million of increased export earnings. Without the ability to seek GI registration in the EU, New Zealand lifestyle wines would be locked out of a lucrative market.

48 In 2007-8, draft EU wine regulations specified that the only geographical information that could appear on a label was a GI registered in the EU. This represented a very real threat to the New Zealand industry's interests 6(a), 9(2)(d) and 9(2)(g)(i)

The EU reforms its wine regulation system approximately every 10 years and a major review is currently under way, including the rules for GIs. All New Zealand's major non-EU competitors have established pathways for GIs in the EU market via either bilateral agreements or registration and would not be affected by such a rule change; New Zealand lies outside either of those pathways.

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- 49 If the New Zealand wine industry could not use geographical information on its wines in the EU, this would result in major damage to New Zealand's wine exports. Even if the Act were implemented under urgency, it could take up to 3 years for the register to be set up and for producers' GI registration applications to be prepared and approved in New Zealand and the EU. NZWine indicates that being unable to use geographical information on New Zealand wine in the EU for that length of time would cause major and potentially irreversible damage in that export market. A New Zealand registration regime could reduce or eliminate the above market access risks. No other form of GI protection (such as trade mark registration) would do so.

D

S6(a)

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The Act requires amendment before implementation

- 51 MBIE has identified a number of deficiencies with the drafting of the current Act that will require attention before the Act can be implemented. The need to amend the Act before implication has been discussed with NZWine and DSANZ.
- 52 The Act is no longer consistent with New Zealand's international obligations, and in particular does not meet our commitments under the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation. Amendment is required to provide for the cancellation of registered GIs that are confusingly similar to prior existing trade mark rights.
- 53 The Act does not provide any sustainable source of funding for IPONZ to operate and maintain the register of GIs. At present, the Act only provides for a single application fee to be paid at the time the initial application is made. Once registered, a GI would remain on the register in perpetuity or until action is taken by the Registrar in response to a third party application to cancel the registration (for example, because the GI has fallen into disuse).
- 54 The funding issue is made more acute because of the small number of potential applications to register GIs. NZWine has identified a list of 29 regional names for which registration is likely to be sought and these applications will be made within the first two years of operation of the register. Officials estimate that a small number of applications (up to 10) from foreign parties will also be made within the period. In outlying years few, if any, further applications are anticipated from either New Zealand or foreign parties.

- 55 MBIE has also identified a range of desirable amendments that could be made to the Act to improve its overall workability. NZWine has been active in providing input to officials on potential changes aimed at improving the Act's workability.

Regulations required to implement

- 56 Before the Act can be brought into force regulations setting out the procedures for registering GI under the Act need to be developed, approved and Gazetted. Officials estimate that development of these regulations is likely to take around six to nine months to complete once the Act is amended.

Consultation

- 57 The following agencies have been consulted: Ministry for Primary Industries and the Treasury. The Department of Prime Minister and Cabinet have been informed.
- 58 Officials have been discussing implementation of the Act with NZWine and DSANZ and they were provided with copies of the Covec report for review and comment. Both support the recommendation for work to commence towards implementing of the Act. They are also aware that the Act needs amendment before it can be implemented.
- 59 NZWine observed that the Covec report did not provide any reasons for not implementing the Act. NZWine noted there were a range of other potential, but unquantifiable, international benefits that could arise from implementing the Act, such as meeting international obligations, providing equivalence to other major wine exporting countries, laying the groundwork for FTA negotiations with the EU and reassuring international investors that their investments can be protected.

Fiscal Implications

- 60 Agreeing to the recommendation that MBIE commence work towards implementing the Act would not, on its own, have any immediate fiscal implications for the Government. Implementation of the Act would, however, require an increase to the IPONZ Baseline (Vote Commerce: Registration and Granting of Intellectual Property Rights), although this will be recovered through third party revenue. This would require fees to be set at an appropriate level to ensure full cost recovery to ensure there would be no overall impact on the government's operating balance. Once the fees are finalised, changes to baselines will be sought.
- 61 There is, however, a risk that full cost recovery may not be achievable through the fees yet to be set, because of the small number (estimated to be around 30- 40) of GIs for which registration is likely to be sought. A small number of applications is likely to mean that the fees would need to be high (perhaps up to \$10,000 per application), which in turn could be a barrier to interested parties applying for registration.

Human Rights

- 62 The proposals in this Cabinet paper appear to be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative Implications

- 63 As noted above, the Act requires amendment before it can be brought into force. A separate legislative bid is being made in the 2015 legislation programme, with a priority of Category 3 (to be passed if possible in the year).
- 64 Additionally a comprehensive set of regulations also need to be developed setting out the registration procedures under the Act.

Regulatory Impact Analysis

65 A regulatory impact statement has been attached as **Appendix B**.

Quality of the Impact Analysis

66 The General Manager, Strategic Policy Branch and the Ministry of Business, Innovation and Employment Regulatory Impact Analysis Review Panel have reviewed the attached Regulatory Impact Statement (RIS) prepared by the Ministry of Business, Innovation and Employment. They consider that the information and analysis summarised in the RIS partially meets the criteria necessary for ministers to fairly compare the available policy options and take informed decisions on the proposals in this paper. 6(a), 9(2)(d) and 9(2)(g)(i)

Publicity

67 It is proposed that the Minister of Commerce and Consumer Affairs write to both New Zealand Winegrowers and Distilled Spirits Association of New Zealand informing them of the decision for MBIE to commence work towards implementing the Act.

Recommendations

68 The Minister of Trade and the Minister of Commerce and Consumer Affairs recommended that the Committee:

- a. **Note** the Geographical Indications (Wine and Spirits) Registration Act 2006 (**the Act**) has not been brought into force;
- b. 6(a), 6(e)(vi) and 9(2)(j)
- c. **Note** that negotiations with the EU for a wine agreement never commenced;
- d. **Note** that New Zealand is working to achieve a launch of negotiations on a free trade agreement with the EU in 2015 and that implementation of the Act would support New Zealand's interest in securing such negotiations;
- e. **Note** that the circumstances leading to the 2007 decision to delay implementation of the Act have changed and proceeding to implement the Act now could be helpful in supporting New Zealand's efforts to launch and pursue such a negotiation;
- f. **Rescind** the decision referred to in paragraph 2; and instead
- g. **Agree** to the Ministry of Business, Innovation and Employment, working closely with the Ministry of Foreign Affairs and Trade and the Ministry for Primary Industries, commencing work to implementing the Act;
- h. **Note** that the Act requires amending and regulations need to be developed before it can be implemented;
- i. **Agree** to the Ministry of Business, Innovation and Employment, working closely with the Ministry of Foreign Affairs and Trade and the Ministry for Primary Industries, commencing a policy process to amend the Act;

- j. **Direct** the Ministry of Business, Innovation and Employment, working closely with the Ministry of Foreign Affairs and Trade and the Ministry for Primary Industries, reporting back to Cabinet on necessary and desirable amendments to the Act by 31 March 2015;
- k. **Agree** to the Minister of Commerce and Consumer Affairs writing to the New Zealand Wine and the Distilled Spirits Association of New Zealand informing them of the decision for Ministry of Business, Innovation and Employment to work towards implementing the Act; and
- l. **Note** that the Minister of Commerce and Consumer Affairs will make a bid for a bill to amend the Act in 2015 Legislative Programme, with a priority of Category 3 (to be passed if possible in the year).

Hon Tim Groser
Minister of Trade

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Hon Paul Goldsmith
Minister of Commerce and Consumer Affairs

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Appendix A: Covec Report

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Appendix B: Regulatory Impact Statement

Agency Disclosure Statement

This RIS has been prepared by the Ministry of Business, Innovation and Employment (MBIE), in consultation with the Ministry of Foreign Affairs and Trade (MFAT).

6(a), 9(2)(d) and 9(2)(g)(i)

There is a lack of evidence that there is a significant problem involving misuse of GIs. MBIE considers that there is no significant misuse of GIs in the domestic market. However, it is more difficult to gauge whether there is a problem in export markets. Given that we have only received very limited evidence of misuse of New Zealand's wine GIs in export markets, we have assumed that the threshold for finding a problem with the status quo in respect of misuse of New Zealand wine GIs internationally has been met but that the problem is very small.

MBIE has assumed that obtaining *sui generis* protection alone will have an impact on misuse of those GIs in export markets. As we are not sure whether this assumption is correct, we have assumed that any effect would be small.

MBIE has assumed that:

- if a *sui generis* registration regime were implemented there would be around 30 domestic applications and 10 foreign applications
- a reasonable number of winegrowing regions would apply for, and be able satisfy, the prerequisites for *sui generis* protection in export markets like the EU and China

If the assumption about the domestic registrations is wrong, and there were fewer applications, there is a risk that the government would not be able to recover the cost of implementing and administering the regime.

If the assumption about the number of successful overseas applications is wrong, the benefits related to protecting product reputation and protecting consumers from false and misleading practices set out in the analysis of option B would not accrue.

We have assumed that there will be around 3 boundary disputes in registering GIs, and that resolving them will cost the industry \$300,000.

Iain Southall
Manager, Intellectual Property Policy
Labour and Commercial Environment
Ministry of Business, Innovation and Employment

Status Quo

1. A geographical indication (GI) is an indication (usually a regional name) used to identify the geographical origin of goods that have a given quality, reputation or other characteristic essentially attributable to their geographical origin. GIs have traditionally been used for agricultural goods and foodstuffs that have qualities influenced by unique local characteristics like climate and soil. Well-known products claimed as GIs include Champagne, Scotch Whisky and Prosciutto de Parma (Parma Ham).
2. The use of GIs by New Zealand producers is largely confined to the wine industry (foreign GIs also operate in the industry). In the spirits industry, only foreign distillers claim GIs over their products. For example, foreign producers claim that terms like “bourbon”, “tequila” and “grappa” are GIs and may not be used by potential New Zealand competitors. Some New Zealand companies own the rights to distribute products bearing foreign GIs in NZ, including various brands of “bourbon”, “cognac”, “scotch whisky” and “tequila”.
3. GIs are protected in New Zealand by range of measures, including the tort of passing off, the Fair Trading Act 1986 and the Trade Marks Act 2002 (as either collective marks or certification marks). Spirits GIs receive additional protection under standard 2.7.5 of the Australia New Zealand Food Standards Code. Wine GIs receive additional protection under the Wine (Specification) Notice 2006 (issued under the Wine Act 2003). This Notice requires that at least 85% of the wine must be made from grapes grown in an area before a wine label can state that the wine is from that area (the **85% rule**).
4. GIs are protected overseas through a similar array of measures. In addition to these measures, some countries have also created a *sui generis* regime for protecting GIs. An important difference between New Zealand’s regulatory regime and some overseas regimes is therefore that some countries have a *sui generis* regime for the protection of GIs whereas New Zealand does not.
5. A *sui generis* GI regime is a regulatory regime that provides specifically for GIs, rather than providing for them within trade mark law or laws prohibiting false and misleading conduct in trade more generally. *Sui generis* GI regimes usually involve parties registering their GIs, although there can be other mechanisms too, including securing protection directly through trade agreements. In this RIS “*sui generis* protection” refers to both registration and non-registration GI regimes.

Geographical Indications (Wine and Spirits) Registration Act 2006

6. In 2006 Parliament enacted the Geographical Indications (Wine and Spirits) Registration Act 2006 (the **Act**). It has never been brought into force. The Act replaced the earlier Geographical Indications Act 1994 covering all products with a new GI registration regime specifically limited to wine and spirit GIs. The 1994 Act was never brought into force either, largely because of a lack of interest from New Zealand producers.
7. The Act would impose one main restriction in respect of New Zealand wine GIs. A person would only be able to use a registered wine GI if at least 85% of the wine was obtained from grapes harvested within the GI’s registered boundary. This largely duplicates the 85% rule currently imposed by the Wines (Specifications) Notice 2006 (see paragraph 3). A person who contravened this requirement would be deemed to have contravened section 9 of the Fair Trading Act 1986, which prohibits misleading or deceptive conduct in trade. The provisions of the Fair Trading Act would then be available to remedy the misuse of the GI.

8. The Act was originally created to address a substantial risk to the wine industry in 2004 that the European Union (EU) would block entry of New Zealand wine for not having “officially recognised” GIs on its labels. Under the EU regulations at that time, the use of GIs on wine labels were necessary for other essential information, like vintage and grape variety, to be able to be used in the marketing of wine. The ban would have had a catastrophic impact on the industry. In 2004 around 46% of wine exports’ total value was going to the EU, returning over \$140 million in export earnings for 2003/2004.

Implementation delayed for trade-related reasons

9. In December 2007 Cabinet decided to delay implementation of the Act 6(a), 6(e)(vi) and 9(2)(i). It made this decision with the support of the wine industry. Cabinet noted that the risk of the EU banning New Zealand wine could be managed 6(a), 6(e)(vi) and 9(2)(i).
10. Wine exports to the EU have now grown to over \$408 million per annum but their relative importance has fallen from around 46% of total wine exports in 2004 to around 32% in 2014. Total export earnings have increased from around \$303 million in 2004 to \$1.3 billion during the same period.

Wine industry’s issues with the status quo

11. New Zealand Wine (NZWine) has conveyed to the government that implementation of the Act is a priority for the wine industry. It has said that it does not see implementation of the Act as “a silver bullet”. But it argues that its implementation would constitute a “coming of age” and the next stage in the evolution of the New Zealand wine industry. It considers that implementing the Act would put New Zealand wine industry on the same footing as other wine producers in export markets, where wine GIs are able to be protected under *sui generis* national regimes.
12. NZWine has raised a number of issues with the status quo, both in terms of domestic and export markets. These include:
- The success of the New Zealand wine industry in premium wine markets and the reputation many of their wines have developed worldwide means that New Zealand wine GIs are becoming more vulnerable to misuse⁵.
 - The absence of a *sui generis* GI regime impedes the development and protection of regional reputations.
 - The absence of a *sui generis* regime in New Zealand prevents them from protecting their GIs in export markets.
 - Trade mark protection for GIs is too complex and expensive to pursue overseas and does not allow bare GIs to be protected.
 - 9(2)(b)(ii) and 9(2)(ba)

⁵ ‘Misuse’ in this context means a third party either putting a GI on wine that is not from that place or seeking rights over a GI (e.g., registration of a trade mark that incorporates the GI).

13.

MBIE does not consider that all of these issues constitute substantial problems

14. MBIE's view on the first three issues raised by the wine industry are as follows:

- a) Misuse: We do not consider that there is strong evidence of a problem in the domestic market. We have not been able to find evidence of any significant misuse of GIs within either the wine or spirits industries. There are four regimes for each industry that protect or can be used to protect against the misuse of GIs in New Zealand (see paragraph 3 for more details). There is no reason to believe that these measures are inadequate to address instances of misuse when they occur.
- b) Regional reputations: We do not consider there is strong evidence that the status quo impedes the wine and spirits industries from developing regional stories and building consumer recognition of regional brands. Most New Zealand wine is already being marketed and sold with reference to the region it originates from. In fact, the New Zealand wine industry has been particularly successful at it. This has played no small part in pushing the industry's total export earnings from around \$303m in 2004 to \$1.3 billion in 2014.
- c) Accessing overseas regimes: The absence of a *sui generis* regime in New Zealand does not prohibit the wine exporters from accessing the *sui generis* regimes of all export markets. Wine exporters have access to the *sui generis* regimes of Australia and the United States, which comprise over 50% of our wine exports by both volume and value. Although New Zealand GIs are protected under the United States regime, wine exporters to Australia have not registered any New Zealand GIs under Australia's regime. There is no legal impediment to them doing so.

Problem Definition

15. We consider that the issues with the status quo raised by the wine industry boil down to two risks.

Risk 1

16. There is a risk that the reputation of New Zealand wines could be adversely affected in certain export markets (primarily China) by people misusing New Zealand GIs. This could be done by wine being passed off as coming either from a specific New Zealand winery or from a New Zealand region more generally. This could harm the wine industry in at least two ways:

- a) it could lower the number of sales in the relevant market (consumers seeking New Zealand wine buy third party wine rather than wine from New Zealand)
- b) poor quality third party wine could damage the reputation of New Zealand wine in the relevant market, causing a loss in future sales and a potential reduction in the price the industry could demand.

17. This problem is expressed as a risk because we have not seen evidence of significant misuse of New Zealand wines in export markets. Although the wine industry could seek to make better use of the measures currently available to combat misuse if it did begin

to rise, taking action in export markets is difficult and costly. We therefore assume that misuse of GIs has a greater potential to cause damage in export markets than domestic markets, given that it would be more difficult to combat.

Risk 2

18.

6(a), 9(2)(d) and 9(2)(g)(i)

19.

20.

21.

22.

23.

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24.

Objectives

25. Provide a regulatory environment for the protection of GIs in the New Zealand wine and spirits industries that:
- Enables wine and spirits exporters to maintain and facilitate access to export markets
 - Ensures the industries can protect the reputation of their products in export markets
 - Is cost-effective and accessible.

Options

26. The options considered in this RIS are:
- Leave the Act enacted but not in force (*status quo*)
 - Bring the Act into force
 - Seek diplomatic solutions.
27. We have discarded repealing the Act as an option. Repealing the Act is the same as the status quo from a regulatory perspective. It is clearly, however, a less attractive option. Repealing the Act would remove the government's ability under the status quo to quickly implement a *sui generis* regime in New Zealand if the need arose.

Regulatory Impact Analysis

Option A: Leave the Act enacted but not in force

Benefits of option A

Protecting reputation of products

28. The wine and spirits industries have access to an array of legal mechanisms in export markets. In addition to the normal laws against misleading practices in trade and consumer rights legislation (see paragraph 3) the two most common methods of protecting GIs in overseas markets are through trade marks and *sui generis* GI regimes.

Cost-effectiveness and accessibility

29. This option provides a cost-effective and accessible way of protecting GIs. With trade mark regimes, there is a high degree of harmonisation around the world. The Madrid Protocol provides an international system that enables cost-effective trade mark protection to be sought in multiple jurisdictions (including the EU and China) through one registration. Obtaining registered trade marks in export markets is therefore accessible, cheap and efficient.
30. As stated above, some countries have also created a *sui generis* regime for protecting GIs. New Zealand has access to the *sui generis* regimes of Australia and the United

States, which comprise over 50% of our wine exports by both volume and value. New Zealand wine exporters have chosen not to register their GIs in Australia, even though there is no legal impediment to do so and instances of misuse have arisen in that market.

Costs of option A

Access to export markets

31.

6(a), 9(2)(d) and 9(2)(g)(i)

32.

33.

34.

35.

36.

Protecting reputation of products

37. The wine industry considers that the current legal measures available to them in overseas markets are inadequate. The consumer protection/unfair competition laws come with a degree of uncertainty. They claim that most regional names like “Marlborough” cannot be registered as a trade mark as a bare name.

38. Although a regional name like “Marlborough” cannot be trade marked as a bare name, it could be registered if it were incorporated into a distinctive logo. Two New Zealand regional associations use trade marks to protect their GIs, as do a number of foreign wine and spirits producers. There seems to be a preference in the New Zealand wine industry, however, not to have to incorporate GIs into logos.

Cost-effectiveness and accessibility

39. As noted in the benefits, trade marks are cheap, quick and easy to register in multiple jurisdictions. However, they may not be very easy to enforce when they are infringed. The wine industry has stated that a lack of understanding of foreign regulatory systems and language difficulties means that monitoring misuse and preventing misuse of their GIs in export markets through anti-competitive business practises and consumer law can be extremely problematic or not viable. Similar comments have been made about enforcing trade marks in export markets. However, these appear to be largely generic problems with taking legal action in foreign jurisdictions rather than one specifically tied to either GIs or trade marks.
40. *Sui generis* GI protection is not accessible for New Zealand wine exporters in the EU and China. The costs and benefits of obtaining *sui generis* protection in those markets are discussed in option B.

Summary of costs and benefits of option A

41. Below is a summary of the costs and benefits of option A.

Group	Costs	Benefits
New Zealand wine and spirits industries	<p>6(a), 9(2)(d) and 9(2)(g)(i)</p> <p>Trade mark law provides an inconvenience by requiring GIs to be incorporated into a logo before they can be registered</p> <p>Wine exporters must incur costs in monitoring misuse of GIs in foreign markets</p> <p>High enforcement costs to prevent misuse in foreign markets</p>	<p>Many legal measures to protect GIs</p> <p>Low domestic and foreign trade mark registration costs</p> <p>Internationally harmonised trade mark regime (including registration procedures)</p> <p>Access to foreign <i>sui generis</i> GI regimes in over 50% of total exports by value and volume</p>
Government		Maintenance of GI regulatory regime low cost

Option B: Bring the Act into force

42. This option would impose a new regulatory regime on the wine and spirits industries. As mentioned in paragraph 7, the main restriction it would impose in respect of New Zealand wine GIs is that a registered wine GI would only be able to be used if at least 85% of the wine was obtained from grapes harvested within the GI's registered boundary. The main restriction the Act would impose in respect of spirits is that a

registered spirit GI would only be able to be used if the spirit originated within the GI's registered boundary. Registered GIs would only be able to be used in accordance with their registration, including any conditions the Registrar imposed restricting the way in which the relevant GI could be used on labels.

43. A person who contravened one of these requirements would be deemed to have contravened section 9 of the Fair Trading Act 1986, which prohibits misleading or deceptive conduct in trade. The provisions of that Fair Trading Act would then be available industry to remedy the misuse of the registered GI.
44. This option would also enable wine exporters wanting *sui generis* protection in the EU and China to satisfy one of the prerequisites for applying for *sui generis* protection in those markets.

Benefits of option B additional to the status quo

Access to export markets

45. This option would provide no additional benefits under scenarios A. It would provide a minor benefit under scenario B by giving the wine industry an opportunity to apply for official recognition of their GIs

6(a), 9(2)(d) and 9(2)(g)(i)



46.

6(a), 9(2)(d) and 9(2)(j).



47. It is also possible that implementing the Act would provide benefits in emerging export markets. The Covec report⁸ estimated the likely benefits under this category to be between \$1-4m.

Protecting reputation of products

48. MBIE considers that this option would not provide any additional benefits to New Zealand wine and spirits producers in the domestic market. There is no evidence of significant misuse of GIs and the Act largely duplicates existing domestic regulation. It would however provide some benefits to foreign producers, and to importers of those products into New Zealand. The size of this benefit would depend on the extent to which they could secure registration under the Act for terms like "port", "sherry"

⁸ MBIE commissioned economic consulting firm Covec to analyse the costs and benefits of implementing the Act. Covec concluded that the costs and benefits of implementing the Act are finely balanced, and the costs and benefits would be likely to be small (\$1-4 million each, compared to the total export earnings of the New Zealand wine and spirits industries of around \$1.3 billion). While Covec could not identify any benefits in the domestic market from implementing the Act, it did identify potential future benefits in relation to export markets but these were uncertain and difficult to model).

“bourbon” and “tequila” (which could be considered generic names and therefore ineligible for registration). Registration would enable importers of those products – or the foreign producers themselves – to take action to prevent local producers from using those terms. It would also allow them to prevent people from importing products with those names from places outside the registered boundary.

49. Because of the territorial scope of the Act, its implementation will not provide protection for New Zealand GIs – and therefore no direct benefit – in export markets. However, the principal benefit of this option is expected to accrue in export markets. This is because the Act would enable wine exporters to satisfy a prerequisite for obtaining *sui generis* protection in the EU and China. Before an application to register foreign GIs can be made in those markets the GIs must be officially protected in their country of origin. Implementing the Act and registering New Zealand GIs under it would be a way of establishing official recognition, paving the way for wine exporters to seek protection for them in the EU and China.
50. Assuming New Zealand wine exporters were successful in registering their GIs under the domestic regime, and that they were able to satisfy the EU’s and China’s other prerequisites, their GIs would be granted *sui generis* protection in those markets. It is likely that this alone would provide some deterrent to people misusing New Zealand wine GIs in those markets, although this potential benefit is difficult to quantify. Misuse of New Zealand GIs does not appear to be widespread. We therefore assume that it would provide only a small benefit in the form of a reduction of misuse in those markets. There would also be a small benefit to both wine exporters and consumers in those markets as a result of the reduction.
51. Assuming that wine exporters would be able to secure *sui generis* protection, they would have an additional “tool in the toolbox” compared to the status quo. They could then use the enforcement provisions of the foreign *sui generis* regime to take action to prevent misuse of their GIs in that market.
52. If few or no wine exporters apply for (or obtain) *sui generis* protection in foreign markets that require GIs to be first officially protected in their country of origin, there will be little (if any) benefits in implementing the Act for the wine industry under this heading.

Cost effectiveness and accessibility

53. The wine industry would face the same problems they identified with the status quo with respect to the difficulties of taking legal action in foreign countries due to different regulatory systems and languages. However, we assume that having an extra regulatory option would provide a benefit. Enforcing GIs under a *sui generis* system of a particular export market might be a cheaper or more effective option, for example, than other measures. For example, MBIE understands that if wine exporters were able to secure *sui generis* protection in China, this would open up the possibility that the Chinese government would enforce New Zealand’s wine GIs on behalf of New Zealand wine exporters. This could provide a benefit in terms of the wine exporters’ ability to access China’s legal processes. It could also provide benefits in respect of the cost-effectiveness of enforcement. Given that misuse of New Zealand GIs does not appear to be widespread in China, we again assume this benefit would be small.
54. It is difficult to gauge the likelihood of New Zealand wine exporters securing *sui generis* protection in China. The experience of other countries’ wine exporters suggests that it might be a lengthy, costly process. To date only four foreign GIs have been granted *sui generis* protection in China: “Scotch Whisky”, “Champagne”, “Bordeaux” and “Napa Valley” (which took nearly 14 years to gain protection). The EU has opted for a GI

agreement with China to secure protection for 10 of its GIs after efforts to secure protection for other GIs under China's *sui generis* regime failed. The experience of the Americans, Australians and Europeans to date suggests that although *sui generis* protection could provide a cost-effective means of enforcement, actually obtaining this protection in the first place might not be particularly cost-effective and may require government assistance to obtain protection.

55.

S6(a)

Costs of option B additional to the status quo

Cost-effectiveness and accessibility

56. This option would be more costly than the status quo.

57. The costs to government would include:

- a) one-off costs for IPONZ to develop and implement the register of GIs, including upgrading its electronic case management system, train staff, upgrade its website, develop guidelines and undertake publicity about implementation of the Act. We estimate these costs to be around \$250,000⁹
- b) on-going costs for IPONZ to maintain the regime (including overheads and software licensing fees). These costs cannot be established with certainty until the register and registration processes have been designed.

58. These costs would be incurred under this option regardless of whether any domestic applications for GIs were made or the market access risk materialised.

59. The costs to the wine industry include:

- a) one-off costs to set geographical boundaries and prepare domestic GI registration applications. Covec estimated these costs to be around \$180,000 (based on an assumption that there will be around 30 applications from New Zealand wine industry)
- b) possible costs for the wine industry to resolve disputes arising around the registration of GIs. The Covec report estimated these cost to be around \$300,000, assuming around three disputes would arise.

60. Although these costs would be voluntary (so would only be incurred if exporters saw a commercial benefit in applying for foreign protection), the benefits outlined above would also only be realised if these costs were incurred. We therefore include these costs in our analysis. However, the costs to wine exporters of monitoring misuse of their GIs and taking enforcement action when necessary would be likely to be broadly the same regardless of whether they had the ability to enforce against the misuse of GIs under the options provided by the status quo or under a *sui generis* regime. Accordingly, we do not consider that the costs of monitoring and enforcement of GIs under this option would be significantly more than under the status quo. Costs of enforcement could be slightly less, given that wine exporters might have an extra option about which regime to enforce under. Costs of enforcement could be significantly less if the Chinese

⁹ This estimate differs from that in the Covec report (\$400,000). The change reflects that we have changed some assumptions about how the register and registration procedures would be designed for handle a small number (30-40) of registrations.

61. To deter misuse of GIs in foreign markets, it is reasonable to assume that wine exporters would need to monitor misuse and take the relevant enforcement actions when necessary (and be seen to be monitoring and enforcing). We think this assumption holds for both the EU (where private parties must enforce against the misuse of GIs) and in China (where the Chinese government could enforce on behalf of GI holders).
62. There would be costs to New Zealand wine and spirits producers opposing applications to register generic terms under the Act. There would also be costs associated with being precluded from using generic terms if they were registered. These costs correspond to the benefits mentioned in paragraph 48.
63. The benefits for importers of foreign products noted in paragraph 48 would be off set to a certain extent by the costs to local producers who were prevented from using the relevant terms as a descriptor for their products. As there are currently few local producers, this impact is likely to be low. It could however impede the potential development of this market.
64. In relation to the potential additional costs for consumers, the Covec report considered that because most spirits are already being sold at a premium in New Zealand, it is "very unlikely that implementation will lead to increased domestic prices, or reduced quality, or material changes in the variety of wine and spirit products available". MBIE has no reason to question this assessment.

Market access

65. To qualify for registration under the Act, regional names must establish that there is a quality, reputation or other characteristic associated with the name. There is a risk under this option that some New Zealand winegrowing regions would not qualify for registration of their regional names under the Act or under the EU's *sui generis* regime. If this happened, the consequences of scenario C occurring would not have been nullified in respect of those regional names claimed as GIs. Moreover, it would put those GIs in a considerably worse position under scenario B. New Zealand would have confirmed that those regional names were not officially recognised as GIs in New Zealand. It might not be a viable option at that stage to amend the Act to deem any regional names that had failed the test under the Act to be registered anyway. However, we consider it unlikely that any of the major winegrowing regions would be unsuccessful in registering their GIs.

Summary of costs and benefits of option B

66. Below is a summary of the costs and benefits that option B provides that are additional to the anticipated costs and benefits of the status quo.

Group	Costs	Benefits
New Zealand wine and spirits industries	<p>Costs to secure registration in NZ, excluding application fee (estimated at \$180,000)</p> <p>Obtaining foreign registration for wine GIs likely to involve considerable cost for</p>	<p>Provides opportunity for wine exporters to nullify consequences of scenario C</p> <p>Could provide slightly lower costs of enforcement action, if a number of assumptions are made</p>

	<p>each application</p> <p>A risk that no benefits will be realised because wine exporters do not apply for foreign GIs or their applications are rejected</p> <p>A risk that there could be boundary disputes, estimated at \$300,000</p> <p>A risk that not all NZ winegrowing regions will successfully register in NZ or the EU, 6(a), 9(2)(d) and 9(2)(g)</p> <p>Local wine and spirits producers could be prevented from using certain terms in marketing their products</p>	<p>Small benefits related to reducing risk of misuse of NZ wine GIs in export markets, if a number of assumptions are made</p> <p>Importers of foreign-sourced wine and spirits could prevent local wine and spirits producers from using certain terms in marketing their products</p>
Government	<p>Costs to implement Act (\$250,000 one-off costs)</p> <p>Potential costs to government to support wine exporters' foreign market applications</p> <p>Costs to maintain regime (no estimate)</p>	

Option C: Seek diplomatic solutions

67. This option would involve New Zealand seeking to remedy the risks to New Zealand wine GIs and to EU market access through diplomatic means. This could involve directly negotiating protection for New Zealand wine GIs in export markets through negotiating international agreements such as free trade or wine agreements. Or it could involve seeking to implement or extend cooperation arrangements with foreign governments to seek to address market access issues and misuse of GIs in those jurisdictions. The lack of international harmonisation around the protection of GIs and the uncertainty of being granted *sui generis* protection in export markets means that these measures (particularly negotiations) have become a common way of securing both protection for GIs in export markets and addressing market access issues.

68. This option assumes that New Zealand would be required to provide *sui generis* protection to foreign GIs following the agreement.

Benefits of option C additional to the status quo

6(a), 6(e)(vi) and 9(2)(j).

69.

6(a), 6(e)(vi) and 9(2)(j)

6(a), 6(e)(vi) and 9(2)(j)

70.

6(a), 6(e)(vi) and 9(2)(j)

71.

6(a), 6(e)(vi) and 9(2)(j)

72.

6(a), 6(e)(vi) and 9(2)(j)

Costs of option C additional to the status quo

6(a), 6(e)(vi) and 9(2)(j)

73.

6(a), 6(e)(vi) and 9(2)(j)

74.

75.

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76.

6(a), 6(e)(vi) and 9(2)(j)

Summary of costs and benefits of option C

77.

6(a), 6(e)(vi) and 9(2)(j)

6(a), 6(e)(vi) and 9(2)(j)

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Summary of options

Objective	Leave the Act unimplemented	Implement the Act	Diplomatic solutions
Access to export markets	6(a), 6(e)(vi) and 9(2)(j)		
Enable industries to protect reputation of products	Meets objective There is, however, a risk that the wine industry's reputation could be adversely affected in export markets through misuse of GIs	✓ A small improvement to the ability to protect reputations if a number of assumptions are made and additional costs incurred	✓ Similar improvement as option B but based on fewer regulatory requirements and fewer assumptions Assumes negotiations successfully concluded
Cost-effective and accessible	This is the most cost-effective option for protection GIs, both domestically and in export markets	X This option imposes several new costs into the system. There could be some accessibility gains, if a number of assumptions are made	X Similar improvement as option B but based on fewer regulatory requirements and fewer assumptions Assumes negotiations successfully concluded

Key (changes to status quo):

- ✓ = positive
- X = negative
- = neutral

Consultation

78. NZWine has been consulted throughout this process. It has also conveyed its views on implementation of the Act to a number of Ministers. MBIE and MFAT officials discussed implementation of the Act with regional associations and sub-associations in the wine industry in late August 2014.

79. NZWine has made clear that implementation of the Act is a priority for the wine industry. There appears to be clear industry support for implementation in the industry, including among the regional associations. There appears to be some confusion however about what implementation will achieve. A common misconception in the wider wine industry appears to be that GI registration in New Zealand will provide worldwide protection for those GIs. Registration under the Act will provide no protection outside of New Zealand. It might not therefore be widely anticipated in the industry that significant resources will need to be expended to convert New Zealand protection into off shore protection. Off shore benefits appear to be where the industry anticipates the main benefits will accrue.

80. NZWine has said they will pay the New Zealand application fees to register 29 priority New Zealand regional names as GIs. MBIE understands they have not yet determined who will organise and fund the efforts to secure *sui generis* protection in foreign markets or how use of GIs will be monitored and enforced in those jurisdictions.
81. NZWine was invited to provide MBIE with comments on the Covec report. Its comments were that the report:
- a) did not provide any reasons not to implement the Act
 - b) 6(a), 6(e)(vi) and 9(2)(j)
 - c) assumed away the value of most risks to their exports and did not consider valuable other benefits like providing equivalence to other major wine exporting countries, laying the groundwork for FTA negotiations with the EU and reassuring international investors that their investment can be protected.
82. MBIE has discussed its implementation work with the Distilled Spirits Association of New Zealand (**DSANZ**). DSANZ has confirmed that it maintains its support for the Act's implementation.

Conclusions and Recommendations

83. Option C is not preferred. The major disadvantage of option C is that the benefits are dependent on an assumption that certain matters will be successfully negotiated. Given that there is no certainty that the EU will even begin negotiations on a free trade agreement with New Zealand, this option is not favoured.
84. We do not think that that option B provides significant benefits over the status quo in respect of the problem identified in risk 1 (risk to New Zealand wines' reputation). Option B provides some potential benefits additional to the status quo, if a number of assumptions are made. However, it is unclear whether these benefits outweigh the additional costs that option B would impose. While the costs are certain and largely fixed, the potential benefits are more difficult to quantify.

85.

6(a) and 6(e)(vi), 9(2)(j) and 9(2)(d) and 9(2)(g)(i).

86.

87. We make no recommendation on the preferred option. The risk of scenario C occurring under the status quo is very small but the potential consequences are very large. This suggests that implementing the Act is a valid option to mitigate this risk.
88. We do however recommend that, if a decision is made to implement, the government take a "no frills" approach to designing the register and registration processes, given that the likely benefits under most scenarios is very small.

89. We have not included as a benefit under option B an inducement for the EU to enter free trade agreement negotiations given that any benefits depend on both the EU entering the negotiations and the negotiations being successfully concluded.

Implementation

90. Retention of the status quo would not require any action to implement.
91. Option B would require the Act to be amended, brought into force and regulations promulgated.
92. There are a number of deficiencies with the drafting of the current Act that will require amendment before the Act can be implemented:
- a) The Act is no longer consistent with New Zealand's international obligations, and in particular does not meet our commitments under the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation.
 - b) The Act does not provide any sustainable source of funding for IPONZ to operate and maintain the register of GIs.
 - c) There are also a range of desirable amendments that could be made to the Act to improve its overall workability.
93. One of the central reasons for implementing the Act is to enable wine exporters to apply for sui generis protection in export markets. Since this was not the original purpose of the Act, a review of the Act would be desirable to ensure that it would actually facilitate this.
94. Before the Act can be brought into force regulations setting out the procedures for registering GIs under the Act need to be promulgated. Officials estimate that development of these regulations is likely to take around six to nine months to complete once the Act is amended. This estimate is based on a business-as-usual timeframe rather than under urgency to remedy the market access issue.
95. IPONZ would need to develop and implement the register of GIs, including upgrading its electronic case management system, train staff, upgrade its website, develop guidelines and undertake publicity about implementation of the Act.

Monitoring, Evaluation and Review

96. If option B is chosen, MFAT will monitor the effect of the new regime in export markets. MFAT will report to Cabinet within five years of the Act being implemented on whether implementation has provided the benefits anticipated in the Cabinet paper to which this RIS is attached.
97. MBIE will supplement MFAT's report to Cabinet with information on the domestic costs and benefits of the Act.



BRIEFING

Geographical Indications (Wine and Spirits) Registration Amendment Bill: Select Committee Report

Date:	10 October 2106	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	1082 16-17

Action sought		
	Action sought	Deadline
Hon Paul Goldsmith Minister of Commerce and Consumer Affairs	Agree that the Geographical Indications (Wine and Spirits) Registration Amendment Bill be passed with amendments as recommended by the Primary Production Select Committee.	12 October 2016

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Katrina Sutich	Acting Manager, Business Law	S9(2)(a)	
Warren Hassett	Senior Analyst		✓

The following departments/agencies have been consulted [double click box & click 'checked']					
<input type="checkbox"/> Treasury	<input type="checkbox"/> MoI	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input type="checkbox"/> MFAT	<input type="checkbox"/> MPI	<input type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> TPK	<input type="checkbox"/> MoH
<input type="checkbox"/> Other:			N/A		

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments:

BRIEFING

Geographical Indications (Wine and Spirits) Registration Amendment Bill: Select Committee Report

Date:	10 October 2106	Priority:	Urgent
Security classification:	In confidence	Tracking number:	1082 16-17

Purpose

To brief you on the report on the Geographical Indications (Wine and Spirits) Registration Amendment Bill presented to the House by the Primary Production Select Committee on 15 September 2016.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

a **Note** that the Geographical Indications (Wine and Spirits) Registration Amendment Bill was reported back to the House on 15 September 2016 and a copy of the Select Committee's report is attached (**Annex one**).

Noted

b **Note** that a draft Second Reading speech is also attached (**Annex two**)

Noted

c **Agree** that the Geographical Indications (Wine and Spirits) Registration Amendment Bill be passed with amendments as recommended by the Primary Production Select Committee.

Agree / Disagree

Katrina Sutich
Acting Manager, Business Law
Building, Resources and Markets Group
MBIE

..... / /

Hon Paul Goldsmith
Minister of Commerce and Consumer Affairs

..... / /

Background

- 1 On 10 December 2014, Cabinet agreed that the Geographical Indications (Wine and Spirits) Registration Act 2006 (“**the GI Act**”) be brought into force (EGI Min (14) 21/8 refers). The GI Act establishes a system for registering geographical indications (**GIs**) for wines and spirits. A GI is a name, usually a regional name, used to identify the origin of goods where the quality, reputation or other characteristic of the goods is attributable their geographical origin. Examples of GIs include Champagne and Scotch Whisky.
- 2 Before the GI Act can be brought into force, some amendments are required to clarify drafting and correct inconsistencies in the GI Act as enacted and to ensure that the registration process is workable, sustainable and cost-effective (EGI Min (15) 6/9 refers). These amendments have been incorporated into the Geographical Indications (Wines and Spirits) Registration Amendment Bill (“**the Amendment Bill**”), which received its first reading on 17 March 2016, and was referred to the Primary Production Select Committee (“**the Select Committee**”).
- 3 The Bill was reported was reported back to the House by the Select Committee on 15 September 2016, which recommended that the Bill be passed with the amendments shown in the report. All of the amendments were adopted unanimously by the Select Committee. A copy of the Commentary prepared by the Select Committee is attached to this briefing (**Annex one**).
- 4 The Amendment Bill is now awaiting its second reading. A draft second reading speech is attached (**Annex two**).

Select Committee Report

- 5 The Select Committee’s Commentary lists the more significant amendments recommended by the Committee. Minor or technical amendments are not covered. All of the amendments proposed are in line with the amendments proposed in the Departmental Report on the Bill.
- 6 We recommend that you support the Select Committee’s recommendation that the Bill be passed with the amendments proposed in the Bill as reported back.
- 7 The amendments listed in the Commentary to the Select Committee’s Report involve the following issues:
 - i. renewal periods;
 - ii. continuous use;
 - iii. substitution of Applicant;
 - iv. opposition Procedures;
 - v. restriction on registration of offensive GIs;
 - vi. removal of a registered GI;
 - vii. alteration of the Register of GIs;
 - viii. alteration of a registrant’s details;
 - ix. recognition of agents; and
 - x. amendment to the Trade Marks Act 2002
- 8 The most significant of these are the amendments involving renewal periods and opposition periods. These are dealt with in more detail below. The remaining amendments are of a relatively minor nature and we refer you to the attached Commentary for an explanation of these amendments.

Renewal periods

- 9 The Select Committee's report recommends a minor amendment to the renewal regime for registered GIs. The Amendment Bill as introduced provided a registration renewal period of 10 years.
- 10 The Select Committee's report recommends that a renewal regime be adopted where the first renewal fee is due five years after the date of registration of a geographical indication, and at 10 year intervals thereafter. The requirement to pay a renewal fee five years after registration will assist in ensuring that there is sufficient revenue to cover the initial costs of establishing and administering the Register of GIs.
- 11 Most of the applications to register geographical indications will be made within the first few years after the GI Act enters into force. As a result, there is a risk that the revenue raised from application fees could be insufficient to cover the cost of establishing and administering the Register of GIs in the period before the first renewal fees are received if the original 10 year renewal period is retained. This could be a particular problem if application numbers are lower than estimated [This issue is discussed in more detail in briefing 3457 15-16].
- 12 A consultation document on a proposed fee structure for the GI Act was released in July 2016. The analysis of submissions indicated that stakeholders, including New Zealand wine producers, were supportive of the proposed amendment. Following our analysis, we recommended the amendment to the renewal regime to the Select Committee.

Cabinet approval for changing the registration renewal regime

- 13 The Cabinet submission seeking approval to release of the fees consultation document (along with an exposure draft of proposed regulations for the GI Act) also sought approval to consult on alternative renewal fee regimes (EG1-16 MIN-0145 refers). The Cabinet submission noted that, subject to the results of the consultation, an appropriate amendment could be recommended to the Select Committee, or alternatively, introduced by a Supplementary Order Paper. It was also noted in the submission that you would seek Cabinet approval for the change to the renewal provisions of the Amendment Bill. Due to an oversight, we did not prepare a Cabinet submission seeking this approval.
- 14 The Cabinet submission seeking approval to release the fees consultation document, however, made it clear that:
 - i. officials considered that amendment to the renewal period provisions in the Bill as introduced was desirable;
 - ii. the alternative renewal period options on which public submissions were sought, and which option was preferred by officials; and
 - iii. the amendment would be recommended to the Select Committee.
- 15 Cabinet did not raise any concerns over the alternative renewal period options, or over the proposal to recommend an alternative renewal period to the Select Committee. The Cabinet minute also did not include a requirement for you to report back to Cabinet on the outcome of the consultation process. There is no reason to believe that Cabinet would not have approved the proposed amendment if approval had been sought.
- 16 In light of the matters discussed above we consider that, in the circumstances, there is no necessity to obtain formal Cabinet confirmation for the amendment to the renewal period. We have discussed the issue with the Cabinet Office, and they concur with these conclusions.

Opposition periods

- 17 The GI Act contemplates the possibility of providing for third parties to oppose the registration of a GI, or the alteration or removal of a registered GI. The GI Act leaves opposition procedures entirely to the Regulations. This is in contrast to other intellectual property legislation, such as the Patents Act 2013 and the Trade Marks Act 2002, which explicitly provide for opposition procedures.
- 18 When the Amendment Bill was being drafted, officials did consider whether opposition provisions should be expressly provided for in the Bill. It was eventually decided not to include opposition provisions in the Amendment Bill, and that the issue would be reviewed once public submissions on the Amendment Bill were received.
- 19 One of the submitters to the Select Committee questioned whether such an important issue should be left to the regulations. Officials agreed with the reasoning advanced by the submitter, and recommended that the Bill be amended to expressly provide for opposition procedures.
- 20 It was also recommended that only "interested persons" can oppose registration, or the alteration or removal of a registered GI. The limitation to an "interested person" is in keeping with the requirement, in section 36 of the GI Act that only an "interested person" can apply to register a GI.

Annexes

Annex 1: Copy of the Commentary accompanying the Report of the Select Committee on the Geographical Indications (Wine and Spirits) Registration Amendment Bill.

Annex 2: Draft second reading speech.

Annex 1: Copy of the Commentary accompanying the Report of the Select Committee on the Geographical Indications (Wine and Spirits) Registration Amendment Bill.

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Geographical Indications (Wine and Spirits) Registration Amendment Bill

Government Bill

As reported from the Primary Production Committee

Commentary

Recommendation

The Primary Production Committee has examined the Geographical Indications (Wine and Spirits) Registration Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The bill would amend the Geographical Indications (Wine and Spirits) Registration Act 2006 and allow it to be brought into force.

The bill seeks to ensure that the registration regime for geographical indications that the Act establishes will work smoothly and sustainably. The registration regime aims to make it easier for users of geographical indications to enforce them in New Zealand and for New Zealand exporters to promote and protect their wine and spirits in some overseas markets.

This commentary covers the main amendments that we recommend be made to the bill. It does not cover minor or technical amendments.

Renewal periods

The bill, as introduced, proposes that the registration of a geographical indication must be renewed by paying renewal fees at 10-year intervals. The renewal fee would be first payable on the tenth anniversary of the date of registration and then every 10 years after that. The fees would be used to administer the geographical indications register.

The Intellectual Property Office of New Zealand (IPONZ) has now completed modelling the anticipated cost and revenue flows involved in administering the geographic-

al indications system. There is concern that the proposed renewal-period model would not adequately provide for the administration of the register.

For example, revenue gathered in the first few years after the Act came into force could be less than the costs of administering the register. Additionally, if application volumes are lower than expected or the number of proceedings and hearings about geographical indications are higher than anticipated, the proposed renewal period might result in a significant shortfall.

We recommend amending clause 9, which would insert new section 9A, to change the bill's proposed renewal period so that the first renewal fee would be payable five years from the date of registration and then every 10 years after that. We consider that this would be the best "break even" renewal-period model.

Continuous use

Section 29 of the Act protects the right of a person who has been using a term, in trade, in relation to a wine or spirit continuously since a specified time.

The intent of the bill's amendments to section 29 is to provide these protections to a person that has acquired the rights to trade in a wine or spirit to which section 29 applies after the specified time, and continues to use the term.

We recommend amending clause 16, which would amend section 29, to clarify this intent.

Substitution of an applicant

We recommend inserting new clause 21A, which inserts new section 36A, to specify the conditions under which the Registrar of Geographical Indications may substitute the applicant for registration of a geographical indication.

Our amendment would allow the Registrar to substitute an applicant if the original applicant has consented to the substitution, has died or ceased to exist, and the application is made in accordance with regulations.

Opposition procedures

We recommend inserting new clause 21A, which would insert new sections 36B and 36C to provide procedures for those opposing the registration of geographical indications.

Currently, the Act leaves opposition procedures to the regulations. This is inconsistent with other intellectual property legislation, such as the Patents Act 2013 and the Trade Marks Act 2002, which explicitly provide for opposition procedures.

Our amendment specifies that the Registrar must give public notice of an application for registration of a geographical indication, and allows opposition to that application. It would remove any doubt of the ability to oppose the registration of geographical indications and would ensure consistency with other intellectual property legislation.

Our amendment would specify that only "interested persons" can oppose the registration, alteration, or removal of a registered geographical indication. This is consistent

with the Act's requirement that only an "interested person" can apply to register a geographical indication.

Restriction on registration of offensive geographical indicators

The bill, as introduced, provides that the Registrar must not register a geographical indication if its use or registration is deemed offensive to a significant section of the community, including Māori. However, the bill does not specify who the Registrar should consult to determine whether the use or registration of the geographical indication would be offensive to Māori.

We recommend inserting new clause 21B, which would insert new section 39A, to specify that a function of the Māori Advisory Committee, established under the Trade Marks Act 2002, is to advise the Registrar whether the proposed use or registration of a geographical indication is likely to be offensive to Māori.

Removal of a registered geographical indication

We recommend inserting new clause 24A, which would insert new section 45A, to specify that the Registrar must give notice of a proposed removal of a registered geographical indication.

Our amendment would ensure that both the public and the registrant would be made aware of the proposed removal, in a format, manner, and frequency that the Registrar thinks appropriate.

Alteration of register

Alteration of a geographical indication

The bill, as introduced, would allow the Registrar to alter a geographical indication, or the conditions or boundaries of a registered geographical indication, only if the proposed alteration does not substantially alter the character of the geographical indication.

We consider that this proposal creates uncertainty because it is too broad. We recommend amending clause 25, which would amend section 46, to specify additional conditions to be met for the Registrar to alter a geographical indication.

Our amendment would clarify that the Registrar may alter a geographical indication only if the alteration is necessary, will not substantially alter the character of the geographical indication, and is not likely to mislead the public.

We also recommend inserting new clause 25A, which would insert new section 46A, to specify that the Registrar must give notice of the proposed alteration.

Alteration of a registrant's details

Although the bill, as introduced, would provide that a geographical indication may be altered, it does not expressly allow altering the details of the registrant of the geographical indication.

We recommend amending clause 25, which would amend section 46, to allow a registrant's details to be altered; for example, to reflect changes to the registrant's details on the New Zealand Business Number Register. We also recommend amending the bill to ensure that regulations prescribe the procedure for the alteration.

Recognition of an “agent”

We recommend amending clause 31, which inserts new section 57AB, to specify the conditions under which the Registrar may refuse to recognise a person as an agent. Our amendment also requires the Registrar to give written notice of the refusal to the person and the person's principal.

Amending the Trade Marks Act 2002

We recommend amending the bill's schedule, which would amend section 20 of the Trade Marks Act 2002, to clarify when an application to register a trade mark can be refused.

As introduced, the bill proposes that an application to register a trade mark can be refused if the mark contains a registered geographical indication. However, the proposed amendment to section 20 of the Trade Marks Act does not cover situations where an application to register a trade mark contains a term that is the subject of an application to register a geographical indication and the deemed date of registration of the geographical indication is earlier than the deemed date of the registration of the trade mark.

Our amendment would ensure that the Act and the Trade Marks Act treat conflicts between the registration of trade marks and geographical indications in a similar manner.

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Appendix

Committee process

The Geographical Indications (Wine and Spirits) Registration Amendment Bill was referred to the committee on 17 March 2016. The closing date for submissions was 29 April 2016. We received and considered 38 submissions from interested groups and individuals. We heard oral evidence from three submitters.

We received advice from the Ministry of Business, Innovation and Employment.

Committee membership

Ian McKelvie (Chairperson)

Todd Barclay

Hon Chester Borrows

Steffan Browning

Barbara Kuriger

Hon Damien O'Connor

Richard Prosser

Stuart Smith

Rino Tirikatene

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Geographical Indications (Wine and Spirits)
Registration Amendment Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

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Hon Paul Goldsmith

Geographical Indications (Wine and Spirits) Registration Amendment Bill

Government Bill

Contents

		Page
1	Title	3
2	Commencement	3
	Part 1	
	Amendments to preliminary and principal provisions	
3	Principal Act	3
4	Section 2 amended (Commencement)	3
5	Section 3 amended (Purpose)	4
6	Section 4 amended (Interpretation)	4
7	New section 6A inserted (What is an enduring New Zealand geographical indication?)	4
	6A What is an enduring New Zealand geographical indication?	4
8	Section 8 amended (Registration)	5
9	New section 9A and cross-heading inserted	5
	<i>Duration of registration</i>	
	9A Duration of registration	5
10	New section 13A inserted (No registration of geographical indication if use or registration likely to be offensive)	5
	13A No registration of geographical indication if use or registration likely to be offensive	5
11	Section 21 amended (Restriction on use of New Zealand registered geographical indication for wine)	6
12	Section 22 amended (Restriction on use of foreign registered geographical indication for wine)	6

**Geographical Indications (Wine and Spirits)
Registration Amendment Bill**

13	Section 23 amended (Restriction on use of New Zealand registered geographical indication for spirit)	6
14	Section 24 amended (Restriction on use of foreign registered geographical indication for spirit)	6
15	Section 25 amended (Additional rules relating to restrictions on use)	6
16	Section 29 amended (Continuous use)	6
17	Section 32 amended (Unregistered geographical indication homonymous with registered geographical indication)	7
18	New section 32A inserted (Use of words "New Zealand" to denote origin)	7
	32A Use of words "New Zealand" to denote origin	8
19	Section 34 amended (Registrar)	8
20	Section 35 amended (Registrar's seal)	8
21	New section 35A inserted (Power of Registrar to delegate)	8
	35A Power of Registrar to delegate	8
<u>21A</u>	<u>New sections 36A to 36C inserted</u>	<u>9</u>
	<u>36A Registrar may amend application to substitute applicant</u>	<u>9</u>
	<u>36B Registrar must give public notice of accepted application</u>	<u>9</u>
	<u>36C Interested person may oppose accepted application</u>	<u>9</u>
<u>21B</u>	<u>New section 39A inserted (Function of advisory committee appointed under Trade Marks Act 2002)</u>	<u>9</u>
	<u>39A Function of advisory committee appointed under Trade Marks Act 2002</u>	<u>9</u>
22	Section 42 amended (Register)	9
23	Section 43 amended (Public access to register)	10
24	Section 45 amended (Removal from register)	10
<u>24A</u>	<u>New section 45A inserted (Notice of proposed removal)</u>	<u>10</u>
	<u>45A Notice of proposed removal</u>	<u>10</u>
25	Section 46 amended (Alteration of register)	11
<u>25A</u>	<u>New sections 46A and 46B inserted</u>	<u>11</u>
	<u>46A Notice of proposed alteration</u>	<u>11</u>
	<u>46B Alteration of register concerning certain inconsistent information</u>	<u>12</u>
26	Section 47 amended (Procedure for removal or alteration)	12
27	New sections 47A to 47D and cross-headings inserted	12
	<i>Renewal of registration</i>	
	47A Renewal of registration	12
	47B Notice of pending expiration of registration of geographical indication	13
	47C Status of geographical indication or trade mark removed from respective register for non-payment of renewal fee	13

<i>Restoration to register</i>		
	47D Registrar may restore expired geographical indication to register	14
28	Section 53 amended (When Registrar may establish geographical indications committee)	14
29	Section 54 amended (Membership of committee)	14
Part 2		
Amendments to miscellaneous provisions		
30	Section 57 amended (Regulations)	14
31	New sections 57A to 57D inserted	15
	57A Recognition of agents	15
	57AB Registrar may refuse to recognise person as agent	15
	57B Registrar may award costs	15
	57C Registrar may require security for costs	16
	57D Meaning of proceedings for purposes of sections 57B and 57C	16
32	Section 63 replaced (Trade Marks Act 2002 amended)	16
	63 Consequential amendments to Trade Marks Act 2002	16
33	New Schedule inserted	16
	Schedule	17
	New Schedule inserted	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Geographical Indications (Wine and Spirits) Registration Amendment Act **2015**.

2 Commencement

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This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to preliminary and principal provisions

3 Principal Act

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This Act amends the Geographical Indications (Wine and Spirits) Registration Act 2006 (the **principal Act**).

4 Section 2 amended (Commencement)

After section 2(2), insert:

**Geographical Indications (Wine and Spirits)
Registration Amendment Bill**

Part 1 cl 5

- (3) Any provision of this Act that is not already in force on 1 July 2018 comes into force on that date.

5 Section 3 amended (Purpose)

Replace section 3(c) with:

- (c) protect the interests of consumers of wine and spirits in New Zealand by providing assurance that a wine or spirit using a registered geographical indication originates in the territory, region, or locality to which the registered geographical indication relates; and 5
- (d) facilitate the purposes set out in paragraphs (a), (b), and (c) in a manner consistent with New Zealand's rights and obligations under the TRIPS Agreement. 10

6 Section 4 amended (Interpretation)

- (1) In section 4, insert in their appropriate alphabetical order:

enduring New Zealand geographical indication has the meaning given to it in **section 6A** 15

homonymous geographical indication has the meaning given to it in section 19(2)

registrant, in relation to a registered geographical indication, means the person upon whose application a geographical indication was registered, renewed, or re-registered (as the case may be) 20

- (2) In section 4, replace the definition of **New Zealand Geographic Board** with:

New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa means the New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa continued under section 7(1) of the New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008 25

- (3) In section 4, definition of **Registrar**, delete "Registered".

New section 6A inserted (What is an enduring New Zealand geographical indication?)

After section 6, insert:

6A What is an enduring New Zealand geographical indication? 30

- (1) An **enduring New Zealand geographical indication**—

(a) is one of the following New Zealand geographical indications:

- (i) New Zealand;
- (ii) North Island;
- (iii) South Island; and 35

(b) must be treated as—

- (i) a registered geographical indication under section 8; and
 - (ii) being registered on and from the date of commencement of this section; and
 - (c) is to be recorded in Part 1 of the register.
- (2) An enduring New Zealand geographical indication is not subject to the following provisions: 5
- (a) **section 9A** (duration of registration):
 - (b) section 45 (removal from register):
 - (c) section 46 (alteration of register).

8 Section 8 amended (Registration) 10

In section 8(2), replace “sections 10 to 15” with “sections 10 to 17”.

9 New section 9A and cross-heading inserted

After section 9, insert:

Duration of registration

9A Duration of registration 15

(1) The registration of a geographical indication is effective for a period of ~~10~~ 5 years commencing on the deemed date of registration.

(1A) ~~The registration of a geographical indication may be renewed under **section 47A**.~~

(2) This section does not affect a geographical indication that ceases to be registered before the expiry of the ~~10-year~~ 5-year period referred to in **subsection (1)**. 20

Compare: 2002 No 49 s 57

10 New section 13A inserted (No registration of geographical indication if use or registration likely to be offensive) 25

After section 13, insert:

13A No registration of geographical indication if use or registration likely to be offensive

The Registrar must not register a geographical indication if ~~the geographical indication~~, its use, in relation to wine or spirits or its registration would, in the opinion of the Registrar, be likely to offend a significant section of the community, including Māori. 30

Compare: 2002 No 49 s 17(1)(c)

**Geographical Indications (Wine and Spirits)
Registration Amendment Bill**

Part 1 cl 11

11 Section 21 amended (Restriction on use of New Zealand registered geographical indication for wine)

- (1) In section 21(a), after “harvested in the”, insert “place or places of”.
- (2) After section 21(a), insert:
 - (ab) all of the constituent remainder of the wine referred to in paragraph (a) (if any) is obtained from grapes harvested in New Zealand; and

5

12 Section 22 amended (Restriction on use of foreign registered geographical indication for wine)

- (1) In section 22(a), after “originated in the”, insert “place or places of”.
- (2) Replace section 22(b) with:
 - (b) the foreign registered geographical indication or indications are used in accordance with—
 - (i) the scope of their protection in their country of origin (including any conditions as to their use imposed by their country of origin); and
 - (ii) their registration in New Zealand (including any conditions imposed by the Registrar).

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13 Section 23 amended (Restriction on use of New Zealand registered geographical indication for spirit)

In section 23(a), after “originated in the”, insert “place of”.

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14 Section 24 amended (Restriction on use of foreign registered geographical indication for spirit)

- (1) In section 24(a), after “originated in the”, insert “place or places of”.
- (2) Replace section 24(b) with:
 - (b) the foreign registered geographical indication or indications are used in accordance with—
 - (i) the scope of their protection in their country of origin (including any conditions as to their use imposed by their country of origin); and
 - (ii) their registration in New Zealand (including any conditions imposed by the Registrar).

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15 Section 25 amended (Additional rules relating to restrictions on use)

In section 25(a), replace “true origin” with “true place of origin”.

16 Section 29 amended (Continuous use)

- (1) Replace section 29(1) with:

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(1) The restrictions in sections 21 to 24 on the use of a registered geographical indication do not apply in respect of the continued and similar use by any New Zealand person or entity of a term that is a registered geographical indication (a **term**), in relation to a wine or spirit in New Zealand, if—

- (a) that person or entity—
 - (i) is using the term in trade; and
 - (ii) has used the term in trade in a continuous manner at least from 15 April 1984; or
- (b) that person or entity—
 - (i) is using the term in trade; and
 - (ii) has used the term in trade in a continuous manner in good faith since before 15 April 1994.

(1A) The restrictions in sections 21 to 24 on the use of a registered geographical indication do not apply in respect of the continued and similar use by any New Zealand person or entity of a term, in relation to a wine or spirit in New Zealand, if that person or entity—

- (a) is using the term in trade; and
- (b) has used the term in trade in a continuous manner since acquiring the right to trade in a wine or spirit to which the exemption in **subsection (1)** applies.

(2) Replace section 29(2)(f) with:

- (f) a New Zealand person or entity that acquires the right to use the term from any New Zealand person or entity;
- (g) an association of any of the persons or entities referred to in paragraphs (a) to (f).

Compare: TRIPS Agreement art 24(4)

(2) In section 29(2), replace “subsection (1)” with “**subsections (1) and (1A)**”.

(3) After section 29(2), insert:

Compare: TRIPS Agreement art 24(4)

17 Section 32 amended (Unregistered geographical indication homonymous with registered geographical indication)

In section 32(2), after “originates in the”, insert “place of”.

18 New section 32A inserted (Use of words “New Zealand” to denote origin)

After section 32, insert:

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32A Use of words “New Zealand” to denote origin

Despite sections 21 and 23, the use of the words “New Zealand” in relation to wine or spirits is not to be treated as use of the enduring New Zealand geographical indication “New Zealand” if the words are used—

- (a) to comply with other laws or regulations to denote the country of origin; and 5
- (b) in the course of trade and not in such a manner as to mislead the public.

19 Section 34 amended (Registrar)

Replace section 34(1) with:

- (1) The chief executive of the ministry must, under the State Sector Act 1988, appoint a Registrar of Geographical Indications. 10

20 Section 35 amended (Registrar’s seal)

In section 35(1), delete “Registered”.

21 New section 35A inserted (Power of Registrar to delegate)

After section 35, insert. 15

35A Power of Registrar to delegate

- (1) The Registrar may delegate to any person any of the Registrar’s functions, duties, and powers, except this power of delegation.
- (2) The delegation—
 - (a) must be in writing; and 20
 - (b) may be made subject to any restrictions and conditions that the Registrar thinks fit; and
 - (c) is revocable, at any time, in writing; and
 - (d) does not prevent the performance or exercise of a function, duty, or power by the Registrar. 25
- (3) A person to whom any functions, duties, or powers are delegated may perform those functions and duties and exercise those powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.
- (4) A person who appears to act under a delegation must, in the absence of evidence to the contrary, be presumed to be acting in accordance with the terms of the delegation. 30
- (5) Any reference to the Registrar in this Act (or in regulations made under this Act) includes a reference to a person to whom the Registrar has delegated his or her power in respect of a thing delegated to that person. 35

21A New sections 36A to 36C inserted

After section 36, insert:

36A Registrar may amend application to substitute applicant

(1) The Registrar may, on the application of an interested person (A), amend a specified application made by another interested person (B) for registration of a geographical indication— 5

- (a) by removing B's name and address; and
- (b) by entering A's name and address as the substitute applicant.

(2) The Registrar may exercise the powers under **subsection (1)** only—

- (a) if—
 - (i) B consents to A being the substitute applicant; or
 - (ii) B has died or ceased to exist; and
- (b) if the application is made in accordance with regulations made under **section 57(1)(ea).** 10

36B Registrar must give public notice of accepted application 15

(1) The Registrar must give public notice of an application for registration of a geographical indication that the Registrar has accepted.

(2) The public notice must be given in the format, manner, and frequency that the Registrar thinks appropriate.

Compare: 2002 No 49 s 46; SR 2003/187 r 161 20

36C Interested person may oppose accepted application

An interested person may, in accordance with any prescribed requirements, oppose an application for registration of a geographical indication that the Registrar has accepted.

Compare: 2002 No 49 s 47; 2013 No 68 s 92 25

21B New section 39A inserted (Function of advisory committee appointed under Trade Marks Act 2002)

After section 39, insert:

39A Function of advisory committee appointed under Trade Marks Act 2002

It is a function of an advisory committee appointed under section 177(1) of the Trade Marks Act 2002 to advise the Registrar whether the use of a geographical indication in relation to wine or spirits, or the registration of the geographical indication, is, or is likely to be, offensive to Māori. 30

Compare: 2002 No 49 s 178

22 Section 42 amended (Register) 35

(1) Replace section 42(2) with:

**Geographical Indications (Wine and Spirits)
Registration Amendment Bill**

Part 1 cl 23

- (2) The register must contain 3 parts, as follows:
- (a) Part 1, for enduring New Zealand geographical indications:
 - (b) Part 2, for all registered geographical indications except those to which **paragraphs (a) and (c)** refer:
 - (c) Part 3, for geographical indications that have been registered in accordance with regulations made under section 57(j) **section 57(1)(i)**. 5

- (2) In section 42(3)(b), replace “Part 2” with “Part 3”.
- (3) After section 42(3)(c), insert:
- (ca) the name and address of the registrant; and
- (4) Replace section 42(3)(d) with:
- (d) the date of registration (except in the case of an enduring New Zealand geographical indication). 10

23 Section 43 amended (Public access to register)
In section 43(1), after “determined by”, insert “the”.

- 24 Section 45 amended (Removal from register)** 15
- (1) In section 45(1)(d), replace “sections 10 to 15” with “sections 10 to 17 and **18A**”.
- (2) After section 45(3), insert:
- (4) The Registrar must remove a registered geographical indication from the register on its expiry. 20

24A New section 45A inserted (Notice of proposed removal)

After section 45, insert:

45A Notice of proposed removal

- (1) If the Registrar proposes on his or her own initiative to remove a registered geographical indication from the register, the Registrar must— 25
- (a) notify the registrant of the grounds of the proposed removal; and
 - (b) give public notice of the proposed removal.
- (2) If the Registrar receives an application to remove a registered geographical indication from the register, the Registrar must,—
- (a) if the applicant is not the registrant, send a copy of the application to the registrant; and 30
 - (b) give public notice of the proposed removal.
- (3) The public notice must be given in the format, manner, and frequency that the Registrar thinks appropriate.

25 Section 46 amended (Alteration of register)

(1) ~~After Replace section 46(1), insert with:~~

~~(1A) The Registrar may, on his or her own initiative or on the application of an interested person, alter a registered geographical indication, or the conditions or boundaries relating to a registered geographical indication, if the Registrar is satisfied the alteration will not substantially alter the character of the geographical indication.~~ 5

(1) The Registrar may, on his or her own initiative or on the application of the registrant or an interested person, alter a registered geographical indication, or the conditions or boundaries relating to a registered geographical indication, if the Registrar is satisfied that— 10

(a) the alteration is necessary; and

(b) the alteration will not substantially alter the character of the geographical indication; and

(c) the alteration is not likely to mislead the public. 15

(2) After section 46(1), insert:

(1A) The Registrar may, on the application of a registrant, alter the registrant's name or address on the register in relation to a specified registered geographical indication.

(1B) The Registrar may, on the application of an interested person, alter the register in relation to a specified registered geographical indication— 20

(a) by removing the registrant's name and address; and

(b) by entering the applicant's name and address as the substitute registrant.

(1C) The Registrar may exercise the powers under **subsection (1B)** only—

(a) if— 25

(i) the registrant consents to the interested person being the substitute registrant; or

(ii) the registrant has died or ceased to exist; and

(b) if the application is made in accordance with regulations made under **section 57(1)(ea)**. 30

25A New sections 46A and 46B inserted

After section 46, insert:

46A Notice of proposed alteration

(1) If the Registrar proposes on his or her own initiative to alter a registered geographical indication, or the conditions or boundaries relating to a registered geographical indication, the Registrar must— 35

(a) notify the registrant of the grounds of the proposed alteration; and

**Geographical Indications (Wine and Spirits)
Registration Amendment Bill**

Part 1 cl 26

- (b) give public notice of the proposed alteration.
- (2) If the Registrar receives an application to alter a registered geographical indication, or the conditions or boundaries relating to a registered geographical indication, the Registrar must,—
- (a) if the applicant is not the registrant, send a copy of the application to the registrant; and
- (b) give public notice of the proposed alteration.
- (3) The public notice must be given in the format, manner, and frequency that the Registrar thinks appropriate.

46B Alteration of register concerning certain inconsistent information

- (1) This section applies if information in the register relating to a person is inconsistent with the primary business data of that person in the New Zealand Business Number Register.
- (2) If this section applies, the Registrar may, in the prescribed manner (if any), alter the information in the register so that it is consistent with the primary business data in the New Zealand Business Number Register.
- (3) In this section, **primary business data** has the same meaning as in section 20(2) of the New Zealand Business Number Act 2016.
- Compare: 2002 No 49 s 78A

26 Section 47 amended (Procedure for removal or alteration)

- (1) Repeal section 47(2)(a).
- (2) After section 47(2), insert:
- (3) This section does not affect the power of the Registrar to remove a registered geographical indication from the register in accordance with **section 45(4)**.

27 New sections 47A to 47D and cross-headings inserted

After section 47, insert:

Renewal of registration

47A Renewal of registration

- (1) The Registrar must renew the registration of a geographical indication on an application by an interested person that is made in the accordance with any prescribed manner and within the prescribed time requirements.
- (2) The registration of a geographical indication may be renewed for a further period of 10 years.

Compare: 2002 No 49 s 58

- 47B Notice of pending expiration of registration of geographical indication**
- (1) If no interested person has made an application under **section 47A** within a prescribed period before the registration of a geographical indication expires, the Registrar must—
- (a) give notice in writing of the pending expiration of the geographical indication—
 - (i) to the registrant; and
 - (ii) to other persons and organisations that the Registrar considers are representative of the producers of the wine or spirits to which the geographical indication relates; and
 - (b) give public notice of the pending expiration of the geographical indication.
- (2) A notice under **subsection (1)** must—
- (a) be in the prescribed form (if any); and
 - (b) at a minimum, state—
 - (i) the date on which the registration of the geographical indication will expire; and
 - (ii) any conditions as to the payment of fees on which a renewal of registration may be obtained; and
 - (iii) that, if the conditions referred to in **subparagraph (ii)** have not been complied with, the geographical indication will be removed from the register.
- Compare: 2002 No 49 s 59
- 47C Status of geographical indication or trade mark removed from respective register for non-payment of renewal fee**
- (1) A geographical indication or trade mark that has been removed from its respective register for non-payment of the renewal fee must be taken into account for a period of 1 year after the date of expiry of the registered geographical indication or registered trade mark when determining the registrability of a later geographical indication application.
- (2) **Subsection (1)** does not apply if the Registrar is satisfied that,—
- (a) in the case of a trade mark that has been removed from its register,—
 - (i) there has been no genuine use of the trade mark during the 2 years immediately before its removal; or
 - (ii) no deception or confusion would be likely to arise from the use of the geographical indication that is the subject of the application by reason of any previous use of the trade mark;
 - (b) in the case of a geographical indication that has been removed from its register,—

**Geographical Indications (Wine and Spirits)
Registration Amendment Bill**

Part 1 cl 28

- (i) in the case of a foreign geographical indication, it is not, or has ceased to be, protected in its country of origin; or
- (ii) the geographical indication has fallen into disuse in its country of origin.

Compare: 2002 No 49 s 60

5

Restoration to register

47D Registrar may restore expired geographical indication to register

- (1) This section applies if a geographical indication has expired and been removed from the register in accordance with **section 45(4)** within the previous 12 months.
- (2) The Registrar may restore an expired geographical indication to the register in accordance with any prescribed requirements.
- (3) A geographical indication that is restored to the register is taken to have continued in existence as if it had not been removed from the register.

10

28 Section 53 amended (When Registrar may establish geographical indications committee)

15

Replace section 53(3) with:

- (3) The function of the committee is to advise the Registrar on issues relating to the matters specified in subsection (1), including—
 - (a) the boundaries of a geographical indication; and
 - (b) the use of a place name as a geographical indication.

20

29 Section 54 amended (Membership of committee)

In section 54(2)(b), after “New Zealand Geographic Board”, insert “Ngā Pou Taunaha o Aotearoa”.

Part 2

25

Amendments to miscellaneous provisions

30 Section 57 amended (Regulations)

- (1) After section 57(e), insert:

(ea) prescribing the procedure relating to the alteration of the name and address of an applicant or a registrant (including the substitution of information relating to an applicant or a registrant):

30

(eb) prescribing the manner in which the Registrar may alter the register under **section 46B**, including prescribing procedures, requirements, and other matters in respect of an alteration:

- (2) In section 57, insert as subsection (2):

35

- (2) The Governor-General may prescribe any renewal fees under **subsection (1)(i)** that—
- (a) recover some or all of the costs incurred by the Registrar in performing his or her functions under this Act;
 - (b) recover those costs at a level that provides an incentive to allow registrations of geographical indications to expire if persons interested in the registration no longer find registration beneficial.

Compare: 2013 No 68 s 243(2)(b)

31 New sections 57A to 57D inserted

After section 57, insert:

57A Recognition of agents

- (1) Anything that must be done by or to a person under this Act in relation to a geographical indication may be done by or to the person's expressly authorised agent.
- (2) **Subsection (1)** applies only if the agent is not a person whom the Registrar refused to recognise as an agent in accordance with any prescribed requirements **section 57AB**

Compare: 2002 No 49 s 190

57AB Registrar may refuse to recognise person as agent

- (1) The Registrar may refuse to recognise a person as an agent if that person—
- (a) is suspended from practice before the Intellectual Property Office of New Zealand; or
 - (ab) has his or her registration as a patent attorney suspended or cancelled; or
 - (b) has been removed from or struck off the roll of barristers and solicitors under the provisions of the Lawyers and Conveyancers Act 2006, and has not been restored to the roll; or
 - (c) is suspended from practice as a barrister or solicitor; or
 - (d) has been convicted in New Zealand of an offence specified in Part 10 (except section 298A) of the Crimes Act 1961 or has been convicted of an equivalent offence in another country.
- (2) If the Registrar refuses to recognise a person as an agent, the Registrar must, as soon as practicable, notify that person and the person's principal in writing.

Compare: SR 2003/187 rr 23, 24

57B Registrar may award costs

- (1) The Registrar may, in any proceedings before him or her under this Act,—

**Geographical Indications (Wine and Spirits)
Registration Amendment Bill**

Part 2 cl 32

- (a) by order, award to a party costs of an amount that the Registrar thinks appropriate (which, without limitation, may be on an indemnity basis); and
 - (b) direct how and by what parties the costs are to be paid.
- (2) The order may be entered as a judgment of the court and may be enforced accordingly.

5

Compare: 2013 No 68 s 212

57C Registrar may require security for costs

- (1) The Registrar may require a party to proceedings to give security for the costs of the proceedings if the Registrar is satisfied that—
- (a) the party does not reside, and does not carry on business, in New Zealand; or
 - (b) there is reason to believe that the party will be unable to pay the costs of the other party if unsuccessful in the proceedings.

10

- (2) If the party does not give the security required, the Registrar may treat the proceedings as having been abandoned by that party and determine the matter accordingly.

15

Compare: 2013 No 68 s 213

57D Meaning of proceedings for purposes of sections 57B and 57C

For the purposes of **sections 57B and 57C**, **proceedings** means any procedure prescribed by regulations made under section 57—

20

- (a) for opposition, and determination of opposition, to an accepted application for registration of a geographical indication as referred to in section 37(2)(b);
- (b) for opposition, and determination of opposition, to the removal or alteration of a registered geographical indication as referred to in section 47(2)(b).

25

32 Section 63 replaced (Trade Marks Act 2002 amended)

Replace section 63 with:

63 Consequential amendments to Trade Marks Act 2002

30

Amend the Trade Marks Act 2002 as set out in the **Schedule**.

33 New Schedule inserted

After section 64, insert the **Schedule** set out in the **Schedule** of this Act.

Schedule
New Schedule inserted

s 33

Schedule
Consequential amendments to Trade Marks Act 2002 5

s 63

Section 5

In section 5(1), repeal the definitions of **geographical indication**, **protected geographical indication**, and **specified goods**.

In section 5(1), insert in its appropriate alphabetical order: 10

registered geographical indication has the same meaning as in section 7(1) of the Geographical Indications (Wine and Spirits) Registration Act 2006

Section 11

After section 11(a), insert:

(ab) are subject to any lawful use of a registered geographical indication; and 15

Section 20

Replace section 20 with:

20 Trade mark that contains geographical indication must not be registered in certain circumstances

(1) The Commissioner must not register a trade mark— 20

(a) ~~that contains a registered geographical indication for a wine or spirit; and~~

(b) ~~that relates to a wine or spirit that does not originate from the geographical origin to which the registered geographical indication relates; and~~

(c) ~~if the use of the trade mark is likely to deceive or confuse.~~ 25

(1) The Commissioner must not register a trade mark if—

(a) a registered geographical indication for a wine or spirit exists under the Geographical Indications (Wine and Spirits) Registration Act 2006 and—

(i) the trade mark contains the registered geographical indication for a wine or spirit; and 30

(ii) the trade mark relates to a wine or spirit that does not originate in the place of geographical origin to which the registered geographical indication relates; and

(iii) the use of the trade mark is likely to deceive or confuse; or 35

**Geographical Indications (Wine and Spirits)
Registration Amendment Bill**

Schedule

Section 20—*continued*

- (b) an application for registration of a geographical indication for a wine or spirit has been made in good faith under the Geographical Indications (Wine and Spirits) Registration Act 2006 and—
- (i) the trade mark contains the geographical indication that is the subject of the application for registration; and
 - (ii) the trade mark relates to a wine or spirit that does not originate in the place of geographical origin to which the geographical indication relates; and
 - (iii) the use of the trade mark is likely to deceive or confuse; and
 - (iv) if registered, the deemed date of registration of the geographical indication is earlier than the deemed date of registration of the trade mark (if registered).
- (2) This section does not apply if the Commissioner or the court, as the case may be, considers that a case of honest concurrent use exists that, in the opinion of the Commissioner or the court, makes it proper for the trade mark to be registered, subject to any conditions that the Commissioner or the court may impose.
- Compare: 2006 No 60 ss 14–17

New section 60A

After section 60, insert:

60A Status of geographical indication removed from register for non-payment of renewal fee

- (1) A geographical indication that has been removed from the register for non-payment of the renewal fee must be taken into account for a period of 1 year after the date of expiry of the registered geographical indication when determining the registrability of a later trade mark application.
- (2) **Subsection (1)** does not apply if the Commissioner is satisfied that, in the case of a foreign geographical indication,—
- (a) the geographical indication is not, or has ceased to be, protected in its country of origin; or
 - (b) the geographical indication has fallen into disuse in its country of origin.

Compare: 2006 No 60 s 47C

Section 88

In section 88(c), replace “Geographical Indications Act 1994” with “Geographical Indications (Wine and Spirits) Registration Act 2006”.

New section 98A

After section 98, insert:

New section 98A—continued

98A No infringement through use of registered geographical indication

A registered trade mark is not infringed by the lawful use of a registered geographical indication registered under the Geographical Indications (Wine and Spirits) Registration Act 2006.

Legislative history

3 November 2015
17 March 2016

Introduction (Bill 86–1)
First reading and referral to Primary Production Committee

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Annex 2: Draft Second Reading Speech

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Geographical Indications (Wines and Spirits) Amendment Bill

SECOND READING SPEECH

MINISTER OF COMMERCE AND CONSUMER AFFAIRS

Mr Speaker

I move that the Geographical Indications (Wine and Spirits) Amendment Bill be read a second time.

The Bill amends the Geographical Indications (Wine and Spirits) Registration Act 2006.

A geographical indication is a name, usually a regional name, that is used to identify the origin of goods where some quality, reputation or other characteristic of the goods are related in some essential way to their geographical origin.

Well-known examples of geographical indications include Champagne and Scotch whisky. In New Zealand, the main user of geographical indications is the local wine industry, although foreign wine and spirit producers also use geographical indications to identify their products. Geographical indications used by New Zealand wine producers include terms such as 'Marlborough' and 'Martinborough'.

The Geographical Indications (Wine and Spirits) Registration Act 2006 provides for a registration system for geographical indications, but this Act is not yet in force. Before the Act can be brought into force, some amendments are necessary to clarify some provisions in the Act, and to ensure that the registration process runs smoothly and sustainably.

Report of the Primary Production Committee

I would like to thank the Primary Production Committee for its consideration of the Bill. The Committee's report contains a number of sensible recommendations for amendment of the Bill. I also want to acknowledge the submissions from the public, and in particular from the New Zealand wine industry.

Most of the amendments recommended by the Committee are of a relatively minor nature.

Two significant amendments to the Bill that were recommended by the Committee involved procedures for opposing registration, and the renewal periods for registered geographical indications.

The Geographical Indications (Wine and Spirits) Registration Act 2006 leaves opposition procedures almost entirely to the regulations. Other similar legislation relating to registered intellectual property rights, such as the Patents Act 2013 and the Trade Marks Act 2002 make explicit provision for opposition procedures.

The amendment recommended by the Committee inserts a new clause 21A into the Bill. This inserts new provisions into the principal Act to require the Registrar of Geographical Indications to advertise the intention to accept an application to register a geographical indication. This allows interested persons to oppose registration if they consider that the indication should not be registered.

The other significant amendment relates to the renewal period provisions in the Bill. The Bill as introduced provided that geographical indications must be renewed by paying a renewal fee every ten years. The renewal fees will contribute towards the ongoing maintenance of the Register of Geographical Indications, and help keep the initial application fees down.

However, as most of the applications to register geographical indications will be made in the first few years after the principal Act enters into force, there is a risk that the revenue raised from application fees could be insufficient to cover the cost of establishing and administering the Register of Geographical Indications. This could be a particular problem if application numbers are lower than estimated.

In response to this, the Committee has recommended that the Bill be amended to provide that the first renewal fee is payable at five years from the date of registration of a geographical indication, and at ten year intervals thereafter.

I agree with the recommendations in the Select Committee's report, and I commend this Bill to the House.

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BRIEFING

Geographical Indications (Wine and Spirits) Registration Amendment Bill – Proposed SOP

Date:	8 November 2016	Priority:	High
Security classification:	In Confidence	Tracking number:	1447 16-17

Action sought		
	Action sought	Deadline
Hon Paul Goldsmith Minister of Commerce and Consumer Affairs	Agree to the recommendations.	10 November 2016

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Gus Charteris	Manager Business Law	[Redacted]	
Warren Hassett	Senior Policy Advisor	[Redacted]	✓

The following departments/agencies have been consulted [double click box & click 'checked']					
<input type="checkbox"/> Treasury	<input type="checkbox"/> MoJ	<input type="checkbox"/> NZFE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input type="checkbox"/> MFAT	<input type="checkbox"/> MPI	<input type="checkbox"/> ME	<input type="checkbox"/> DIA	<input type="checkbox"/> TPK	<input type="checkbox"/> MoH
<input type="checkbox"/> Other:			N/A		

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments:



BRIEFING

Geographical Indications (Wine and Spirits) Registration Amendment Bill – Proposed SOP

Date:	8 November 2016	Priority:	High
Security classification:	In Confidence	Tracking number:	1447 16-17

Purpose

To seek approval for the submission to the House of a Supplementary Order Paper (**SOP**) to the Geographical Indications (Wine and Spirits) Registration Amendment Bill (**the Amendment Bill**).

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

Note that the Amendment Bill was reported back to the House on 16 September by the Primary Production Select Committee, and that the Amendment Bill received its Second Reading on 3 November.

Noted

a **Note** that:

- i. the Select Committee's report on the Amendment Bill said that the Committee had agreed to amend the Amendment Bill to allow only interested persons to oppose the registration, and the alteration and removal of a registered geographical indication; and
- ii. due to an oversight, provisions allowing only interested persons to oppose the alteration or removal of a registered geographical indication were omitted from the Amendment Bill as reported back; and
- iii. an SOP has been prepared rectifying this omission; and
- iv. a draft of the SOP is attached to this report.

Noted

- b **Agree** that the SOP (when finalised by the Parliamentary Counsel Office) be printed, so it can be consequently submitted to the Bills Office.

Agree / Disagree

- c **Agree** to liaise with the Leader of the House on timing so that the Committee of the Whole House stage is at least one working day after the day you want the SOP released.

Agree / Disagree

Gus Charteris
Manager, Business Law
Building, Resources and Markets, MBIE

Hon Paul Goldsmith
Minister of Commerce and Consumer Affairs

..... / /

..... / /

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Background

1. The Geographical Indications (Wine and Spirits) Registration Amendment Bill (“**the Amendment Bill**”) was reported back to the House on 16 September 2016 by the Primary Production Select Committee. The Bill amends the Geographical Indications (Wine and Spirits) Act 2006 (“**the GI Act**”)
2. One of the recommendations in the Departmental Report on the Amendment Bill was that the Bill be amended to insert provisions into the GI Act that would allow only “interested persons” to oppose the registration of a geographical indication, and the removal or alteration of a registered geographical indication. This amendment was agreed to by the Primary Production Select Committee and referred to in their report on the Bill.
3. The Amendment Bill includes a provision (clause 21A) inserting a new section 36C into the GI Act, allowing interested persons to oppose registration of a geographical indication. Due to an oversight, however, provisions allowing only interested persons to oppose the removal or alteration of a registered geographical indication were omitted from the Amendment Bill as reported back to the House. The attached draft SOP rectifies this omission.

Draft Supplementary Order Paper

4. A draft SOP is attached to this report. The draft is subject to peer review and proof reading by the Parliamentary Counsel Office (“**PCO**”).
5. The draft SOP proposes new clauses 24B and 25B, which will insert new sections 45B and 46C into the GI Act. The SOP also makes technical amendments, consistent with other provisions in the Bill, to indicate that an interested person may include the registrant of a geographical indication, except where indicated otherwise. The amendments proposed in the SOP are consistent with those agreed to by the Primary Production Select Committee and are agreed policy.
6. PCO has indicated that the final version of the SOP should be ready by Thursday 10 November 2016. Subject to your agreement, it will be printed and submitted to the Bills Office. Once submitted, the Bills Office will then check with your office about when you want the SOP released.
7. To ensure that the SOP can be distributed, and is available to be considered during the Committee of the Whole House stage of the Amendment Bill, we recommend that your office liaise with the Leader of the House on timing so that the Committee stage is at least one working day after the day you want the SOP released.
8. We will inform you if there are any delays in finalising the SOP.

Annexes

Annex One: Draft Supplementary Order Paper

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BRIEFING

**Geographical Indications (Wines and Spirits) Amendment Bill –
Update on Progress**

Date:	31 July 2015	Priority:	High
Security classification:	In Confidence	Tracking number:	0293 15-16

Action sought		
	Action sought	Deadline
(Hon Paul Goldsmith Minister of Commerce and Consumer Affairs	Agree to the recommendations.	4 August 2015

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Iain Southall	Manager, Business Law	[Redacted]	
Warren Hassett	Senior Advisor	[Redacted]	✓

The following departments/agencies have been consulted					
<input type="checkbox"/> Treasury	<input type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input checked="" type="checkbox"/> MFAT	<input checked="" type="checkbox"/> MPI	<input type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> TPK	<input type="checkbox"/> MoH
<input type="checkbox"/> Other:			N/A		

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments:

RELEASED UNDER THE OFFICIAL INFORMATION ACT



BRIEFING

Geographical Indications (Wines and Spirits) Amendment Bill – Update on Progress

Date:	31 July 2015	Priority:	High
Security classification:	In confidence	Tracking number:	0293 15-16

Purpose

To provide you an update on the progress of the Geographical Indications (Wines and Spirits) Amendment Bill ('the **Amendment Bill**'), and also brief you for your meeting with New Zealand Winegrowers on 4 August.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** that the Amendment Bill currently being drafted will, when enacted allow the Geographical Indications (Wines and Spirits) Registration Act 2006 ('the **GI Act**') to be brought into force; *Noted*
- b **Note** that the Intellectual Property Office of New Zealand ('**IPONZ**') commissioned Deloitte to develop a model to assist IPONZ in setting fees for administering the GI Act, and Deloitte has now submitted its final report; *Noted*
- c **Note** that, based on the advice provided by Deloitte, IPONZ has recommended that the application fee for applying to register a geographical indication be set at \$5000 and the renewal fee, payable every five years be \$2500; *Noted*
- d **Note** that officials are working on further minor amendments to the GI Act, which will be incorporated into the Amendment Bill; *Noted*
- e **Note** that the Ministry for Primary Industries ('**MPI**') has proposed a substantive amendment to the '85% rule' in the GI Act, and released a consultation document on 13 July; *Noted*
- f **Note** that:
- i. if MPI recommends an amendment to the '85% rule', approval for this amendment and the further minor amendments to the GI Act will be sought from the Cabinet Economic Growth and Infrastructure Committee ('**EGI**');
 - ii. the submission to EGI will also seek approval to introduce the Amendment Bill, rather than make a separate submission to the Cabinet Legislation Committee ('**LEG**');

- iii. officials anticipate that the submission to EGI will be provided to you in time for it to be submitted to the Cabinet Office in time to be considered at EGI on 26 August.
- iv. if MPI does not recommend an amendment to the 85% rule, approval for the further amendments, and to introduce the Amendment Bill will be sought from the Cabinet Legislation Committee instead of EGI.

Noted

g **Note** that you will be meeting with New Zealand Winegrowers in Auckland on 4 August.

Noted

h **Discuss** the matters referred to above at your meeting with New Zealand Winegrowers on 4 August;

Agree/Disagree

i **Agree** to IPONZ sharing the model developed by Deloitte regarding fees with interested stakeholders, including New Zealand Winegrowers.

Agree/Disagree

Iain Southall
Manager, Business Law
 Commerce, Consumers and Communications
 MBIE
 / /

Hon Paul Goldsmith
Minister of Commerce and Consumer Affairs
 / /

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Background

1. The Geographical Indications (Wines and Spirits) Amendment Bill ('the Amendment Bill') amends the Geographical Indications (Wines and Spirits) Registration Act 2006 ('the GI Act'). The GI Act is not yet in force. In December 2014, Cabinet agreed to bring the GI Act into force, and the Amendment Bill, when enacted, will enable this. The Amendment Bill is currently being drafted, with a view to it being submitted to Cabinet for approval to introduce by the end of August 2015.
2. The reason for moving to implement the GI Act at this time is to avoid potential risks should the GI Act not be implemented. These risks include:
 - undermining industry trade strategies and growth potential;
 - negative impact on New Zealand's aspirations for a Free Trade Agreement with the European Union; and
 - 6(a) and 6(e)(vi)
3. The December 2014 Cabinet paper noted that there were a number of amendments required to the GI Act before it could be brought into force. These amendments were intended to improve the Act's workability and ensure that the registration process runs smoothly and sustainably. Cabinet also directed that officials report back to Cabinet by 31 March 2015 on the required amendments.

Meeting with New Zealand Winegrowers 4 August

4. You will be meeting with representatives of NZ Winegrowers at their offices in Auckland on 4 August 2015 from 12:15pm – 12:45pm. The attendees will be Philip Gregan, CEO of NZ Winegrowers, and Jeffrey Clarke, General Counsel. Brief biographies of Mr Gregan and Mr Clarke are attached as Annex 1. They will provide a brief overview of the New Zealand wine industry and an update of the work of New Zealand Winegrowers regarding the implementation of the GI Act.
5. NZ Winegrowers is the national organisation for New Zealand's grape and wine sector. The organisation currently has approximately 850 grower members and 700 winery members.
6. Officials suggest that you provide New Zealand Winegrowers with an update on progress towards implementation of the GI Act based on the information in this briefing. In particular, officials suggest that you discuss the fees proposed by IPONZ on the basis of analysis done by Deloitte with New Zealand Winegrowers. Officials have not yet had the opportunity to discuss these issues in detail with New Zealand Winegrowers, and we would be interested in any comments they may make to you. Some suggested talking points are set out in Annex 2.

Fees

7. Earlier this year IPONZ commissioned Deloitte to develop a costing model to assist IPONZ with setting the fees it would charge for administering the geographical indication system established by the GI Act. What follows is a brief summary of the factors used by Deloitte in coming to their conclusions, together with their recommendations in relation to the initial application fee and renewal fee.
8. It is intended that all of the costs of administering the GI Act will be recovered from fees charged to applicants for registration, and other interested parties, such as those opposing applications to register a geographical indication. The level of individual fees may not reflect the actual cost of the service or function the fee is intended to cover, as long as the total income from fees covers the whole cost of administering the GI Act

9. For example, it is intended that the initial application fee would not cover the entire cost of processing an examining the application. The reason for this is to keep the initial application fee as low as possible so as not to discourage interested parties from making applications. The balance of the cost would be made up by requiring the payment of renewal fees to maintain a registration in force. Failure to pay a renewal fee would result in lapsing of the registration.
10. The approach of using renewal fees to subsidise initial application fees is also used in the Patents Act 2013 and the Trade Marks Act 2002. The March Cabinet paper referred to earlier in this report sought approval for the GI Act to be amended to provide for renewal fees to be paid every ten years, and an appropriate provision has been inserted into the Amendment Bill
11. A major factor in determining the level of fees that will need to be charged is the fact that only a small number of geographical indications are likely to be registered. Officials estimate that there will about 30 applications in the first three years after the GI Act enters into force, most from New Zealand wine growers. After this, there are likely to be no more than 1-2 applications per year, mainly from foreign applicants. However, there is considerable uncertainty in those estimates.
12. Given the small number of applications, IPONZ have endeavoured to keep the costs involved as low as possible. The work involved will be done by existing IPONZ staff, with no additional staff being required. In addition, the IT work required, including development of a suitable website, be done 'in house' rather than contracted out to an external provider. The GI register will be online, but the system will be basic, and IPONZ will keep development costs as low as possible
13. Nevertheless, because the costs are being spread over a small number of applications, the application and renewal fees will be significantly higher than those charged for other registered intellectual property rights. For comparison, IPONZ receives about 6000 patent applications and about 21000 trade mark applications per year. The initial application fee will need to cover such things as the initial costs of establishing the Register of Geographical Indications and maintaining the register until the first renewal fees become due.
14. On this basis, Deloitte has suggested an initial application fee of \$5000+GST, with a renewal fee payable every five years of \$2500 +GST. They have also suggested that the fees be reviewed within three – five years given the uncertainties surrounding the assumptions regarding the number of applications.
15. As mentioned earlier, the March Cabinet paper sought approval for renewal fees to be paid at ten yearly intervals. This renewal interval was proposed as it is the same as the renewal period for registered trade marks, and in the absence of any detailed information on the costs of administering the GI Act. The Deloitte report estimated that if the renewal period was ten years, the initial application fee would have to be set at \$7000+GST, and the renewal fee would need to be \$3000+GST to recover costs. In light of this, officials now consider that a five year renewal period is more appropriate, and will propose that an appropriate change be made to the Amendment Bill when it is considered by a Select Committee.
16. By way of comparison, the fee charged to apply to register a geographical indication in Australia is AUD27, 500 (including GST), and other fees may be charged as necessary on a cost-recovery basis. There is no requirement to pay renewal fees.

Further Amendments to the GI Act

17. In the course of developing the amendments proposed in the March paper, MBIE, working with MFAT and MPI, has noted a number of other provisions in the GI Act where amendment may also be desirable to improve the workability of the GI Act. Officials indicated, in the March Cabinet paper, that they would report back to Cabinet separately on these possible amendments in the next few months, rather than delay submission of the March paper. This

was in order to meet the Cabinet deadline referred to above, and avoid undue delay to introduction of the Amendment Bill.

Technical Amendments

18. Most of the further amendments proposed are 'minor and technical' amendments intended to clarify drafting and remove inconsistencies. No regulatory impact statement is needed for these.

Amendment to the 85% Rule

19. Under s21 of the GI Act, a wine may be labelled with a New Zealand registered geographical indication only if at least 85% of the wine is made from grapes grown in the region to which the geographical indication relates. This is known as the '85% rule'. There is no restriction on where the other 15% of the wine may come from. A New Zealand registered geographical indication is one which identifies a wine or spirit as originating in New Zealand.
20. MPI, working with New Zealand Winegrowers, has proposed that the 85% rule be amended to provide that where a wine is labelled with a New Zealand registered geographical indication, all (100%) of the wine must be made from grapes grown in New Zealand. This will be additional to the requirement that 85% of the wine must be made from grapes grown in the region to which the geographical indication relates.
21. As this proposed amendment is a significant change to the GI Act, MPI has decided to consult interested parties before making a final recommendation on the amendment proposal. To this end MPI released a public consultation document on 13 July. MPI have also sent the consultation document to key stakeholders, and the deadline for submissions was 27 July 2015.
22. The stakeholders notified by MPI include:
 - New Zealand Winegrowers, with a request that they notify their members
 - Wine exporters and importers whose contact information MPI holds on its database
 - The Food and Grocery Council
 - The Customs Brokers Association
 - The Retailers Association, and
 - Spirits New Zealand.
23. A copy of MPI's consultation document is attached to this report. Officials will report to you on the outcome of the consultation process when the Amendment Bill is submitted to Cabinet for approval to introduce.

Next Steps

24. Once the proposals for the further amendments to the GI Act are finalised, approval for these amendments will be sought from Cabinet. They will include an amendment to the 85% rule if, following its consultation process, MPI recommends this amendment. As the amendment to the 85% rule is a substantive amendment, it is intended that, if MPI does recommend this amendment, the submission be made to the Cabinet Economic Growth and Infrastructure Committee ('EGI').
25. Given the need to consider submissions on the amendment to the 85% rule proposed by MPI, officials expect that the submission to EGI will be sent to you in time for it to be submitted to the Cabinet Office in time for the EGI meeting on 26 August.

26. Once the proposed amendments are approved, the Amendment Bill will be ready for introduction shortly afterwards. Given the priority that the government has given to this Bill, it is intended that the EGI submission also ask for approval to introduce the Bill, rather than make a separate submission to the Cabinet Legislation Committee ('LEG').
27. If, following its consultation process, MPI decides not to proceed with an amendment to the 85% rule, officials expect that a submission seeking approval for the further amendments and introduction of the Amendment Bill will be provided to you in time for it to be submitted to Cabinet Office in time for the bill to be considered by LEG on 26 August.
28. Before the GI Act can be brought into force, regulations dealing with the procedures for registering geographical indications under the GI Act and setting fees will need to be developed and gazetted. It is intended that the development of these regulations will proceed in parallel with the parliamentary process for the Amendment Bill.
29. Subject to the government's legislative priorities, it should be possible to enact the Amendment Bill in time to allow the GI Act to be brought into force by mid-2016.

Annexes

Annex 1: Attendees at your meeting with New Zealand Winegrowers.

Annex 2: Talking points for your meeting with New Zealand Winegrowers.

Annex 3: Copy of MPI Consultation document on the 100% Rule.

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Annex 1: Attendees at your meeting with New Zealand Winegrowers

Philip Gregan, CEO



Philip Gregan is Chief Executive Officer of New Zealand Winegrowers, the national organization representing the interests of New Zealand's 1,500 grape growers and winemakers. New Zealand Winegrowers performs a number of key industry functions including strategic leadership, advocacy, research, generic marketing, and information provision. Mr. Gregan joined the Wine Institute of New Zealand in 1983 after completing a Master of Arts in Geography at the University of Auckland. Mr. Gregan was appointed CEO of the Wine Institute in 1991, and when the Wine Institute merged with sister organisation the New Zealand Grape Growers Council in 2002, he was appointed CEO of the combined body, New Zealand Winegrowers.

Jeffrey Clarke, General Counsel



Mr Clarke began his legal career in New Zealand, and then travelled to the United States. Later he transferred to London, and came back to New Zealand where he worked for Meridian Energy. After that he went to Paris, where he was New Zealand's Energy Advisor at the International Energy Agency. He has also worked at the OECD, prior to returning to New Zealand in 2012 to work in the Corporate Advisory group of Russell McVeagh before joining New Zealand Winegrowers in late 2014.

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Annex 2: Talking Points for your meeting with New Zealand Winegrowers, 4 August

Fees

- The Intellectual Property Office of New Zealand has commissioned Deloitte to assist them in setting fees for administering the GI Act. Deloitte have suggested an initial application fee of \$5000 and a renewal fee of \$2500, which would be paid every five years.
- What is your reaction to these suggested fees?
- Do you think the fees represent good value for money, given the value to the wine industry of being able to register their geographical indications?

NZWinegrower's preparations for implementation of the GI Act

- I understand that NZWinegrowers has a list of 'priority' geographical indications for which it will file applications for registration. What about other New Zealand wine geographical indications? Will NZWinegrowers provide assistance for New Zealand wine growers who wish to register these indications?
- Once New Zealand wine geographical indications are registered in New Zealand it will be possible to obtain protection for them in overseas markets. How do you think this will benefit the New Zealand wine industry? What other countries will you seek protection in?
- Do you think that many foreign wine growers will apply to register their geographical indications in New Zealand? Do you think that this might cause problems for New Zealand wine growers?

Amendment to the 85% Rule

- Does NZWinegrowers support this amendment? I am interested in hearing your views on this. How will it benefit the wine industry?

Progress on the GI Act

- As you know, the GI Act needs some amendments to allow it to be brought into force. An amendment Bill is currently being drafted, and I hope that it will be ready to be introduced to Parliament by the end of this month.
- Subject to the government's legislative priorities, I hope that the Amendment Bill will be enacted in time to allow the GI Act to come into force by the middle of 2016.



Wine Geographical Indications

Proposed amendment to the 85% rule in
section 21 of the Geographical Indications
(Wine and Spirits) Registration Act 2006

MPI Discussion Document
Paper No: 2015/27

Prepared for the Ministry for Primary Industries and the
Ministry of Business, Innovation and Employment

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While every effort has been made to ensure the information in this publication is accurate, the Ministry for Primary Industries does not accept any responsibility or liability for error of fact, omission, interpretation or opinion that may be present, nor for the consequences of any decisions based on this information.

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1	Proposed amendment to section 21 of the Geographical Indications (Wine and Spirits) Registration Act 2006	1
2	Submissions	1
3	Background	2
4	Problem definition	2
5	Options	3
6	Objectives and criteria for analysing the options	3
7	Analysis of options	4
8	Retain the current 85% rule for geographical origin	5
9	Consequential amendment to the Wine (Specifications) Notice 2006	5
10	Consultation	5
11	Next steps	6
12	Implementation plan	6
13	Monitoring, evaluation and review	6
14	This is a targeted consultation on the 85% rule	6
	Questions for Feedback	7

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1 Proposed amendment to section 21 of the Geographical Indications (Wine and Spirits) Registration Act 2006

The Ministry of Business, Innovation and Employment (MBIE) and the Ministry for Primary Industries (MPI) are seeking views on a proposal to amend section 21 of the Geographical Indications (Wine and Spirits) Registration Act 2006 (the Act). The amendment would specify that New Zealand registered geographical indications may only be used to identify wine if the wine is made solely from grapes harvested in New Zealand.

A geographical indication is a name, usually a regional name, which is used to identify the origin of goods where some quality, reputation or other characteristic of the goods are related in some essential way to their geographical region. In the case of New Zealand wine, there could potentially be a number of geographical indications registered, such as 'Marlborough', 'Nelson', or 'Hawkes Bay'.

Subject to submissions received as part of this consultation, the Government intends to include the proposal in an amendment Bill that has other amendments required to implement the Act. The amendment Bill is being prepared for introduction later this year. Subject to Parliamentary processes, the intention is to implement the Act in 2016.

2 Submissions

MBIE and MPI welcome written submissions on the proposal contained in this document. All submissions must be received by MPI **no later than 27 July 2015**.

Written submissions should be sent directly to:

Jason Frick
Policy Analyst, Forestry and Plant Sector Team
Policy and Trade Branch
Ministry for Primary Industries
PO Box 2526, Wellington 6140
Email: Jason.Frick@mpi.govt.nz

We will consider all relevant material made in submissions, so you are welcome to provide information supporting your comments. Please make sure you include the following information in your submission:

- The title of this consultation document;
- Your name and title;
- Your organisation's name (if you are submitting on behalf of an organisation), and whether your submission represents the whole organisation or a section of it; and
- Your contact details (that is, phone number, address, and email).

Submissions are public information

Note, your submission is public information. Submissions may be the subject of requests for information under the Official Information Act 1982 (OIA). The OIA specifies that information is to be made available to requesters unless there are sufficient grounds for withholding it, as set out in the OIA. Submitters may wish to indicate grounds for withholding specific information contained in their submission, such as if the information is commercially

sensitive or if they wish personal information to be withheld. MPI will take such indications into account when determining whether or not to release the information.

Any decision to withhold information requested under the OIA is reviewable by the Ombudsman. For more information please visit:

<http://www.ombudsman.parliament.nz/resources-and-publications/guides/official-information-legislation-guides>

3 Background

A geographical indication is a name, usually a regional name, that is used to identify the origin of goods where some quality, reputation or other characteristic of the goods are related in some essential way to their geographical region. Examples of geographical indications include Champagne and Scotch whisky. In the case of New Zealand wine, there could potentially be a number of geographical indications registered, such as 'Marlborough', 'Nelson', 'Hawke's Bay' or 'Central Otago'.

4 Problem definition

If implemented without amendment, the Act will require that if a New Zealand registered geographical indication is used for a wine, at least 85% of the wine is obtained from grapes harvested in the geographical region to which the geographical indication relates (the 85% rule). As the Act is silent on where the grapes that make up the remaining 15% of the wine were harvested, this means up to 15% of the wine could be made from grapes harvested in another country or region.

Blending New Zealand wine with wine made from grapes harvested in another country can impact on the integrity of New Zealand wine and its premium positioning in the global market¹. Building this integrity and global positioning has required significant investment from the New Zealand industry over the last decade. One risk of cross-country blending is that the wine for blending could be sourced from grapes of a country that may not have the same regulatory oversight and risk management controls for grape growing and wine making as in New Zealand (for example, made under a registered wine standards management plan that is verified annually). Also, the wine industry's marketing and promotion strategy involves complying with the industry's 'Sustainable Winegrowing New Zealand' programme and there is a risk that cross-country blended wine would not fit with that programme.

There is no obligation under the Act to declare on the label whether any of the wine in the bottle is made from grapes harvested outside the region concerned, as permitted under the 85% rule. Under the Wine Regulations 2006, if there was any cross-country blending, the same bottle would be required to state that wine has been made from grapes harvested in New Zealand and another country. This could potentially mislead some wine consumers as they may not be aware that the two statements are for different purposes.

Do you agree with MPI's characterisation of the problem with the 85% rule in the Act? To what extent are these problems relevant and important to your business, to the wider New Zealand wine industry, and to help facilitate international trade?

¹ In the year to 30 June 2014 New Zealand grape wine exports were worth \$1.33 billion. Around 83% of the exports by volume were to Australia, the United States and the United Kingdom. The New Zealand wine industry's success comes from its positioning as a distinctive premium wine in these markets. The New Zealand wine industry cannot compete with major wine producers, like Australia, on volume and range of offerings in these markets.

5 Options

We have identified the following two options to address the problem above.

- Option 1 (Status quo): Keep the 85% rule and remain silent on where the grapes for the other 15% of wine is sourced from.
- Option 2 (MPI's preferred option): Amend the Act to require that where blending occurs the remaining 15% of the wine come from grapes harvested within New Zealand.

For the purpose of clarity, option 2 would not require wine with a New Zealand registered geographical indication to disclose on its label that 15% of the wine came from another region within New Zealand. This means, for example, that winemakers could still meet advance orders if a season provides a lower than expected grape yield due to some local climatic event in their own region.

We would like to hear from you what your views are on these two options, and their advantages and disadvantages. If you would like to suggest another option, please provide a description of that option, why you consider that to be a better option, and what are its advantages and disadvantages.

6 Objectives and criteria for analysing the options

The proposed amendment aims to provide an appropriate level of protection for the integrity and reputation of New Zealand wine as a premium product in the domestic and global markets, and to better facilitate international trade.

MBIE and MPI have identified the following as criteria against which to assess the options:

- Risk to New Zealand wine's reputation and its premium positioning in the global market.
- Clarity for wine consumers.
- Ability to seek cross-registration of New Zealand registered geographical indications in offshore markets.
- Impact on innovation (e.g. developing innovative products).

We are interested in your views on whether we have identified the appropriate objectives of the amendment and criteria for assessment, and whether there are other objectives or criteria that should be added to this set.

7 Analysis of options

Table 1: Comparing the status quo (85% rule) with requiring all wine to be from grapes harvested in New Zealand

Assessment Criteria	Option 1 (Status Quo – silent on the source of grapes for the remaining 15% of the wine)	Option 2 (Require 100% New Zealand grapes)
Risk to New Zealand wine's reputation and its premium positioning in the global market	Blending wine from foreign grapes and labelling with a New Zealand registered geographical indication under the current 85% rule may potentially put the integrity of New Zealand wine at risk. Such blending may cause significant and lasting impact on consumer trust in 'New Zealand wine', initially within New Zealand with flow-on effects in international markets. The risk is higher if the imported wine for blending is from grapes harvested in countries that do not have the same regulatory oversight and risk management controls for grape growing and wine making as in New Zealand.	Removes the risk of blending with wine from countries that do not have the same regulatory oversight for grape growing and wine making as in New Zealand and are not made to the same specification as in New Zealand.
Clarity for wine consumers	<p>A geographical indication applied to a wine provides a statement about the country of origin of the grapes used to make the wine. Consumers may view a label as misleading if the wine contains some wine from non-New Zealand grapes as permitted under the current 85% rule.</p> <p>When in force a label on a bottle of wine with registered geographical indication could state, for example, 'Marlborough' with 85% of the wine made from grapes harvested in Marlborough. To meet the current country of origin labelling requirements under the Wine Regulations 2006 the same bottle would also state grapes have been harvested in New Zealand and another country. This could confuse some wine consumers as some would not be aware that the two statements are for different purposes.</p> <p>A geographical indication gives consumers information about a characteristic of a wine, such as its quality, or reputation, that consumers associate with the region to which the geographical indication relates, and helps consumers distinguish wines from that region from wines from other regions. Blending wine made from grapes grown in New Zealand with wine made from grapes grown in another country may remove that association with a particular region.</p>	<p>The proposed amendment would provide assurance to a consumer that a wine sold using a New Zealand registered geographical indication is made solely of New Zealand grapes.</p> <p>The proposed amendment would remove potential for confusion for wine consumers who may not be aware that the two statements are for different purposes.</p> <p>The association of the blended wine is much closer to the stated geographical indication.</p>
Impact on innovation	The 85% rule would mean winemakers could create new products that included grapes and wine from outside New Zealand, while using a New Zealand registered geographical indication. This could allow for some innovation.	The proposed amendment would not prevent winemakers from supplying the domestic and export markets with wine composed of blended New Zealand and imported grapes provided they do not use a New Zealand registered

8 Retain the current 85% rule for geographical origin

The proposed amendment would not change the ability in section 21 of the Act (when in force) for up to 15% of the wine in any New Zealand registered geographical indication wine to come from grapes harvested in another New Zealand region without needing to disclose it on the label. For example, 'Marlborough Riesling' could be blended with up to 15% of 'Nelson Riesling'. This means winemakers could still meet advance orders if a season provides a lower than expected grape yield due to some local climatic event in their own region. There would be no change to their ability to source similar grapes from another region in New Zealand to meet a shortfall. While a label on a bottle of wine would state the sources of grapes to meet the country of origin labelling requirement under the Wine Regulations 2006, it would not be required to disclose if up to 15% of wine came from grapes harvested in another New Zealand region for geographical indications purpose.

This recognises that regional seasonal variations in crop yields is common in grape production and the different wines and grapes used in the blended product have been produced under the same regulatory oversight and risk management controls regardless of which New Zealand region the grape was sourced from.

9 Consequential amendment to the Wine (Specifications) Notice 2006

In line with the proposed amendment to the Geographical Indications (Wine and Spirits) Registration Act 2006, MPI also proposes to clarify this issue in clause 6 of the Wine (Specifications) Notice 2006 (the Notice) made under the Wine Act 2003. Currently clause 6 of the Notice requires that where a grape wine label includes a statement regarding a single grape variety, vintage or area of origin, at least 85% of the wine must be from the stated variety, vintage or area of origin. MPI proposes to amend clause 6 to require that wines with regional names that are New Zealand registered geographical indications are made solely from grapes harvested in New Zealand. Subject to Parliamentary processes, MPI is proposing that the two amendments, to the Act and the Notice, come into force at the same time.

10 Consultation

In May 2015 New Zealand Winegrowers, the industry body representing New Zealand grape growers and grape winemakers, wrote to the Government to seek the proposed amendment.

After initial analysis of the proposal, MBIE and MPI have agreed to proceed with this discussion paper for industry consultation with the intention of getting a deeper understanding of the issues, the level of industry support for the proposal, the likely impact on makers and traders of wine and wine products, and whether there are other options to address the issue.

While the issue may be of greater relevance to winemakers and wine traders, we would like to hear from anyone who may be impacted by the proposal, particularly whether:

- you agree with our characterisation of the problem;
- you support or oppose the proposal; and
- the proposal will impact your business and the New Zealand wine industry.

If the Government agrees to include the proposed amendment in the amendment Bill there will be further opportunity for industry and public submission at the Select Committee stage.

11 Next steps

Subject to submissions received as part of this consultation, the Government intends to include the proposed amendment in an amendment Bill that has other amendments required to implement the Act. The amendment Bill is being prepared for introduction later this year. Subject to Parliamentary processes, the intention is to implement the Act in 2016.

12 Implementation plan

Subject to industry submissions, the proposed amendment to the 85% rule will be incorporated into the Geographical Indications (Wine and Spirits) Registration Amendment Bill.

It is intended that the Intellectual Property Office of New Zealand (IPONZ), part of MBIE will be responsible for implementing the Act. IPONZ would develop and implement a register for geographical indications, including developing guidelines and undertaking publicity about implementation of the Act. Provisions relating to the registration process and establishment and maintenance of a register, and appeals procedures are already in the Act. MBIE will develop regulations to set out the procedures for registering geographical indications under the Act.

The proposed amendment to the 85% rule would not introduce any new compliance costs as the proposal only changes the composition of New Zealand wine for which geographical indication registration is sought, from 85% to 100% use of New Zealand grapes. The registration of geographical indications will be at the discretion of those wanting to protect their geographical indications.

13 Monitoring, evaluation and review

The operation of the Act will be monitored as part of the Intellectual Property Office of New Zealand's normal reporting processes. In addition, MBIE will seek the view of the New Zealand wine industry regarding the operation of the Act from the point of view of users of geographical indications.

14 This is a targeted consultation on the 85% rule

This is a targeted consultation to amend section 21 of the Act (85% rule). You will have an opportunity to make submissions on other amendments when the amendment Bill is at Select Committee later in 2015.

QUESTIONS FOR FEEDBACK

1. Do you agree with MPI's characterisation of the problem with the 85% rule in the Act (as in section 4 of this paper)? If not, why not?
2. How significant and relevant do you consider this problem to be to:
 - (a) Your business;
 - (b) The wider New Zealand wine industry;
 - (c) Export markets for New Zealand wine?
3. Have we identified the correct objective (as in section 6 of this paper)?
4. Have we identified the right set of criteria for assessing the options? Are there others you consider should be added to this set (as in section 6 of this paper)?
5. What are your views on the two options discussed in this paper, and what you consider to be the costs and benefits of the two options?
6. Would you like to suggest another option? Please provide a description of that option and reasons for supporting that option and its advantages and disadvantages.
7. Do you currently make or trade cross-country blended wine? How would the proposed amendment to the 85% rule impact on your business practice?
8. Do you have any other comments on the proposed amendment to the 85% rule?

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BRIEFING

Geographical Indications (Wines and Spirits) Registration Amendment Bill – Initial Briefing to Primary Production Select Committee

Date:	18 April 2016	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2839 15-16

Action sought		
	Action sought	Deadline
Hon Paul Goldsmith Minister Commerce and Consumer Affairs	Agree to the recommendations.	27 April 2016

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Gus Charteris	Manager, Business Law	S9(2)(a)	
Warren Hassett	Senior Advisor		✓

The following departments/agencies have been consulted [double click box & click 'checked']					
<input type="checkbox"/> Treasury	<input type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input type="checkbox"/> MFAT	<input type="checkbox"/> MPI	<input type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> TPK	<input type="checkbox"/> MoH
<input type="checkbox"/> Other:		N/A or [Insert agency]; [Insert agency]			

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments:



BRIEFING

Geographical Indications (Wines and Spirits) Registration Amendment Bill – Initial Briefing to Primary Production Select Committee

Date:	18 April 2016	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2839 15-16

Purpose

To seek your approval to provide the attached briefing to the Primary Production Select Committee on the Geographical Indications (Wines and Spirits) Registration Amendment Bill ("the Bill").

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Agree** that the attached briefing be provided to the Primary Production Select Committee.

Agree / Disagree

Gus Chatteris
Manager, Business Law
MBIE

..... / /

Hon Paul Goldsmith
Minister of Commerce and Consumer
Affairs

..... / /

Comment

1. The Bill received its first reading on 17 March 2016 and was referred to the Primary Production Select Committee (“**the Committee**”).
2. The Committee is currently seeking public submissions on the Bill. The closing date for submissions is 29 April 2016. The final date for the Committee to report back to the House is 17 September 2016.
3. It is likely that officials will be invited to brief the Committee on the Bill at its meeting on 5 May 2016 (subject to confirmation by the Committee).

Main Points Discussed in the Initial Briefing

4. The initial briefing contains discussion on the following topics:
 - The purpose of the Bill;
 - Background – including the rationale for protecting geographical indications and why the Geographical Indications (Wines and Spirits) Registration Act 2006 is being brought into force;
 - Key features of the Bill:
 - Enduring geographical indications;
 - Duration of registration and renewal fees;
 - No registration of offensive geographical indications;
 - 100% rule for wines labelled with New Zealand registered Geographical Indications

Fees

5. It is intended that all of the costs of administering the Geographical Indications (Wines and Spirits) Registration Act (“**the GI Act**”) will be recovered from fees charged to applicants for registration, and other interested parties. One of the fees provided for in the Bill is a renewal fee. If the renewal is not paid, the registration lapses. As introduced, the Bill proposes a renewal period of ten years. Registrations could be renewed indefinitely.
6. We informed you last year (see briefing 0293 15-16) that the Intellectual Property Office of New Zealand (IPONZ) had commissioned Deloitte to develop a costing model to assist IPONZ with setting the fees it would charge for administering the geographical indication system established by the GI Act.
7. In relation to the renewal period, Deloitte suggested that the renewal period be five years based on its analysis. The application and renewal fees for a five year renewal period were estimated by Deloitte to be \$5,000 + GST and \$2,500 + GST, respectively. The application and renewal fees for a ten year term were estimated to be \$7,000 + GST and \$3,500 + GST respectively.
8. As we informed you last year, officials intend to propose that the renewal period specified in the Bill be amended to five years when the Bill is considered by the Committee. Officials will consider any relevant public submissions before making a recommendation to the Select Committee.

Annexes

Annex 1: Geographical Indications (Wines and Spirits) Registration Amendment Bill 2015:
Initial Briefing to the Primary Production Select Committee

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**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

**Geographical Indications
(Wines and Spirits)
Registration Amendment Bill
2015**

**Initial Briefing to the Primary Production Select
Committee**

5 May 2016

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1. Introduction

1. This briefing sets out the purpose and content of the Geographical Indications (Wines and Spirits) Registration Amendment Bill 2015 (**“the Bill”**). It also provides an outline of the Bill’s key provisions.

2. Purpose

2. The Bill amends the Geographical Indications (Wines and Spirits) Registration Act 2006 (**“the GI Act”**). Its principal purpose is to allow the GI Act to be brought into force.
3. Many of the amendments to the GI Act made by the Bill are minor and technical and intended to clarify wording, to correct inconsistencies, or to ensure that trade marks that are similar to geographical indications are treated consistently. These amendments are set out under the heading “miscellaneous amendments” in the explanatory note and are not dealt with in this briefing.
4. Other amendments are being made to ensure that the registration regime for geographical indications that will be established by the GI Act when it enters into force will work smoothly and sustainably. These are described further in this briefing.

3. Background

3.1. What is a geographical indication?

5. A geographical indication (“GI”) is a name, usually a regional name, used to identify a product as originating from a particular locality, where some quality of the product, or its reputation or other characteristic is attributable to its geographical origin. Well known examples of GIs are “Champagne” and “Scotch Whisky”. Examples of New Zealand GIs include “Marlborough”, “Central Otago”, and “Gimblett Gravels”, which are being used by New Zealand wine producers.

6. The use of GIs by New Zealand producers is largely confined to the wine industry. Foreign producers, and especially foreign wine and spirits producers, also use GIs in the marketing of their products in New Zealand.

3.2. Why protect geographical indications?

7. Under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (**“the TRIPS Agreement”**) New Zealand is required to provide minimum standards for the protection of GIs. This does not require a standalone system for registering geographical indications, as long as protection is available through other means.
8. In New Zealand, GIs can be protected as registered trade marks under the Trade Marks Act. If a geographical indication is protected as a trade mark, producers cannot use it

unless they obtain a license to use the mark, and comply with any conditions attached to the use of the license.

9. The use of geographical names on products in a manner that would mislead the public as to the origin of the products is actionable under the Fair Trading Act 1986. Misleading use of geographical names on products may also be actionable under the common law tort of passing off.
10. In relation to wine, there is additional protection for GIs under the Wine (Specifications) Notice 2006 issued by the New Zealand Food Safety Authority under truth in labelling requirements of the Wine Act 2003. The Notice requires that where a label includes information about the origin of wine at least 85% of the wine must be made from grapes grown in the stated area.
11. In relation to spirits, additional protection for GIs is provided under standard 2.7.5 of the *Australia New Zealand Food Standards Code*. Standard 2.7.5 provides that a geographical indication must not be used in relation to a spirit, even where the true origin of the spirit is indicated or the GIs used in translation or accompanied by expressions such as 'kind', 'type', 'style', 'imitation' or the like, unless the spirit has been produced in the country, locality or region indicated.

3.3. The Geographical Indications (Wines and Spirits) Registration Act 2006

12. In 2004 there was a substantial risk that New Zealand wine exports would be blocked from the EU market because the EU considered they were not using "officially recognised" GIs on their labels. The EU's regulatory system for wine imports is complex and highly prescriptive, both in terms of technical standards and labelling requirements. Under the EU regime, the use of GIs on wine labels is necessary for other essential information, such as vintage and grape variety, to be able to be used in the marketing of wine.
13. Such a ban could have had a catastrophic impact on the New Zealand wine industry. At that time, the EU was the largest and most significant export market for New Zealand wine. Wine exports to the EU were returning around \$140 million in export earnings (approximately 46% of the total export earnings for wine).
14. The Government's response was to pass the GI Act. The intention behind the Act was to align our law more closely with our international obligations under the TRIPS Agreement and to protect wine exports to the EU by bringing our registration system for wines and spirits GIs into conformity with EU requirements.
15. Cabinet agreed in December 2007 to delay implementation of the GI Act, so it could be considered in the context of negotiations for a wine agreement between New Zealand and the EU. This was supported by the wine industry.

16. Discussions with the EU over negotiating a wine agreement stalled after the European Commission failed to obtain a negotiating mandate from its Member States in 2008. The European Commission has since advised that it no longer negotiates bilateral wine agreements.

3.3.1. Why bring the GI Act into force now?

17. In December 2014, the government decided that the GI Act should be brought into force. There are two main reasons for this:
18. The New Zealand wine industry favours implementation of the GI Act as a means of safeguarding market access to the EU. It also sees implementation as useful for protecting and promoting their products in export markets.
19. Implementation of the GI Act will enable New Zealand GIs to be registered in New Zealand. This will allow New Zealand GIs to be registered in our main export markets for wine. Most countries that have formal registration systems for GIs will only register indications that have been formally registered in their country of origin.
20. If New Zealand GIs are registered in other countries, this will make it easier for New Zealand wine producers to take action against wine producers who use New Zealand GIs on wine that does not originate in New Zealand.
21. In addition to industry specific motivations, New Zealand is now in the preliminary stages of securing agreement to launch negotiations on a broad Free Trade Agreement with the EU that should cover the same core issues as would have been addressed in a bilateral wine agreement.

3.3.2. How will the GI Act work in practice?

22. The GI Act would establish a registration system for geographical indications for wines and spirits. This will be administered by the Intellectual Property Office of New Zealand (“**IPONZ**”).
23. If a geographical indication is registered under the Act, then the indication could only be used to label wines or spirits if:
 - In the case of wine, at least 85% of the wine is made from grapes harvested within the boundaries of the region identified by the GI;
 - In the case of spirits, the spirit originated in the region identified by the GI.
24. The GI Act would also provide for the alteration or removal of registered geographical indications, either by the Registrar of Geographical Indications (“**the Registrar**”), or at the request of third parties. It also amends the Trade Marks Act 2002 in order to ensure that the treatment of trade marks registered under the Trade Marks Act 2002 which contain, or are similar to GIs registered under the GI Act, is consistent with the provisions in the GI Act dealing with GIs that are, or contain, registered trade marks.

25. Before the GI Act can be brought into force, amendments are required to improve the clarity of some provisions, remove inconsistencies and ensure that the GI registration system runs smoothly and sustainably. These amendments are contained in the Bill.
26. It will also be necessary to develop regulations relating to procedures and fees. These regulations will be developed in parallel with the passage of the Amendment Bill through Parliament. It is intended that this will allow the GI Act to be brought into force promptly after passage of the Bill.

4. Key Features of the Bill

27. The key features that the Bill introduces into the GI Act are:
 - Enduring GIs;
 - Duration of registration and renewal fees;
 - No registration of offensive GIs;
 - 100% rule for a wine labelled with a New Zealand registered GI.

4.1. Enduring Geographical Indications

28. Clause 7 of the Amendment Bill inserts a new section 6A into the GI Act. New section 6A provides that the terms “New Zealand”, “North Island” and “South Island” will be treated as being New Zealand registered geographical indications from the date of commencement of the GI Act. There will be no need for anyone to apply to register these terms.
29. These terms are currently being used as geographical indications by New Zealand winemakers, but they might not be considered to meet the definition of geographical indication in section 6(1) of the GI Act. They will be registered indefinitely (no renewal fees will be payable) and it will not be possible for third parties or the Registrar to alter these registrations or remove them from the Register of GIs (“**the Register**”).
30. Regulation 7 of the Wine Regulations 2006 requires wine to be labelled with its country of origin. This means that a wine produced in New Zealand will need to carry the words “New Zealand” on the label even if the wine does not otherwise meet the requirements for use of the term “New Zealand” as a New Zealand registered geographical indication.
31. To ensure that wine can meet the country of origin labelling requirements without breaching the GI Act, clause 18 of the Bill inserts a new section 32A into the GI Act. New section 32A provides that the use of the words “New Zealand” on a wine label will not be treated as use of “New Zealand” as a geographical indication if:
 - the words are used to comply with country of origin labelling requirements; and
 - they are used in a manner which will not mislead the public.

4.2. Duration of Registration – Renewal Fees

32. Under the GI Act as enacted, once a geographical indication is registered, it is registered indefinitely, with no requirement to pay renewal fees to keep the registration current. This could cause problems for IPONZ.
33. IPONZ have estimated that, once the GI Act comes into force, there will be 25 – 30 applications for registration filed within the first two years, mostly from the local wine industry. In later years only 0 – 2 applications per year are expected. The income from ongoing applications will probably not be sufficient to cover the costs of maintaining the Register in the absence of a renewal fee system.
34. To deal with this issue, Clause 9 of the Bill inserts a new section 9A into the GI Act that provides that a registered GI is registered for 10 years from the date of registration. Clause 27 inserts a new section 47A into the GI Act which provides that the registration of a geographical indication may be renewed for further periods of 10 years if the prescribed renewal fee is paid.
35. It is intended that some of the renewal fee income will be used to recover some or all of the costs incurred by the Registrar in administering the GI registration system established by the GI Act. Clause 30 of the Bill inserts a new section 57(2) into the GI Act that authorises this. It is intended that all of the costs of administering the GI registration system will be recovered from fees levied by the Registrar.
36. This will allow renewal fees to be used to cover some of the costs of examining applications to register geographical indications, which will allow the initial application fees to be set at a level lower than would otherwise be the case. This will reduce the risk that some wine producers will be deterred from registering GIs due to the initial cost.
37. The use of renewal fees to cover some of the costs of administering intellectual property registration systems and keep application fees low is not unusual – this approach is provided for in the Patents Act 2013 and the Trade Marks Act 2002, and in many other jurisdictions.
38. If the registration of a GI is not renewed, the registration will lapse. If a registration does lapse, it would be possible for the registration to be restored if an application to restore the registration is made within 12 months of lapsing. This is provided for in proposed new section 47D for the GI Act, inserted by clause 27 of the Bill.
39. If a lapsed registration is not restored within 12 months of lapsing, the GI concerned could be re-registered if a new application to register the GI is made, and the appropriate application fee paid.

4.2.1. The renewal period

40. The Bill proposes a ten year renewal period in new section 9A.

4.2.2. No registration of offensive geographical indications

41. Clause 10 of the Bill inserts a new section 13A into the GI Act. This provides that the Registrar must not register a GI if the indication, its use, or registration would be likely to be offensive to a significant section of the community including Maori.
42. This provision mirrors a similar provision in the Trade Marks Act 2002 (section 17(1)(c)). It will ensure that a term that might have been refused registration as a trade mark on offensiveness grounds cannot be registered as a GI.
43. Use or registration of some Maori place names in association with alcoholic beverages may be offensive to Māori. An example of this may be the use of a place or other geographical name with an association with wahi tapu.

100% rule for wine labelled with a New Zealand registered geographical indication

44. Under section 21 of the GI Act as enacted, a wine could be labelled with a New Zealand registered GI if at least 85% of the wine was made from grapes harvested in the region to which the geographical indication relates. This could mean that a wine carrying a New Zealand registered GI could contain up to 15% of wine from another country.
45. Using New Zealand registered GI on wine which contains wine from another country may mislead consumers, and diminish the integrity and reputation of New Zealand wines.
46. A GI gives consumers information about a characteristic of a wine, such as its quality, or reputation, that consumers associate with the region to which the geographical indication relates, and helps consumers distinguish wines from that region from wines from other regions. Blending wine made from grapes grown in New Zealand with wine made from grapes grown in another country may remove that association with a particular region, and dilute the reputation of New Zealand registered GI.
47. To deal with this issue, clause 11 of the Bill amends section 21 of the GI Act to insert a new section 21(ab). This provides that, in order for a wine to be labelled with a New Zealand registered GI, all (100%) of the wine must be made from grapes harvested in New Zealand.



BRIEFING

**Geographical Indications (Wines and Spirits) Registration Act 2006
– Draft Regulations**

Date:	25 November 2015	Priority:	High
Security classification:	In Confidence	Tracking number:	1623 15-16

Action sought		
	Action sought	Deadline
Hon Paul Goldsmith Minister of Commerce and Consumer Affairs	Agree to the recommendations.	3 December 2015

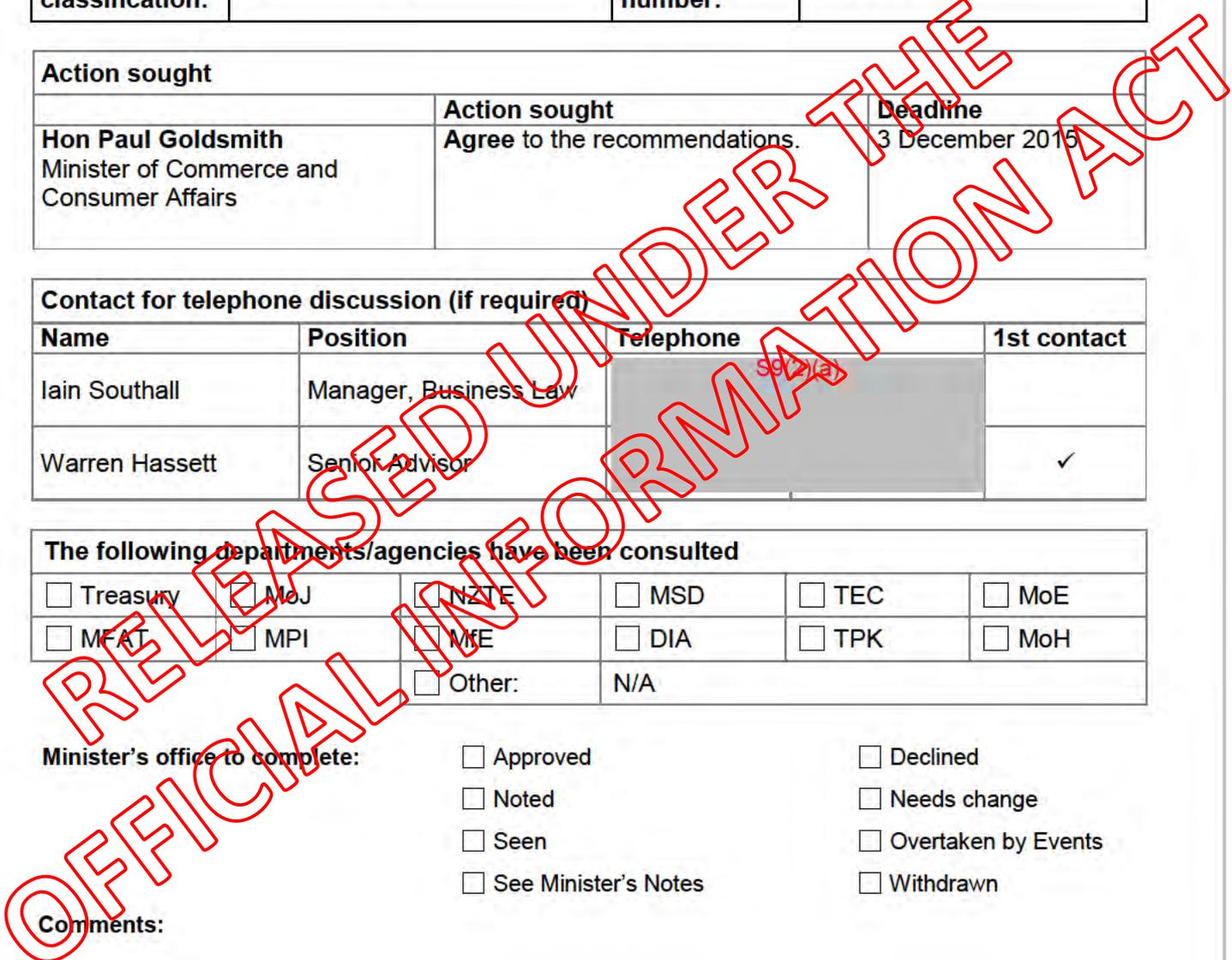
Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Iain Southall	Manager, Business Law	s9(2)(a)	
Warren Hassett	Senior Advisor		✓

The following departments/agencies have been consulted					
<input type="checkbox"/> Treasury	<input type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input type="checkbox"/> MFAT	<input type="checkbox"/> MPI	<input type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> TPK	<input type="checkbox"/> MoH
<input type="checkbox"/> Other:			N/A		

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments:





BRIEFING

Geographical Indications (Wines and Spirits) Registration Act 2006 – Draft Regulations

Date:	25 November 2015	Priority:	High
Security classification:	In confidence	Tracking number:	1623 15-16

Purpose

To seek your agreement to the attached submission to the Cabinet Economic Growth and Infrastructure Committee ('**EGI**'), which seeks approval to instruct the Parliamentary Counsel Office to draft an exposure draft of the Regulations required to implement the Geographical Indications (Wines and Spirits) Registration Act 2006 ('the **GI Act**').

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

a. **Note** that:

- i. in December 2014, Cabinet agreed to bring the GI Act into force;
- ii. before the GI Act can be brought into force, some amendments are required which will be made by the Geographical Indications (Wines and Spirits) Registration Amendment Bill, which was introduced on 3 November 2015;

Noted

b. **Note** that regulations need to be made before the GI Act comes into force to implement the geographical indication registration system established by the GI Act;

Noted

c. **Agree** that, given the similarities between geographical indications and trade marks, the GI Act regulations be based largely on the relevant provisions of the Trade Marks Act 2002 and the Trade Marks Regulations 2003 (and in some instances the Patents Regulations 2014) as set out in Annex 1 of the attached submission to EGI.

Agree/Disagree

d. **Agree** that public consultation on the proposed GI Act regulations be based on an exposure draft of the proposed regulations, rather than a discussion document.

Agree/Disagree

Background

1. In December 2014, Cabinet agreed to bring the GI Act into force. The Geographical Indications (Wines and Spirits) Registration Amendment Bill 'the **Amendment Bill**', when enacted, will enable this. The Amendment Bill has a priority three on the government's legislative program.
2. The December 2014 Cabinet paper noted that there were a number of amendments required to the GI Act before it could be brought into force. These amendments were intended to improve the Act's workability and ensure that the registration process runs smoothly and sustainably.
3. Cabinet approved further amendments to the GI Act in March 2015 and October 2015 (EGI Min (15) 6/9 refers and EGI -15-Min 0112 refers). These amendments have been incorporated into the Amendment Bill which was introduced to Parliament on 3 November 2015.

Regulations for the GI Act

4. Before the GI Act can be brought into force, regulations dealing with the procedures for registering geographical indications ('GIs') under the GI Act and setting fees will need to be developed and gazetted. It is intended that the development of these regulations will proceed in parallel with the parliamentary process for the Amendment Bill.
5. GIs are similar to trade marks. They generally consist of a word or words, or occasionally a symbol. Like applications to register trade marks, applications to register GIs will be examined to determine eligibility for registration, interested parties will be able to oppose registration or apply to have a registration removed, and registrations will need to be kept in force through the payment of renewal fees.
6. In light of these similarities, there would be considerable value in basing the GI Act regulations largely on the procedures set out in the Trade Marks Act 2002 and the Trade Marks Regulations 2003. This would simplify the administration of the GI Act by the Intellectual Property Office of New Zealand (IPONZ).
7. Since many of the persons who are likely to apply to register GIs will also have applied to register trade marks themselves, or have dealt with the Commissioner of Trade Marks in other trade mark related matters, adopting procedures based on the Trade Marks Regulations 2003 is likely to make it easier and cheaper for such persons to deal with the Registrar of Geographical Indications.
8. Although it is intended that the bulk of the Regulations will be based on the Trade Mark Regulations 2003, there are two areas where it would be desirable to depart from the Trade Mark Regulations. One area relates to oppositions, where the procedure will be based on the procedures in the Patents Regulations 2014. This reflects the fact that the nature of the pleadings and evidence in GI oppositions is likely to be more complex than those encountered in trade mark oppositions.
9. The other relates to the Registrar's ability to control proceedings, such as hearings or oppositions. In this case the relevant parts of the Patents Regulations 2014 represent a more up-to-date approach than that currently in the Trade Marks Regulations 2003.

Exposure Draft

10. The usual process followed when developing regulations would be to issue a discussion document, followed by, if necessary an exposure draft. However, as the GI regulations will be based on the existing set of Trade Marks Regulations, there would seem to be little to be gained by releasing a conventional consultation document. It would be quicker and simpler to draft a set of regulations, and release the draft regulations as an exposure draft for comment by interested persons. This consultation process would take place in parallel with the passage of the Amendment Bill through Parliament.

11. This approach will allow final approval to be sought for the regulations so that they can be gazetted promptly once the Amendment Bill has been passed. This is likely to allow the GI Act to be brought into force sooner than might otherwise be the case.
12. Prompt entry into force of the GI Act is desirable given the importance given to it by the wine industry, and that entry into force will support New Zealand's interests in negotiating a free trade agreement with the EU. The EU is taking a keen interest in the progress of the Amendment Bill, and the implementation of the GI Act.
13. Seeking approval now to draft an exposure draft of the GI Act regulations will also allow the Parliamentary Counsel Office to commence drafting in January 2016. This will mean that the completed draft may be available by late February or early March 2016, so that it can be released by the time the Commerce Select Committee considers the Amendment Bill. If approval is not sought now, it is possible that PCO may not be able to complete the exposure draft in this timeframe, especially given the volume of drafting work that will be needed as part of TPP implementation.

Submission to EGI

14. A draft submission to EGI is attached as Annex 1 to this briefing. This submission seeks approval to issue drafting instructions to the Parliamentary Counsel Office to draft an exposure draft of the regulations.
15. Once the exposure draft has been finalised, we will seek Cabinet approval to release the exposure draft. At the same time, we also intend to seek approval to release a consultation document regarding the fees to be charged in relation to the GI registration process. At this stage officials anticipate that this will occur in the first quarter of 2016.
16. In relation to fees, as set out in a previous briefing to you in July 2015 (0293 15-16), IPONZ estimates that the initial application fee will be around \$5000+GST, with a renewal fee payable every five years of around \$2500 +GST. New Zealand Winegrowers, the representative body for local grape growers and winemakers, has indicated that it is happy with the fees of this level. The organisation recognises that fees will need to be higher than those for similar registered intellectual property rights, such as trade marks.

Next Steps

17. We recommend that you sign, if you agree, the attached submission to EGI, and submit it to the Cabinet Office by 10am, 3 December 2015, so that the submission can be considered by EGI at its meeting on 9 December.

Annexes

Annex One: Draft submission to EGI

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

In Confidence

Office of the Minister of
Commerce and Consumer Affairs

Chair,
Cabinet Economic Growth and Infrastructure Committee

Geographical Indications (Wines and Spirits) Registration Act 2006 – Proposed Regulations

Proposal

- 1 This submission seeks approval for the issuance of drafting instructions for an exposure draft of the regulations (**the Regulations**) required for implementation of the Geographical Indications (Wines and Spirits) Registration Act 2006 (**the GI Act**).

Executive Summary

- 2 The GI Act, will, when brought into force, establish a system for registering Geographical Indications (**GIs**) for wines and spirits. A GI is a name, usually a regional name, which is used to identify the origin of goods where some quality of the goods is influenced by their geographical origin. Examples of GIs include Champagne and Scotch Whisky. On 10 December 2014, Cabinet agreed that the GI Act be brought into force (ECI Min (14) 21/8 refers).
- 3 Before the GI Act can be brought into force, some amendments are required to clarify drafting and correct inconsistencies in the GI Act as enacted and to ensure that the registration process is workable, sustainable and cost-effective (ECI Min (15) 6/9 refers). These amendments have been incorporated into the Geographical Indications (Wines and Spirits) Registration Amendment Bill (**the Amendment Bill**), introduced into Parliament on 3 November 2015.
- 4 Regulations will be required to implement the registration system established by the GI Act. No regulations were developed at the time the GI Act was enacted. The regulations will cover the procedures for examination and registration of a geographical indication, and those required for maintenance of the Register of Geographical Indications (**the Register**). The Register will be administered by the Intellectual Property Office of New Zealand (IPONZ).
- 5 Given the similarities between GIs and trade marks, I propose that the Regulations be largely based on the relevant provisions of the Trade Marks Act 2002 and the Trade Marks Regulations 2003. This will simplify administration by IPONZ as well as minimising the costs involved in implementing the GI Act. It will also make the process easier for those applying to register geographical indications, as they are likely to be familiar with the trade mark registration system as applicants and owners of registered trade marks.
- 6 As the Regulations will be largely based on the Trade Marks Act 2002 and the Trade Marks Regulations 2003, I recommend that, instead of producing a separate consultation document, an exposure draft of the regulations be produced, which can then be released, with commentary for public comment. This will allow a final draft of the regulations to be produced much sooner than would otherwise be the case, and will mean that the regulations are likely to be ready to be gazetted when the Amendment Bill is enacted. Once the exposure draft is complete, Cabinet approval will be sought to release the draft for public comment.

- 7 One of the main reasons for bringing the GI Act into force at this time is to support New Zealand's interests in negotiating a free trade agreement with the European Union ('[EU]'). In light of this, and the interest shown in the implementation of the GI Act by the EU, it is desirable that the GI Act be brought into force as soon as possible.
- 8 The Regulations will cover various procedures associated with the making and examination of applications to register GIs, alter or remove registrations, opposition procedures and hearings before the Registrar of Geographical Indications ('the Registrar').
- 9 The Regulations will also need to set out a schedule of fees. The costs of administering the GI registration system will be recovered entirely from fees paid by applicants for registration and others who interact with the registration system. It is intended that approval will be sought to release a consultation document regarding fees at the same time approval is sought to release the exposure draft of the proposed regulations.

Background

What is a Geographical Indication?

- 10 A GI is an indication (usually a regional name) used to identify the geographical origin of goods that have a given quality, reputation or other characteristic essentially attributable to their geographical origin. GIs have traditionally been used particularly in the EU for agricultural goods and foodstuffs that have qualities that are claimed to be influenced by unique local characteristics like climate and soil.
- 11 The use of GIs by New Zealand producers is largely confined to the wine industry, although foreign wine producers selling into the New Zealand market also use GIs. In the New Zealand spirits market, only foreign distillers use GIs to identify their products.
- 12 The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ('the TRIPS Agreement') obliges New Zealand to provide protection for GIs for wines and spirits.
- 13 GIs are currently protected in New Zealand by range of measures, including the tort of passing off, the Fair Trading Act 1986, the Trade Marks Act 2002, standard 2.7.5 of the Australia New Zealand Food Standards Code (spirits) and the Wine (Specification) Notice 2006 (wine).

The Geographical Indications (Wines and Spirits) Registration Act 2006

- 14 The GI Act is intended to provide a registration regime for GIs for wines and spirits. It replaced the earlier Geographical Indications Act 1994, which provided for registration of GIs for all products. The 1994 Act was never brought into force.
- 15 In 2007, Cabinet agreed that implementation of the GI Act be delayed (EDC Min (07) 29/5 refers). In December 2014, Cabinet agreed to rescind this decision and bring the GI Act into force. Before the GI Act can be brought into force, some amendments are required to clarify drafting and correct inconsistencies in the GI Act as enacted and to ensure that the registration process is workable, sustainable and cost-effective (EGI Min (15) 6/9 refers). These amendments have been incorporated into the Geographical Indications (Wines and Spirits) Registration Amendment Bill introduced into Parliament on 3 November 2015. This Bill has a priority 3 on the 2015 Legislative Program.
- 16 The GI Act establishes a formal register for GIs. Any 'interested person' will be able to apply to register a GI. The application will be subject to an examination process by the Registrar and a GI will only be registered if the criteria set down in the Act are satisfied. The Act also establishes procedures to enable interested third parties to challenge the Registrar's decision to register, remove or alter a registered GI, and to apply to remove or alter the registration of a GI. The registration process will be administered by IPONZ.

- 17 Once the Amendment Bill is enacted it will be possible to bring the GI Act into force by Order in Council once the Regulations are gazetted and IPONZ has completed its preparations for implementation.
- 18 The main reasons for bringing the GI Act into force at this time are to support the trade strategies of the New Zealand wine industry, and to support New Zealand's interests in negotiating a free trade agreement between New Zealand and the EU. I am aware that the EU has taken a strong interest in the implementation of the GI Act, and it would be desirable to bring the GI Act into force as soon as possible.

Comment

Need for Regulations

- 19 Regulations will need to be made and gazetted before the GI Act can be brought into force. No regulations were drafted at the time the GI Act was enacted. The Regulations will cover a number of matters including:
 - The documents and other information required to accompany an application for registration of a geographical indication;
 - Procedures for examination and acceptance of an application for registration of a geographical indication;
 - Procedure governing opposition by interested third parties to acceptance of a registration;
 - The procedures to be followed for applications to remove or alter a registered geographical indication, including procedures for third parties to oppose an application for removal or alteration;
 - Procedures governing hearings before the Registrar where the Registrar has exercised a discretion adversely in relation to an application or a registration;
 - Miscellaneous matters, including extensions of time, renewals of registration, changes of name or substitution of registrants.
- 20 A detailed description of the matters the Regulations will include is set out in Annex 1 to this submission.

Regulations to be based on the Trade Marks Act 2002 and the Trade Marks Regulations 2003

- 21 GIs are similar to trade marks in that they consist of a word or words, or occasionally a symbol. Like applications to register trade marks, applications to register GIs will be examined to determine eligibility for registration, interested parties will be able to oppose registration or apply to have a registration removed, and registrations will need to be kept in force through the payment of renewal fees.
- 22 Given the similarities with trade marks, the procedures required to implement the GI Act are very similar to those set out in the Trade Marks Act 2002 and the Trade Marks Regulations 2003. Some procedures, such as opposition to acceptance of an application, which are set out in the Trade Marks Act 2002, are left to regulations in the GI Act.
- 23 There are considerable advantages in basing the GI Act regulations on the relevant parts of the Trade Marks Act 2002 and the Trade Marks Regulations 2003.

- 24 This will simplify the implementation of the GI Act by IPONZ, reducing both the time and costs involved with implementation. Many of the persons who are likely to apply to register GIs, or who otherwise have an interest in registered GIs are also likely to be familiar with the Trade Marks Act 2002 and the Trade Marks Regulations 2003. This is because they are likely to have applied to register trade marks themselves, or have dealt with the Commissioner of Trade Marks in other trade mark related matters. Adopting procedures based on the Trade Marks Regulations 2003 is likely to make it easier and cheaper for such persons to deal with the Registrar.
- 25 Although it is intended that the bulk of the Regulations will be based on the Trade Mark regulations, there are two areas where it would be desirable to depart from the Trade Mark Regulations. One area relates to oppositions, where the procedure will be based on the procedures in the Patents Regulations 2014. This reflects the fact that the nature of the pleadings and evidence in GI oppositions is likely to be more complex than those encountered in trade mark oppositions.
- 26 The other relates to the Registrar's ability to control proceedings, such as hearings or oppositions. In this case the relevant parts of the Patents Regulations 2014 represent a more up-to-date approach than that currently in the Trade Marks Regulations 2003.

Release of exposure draft of the proposed regulations

- 27 As the Regulations will be based on the existing set of Trade Marks Regulations, there would seem to be little to be gained by releasing a conventional consultation document. It would be quicker and simpler to draft a set of regulations, and release the draft regulations as an exposure draft for comment by interested persons. This consultation process would take place in parallel with the passage of the Amendment Bill through Parliament.
- 28 After any amendments to the Regulations that might be considered necessary following public comment, final approval for the Regulations can be sought in time for them to be gazetted promptly once the Amendment Bill has been enacted. This is likely to allow the GI Act to be brought into force sooner than might otherwise be the case.
- 29 I consider the prompt entry into force of the GI Act is desirable given the importance given to it by the wine industry, and that entry into force will support New Zealand's interests in negotiating a free trade agreement with the EU. I am aware that the EU is taking a keen interest in the progress of the Amendment Bill, and the implementation of the GI Act.
- 30 I therefore recommend that Cabinet agree to the issuance of instructions to the Parliamentary Counsel Office to draft an exposure draft of regulations for the GI Act. The draft would take account of amendments proposed to be made to the GI Act in the Amendment Bill. I will seek Cabinet approval for the release of the exposure draft.

Fees

- 31 As discussed in earlier submissions to Cabinet in relation to the Amendment Bill, it is intended that the costs of setting up and maintaining the GI registration system established by the GI Act be recovered entirely from third party fees. The issue of fees will be the subject of a separate consultation document which will be released at the same time the exposure draft of the Regulations is released for public comment. Approval will be sought from Cabinet before the consultation document relating to fees is released.

- 32 It is likely that the number of geographical indications registered under the Act will be small. Officials estimate that there will be about 30 applications in the first three years after the GI Act enters into force, most from New Zealand wine growers. After this, there are likely to be no more than 1-2 applications per year, mainly from foreign applicants. However, there is considerable uncertainty in those estimates.
- 33 Given the small number of applications, IPONZ have endeavoured to keep the costs involved as low as possible. The work involved will be done by existing IPONZ staff, with no additional staff being required. In addition, the IT work required, including development of a suitable website, be done 'in house' rather than contracted out to an external provider. The GI register will be online, but the system will be basic, and IPONZ will keep development costs as low as possible.
- 34 Nevertheless, because the costs are being spread over a small number of applications, the application and renewal fees will be significantly higher than those charged for other registered intellectual property rights. On this basis, IPONZ estimates that the initial application fee are likely to be around \$5000+GST, with a renewal fee payable of around \$2500+GST.
- 35 New Zealand Winegrowers, the representative body for local grape growers and winemakers, has indicated that it is happy with the fees of this level. The organisation recognises that fees will need to be higher than those for similar registered intellectual property rights, such as trade marks.
- 36 By way of comparison, the fee charged to apply to register a geographical indication in Australia is AUD27,500 (including GST), and other fees may be charged as necessary on a cost-recovery basis. There is no requirement to pay renewal fees.

Consultation

- 37 The following agencies have been consulted: the Ministry of Foreign Affairs and Trade and the Ministry for Primary Industries have been consulted on the development of the recommendations in this paper and support them. The Department of Prime Minister and Cabinet has been informed.

Financial Implications

- 38 The costs of the GI registration system will be fully recovered from third party fees and there are no financial implications from the release of this exposure draft.

Legislative Implications

- 39 The recommendations contained in this paper will lead to the drafting of an exposure draft regulations to be made under the GI Act.

Regulatory impact Analysis

- 40 The Regulatory Impact Analysis requirements do not apply to this paper. A Regulatory Impact Statement was prepared when the GI Act was introduced and is available at <http://www.mbie.govt.nz/publications-research/publications/intellectual-property/gi-cabinet-paper-and-ris.pdf>. A full Regulatory Impact Analysis will be provided when final approval for the Regulations is sought.

Publicity

- 41 A press statement will be issued when the exposure draft is released for public comment.

Recommendations

42 Minister of Commerce and Consumer Affairs recommends that the Committee:

1. **Note** that the Geographical Indications (Wine and Spirits) Registration Act 2006 (**the GI Act**) has not been brought into force;
2. **Note** that:
 - 2.1. in December 2014, Cabinet agreed to bring the GI Act into force;
 - 2.2. Cabinet also agreed to the Ministry of Business, Innovation and Employment, working closely with the Ministry of Foreign Affairs and Trade and the Ministry of Primary Industries commencing work to implement the GI Act (EGI Min (14) 21/8 refers);
 - 2.3. before the GI Act can be brought into force, some amendments are required;
 - 2.4. that the amendments have been incorporated into the Geographical Indications (Wines and Spirits) Registration Amendment Bill, which was introduced to Parliament on 3 November 2015;
3. **Note** that in order to bring the GI Act into force, regulations will be required to implement the GI registration system established by the GI Act;
4. **Agree** that the GI Act regulations be based largely on the relevant provisions of the Trade Marks Act 2002 and the Trade Marks Regulations 2003 (with some processes and procedures to be based on the Patents Regulations 2014) as set out in Annex 1 of this submission.
5. **Agree** that public consultation on the proposed GI regulations be based on an exposure draft of those regulations.
6. **Agree** that the Minister of Commerce and Consumer Affairs issue drafting instructions to the Parliamentary Counsel Office to draft an exposure draft of the GI regulations to give effect to recommendations 4 and 5 above.
 7. **Authorise** the Minister of Commerce and Consumer Affairs to make decisions on any minor or technical matters that might arise during the drafting process;
8. **Note** that the Minister of Commerce and Consumer Affairs will seek approval from Cabinet before releasing the exposure draft of the Regulations, together with a consultation document seeking public input on a proposed fee structure for the GI Act.

Hon Paul Goldsmith
Minister of Commerce and Consumer Affairs

___/___/___

Annex 1: Proposed Regulations

Applications, notices and request to the Registrar

1. This part of the Regulations will deal with how applications are made to the Registrar, and the formal requirements for documents accompanying the application. It is proposed that these regulations be modelled on regulations 4 – 7 and 9 – 11 of the Trade Mark Regulations 2003.
2. Regulation 8 of the Trade Mark Regulations requires documents or information to be provided through the IPONZ Case Management Facility (CMF). IPONZ does not intend to use the CMF for GIs, as the low number of applications expected would not justify the cost of modifying the CMF appropriately.
3. It is proposed that applicants will be required to submit documents and information electronically, in a form approved by the Registrar.

Filing date

4. This regulation relates to how the date of filing of a document is determined. It is proposed that this mirror Regulation 10 of the Trade Marks Regulations.

Addresses

5. These regulations set out requirements for applicants and other parties to proceedings under the regulations to provide appropriate addresses. It is proposed that the regulations relating to addresses mirror Regulations 13 – 18 of the Trade Mark Regulations 2003.

Agents

6. Agents will be permitted to act for applicants for registration, or for other parties to proceedings under the regulations. It is proposed to adopt regulations that reflect Regulations 19 – 25A of the Trade Mark Regulations 2003.

Commissioner's Control of Proceedings

7. It is proposed that the Registrar be given powers to control proceedings before the Registrar. The proposed regulations will be based on Regulations 155 – 162 of the Patents Regulations 2014

Making an application for registration of a New Zealand GI

8. This part of the regulations sets out the requirements for filing an application to register a New Zealand GI. In this context, a New Zealand GI is one that identifies a wine or spirit as originating from a region within New Zealand.
9. The regulations will set out the information that must be provided before an application is accorded a filing date. The filing date will be the date by which all of the following information is filed and the application fee paid:
 - i. Application needs to be made by an interested party (including paying an application fee).

- ii. The following information must be provided in an application:
 - a. Applicant's name and address, plus the information set out in Reg 42(2) and (3) of the Trade Mark Regulations 2003;
 - b. Agent's name and address, if applicable;
 - c. Sufficiently clear representation of the indication;
 - d. Whether the geographical indication relates to a wine or spirit;
 - e. Boundaries of the region to which the GI relates represented by:
 - i. Textual description of the boundary; and
 - ii. an appropriate map such as LINZ TOPO250 or TOPO50 map showing the boundary to support the description.
 - f. An explanation of the given quality, reputation or other characteristic that is essentially attributable to the geographic region defined by the boundaries;
 - g. Formal supporting evidence regarding the given quality, reputation or other characteristic; and
 - h. Any proposed conditions on the use of the GI.

10. In addition, the following information will need to be provided before an application to register a GI can be accepted. Items (ii) – (viii) must be provided in the form of evidence:

- i. The applicant's address for service
- ii. Narrative of the history of the founding and development of the area for the growing of grapes for wine or the production of spirits;
- iii. Narrative of the history relating to the use of indication as a geographical indication, including:
 - a. whether, and to what extent, the indication is known to wine and spirits retailers and wine and spirits consumers beyond the boundaries of the area;
 - b. whether, and to what extent, the indication has been traditionally used in the area or elsewhere;
- iv. whether or not the GI is a place name approved by New Zealand Geographic Board (Ngā Pou Taunaha Aotearoa) as a name for a geographic feature within the proposed boundaries;
- v. Where the GI is not a place name approved by the New Zealand Geographic Board, whether the name is of cultural significance to the local community, including Maori, and what steps have been taken by the applicant to ensure that use of the geographical indication is not offensive to a significant section of the community, including Maori.
- vi. a description of the degree of discreteness and homogeneity of the geographical indication in respect of the following attributes:
 - a. the geological formation of the area;

- b. the degree to which the climate of the area is uniform, having regard to the temperature, atmospheric pressure, humidity, rainfall, number of hours of sunshine and any other weather conditions experienced in the area throughout the year;
- c. whether part or all of the area is within a natural drainage basin;
- d. for the growing of grapes, the availability of water from an irrigation scheme;
- e. elevation of the area; and
- f. any relevant traditional divisions within the area; and
- vii. any other information relevant to the Registrar determining whether the geographical indication for that identifies a wine or spirit as a given quality, reputation or other characteristic essentially attributable to its geographical origin.
- viii. any other information the Registrar may request the applicant to provide.

Making an application for registering a foreign geographical indication

11. These regulations set out the requirements for filing an application to register a foreign geographical indication. In this context, a foreign geographical indication is one that identifies a wine or a spirit as originating in a region outside New Zealand.
12. The regulations will set out the information that must be provided before an application is accorded a filing date. The filing date will be the date by which all of the following information is filed and the application fee paid:
 - i. Applicant's name and address and address for service;
 - ii. Agent's name and address, if applicable;
 - iii. Sufficiently clear representation of the indication;
 - iv. A transliteration of any foreign characters in the geographical indication;
 - v. A translation of any foreign words in the geographical indication;
 - vi. Whether the GI relates to a wine or spirit;
 - vii. The country or countries of origin where the GI is protected.
 - viii. A statement that the GI is protected in the country of origin and that the GI has not fallen into disuse in the country of origin;
 - ix. Any proposed conditions on the use of the foreign GI in New Zealand.
 - x. A copy of the rules, regulations or other document setting out the scope of protection given to the GI in its country of origin, including any conditions as to the use of the GI. If these documents are not in English, a translation must also be filed

13. In addition, before the application can be accepted, the applicant must provide any other information that the Registrar may request the applicant to provide.
14. If an application is made to register a translation or transliteration of a foreign geographical indication the application must be accompanied by the same information that must be provided with an application to register a foreign geographical indication.
15. An application to register a translation or transliteration of a foreign geographical indication will be treated as separate application(s) and independent of an application to register the geographical indication itself.

Examination and acceptance of an application

16. This part of the regulations set out how the Registrar must deal with an application to register a GI. These regulations are made under s37(2)(a) of the GI Act. It is proposed that the regulations will include the requirements set out below. Requirements (i) – (iii) are based on sections 39 – 41 of the Trade Marks Act 2002:
 - i. The Registrar must examine the application to determine whether it complies with the requirements of the GI Act and regulations;
 - ii. An application must be accepted, subject to any conditions the Registrar sees fit, if the Registrar considers that it complies with the requirements of the GI Act and regulations;
 - iii. The applicant must be given a non-compliance notice if the Registrar considers that an application does not meet the requirements of the Act and regulations, and give the applicant an opportunity to amend the application or respond to the objections raised;
 - iv. If a non-compliance notice is sent the Registrar will set a deadline of 6 months for responding/overcoming all objections raised in the non-compliance report. If the applicant responds to a non-compliance notice, the Registrar may issue a further non-compliance notice, it is proposed that the Registrar will have the power to issue a further non-compliance notice if the Registrar considers that the requirements of the Act and regulations have not been complied with. If a further notice is issued, the a further deadline for response will be set/deadline for overcoming all objections will be extended.
 - v. It is proposed that the approach to setting and extending deadlines will mirror the approach taken in Regulation 61, 62 and 62A of the Trade Marks Regulations 2003. The only difference proposed is that the deadline run from the date of issue of the compliance notice, rather than from the date of filing of the application (which is what happens with trade mark applications¹). This is because the examination process for geographical indications is much more complex than for trade marks. Setting the deadline to run from the filing date of the application may cause problems if examination is delayed, or takes longer than anticipated.
 - vi. If an application is accepted, the fact of acceptance must be advertised by the Registrar. This provision is based on s46 of the Trade Marks Act 2002.

¹ See Regulation 61 of the Trade Mark Regulations 2003.

17. If the Registrar decides to reject an application to register a GI, the applicant must be notified, and hear the applicant if the applicant requests a hearing. It is proposed that the procedure be based on that in Regulations 69 and 70 of the Trade Marks Regulations 2003.

Opposition to acceptance

18. Once acceptance of an application to register a GI is advertised, it will be possible for interested parties to oppose registration. The opposition procedure will be set out in regulations made under s37(2)(b) of the GI Act. The procedure set out in the regulations will be based on sections 47 and 49 of the Trade Marks Act 2002, and Regulations 91 - 94 of the Patents Regulations 2014. The reason for using the Patents Regulations as a basis for the opposition procedure is to take account of the fact that the pleadings are likely to be considerably more 'technical' than those normally encountered in trade mark oppositions.

When a GI must be registered

19. It is proposed that this regulation, made under s37(2)(c) of the GI Act will require the Registrar to register a geographical indication if the application has been accepted, and no opposition has been filed. If an opposition has been filed the indication must be registered if the result of the opposition is that it be registered. It is proposed that this provision be based on s50 of the Trade Marks Act 2002.

Application to remove a GI from the Register (s45 of the GI Act)

20. Under s45 of the GI Act, the Registrar may remove a geographical indication from the register if satisfied that one or more of the grounds specified in s45(1) exist, either on the Registrar's own initiative, or on the application of an interested party. Section 47 of the GI Act provides that the procedures for removal, and any opposition to removal will be governed by regulations made under s57 of the GI Act.
21. If the Registrar decides to remove a geographical indication from the register, the Registrar will be required to advertise the fact and notify the registrant. Any interested person will be able to oppose the removal proposed by the Registrar.
22. The opponent will be required to file a notice of opposition setting out the grounds on which the proposed removal is opposed. It is proposed that the procedure be based on the procedure set out in Regulation 140 of the Patents Regulations 2014 that allows persons to oppose a correction to the Patents Register initiated by the Commissioner of Patents. There is no corresponding procedure in the Trade Marks Act 2002 or Trade Marks Regulations 2003.
23. Where an interested party applies for removal of a registration, it is proposed that the regulations will require a procedure similar to that set out in Regulations 94 – 105 of the Trade Mark Regulations 2003 for revocation of a trade mark registration. The applicant will, in addition to the usual information relating to name, agent, etc, be required to set out the grounds for removal, and the basis for the applicant's claim to be an interested person.
23. The Registrar will be required to inform the person recorded on the Register as the registrant of any application for removal, and advertise the application for removal. The notice sent to the registrant must include a statement of the grounds of removal relied upon by the Registrar or interested party.

24. It is proposed that any interested person (which would include the person recorded as the registrant) can oppose the application for removal, whether initiated by the Registrar or an interested party.
25. Where an interested party applies for removal of a registration, it is proposed that the regulations will require the opponent to, in addition to the usual information relating to name, agent, etc, be set out:
- i. the basis for the opponent's claim to be an interested person.
 - ii. a response to the grounds for removal cited by the interested party;
 - iii. a brief statement of the facts relied upon by the opponent in support of continued registration;
26. Before determining the application for removal, the Registrar must, if requested, hear the registrant and opponent, if any, consider the evidence and, determine, whether or not the geographical indication should be removed from the register. This provision is based on s49 of the Trade Marks Act 2002.

Application for alteration of a registered geographical indication (s46 of the GI Act)

27. Under s46, the Registrar may remove a GI from the Register either on his or her own initiative, or on the application of an interested party, if the Registrar is satisfied that the alteration is necessary. Section 47 of the GI Act provides that the procedures for alteration, and any opposition to alteration will be governed by regulations made under s57 of the GI Act.
28. It is proposed that the regulations governing alterations will mirror the regulations relating to removal of a registration with any necessary changes. They will allow any interested party (which includes the person recorded as the registrant) to apply for alteration of a registration, or oppose any proposal by the Registrar to alter a registration.

Hearing before exercise of the Registrar's discretion (s40 of the GI Act)

29. Under s40 of the GI Act, the Registrar must give an interested person an opportunity to be heard before exercising any discretionary power adversely to an interested party in relation to a registered geographical indication, or an application for registration. The procedures may be governed by regulations made under s57 of the GI Act.
30. It is proposed that the procedure be based on that provided for under Regulation 123 of the Trade Marks Regulations 2003.

Miscellaneous matters

Extensions of time

31. It is proposed that the extensions of time for extensions of time other than for responding to non-compliance reports provision will be the same as Regulation 32 of the Trade Mark Regulations 2003.

Expiry and Renewal of registration

32. It is proposed that the procedures relating to the issue of a notice of expiry of a registration, under s47B, and renewal of a registration under s47A of the GI Act will be modelled on Regulations 132 and 133 of the Trade Mark Regulations 2003.

Change of name of applicant

33. An interested party can apply to register a geographical indication. Once it is registered, the name of the applicant will be recorded as the 'registrant' in the register entry for that indication.

34. There may be occasions when it may be necessary to change the name or address of the registrant. Where the registrant's name or address has changed, it is proposed that a procedure along the lines of Regulation 135 of the Trade Mark Regulations be adopted.

Substitution of Registrant

35. An interested party can apply to register a geographical indication. Once it is registered, the name of the registrant will be recorded as part of the register entry for that indication.

36. If the registrant ceases to exist, or no longer wishes to be recorded on the register as an applicant, it is proposed that another interested party may apply to have its name recorded on the Register as registrant. It is also proposed that the Registrar will only be able to do this if appropriate evidence is filed.

37. It is proposed to require evidence that:

- i. The registrant consents to another person being substituted as registrant; or
- ii. That the registrant has ceased to exist; and
- iii. Any other evidence that the Registrar considers relevant.

In both cases the other person would have to satisfy the Registrar that it was an interested person, that is, a person that is eligible to apply to register the geographical indication concerned.



BRIEFING

Geographical Indications (Wine and Spirits) Registration Amendment Bill – Submission of Departmental Report

Date:	3 August 2016	Priority:	High
Security classification:	In Confidence	Tracking number:	0249 16-17

Action sought		
	Action sought	Deadline
Hon Paul Goldsmith	Agree that the attached Departmental Report be submitted to the Primary Production Select Committee.	8 August 2016

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Gus Charteris	Manager, Business Law	sg(1)(a)	
Warren Hassett	Senior Advisor		✓

The following departments/agencies have been consulted					
<input type="checkbox"/> Treasury	<input checked="" type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input checked="" type="checkbox"/> MFAT	<input checked="" type="checkbox"/> MPI	<input type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> TPK	<input type="checkbox"/> MoH
<input type="checkbox"/> Other:			N/A		

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments:

BRIEFING

Geographical Indications (Wine and Spirits) Registration Amendment Bill – Submission of Departmental Report

Date:	3 August 2016	Priority:	High
Security classification:	In Confidence	Tracking number:	0249 16-17

Purpose

To seek your approval to provide the Primary Production Select Committee with the attached Departmental Report on the Geographical Indications (Wine and Spirits) Registration Amendment Bill.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Agree** that the attached Departmental Report on the Geographical Indications (Wine and Spirits) Registration Amendment Bill be provided to the Primary Production Select Committee.

Agree / Disagree

Gus Charters
Manager, Business Law
Building, Resources and Markets, MBIE

..... /

Hon Paul Goldsmith
Minister of Commerce and Consumer Affairs

..... / /

Background

1. The Geographical Indications (Wine and Spirits) Registration Amendment Bill (“**the Bill**”) is currently being considered by the Primary Production Select Committee (“**the Select Committee**”). Officials have indicated to the Select Committee that the Departmental Report will be submitted to the Clerk of the Committee in time for the Committee to consider the Report at its meeting on Thursday 11 August 2016.
2. On 6 July 2016, MBIE released consultation documents seeking public submissions on proposed regulations for implementing the Geographical Indications (Wine and Spirits) Registration Act 2006 (“**the GI Act**”), and on a proposed fee structure for the GI Act (Briefing 3457 15-16 refers). Submissions closed on 29 July 2016. The Select Committee was informed that the consultation documents were being released.
3. The submission of the Departmental Report has been deferred until submissions closed on the draft regulations and fee structure. This was to allow the Report to include recommendations for amendment to the Bill in the event that submitters identified issues with the draft regulations that might need to be reflected in the Bill (for example to ensure that the regulation making power in the Bill is sufficient to support the draft regulations). None of the submissions identified any such issues.

Comment

4. The Departmental Report is attached. It covers the following issues:
 - a cover brief discussing the main points raised by submitters, and additional issues raised by officials; and
 - a table summarising the comments made by submitters, and officials’ response to those comments
5. The Committee received 38 submissions on the Bill. Most submissions came from wine producers. These submissions generally did not comment on any specific aspect of the Bill; instead they expressed general support for the implementation of the GI Act.
6. Submitters that did comment on specific aspects of the Bill included two patent attorney firms, the New Zealand Institute of Patent Attorneys, the New Zealand Law Society and New Zealand Winegrowers.
7. Where submitters suggested amendments, they were largely minor and intended to clarify wording or ensure that the relevant provisions achieved their policy intent. The Departmental Report recommends that most of the suggested amendments be adopted by the Committee. The most significant recommendations for amendment are outlined below.

Express Provision for Opposition Procedures

8. The Departmental Report recommends that there should be express provision in the GI Act for opposition procedures. This was raised in a number of submissions. Currently the GI Act leaves opposition procedures entirely to the associated regulations (which are in the process of development). The recommended amendment aligns with the approach taken in the Patents Act 2013 and the Trade Marks Act 2002, which explicitly provide for opposition procedures.

Consequential Amendment to the Trade Marks Act 2002

9. The Departmental Report recommends a change to the consequential amendment to the Trade Marks Act 2002 contained in clause 33 of the Bill. The intention behind this consequential amendment was to provide for a “first in time, first in right” approach for dealing with any conflicts between applications to register a trade mark and registered geographical indications or applications to register geographical indications.

10. Under the “first in time, first in right” approach, the Commissioner of Trade Marks would have the power to refuse to register a trade mark if the trade mark contained a registered geographical indication, or a geographical indication for which there was an application for registration. This power of refusal would be exercised if the date of application of the registered geographical indication, or the application for registration, was prior to the application date of the trade mark application concerned.
11. The wording of the relevant provision in the Bill as introduced did not fully achieve this objective, and an appropriate amendment has been recommended.

Renewal Period for Registered Geographical Indications

12. The Departmental Report recommends that the renewal regime for registered geographical indications require the payment of a renewal fee five years after registration and at ten year intervals thereafter. The Amendment Bill provides that geographical indication registrations must be kept in force by paying renewal fees at ten year intervals, with the first renewal fee due ten years after an indication is registered.
13. At the time the decision was made to include a ten year renewal period in the Bill, the Intellectual Property Office of New Zealand (“IPONZ”), which will administer the GI Act, had not completed their estimates of the costs of administering the geographical indication registration system. IPONZ has now updated its estimates of likely application volumes and modelled the likely costs and revenue flows based on these estimates. It is now estimated that there will be about 40 applications made to register geographical indications in the first three years, with between zero and two applications per year for the next seven years.
14. As we informed you in June 2016 (Briefing 3457 15-16 refers), if application volumes are lower than expected, or the number of applications are the same but spread over a longer period, this could have a significant effect on the cumulative surplus/deficit of administering the geographical indication registration system. The revenue gathered in the first few years after the entry into force of the GI Act could be less than the costs actually incurred by IPONZ in administering the Register of Geographical Indications.
15. This risk could be mitigated by adopting a renewal period different to the ten year period currently set in the Amendment Bill. Alternative options for renewal periods were set out in a consultation document on a fee schedule for the GI Act that was released by MBIE on 6 July 2016. Submissions closed on 29 July 2016. In this document, MBIE’s preferred option was for a scheme whereby the first renewal fee is payable five years from the date of registration, and at ten year intervals thereafter.
16. Submissions on this topic either supported MBIE’s preferred option, or expressed no opinion. As noted above, the Departmental Report recommends that the Bill be amended to provide for a renewal scheme reflecting MBIE’s preferred option. If the Committee accepts this recommendation, we will draft a paper for you to submit to Cabinet seeking their approval for this amendment.

Submission of the Departmental Report

17. We recommend that you approve the attached Departmental Report being provided to the Select Committee. The Report needs to be provided to the Clerk of the Committee no later than Tuesday 9 August 2016, so that it may be considered at the Select Committee’s meeting on 11 August.

Annex

Departmental Report on the Geographical Indications (Wine and Spirits) Registration Amendment Bill.

ANNEX: Departmental Report on the Geographical Indications (Wine and Spirits) Registration Amendment Bill

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

8 August 2016

Chair

Primary Production Select Committee

Departmental Report on the Geographical Indications (Wine and Spirits) Registration Amendment Bill

Purpose

1. This report provides analysis of submissions received by the Primary Production Select Committee on the Geographical Indications (Wine and Spirits) Registration Amendment Bill 2015 ("**the Bill**"). It also sets out recommendations for amendments arising from issues identified by officials (see **Annex 2** of this report).

Analysis of Submissions

2. A total of 38 submissions were received on the Bill. Most of the submissions did not make any substantive comment on the content of the Bill itself. These submissions expressed general support for the entry into force of the Geographical Indications (Wine and Spirits) Registration Act 2006 ("**the GI Act**"), and stressed the importance to the New Zealand wine industry of being able to register the industry's geographical indications ("**GIs**") in New Zealand. These submissions are not dealt with in the analysis of submissions.
3. A table summarising officials' analysis of submissions received on the Bill is attached as **Annex 1** to this report. Only those submissions that commented on the content of the Bill itself are dealt with in this table. A list of all the submitters is attached as **Annex 3** to this report. A detailed analysis of the more significant issues identified by submitters is set out below.
4. Those submitters that commented on the Bill itself supported the amendments to the GI Act proposed in the Bill. Where submitters suggested amendments, they were largely minor and intended to clarify wording or ensure that the relevant provisions achieved their policy intent. This Departmental Report recommends that most of the suggested amendments be adopted by the Committee.
5. The most significant recommendation for amendment arising from the submissions is that there should be express provision in the GI Act for opposition procedures. Currently the GI Act leaves opposition procedures entirely to the Regulations. This is in contrast to the Patents Act 2013 and the Trade Marks Act 2002, which explicitly provide for opposition procedures.
6. In addition, the Report also includes issues identified by officials as requiring amendment. The most significant of these are:
 - i. a change to the consequential amendment to the Trade Marks Act 2002; and
 - ii. a change to the renewal period in the Bill, from a ten year renewal period, to a scheme where the first renewal fee is due five years after the registration date, and then at ten year intervals thereafter.

These amendments are described in more detail as part of the analysis set out below.

Opposition: Grounds and process

7. The GI Act leaves opposition procedures entirely to the Regulations. This is in contrast to other intellectual property legislation, such as the Patents Act 2013 and the Trade Marks Act 2002, which explicitly provide for opposition procedures. When the Amendment Bill was being drafted, officials did consider whether opposition provisions should be expressly provided for in the Bill. It was eventually decided not to include opposition provisions in the Amendment Bill, and that the issue would be reviewed once public submissions on the Amendment Bill were received.
8. One submitter (AJ Park) questioned whether such an important issue should be left to the regulations. Officials agree with the reasoning advanced by the submitter, and recommend that the Bill be amended to expressly provide for an opposition procedure. It is also recommended that only “interested persons” can oppose registration or the alteration or removal of a registered GI. The limitation to an “interested person” is in keeping with the requirement, in section 36 of the GI Act, that only an “interested person” can apply to register a GI.
9. Further, Officials consider it appropriate that the notice and advertising requirements on the Registrar of Geographical Indications (“the Registrar”) detailed in Annex 1 (item 1) be set out in the Act rather than regulations.

Definition of an “interested person”

10. One submitter (A J Park) argued that there is nothing in the GI Act to determine who is an appropriate person to register a GI. Another submitter (Eispeth Buchanan) suggested that the GI Act should define an “interested person”.
11. Officials consider that the term “interested person” in the GI Act ensures that only those with a genuine interest in a GI are able to apply to register a GI. If a definition of “interested person” is provided, this runs the risk that some persons who have a genuine interest in a particular GI could be inadvertently prevented from applying for registration. The term “interested person” appears in a number of Acts, and it is officials’ view that the Registrar and the courts should not have any difficulty in determining whether a person has an interest in a GI.

Fees

12. The New Zealand Food and Grocery Council suggested that there should be a requirement for the GI Act fees to be reviewed after five years to assess whether or not there was a need for maintenance of the register or whether there remains a need for renewal fees. Officials consider that there is no need for this. The Intellectual Property Office of New Zealand (“IPONZ”) regularly reviews the fees it charges, and adjusts them up or down as appropriate. None of the other intellectual property statutes require fees to be reviewed.

Customary names for grape varieties and wines

13. Under sections 11 and 12, terms that are customary names for grape varieties or common names for wines cannot be registered as GIs. It was suggested by New Zealand Winegrowers that the Registrar be given the power to make regulations adopting a list of terms that the Registrar considers to be customary grape variety names, or common wine names. This, it was argued, would provide certainty to local winegrowers who wanted to use these names on their wines.

14. Making such a regulation would require a mechanism for adding or removing names from the list. There would be a need to ensure that interested parties were given an opportunity to make their views known before a term was added or removed. This may be costly and complex to administer, particularly as there may well be disputes over what terms should or should not be on the list.
15. To provide some clarity for the industry, however, the Registrar intends to publish guidelines on how she will determine whether or not a particular term is a customary grape variety name when deciding whether or not to register a GI.

Changes to the 85% Rule

16. Under the GI Act, a wine can be labelled with a registered GI only if at least 85% of the wine is made from grapes harvested within the region indicated by the GI. One submitter (Dunleavy Vineyards Ltd) argued that the 85% rule should be increased.
17. Officials note that the 85% rule is a minimum standard, and is common to many other countries' GI registration systems, for example, Australia and the EU. There appears to be no advantage to setting a higher limit, and potentially a disadvantage.
18. If grape harvests are lower than expected in a particular region, wine makers in that region often make up the shortfall by blending their wine with up to 15% of wine made from grapes grown in another region if that is necessary to meet, for example, advance orders. Adopting a 90% or higher rule would reduce wine producers' flexibility in this respect.
19. The same submitter also suggested that the GI Act include other controls, such as restrictions on the addition of sugar. Officials note that issues such as this are outside the scope of the GI Act, and can be dealt with in regulations or orders made under the Wine Act 2003.

Clause 5 – Amendment to section 3 (purpose) of the GI Act

20. This clause adds an additional purpose of protecting the interests of wine and spirits consumers in New Zealand. New Zealand Winegrowers argued that the GI registration system is primarily about protecting the interests of legitimate users of GIs, and question the proposed amendment to the purpose statement.
21. Officials consider the amendment is appropriate. One of the purposes of GI registration is to provide consumers of wines or spirits with greater certainty that a wine or spirit labelled with a GI actually originated in the region identified by the GI. Breaches of the GI Act are actionable under the Fair Trading Act, which is concerned with protection of consumers.

Clause 7 – Enduring Geographical Indications

22. Clause 7 inserts a provision into the GI Act that deems the terms “North Island”, “South Island” and “New Zealand” as “enduring” New Zealand GIs. These enduring GIs will be deemed to be New Zealand registered GIs without the need for anyone to apply to register them. They will not need to be renewed and cannot be removed from the register, or altered.
23. All of those submitters who mentioned clause 7 supported the deeming of “North Island”, “South Island” and “New Zealand” as enduring GIs. One submitter (AJ Park) suggested that these GIs should go through the normal examination and opposition process. However, this would defeat the object of deeming these terms as enduring GIs. These terms are considered inherently useful, but might not otherwise meet the definition of a GI in section 6 of the GI Act.

Clause 9 – Renewal fees

24. Four submitters (AJ Park, NZ Food and Grocery Council, NZ Institute of Patent Attorneys and New Zealand Wine Growers) addressed renewal fees. AJ Park argued that the requirement to pay a renewal fee made the system more complicated and might suggest that a GI is a proprietary right. The other submitters accepted that renewal fees were required to enable the registration system to be self-financing. AJ Park suggested that, as protection of GIs is a WTO obligation, at least part of the costs of establishing the GI register should be met by MBIE.
25. Officials agree that the renewal fee requirement does make the GI registration system slightly more complicated. However, some form of renewal fee system is required if the initial application fee is to be kept at a level that does not discourage the registration of GIs. We do not agree that this turns a registered GI into a proprietary right.
26. Although New Zealand's international obligations oblige us to provide protection for wine and spirit GIs, this does not mean that the government must meet some of the cost of providing protection. These same obligations require New Zealand to provide minimum standards of patent and trade mark protection, but the patent and trade mark systems administered by IPONZ under the Patents Act 2013 and the Trade Marks Act 2002 are financed entirely by user fees. There is no subsidy from the government.
27. One submitter noted that, given that the number of applications to register GIs is uncertain, and the costs of maintaining the Register of GIs will be dependent on the number of registrations, there should be a mandatory review of fees within four or five years of entry into force of the GI Act. As noted earlier, officials see no need to mandate such a review, as IPONZ reviews fees on a regular basis. The same submitter also supported the ten year renewal period, seeing the alignment with the Trade Mark renewal period as being logical.

Clause 10 – Restriction on registration of offensive GIs

28. Clause 10 inserts a new provision into the GI Act. This will provide that the Registrar of GIs must not register a GI if, in the opinion of the Registrar, the GI, its use, or registration would be offensive to a significant section of the community, including Maori.
29. The submitters who mentioned clause 10 were supportive of its inclusion. The New Zealand Law Society noted that the proposed wording differs from the corresponding provision (s17(1)(c)) in the Trade Marks Act 2002, and suggested that clause 10 should be amended to make it consistent. Officials agree and recommend that the new provision be amended to be consistent and to make its intent clearer.
30. Other submissions on clause 10 noted that the Bill does not contain any suggestion of who the Registrar of GIs should consult when determining whether or not the use or registration of a GI would be offensive. Officials recommend that the Bill provide that a function of the Maori Advisory Committee established under the Trade Marks Act 2002 is to advise the Registrar whether the proposed use or registration of a geographical indication is likely to be offensive to Māori.

Clause 11 – 100% rule

31. Clause 11 would amend the GI Act to provide that, if a wine is labelled with a New Zealand registered GI, all of the wine must be produced from grapes harvested in New Zealand. Under the GI Act as it stands, a wine labelled with a New Zealand registered GI could contain up to 15% of wine made from grapes harvested in another country.

32. All submitters that mentioned clause 11 supported it.

Clause 16 – Continuous use

33. This clause replaces section 29(1) of the GI Act with the provisions of Article 24(4) of the WTO TRIPs Agreement. Section 29 is intended to protect the rights of a person that has been using a term that is later registered as a GI, where the person has been using that term continuously before 15 April 1984 or in good faith since before 15 April 1994 (this date is specified in the WTO TRIPs Agreement).
34. The intent behind the proposed amendment was to deal with the situation where the current user of the term had acquired the right to use the term from another entity. New Zealand Winegrowers has pointed out that the proposed amendment does not actually achieve this, and still requires the current user to have been using the term continuously. The submitter has suggested that the clause 16 should be amended to make it clear that the current user, and the entity from whom the current user obtained the right to use the term, must between them have been using the term continuously or in good faith during the relevant period.
35. Officials recommend that clause 16 should be amended in the manner suggested.

Clause 18 – Use of words “New Zealand” to denote origin

36. This clause would amend the GI Act to provide that the use of the words “New Zealand” by a person in relation to wines or spirits would not constitute use of the term “New Zealand” as a GI, provided that:
- the words “New Zealand” are used to denote country of origin in compliance with other laws; and
 - the use is in the course of trade and will not mislead the public.
37. The words “New Zealand” will be registered as an enduring geographical indication – see clause 7 of the Bill. In the absence of clause 32, wines containing New Zealand wine might not be able to use the words “New Zealand” unless they comply with the requirements of sections 21 and 23 of the GI Act.
38. The New Zealand Law Society argues that the words “in the course of trade” are not needed, as use that is not in the course of trade would not breach sections 21 and 23 of the GI Act. This submitter also argues that the words “mislead the public” are a higher threshold than in section 9 of the Fair Trading Act (breaches of sections 21 and 23 of the GI Act are actionable under section 9 of the Fair Trading Act). It is suggested that if the higher threshold is not intended clause 18 should be amended to be consistent with section 9 of the Fair Trading Act.
39. Officials do not agree with the amendments to clause 18 suggested by the submitter. The words “in the course of trade” provide clarity and are consistent with the wording of section 26 of the GI Act. The use of the words “mislead the public” is intended, and is also consistent with section 26 of the GI Act, and with section 10 of the Fair Trading Act, which relates to misleading conduct in relation to goods.

Clause 21 – Power of Registrar to Delegate

40. The New Zealand Institute of Patent Attorneys has argued that, as the Registrar must be appointed under the State Sector Act, and must be an employee of the Ministry, any delegate of the Registrar must also meet these criteria.

41. Officials disagree. The Registrar is accountable to the MBIE Chief Executive for the exercise of powers by people who work under her. It is not necessary, nor practicable, for these people to be appointed under the State Sector Act (as Statutory Officers, and Chief Executives are). While most, if not all, delegates are likely to be Ministry employees, it is undesirable for the Act to preclude delegation to qualified contractors or non-Ministry public servants. The Registrar's power of delegation is consistent with the Commissioner of Patents' and the Commissioner of Trade Marks' powers, under the Patents Act 2013 and the Trade Marks Act 2002 respectively.

Clause 25 – Alteration of Register

42. This clause adds a subsection, (1A), to section 46. It allows alteration of an entry on the Register of GIs either by the Registrar, or on the application of a third party, to alter the GI, or conditions or boundaries of a registered GI. Such an alteration would only be allowed if the proposed alteration did not substantially alter the character of the GI.
43. One submitter, the New Zealand Institute of Patent Attorneys, argued that the proposal is too broad, and creates uncertainty. The submitter suggested that amendments should only be allowed to correct clerical errors or changes in names if the name is altered by a ruling of the New Zealand Geographical Board.
44. The New Zealand Law Society submitted that the words "...as an indicator of geographical origin and is not likely to mislead" should be added to the end of proposed section 46(1A).
- a) Officials recommend that section 46 be amended to provide that the Registrar may alter a GI if satisfied that:
 - alteration is necessary (currently a requirement under subsection (1), but not under new subsection (1A));
 - alteration will not substantially alter the character of the GI; and
 - alteration is not likely to mislead the public.

Clause 30 – Regulations

45. Clause 30 amends section 57 of the GI Act, which provides the power to make regulations. The New Zealand Institute of Patent Attorneys suggested that proposed section 57(2)(b) not be included. Section 57(2)(b) would allow the renewal fees to be set at a level to provide an incentive to allow GI registrations to lapse if the GI is no longer providing value to persons with an interest in the GI.
46. The submitter argues that there is a tension between setting application and renewal fees such that they do not discourage interested persons from applying to register GIs, and to renew GI registrations, while also encouraging the lapsing of unused GIs. It appears that the submitter is arguing that the tension be resolved by setting lower renewal fees even if this means unused GIs remain on the register.
47. The New Zealand Law Society argued that setting renewal fees using the criterion set out in proposed section 57(1)(b) was uncertain and also subjective and vague. The submitter suggests that renewal fees set using the proposed criterion may deter the renewal of GI registrations where continued registration would otherwise "fall within the purposes of the Act". It is suggested by the submitter that proposed section 57(2)(b) refer to the expiry of registrations which no longer meet the purposes of the Act.

48. Officials disagree with this suggestion. The existing wording of proposed section 57(2)(b) fairly describes the circumstances where interested persons might allow a registered GI to lapse. The wording is consistent with similar language in section 243(2)(b) of the Patents Act 2013.

Clause 31 – New sections 57A – 57D

49. One submitter queried proposed section 57B(1)(a), which allows the Registrar to award costs on an indemnity basis. It is argued that there is no precedent for the awarding of costs at the IPONZ level. Officials disagree, and note that section 212 of the Patents Act 2013 allows the Commissioner of Patents to award costs on an indemnity basis.

Other Issues Identified by Officials

Renewal Periods

50. The Amendment Bill proposes that the registration of a registered geographical indication must be renewed by paying renewal fees at 10 year intervals. The first renewal fee would be payable on the 10th anniversary of the date of registration of the geographical indication and at 10 year intervals thereafter. The 10 year renewal period was proposed before IPONZ had completed its modelling of the likely costs and revenue flows involved in administering the geographical indication registration system.
51. IPONZ has now updated their estimates of the likely application volumes based on information that has become available since the Amendment Bill was introduced and they have also modelled the likely costs and revenue flows based on these estimates. If application volumes are lower than expected, or the number of applications are the same, but spread out over a longer period this could have a significant effect on the cumulative surplus/deficit of administering the geographical indication registration system. The revenue gathered in the first few years after the entry into force of the GI Act could be less than the costs actually incurred by IPONZ in administering the Register.
52. This risk could be mitigated by adopting a renewal period different from the 10 year period currently set in the Amendment Bill. As noted in a letter from officials to the Committee dated 22 June 2016, alternative options for renewal periods were set out in a consultation document that was released by MBIE on 6 July 2016 seeking public submissions on a fee schedule for the GI Act. The closing date for submissions was 29 July 2016.
53. The following renewal periods were considered in the consultation document:
- i. a 10 year renewal period (as in the Amendment Bill);
 - ii. a five year renewal period; and
 - iii. a scheme whereby the first renewal fee was payable five years from the date of registration, and at 10 year intervals thereafter (MBIE's preferred option).
54. Where submissions on the fees consultation document referred to earlier commented on the renewal period proposals, the submitters supported MBIE's preferred option. Officials therefore recommend that the Bill be amended to provide for MBIE's preferred option (option (iii) above).

Trade Marks Act - "first in time, first in right"

55. The Schedule of the Bill amends section 20 of the Trade Marks Act 2002. The intention of the amendment to the Trade Marks Act is to provide a "first in time, first in right" approach to applications to register a trade mark that contains a registered geographical indication. Under this approach, an application to register a trade mark can be refused if:
- i. The mark contains a registered GI; or
 - ii. It contains a term which is the subject of an application to register a GI and the deemed date of registration of the GI (if it were to be registered) is earlier than the deemed date of registration of the trade mark.
56. The proposed amendment to section 20 deals with situation (i) above, but not (ii). Officials recommend that the proposed amendment be amended to ensure that an application to register a trade mark can be refused if it falls within the scope of situation (ii) described above.

Sections 46 and 57 of the GI Act

57. There is nothing in the GI Act that expressly allows for alterations of the details (such as name or address) of the registrant of a GI. The proposed amendments to section 46 of the GI Act (see clause 25 of the Bill) only deal with changes to the GI itself. Section 57 of the GI Act, which allows for the making of regulations, does not expressly allow for procedures for altering a registrant's details. Officials recommend amending the Bill to allow alteration of a registrant's details on the register and regulations to prescribe the procedure relating to the alteration.
58. Officials also recommend providing for substitution of a registrant, if the registrant consents, or has ceased to exist.

Section 57A – Recognition of Agents

59. This item relates to proposed section 57A of the Bill, introduced in clause 31. Officials recommend that section 57A be amended to set out the people who the Registrar may refuse to recognise as agents for the purposes of proposed section 57A(2). It is more appropriate that this be set out in legislation, rather than regulations.

Clause 27, Section 47A

60. As currently drafted, proposed section 47A does not expressly require a renewal fee to be paid. Officials recommend that section 47A be amended so that the Registrar must not renew a registration unless the renewal fee is paid.

Gus Charteris
Manager
Business Law Team

Annex 1: Geographical Indications (Wine and Spirits) Registration Amendment Bill – Summary Table of Submissions

Item No.	Issue/Clause No.	Submitter	Summary of Submission	Departmental Response
1.	Opposition grounds and process	A J Park	Questions whether these should be left entirely to the Regulations	<p>Agree in part. Appropriate that administrative details of opposition be set out in regulations. However, now consider that the GI Act expressly provide for oppositions, and we recommend the Bill be amended to provide that only an interested person has right to oppose registration of a GI, or alteration or removal of a GI.</p> <p>Further, we recommend the Act (rather than regulations) require the registrar to:</p> <ul style="list-style-type: none"> • Advertise an application for registration, • Advertise an application for removal, or alteration, (and send copy to the registrant , if the applicant is not the registrant) • Advertise, and notify the registrant, of removal or alteration proposed by Registrar and grounds for it/
2	Removal of Registered GIs	A J Park	There is no explicit provision in the Act for a third party to make an application to remove a registered GI.	Disagree. Section 45(2) of the GIs Act provides that the Registrar may remove a registered GI on his or her own initiative or <i>on the application of any interested person</i> (emphasis added).
3	Definition of “interested person”	AJ Park	There is no provision in the GI Act to address a situation whether an applicant to register a GI is the most appropriate to apply. There should be a mechanism in the application and opposition process for addressing who the appropriate holder should be.	Agree in part. It is not clear from the submission just who might be considered an “inappropriate” applicant. The requirement in the Act is that an “interested person” can apply. Agree that a ground of opposition should be that the applicant or registrant is not an “interested person”. This will be addressed in the Regulations.

Item No.	Issue/Clause No.	Submitter	Summary of Submission	Departmental Response
		Elspeth Buchanan	Nothing in the Act as amended indicates who is an “interested person”, and the Act should define an “interested person”.	Disagree. There is a risk that a definition may inadvertently leave out persons who do have a legitimate interest in a GI. Whether a person has a genuine interest is a matter that the courts or Registrar (as applicable) can determine on a case by case basis. The term “interested person” is not defined in a number of Acts.
4	Foreign GIs	AJ Park	Not clear from the Act whether foreign GIs will be subject to a robust examination process.	Noted. Amendments to Bill recommended by officials will make it clear that applications for (foreign and NZ) GIs can be opposed. The Act provides for the examination process for (foreign and NZ) GIs to be prescribed in regulations. This process will be robust.
5	S45(1)(b) GI Act	AJ Park	Should specify that this subsection is for foreign GIs, as subsection (a) does.	Disagree. As it stands, section 45(1)(b) includes registered GIs that have fallen into disuse in New Zealand. Amending section 45(1)(b) in the manner suggested would mean that New Zealand registered GIs could not be removed from the register if they are no longer in use.
6	Definition of GI	Elspeth Buchanan	The GI Act should contain a more precise definition of what constitutes a GI; greater clarity would be in the public interest, and would provide certainty for those who apply to register GIs.	Disagree. The definition in the Act reflects the internationally recognised definition in the TRIPS Agreement. IPONZ will produce guidelines on the information required to support an application to register a GI, which provide guidance to applicants.
7	Who may use a GI	Elspeth Buchanan	The GI Act is not clear on who may use a GI. Sections 21 to 24 state that a person may use a registered GI under certain circumstances; does that mean that anyone who complies with those requirements can use a registered GI? If so, this should be made clear.	Disagree. The GI Act places no restrictions on who can use a registered GI, so any person may use one, provided the product that the person uses it to describe meets the requirements of the GI Act.

Item No.	Issue/Clause No.	Submitter	Summary of Submission	Departmental Response
8	Fees	New Zealand Food and Grocery Council	There should be a sunset clause in the Regulations that set the fees requiring the fees to be reviewed after five years to assess the ongoing need for maintenance of the register and the need for provision of renewals.	Disagree. IPONZ reviews its fees on a regular basis as a matter of course and adjusts them up or down as appropriate. Fees for other IP registries do not automatically expire after a certain period of time.
9	Sections 11, 12 of the GI Act	NZ Wine Growers	<p>Customary grape variety names and common names for wine.</p> <p>The Registrar should be given the power to make regulations adopting (or adopting by reference) a non-exhaustive list of customary names for grape varieties and common names of wines, that would not be registered as GIs. These would provide certainty to local wine growers that they could use these customary or common names without having to incur the expense of opposing any application to register them as GIs.</p>	<p>Disagree.</p> <p>Making such regulations would require a mechanism for adding and removing names from the list, and ensuring that interested parties were given an opportunity to make their views known. This would be costly and complex to administer.</p> <p>To provide clarity for the industry, It is intended that the Registrar will publish guidelines on how she will determine whether a name is customary if an application to register is made.</p>

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Item No.	Issue/Clause No.	Submitter	Summary of Submission	Departmental Response
10	85% Rule	Dunleavy Vineyards Ltd	<p>Prefers the 85% rule in the GI Act be increased.</p> <p>Additional controls, such as restrictions on the addition of sugar should also be considered.</p>	<p>Noted. The 85% rule is a minimum requirement. If a wine is labelled with a registered GI at least 85% of the wine must be made from grapes grown in the area identified by the GI. It is quite permissible for more than 85% of the wine to be made from grapes grown the GI area. The 85% rule is common to many other countries' GI registration systems, for example, the EU and Australia. There would be no advantage in setting a higher limit, and possibly a disadvantage.</p> <p>If grape harvests are lower than expected in a particular region, wine makers in that region often make up the shortfall by blending their wine with up to 15% of wine made from grapes grown in another region if that is necessary to meet, for example, advance orders. Adopting a 90% or higher rule would reduce wine producers' flexibility in this respect.</p> <p>Disagree. This is outside the scope of the GI Act. It would be more suited to inclusion in the regulations or orders made under the Wine Act 2003.</p>
11	5	NZ Wine Growers	<p>Questions the proposed amendment to section 3 of the GI Act to introduce the additional purpose of "protecting the interests of consumers of wines and spirits in New Zealand". Argues that the GI registration system is primarily about protecting the rights of legitimate users of GIs, and their investment in developing those GIs.</p>	<p>Disagree. One of the purposes of GI registration is to provide consumers with greater certainty that a wine or spirit labelled with a registered GI actually originates in the region identified by the GI, and it is appropriate that this be identified in the Act. Note that breaches of the GI Act are actionable under the Fair Trading Act, which is concerned with protecting the interests of consumers. The proposed amendment to section 3 of the GI Act is in addition to the purposes already there, which do reflect the purposes identified by NZ Wine Growers.</p>

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Item No.	Issue/Clause No.	Submitter	Summary of Submission	Departmental Response
12	7	AJ Park	Supports the reasons for deeming “North Island”, “South Island” and “New Zealand” as enduring GIs. However they consider that deeming terms to be enduring GIs may create problems, and that any GI should go through the application and opposition processes. Notes that New Zealand producers could be disadvantaged if other countries took the same approach.	Noted. The reason for deeming the three indications referred to as enduring GIs is that they might not otherwise meet the criteria for registration, so they may well not survive an application or opposition process.
13	7	NZ Institute of Patent Attorneys;	Agrees with the deeming of specified GIS as provided by clause 7 of the Bill. Notes that similar terms are registered under the corresponding Australian legislation. Supports exclusion for New Zealand when used as a country of origin (clause 18).	Noted.
14	7	NZ Wine Growers	Supports the creation of “New Zealand”, “North Island” and “South Island” as enduring New Zealand GIs. Their registration will ensure that any winemaker, anywhere in New Zealand, will have at least one registered GI they can use for their wine. It also avoids potential issues over who ought to have been the applicant for those broad GIs.	Noted.

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Item No.	Issue/Clause No.	Submitter	Summary of Submission	Departmental Response
15	7	Lion	Supports the creation of “New Zealand”, “North Island” and “South Island” as enduring New Zealand GIs.	Noted.
16	9	AJ Park	Payment of a renewal fee makes the scheme more complicated and suggests that a GI is intended as a proprietary right.	Agree in part. While the renewal fee does make the system more complicated it is necessary to ensure that the ongoing costs of maintaining the register of GIs can be met without having excessive application fees. We disagree that this suggests a proprietary right.
17	9	New Zealand Food and Grocery Council	Notes that renewal fees are an unusual feature of a GI registration system, but appreciates that the registration system has to be self-funding. Expects at least part of the set-up costs for GI register to be met by MBIE as part of NZ’s WTO obligations.	Disagree. All the costs involved in establishing and maintaining the register are to be met from fees. The fact that the WTO TRIPS Agreement requires New Zealand to protect GIs does not mean that the government has to fund at least some of the costs involved in providing that protection. New Zealand is also required by the TRIPS Agreement to provide patent and trade mark systems. These are funded entirely by user fees.

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Item No.	Issue/Clause No.	Submitter	Summary of Submission	Departmental Response
18	9	New Zealand Institute of Patent Attorneys	<p>Considers that it is appropriate for users of the GI registration system to pay for the registration system.</p> <p>Does not consider an application fee of \$10,000 unreasonable, particularly in light of the AUD27,000 fee set in Australia, and the number of GIs registered in Australia.</p> <p>It would be helpful if GIs that have expired for non-payment of the renewal fee are marked "expired but restorable" on the Register, as trade marks are, for the duration of the grace period.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p>

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Item No.	Issue/Clause No.	Submitter	Summary of Submission	Departmental Response
19	9	NZ Wine Growers	<p>Notes that the concept of expiry of GI Registrations is unusual. Does not oppose principle that the costs of maintaining the register should be recovered through fees charged for registration or renewal, as long as they are reasonable.</p> <p>As it is unclear how many applications for registration will be submitted initially and costs of maintaining the register will be dependent on the volume of registrations, there should be a requirement for a mandatory review of fees after four or five years.</p> <p>Supports the ten year renewal period, sees the alignment with the Trade Mark renewal period as logical</p>	<p>Noted.</p> <p>Disagree. IPONZ reviews its fees at regular intervals as a matter of course. There is no need for the GI Act to impose a requirement for a review. Other Acts do not mandate reviews of fees for other IP registries.</p> <p>Noted.</p>
20	10	AJ Park	<p>The GI Act should give the Registrar the ability to include someone on a committee who understands Maori Culture.</p>	<p>Agree in part. We recommend that the Act be amended to provide that a function of the Maori Advisory Committee established under the Trade Marks Act 2002 is to advise the Registrar whether the proposed use or registration of a geographical indication is likely to be offensive to Māori.</p>

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Item No.	Issue/Clause No.	Submitter	Summary of Submission	Departmental Response
21	10	New Zealand Institute of Patent Attorneys	<p>Agrees with clause 10, which inserts a new section 13A into the GI Act providing that the Registrar must not register a GI if registration or use of the GI would be offensive to a significant section of the community, including Maori.</p> <p>Bill is silent on who the Registrar should consult – suggests that there should be an explicit provision that the Registrar may consult the Maori Advisory Committee established under the Trade Marks Act 2002.</p>	<p>Noted.</p> <p>Agree. See response to item 20 above.</p>
22	10	New Zealand Law Society	<p>This inserts a new section 13A after section 13. But it appears that the reference should be to section 18A, as this is a more logical place for this provision; it would be consistent with the explanatory note and clause 24.</p> <p>The wording of proposed section 13A is inconsistent with the wording of section 17(1)(c) of the Trade Marks Act 2002. It is not clear what is meant by “cannot register a GI if the geographical indication ...would be likely to offend...” Recommends that the words “geographical indication” (second occurrence) be deleted from proposed section 13A.</p>	<p>Noted. Intended to be section 13A. References to 18A in clause 24 and explanatory note are typographical errors.</p> <p>Agree. Officials recommend that proposed section 13A be amended so that it is consistent with the wording of section 17(1)(c) of the Trade Marks Act 2002.</p>

Item No.	Issue/Clause No.	Submitter	Summary of Submission	Departmental Response
23	11	New Zealand Institute of Patent Attorneys	Agrees with the proposed amendment introducing a "100% rule" for wines carrying a New Zealand registered GI.	Noted.
24	11	NZ Wine Growers	Supports introduction of the "100% rule"	Noted
25	11	Lion	Supports introduction of the "100% rule"	Noted.
26	12	New Zealand Law Society	Replace ":" with "," to make it clear that foreign geographical indications must be used in accordance with both sections 22(b)(i) and (ii). This would make the wording consistent with proposed new section 24(b) (clause 14).	Agreed. Submission deals with a matter of drafting style to which PCO has agreed.

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Item No.	Issue/Clause No.	Submitter	Summary of Submission	Departmental Response
27	16	NZ Wine Growers	<p>Supports amendment to section 29 of the GI Act.</p> <p>Believes that proposed amendment to section 29 does not achieve the object of dealing with the issue of when a wine business changes hands. Despite the parenthetical – which addresses how the current user of the term may have acquired the right to use it – the subject of the clause is the New Zealand person who currently uses the term. The clause therefore still requires the current user to have been using the term continuously in order to qualify for the exemption. We suggest that the clause should be amended to make clear that:</p> <ul style="list-style-type: none"> a. the current user, and b. the person who transferred the right to use the term to the current user <p>must between them have been using the term continuously or in good faith during the relevant period.</p>	<p>Agree that the proposed amendment should be made.</p>

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Item No.	Issue/Clause No.	Submitter	Summary of Submission	Departmental Response
29	18	New Zealand Law Society	<p>Proposed section 32A(b) requires that to obtain the benefit of the section, the use of “New Zealand” must be: <i>“in the course of trade and not in such a manner as to mislead the public.”</i></p> <p>The words “in the course of trade” appear superfluous, as use of the words “New Zealand” other than in the course of trade would not breach sections 21 or 23 of the GI Act. If these words are retained in new section 32(A)(b), they should also qualify new section 32A(a). Recommends that the words be deleted from section 32A(b) and insert them after “if the words are used” in section 32A(a).</p>	<p>Disagree. The use of the words “in the course of trade” is useful to provide clarity, is consistent with the wording of section 26 of the GI Act, and do not need to qualify paragraph (a)</p>
30	18	New Zealand Law Society	<p>The words “mislead the public” are a higher threshold than in section 9 of the Fair Trading Act, which encompasses any conduct in trade that is misleading or deceptive, or likely to mislead or deceive. If the higher threshold is not intended, section 32A(b) should be amended to be consistent with section 9 of the Fair Trading Act.</p>	<p>Noted. “Mislead the public” is intended. The wording of proposed new s32A(b) is consistent with that of s26 of the GI Act, and a similar section of the Fair Trading Act, section 10:</p> <p>“Misleading conduct in relation to goods</p> <p>No person shall, in trade, engage in conduct that is liable to <i>mislead the public as to the nature, manufacturing process, characteristics, suitability for a purpose, or quantity of goods.</i>”</p> <p><i>(emphasis added)</i></p>

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Item No.	Issue/Clause No.	Submitter	Summary of Submission	Departmental Response
31	21	New Zealand Institute of Patent Attorneys	Clause 21 allows the Commissioner to delegate the Registrar's functions to "any person". This does not appear appropriate given that the Registrar must be appointed under the State Sector Act and must be an employee of the Ministry. Any delegate should meet these criteria.	Disagree. The Registrar is accountable to the MBIE Chief Executive for the exercise of powers by people who work under her. It is not necessary, nor practicable, for these people to be appointed under the State Sector Act (as Statutory Officers, and Chief Executives are). While most, if not all, delegates are likely to be Ministry employees, it is undesirable for the Act to preclude delegation to qualified contractors or non-Ministry public servants. The Registrar's power of delegation is consistent with the Commissioner of Patents' and the Commissioner of Trade Marks' powers, under the Patents Act 2013 and the Trade Marks Act 2002 respectively.
32	24	New Zealand Institute of Patent Attorneys NZ wine Growers	Clause 24 refers to section 18A, however there is no section 18A in the Bill.	Noted. A typographical error to be corrected.
32	25	New Zealand Institute of Patent Attorneys	The proposal to allow amendments to a registered GI is unduly broad. As currently worded it creates some uncertainty as to the circumstances in which a GI can be amended. Recommends that, apart from the correction of clerical errors the only form of amendment allowed is reflect changes in name as altered by the New Zealand geographic board.	Agree. Officials recommend that section 46 be amended to provide that the Registrar may alter a GI if satisfied that: a) alteration is necessary b) alteration will not substantially alter the character of the GI; and c) alteration is not likely to misread the public.

Item No.	Issue/Clause No.	Submitter	Summary of Submission	Departmental Response
33	25	NZ Law Society	<p>Recommends that section 46(1A) should be amended to require the Registrar to be satisfied that the alteration "will not substantially alter the character of the geographical indication as an indicator of geographical origin and is not likely to mislead".</p> <p>If new section 46(1A) is adopted, existing section 46 is redundant.</p>	<p>Agree. See response to item 32 directly above.</p>
34	30	NZ Institute of Patent Attorneys	<p>There is a tension between setting application and renewal fees that do not deter the registration and renewal of GIs that are in use, while also deterring the renewal of unused GIs. Seems to suggest tension be resolved in favour of setting a lower renewal fee level even if this means that potentially unused GIs remain on the register. Suggests that s57 of the GI Act not be amended to include s57(1)(b).</p> <p>If existing s57 is amended to include a s57(2), the existing clauses of s57 should be renumbered (1).</p>	<p>Disagree. This tension exists for patents, trade marks and designs, where renewal fees are set to discourage the renewal of rights which are no longer of value to the holder and are not being used.</p> <p>Noted. It is not necessary for the Bill to address this matter as PCO will make this change when the amendments are incorporated into the principal Act</p>

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Item No.	Issue/Clause No.	Submitter	Summary of Submission	Departmental Response
35	30	NZ Law Society	<p>In respect of proposed s57(2)(b), questions whether a renewal fee set "at a level that provides an incentive to allow registrations ... to expire if persons interested in the registration no longer find registration beneficial" is sufficiently certain and consistent with the purposes of the Act.</p> <p>In particular, the concept "<i>if persons interested ... no longer find registration beneficial</i>" is subjective and vague. There is a risk that renewal fees set with reference to such a subjective and vague concept may deter interested parties from renewing geographical indications in circumstances where continued registration would otherwise fall within the purposes of the Act.</p> <p>Recommends amendment of section 57(2)(b) to refer to the recovery of costs at a level that provides an incentive to allow registrations of geographical indications to expire "which no longer meet the purposes of the Act".</p>	<p>Disagree. The existing wording of proposed s57(2)(b) fairly describes the circumstances where interested persons might allow a registered GI to lapse. The wording is consistent with similar language in s243(2)(b) of the Patents Act 2013.</p>

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Item No.	Issue/Clause No.	Submitter	Summary of Submission	Departmental Response
36	31	New Zealand Law Society	Raises concerns about the reference to costs on an indemnity basis in proposed s57B(1)(a). Argues that there is no precedent for the awarding of indemnity costs at the IPONZ level. Concerned that the explicit reference to indemnity costs may create the perception that they are the norm.	Disagree. The wording of proposed s57B(1)(a) mirrors the equivalent provision in the Patents Act 2013, section 212 which gives the Commissioner of Patents the power to award costs on an indemnity basis, although this power is rarely, if ever, used.

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Annex 2: Geographical Indications (Wines and Spirits) Registration Amendment Bill: Other Issues Identified by Officials

Item no.	Reference	Issue	Recommendation
37	Clause 27	<p>The Bill as introduced introduces the requirement (section 9A) that a GI is registered for 10 years from the date of registration. New section 47A allows the registration to be renewed for further periods of 10 years on payment of a renewal fee.</p> <p>The 10 year renewal period was decided upon before IPONZ had had an opportunity to model the likely costs and revenue flows involved in administering the GI registration system. Analysis by IPONZ has now indicated that the ten year renewal period may result in significant shortfall in revenue if application volumes are lower than expected, or if the number of proceedings and hearings involving GIs is higher than estimated.</p> <p>This risk could be mitigated by adopting a renewal period different from that proposed in the Bill.</p>	<p>Officials recommend that the Bill be amended to provide that a GI is registered for an initial period of five years from the date of registration. The registration would be renewable if a renewal fee is paid. Further renewal fees would be payable at ten year intervals thereafter.</p> <p>Submissions were sought on the issue of the renewal period as part of public consultation on the regulations and fees. In a consultation document released by MBIE on 6 July, submissions were sought on alternative options for the renewal period. MBIE's preferred option was for a scheme whereby the first renewal fee is payable five years from the date of registration, and at 10 year intervals thereafter. Submissions supported MBIE's preferred option. Officials recommend that the Bill be amended to reflect this option.</p>

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Item no.	Reference	Issue	Recommendation
38	Schedule	<p>The Schedule amends s20 of the Trade Marks Act 2002. The amendment is intended to provide for a “first in time, first in right” approach. Under this approach, a an application to register a trade mark will be refused if:</p> <ul style="list-style-type: none"> i. It contains a registered geographical indication; or ii. It contains a term which is the subject of an application to register the term as a geographical indication and the deemed date of registration of the indication if it were to be registered is earlier than the deemed date of registration of the trade mark. <p>The proposed amendment to s20 of the Trade Marks Act deals with situation (i) above, but not situation (ii).</p>	<p>It will be necessary to amend the consequential amendment to section 20 of the Trade Marks Act 2002 so that a trade mark cannot be registered if it contains a term that is the subject of an application to register the term as a geographical indication and the deemed date of registration of the geographical indication, if it were to be registered, is earlier than the date (or deemed date) of registration of the trade mark.. This will ensure that the GI Act and the Trade Marks Act treat conflicts between registered Trade Marks and registered GIs in the same way.</p>
39	Sections 46 and 57	<p>Alteration of register and regulation-making powers</p> <p>Unlike the Trade Marks Act 2002, the Geographical Indications (Wine and Spirits) Registration Act 2006 (the Act) does not expressly authorise alterations to the register that relate only to the registrant.</p> <p>Section 46 of the Act (as amended by clause 25 of the Bill) only deals with changes to the registered geographical indication itself. Likewise, section 57 of the Act deals with making regulations to prescribe procedures for altering a geographical indication on the register, but does not deal with procedures for altering a registrant recorded on the register.</p>	<p>Officials recommend amending the Bill to allow:</p> <ul style="list-style-type: none"> – alteration of a registrant’s details on the register (including substitution of a registrant) – regulations to prescribe the procedure relating to the alteration of a registrant recorded on the register

Item no.	Reference	Issue	Recommendation
40	Section 57A	<p>“57A Recognition of agents</p> <p>(1) Anything that must be done by or to a person under this Act in relation to a geographical indication may be done by or to the person’s expressly authorised agent.</p> <p>(2) Subsection (1) applies only if the agent is not a person whom the Registrar refused to recognise as an agent in accordance with any prescribed requirements.”</p>	<p>As drafted, the people whom the Registrar is permitted to not recognise as agents would be set out in the regulations. Officials consider that it is more appropriate that this be set out in the Act, rather than regulations. We therefore recommend that the Bill be amended to provide that the Registrar may refuse to recognise a agents for the purposes of proposed section 57A(2) if the person: (a) is suspended from practice before the IPONZ;</p> <p>(b) has been removed from or struck off the roll of barristers and solicitors and has not been restored to the roll;</p> <p>(c) is suspended from practice as a barrister or solicitor; or</p> <p>(d) has been convicted in New Zealand of an offence specified in Part 10 (except section 298A) of the Crimes Act 1961 or has been convicted of an equivalent offence in another country.</p>
41	Clause 27, Section 47A	Does not expressly require the payment of the renewal fee.	Amend clause 47A to expressly provide that the renewal fee must be paid before the Registrar can renew a registration.

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Annex 3: List of Submitters

AJ Park
Blue Gum Corner
Central Otago Wine Growers Association
Cimino Cole
Constellation Brands New Zealand Ltd.
Dry River Wines Ltd.
Dunleavy Vineyards Ltd.
Elsbeth Victoria Buchanan
Felton Road Wines
Francis Hutt
G Pollard
Greystone Wines
Gwyn Williams
Immigrant's Vineyard
Lion
Marlborough Winegrowers Association Inc.
Misha's Vineyard Wines Ltd.
Morrison Davids Vineyards Ltd.
Negociants New Zealand Ltd.
New Zealand Food and Grocery Council
New Zealand Institute of Patent Attorneys Inc.
New Zealand Law Society
New Zealand Winegrowers
Pernod Ricard Winemakers
Quartz Reef Wines
RH Parkinson
Saint Clair Family Estate Winery
Spirits New Zealand
Spring Creek Winery t/a Rapaura Springs
Spurlock Vineyards Ltd.
Steve Knight
The Scotch Whisky Association
Tony McIntyre
Two Terraces Vineyard
Villa Maria Estate Ltd.
Waipara River Estate
Waipara Valley North Canterbury Winegrowers Inc.
Wairau River Wines



BRIEFING

Geographical Indications (Wines and Spirits) Registration Act: Release of Exposure Draft of Regulations and Fees Consultation Document

Date:	17 June 2016	Priority:	High
Security classification:	In Confidence	Tracking number:	3457 15-16

Action sought		
	Action sought	Deadline
Hon Paul Goldsmith Minister Commerce and Consumer Affairs	<p>Submit the attached Cabinet paper for EGI to the Cabinet Office.</p> <p>Agree to the submission to the Primary Production Committee of the attached note setting out a proposed timeline for consideration of the Geographical Indications (Wines and Spirits) Registration Amendment Bill.</p>	23 June 2016

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Gus Charteris	Manager, Business Law	S9(2)(a)	
Warren Hassett	Senior Advisor		

The following departments/agencies have been consulted					
<input type="checkbox"/> Treasury	<input type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input checked="" type="checkbox"/> MFAT	<input checked="" type="checkbox"/> MPI	<input type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> TPK	<input type="checkbox"/> MoH
<input type="checkbox"/> Other:		N/A			

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments:



BRIEFING

Geographical Indications (Wines and Spirits) Registration Act: Release of Exposure Draft of Regulations and Fees Consultation Document

Date:	17 June 2016	Priority:	High
Security classification:	In Confidence	Tracking number:	3457 15-16

Purpose

The attached Cabinet paper for the Cabinet Economic Growth and Infrastructure Committee (“**EGI**”) seeks approval to release a consultation document on proposed regulations and fee schedule needed to implement the Geographical Indications (Wines and Spirits) Registration Act 2006. We seek your agreement that the paper be submitted to the Cabinet Office in time for the EGI meeting on 29 June 2016. We also seek your approval to submit the attached note to the Primary Production Select Committee.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** that, in December 2014, Cabinet agreed to bring the Geographical Indications (Wines and Spirits) Registration Act (“**the GI Act**”) into force, and that regulations will be required to implement the registration system for geographical indications established by the GI Act.
- Noted*
- b **Note** in December 2015, Cabinet:
- i. agreed to the issuance of drafting instructions for an exposure draft of the regulations; and
 - ii. agreed that the regulations be largely based on the relevant provisions of the Trade Marks Act 2002 and the Trade Marks Regulations 2003 (with some processes and procedures to be based on the Patents Regulations 2014); and
 - iii. Noted that the Minister of Commerce and Consumer Affairs would seek approval from Cabinet before releasing the exposure draft of the Regulations, together with a consultation document seeking public input on a proposed fee structure for the GI Act (EGI-15-MIN 0190 refers).
- Noted*
- c **Note** that the Geographical Indications (Wines and Spirits) Registration Amendment Bill (“**the Amendment Bill**”), currently being considered by the Primary Production Select Committee, will, when enacted, amend the GI Act, to ensure that the registration procedures implemented by the GI Act runs smoothly and sustainably.

Noted

d **Note** that the Amendment Bill provides that registered GIs will expire at the end of 10 years unless they are renewed and a renewal fee paid.

Noted

e **Agree** that the fees consultation document seek public input on the following alternative renewal fee options, in addition to the 10 year renewal period in the Amendment Bill:

- i. A 5 year renewal period; and
- ii. A scheme where the first renewal fee is payable 5 years after the date of registration of a GI, with subsequent renewal fees being payable at 10 year intervals.

Agree/Disagree

f **Note** that subject to the results of the consultation, an appropriate amendment to the Amendment Bill could either be recommended to the Select Committee, or alternatively, introduced by Supplementary Order Paper at the Committee of the Whole House stage.

Noted

g **Sign**, and submit, if you agree: the attached Cabinet paper to EGI (Annex 1) to the Cabinet Office by 10am Thursday 23 June 2016, in time for the submission to be considered by EGI at its meeting on 29 June 2016.

Agree/Disagree

h **Agree** to the submission to the Primary Production Select Committee of the attached note (Annex 5) setting out a proposed timeline for the Select Committee process.

Agree/Disagree

S9(2)(a)

Gus Charteris
Manager, Business Law
MBIE

16.1.06.16

Hon Paul Goldsmith
Minister of Commerce and Consumer
Affairs

..... / /

Background

1. On 10 December 2014, Cabinet agreed that the Geographical Indications (Wines and Spirits) Registration Act 2006 (“**the GI Act**”) be brought into force (EGI Min (14) 21/8 refers). To bring the GI Act into force, a range of regulations are now required.
2. In December 2015, the Cabinet Economic Growth and Infrastructure Committee (“**EGI**”) agreed to the following (EGI-15-MIN-0190 refers):
 - i. that the GI Act Regulations be based largely on the relevant provisions of the Trade Marks Act 2002 and the Trade Marks Regulations 2003 (with some processes and procedures to be based on the Patents Regulations 2014);
 - ii. that public consultation on the proposed regulations be based on an exposure draft of those regulations; and
 - iii. that the Minister of Commerce and Consumer Affairs be invited to issue drafting instructions to the Parliamentary Counsel Office to draft an exposure draft of the Regulations.
3. EGI also noted that you would seek approval from Cabinet before releasing the exposure draft of the proposed regulations, together with a consultation document seeking public input on a proposed fee structure for the GI Act. Attached to this report is a draft submission to EGI (Annex 1) seeking this approval. We recommend that, if you agree, you submit this Cabinet paper and accompanying documents to the Cabinet Office by 10am on 23 June 2016, in time to be considered by EGI at its meeting on 29 June 2016.

Geographical Indications (Wines and Spirits) Registration Amendment Bill

4. Before the GI Act can be brought into force, some amendments are required to ensure that the registration process to be established by the GI Act runs smoothly and sustainably. These amendments are contained in the Geographical Indications (Wines and Spirits) Registration Amendment Bill (“**the Amendment Bill**”).
5. The Amendment Bill is currently being considered by the Primary Production Select Committee. The due date for the Select Committee to report back on the Bill is 17 September 2016. This report seeks your approval to submit a proposed timeline for the final Select Committee stages of the Amendment Bill to the Primary Production Committee (Annex 5).

Comment

6. Attached to this report is a Cabinet for paper for EGI, together with:
 - a copy of the exposure draft of the proposed regulations (Annex 2);
 - a commentary on the exposure draft, including questions for submitters (Annex 3);
 - a consultation document on a schedule of fees for the GI Act (Annex 4).

Exposure Draft of the Regulations

7. As noted in the December 2015 EGI decision, the exposure draft is largely based on the relevant provisions of the Trade Marks Regulations 2002. Geographical Indications (“**GIs**”) are similar to trade marks. They generally consist of a word or words, or occasionally a symbol. Like applications to register trade marks, applications to register GIs will be examined to determine eligibility for registration, interested parties will be able to oppose registration or apply to have a registration removed, and registrations will need to be kept in force through the payment of renewal fees.

8. In light of these similarities, there is considerable value in basing the GI Act regulations largely on the procedures set out in the Trade Marks Act 2002 and the Trade Marks Regulations 2003. This will:
 - simplify the administration of the GI Act by the Intellectual Property Office of New Zealand (IPONZ); and
 - make it easier and cheaper for persons applying to register GIs to deal with the Registrar of Geographical Indications.
9. Although it is intended that the bulk of the Regulations will be based on the Trade Mark Regulations 2003, there are 2 areas where it would be desirable to depart from the Trade Mark Regulations. One area relates to oppositions, where the procedure will be based on the procedures in the Patents Regulations 2014. This reflects the fact that the nature of the pleadings and evidence in GI oppositions is likely to be more complex than those encountered in trade mark oppositions.
10. The other relates to the Registrar's ability to control proceedings, such as hearings or oppositions. In this case the relevant parts of the Patents Regulations 2014 represent a more up-to-date approach than that currently provided for in the Trade Marks Regulations 2003.

Fees Consultation Document

11. It is intended that all of the costs of administering the Geographical Indications (Wines and Spirits) Registration Act will be recovered from fees charged to applicants for registration, and other interested parties. The fees consultation document sets out various options for determining the level of fees. The preferred option identified in the document is a "cost to serve the entire register model"
12. Under this model, fees are set at a level that which will encourage users to participate in the registration process and maintain the integrity of the register. To ensure this, some fees will be set at below the actual cost of the service that the fee is intended to cover. This is the approach taken in setting fees for other registered intellectual property rights, such as patents and trade marks.

Application and Renewal Fees

13. The Amendment Bill includes a provision that GI registrations must be kept in force by paying renewal fees at 10 year intervals, with the first renewal fee due 10 years after a GI is registered. The revenue from renewal fees will contribute to the maintenance of the Register of Geographical Indications ("**the Register**"), and allow application and other fees to be kept lower than would otherwise be the case.
14. At the time the decision was made to include a 10 year renewal period in the Bill, IPONZ had not completed their estimates of the costs of administering the GI registration system. We informed you last year (see briefing 0293 15-16) that IPONZ had commissioned Deloitte to develop a costing model to assist IPONZ with setting the fees it would charge for administering the geographical indication system established by the GI Act.
15. At that time, the modelling suggested that a 5 year renewal period would be necessary to ensure that fee revenue covered the long run costs of administering the Register. In our briefing to you last year we suggested that we would recommend to the Select Committee that the 10 year renewal period provided for in the Amendment Bill be amended to 5 years.
16. Since then, IPONZ has been able to refine its estimates of costs and revenues involved in administering the Register. It is now estimated that there will be about 40 applications in the first 3 years after the GI Act enters into force, most from New Zealand wine growers. After this, there are likely to be no more than 2 applications per year for the next 7 years, and 1 per year for the next 6 years, mainly from foreign applicants. It is also estimated that there will be 3 disputes involving GIs which the Registrar of GIs will have to adjudicate in each of the first 2 years after entry into force, and 1 – 2 per year for the next 3 – 4 years. Note there is considerable uncertainty in these estimates.

17. There is, however, a risk that application volumes could be lower than expected, or the number of applications are the same, but spread out over a longer period. Another possible outcome is that the number of proceedings and hearings involving geographical indications are higher than estimated.
18. If any of these outcomes occur, this could have a significant effect on the cumulative surplus/deficit of administering the geographical indication registration system. The revenue gathered in the first few years after the entry into force of the GI Act could be less than the costs incurred by IPONZ in administering the Register. This is because of the time gap between the receipt of the application fees and receipt of the first renewal fees. This gap could be as much as 6 – 7 years based on the 10 year renewal period set out in the Amendment Bill.
19. One way of mitigating this risk would be to adopt a renewal period different from the 10 year period currently set in the Amendment Bill. We consider that it would be appropriate to seek the views of stakeholders before recommending any changes to the renewal period in the Amendment Bill. The attached consultation document considers renewal periods other than the 10 year period set out in the Amendment Bill.
20. The following renewal periods have been considered:
- i. A 10 year renewal period (as in the Amendment Bill) – application fee \$5,000, renewal fee \$2,500;
 - ii. A 5 year renewal period – application fee \$3,500, renewal fee \$1,750.
 - iii. A scheme whereby the first renewal fee is payable 5 years from the date of registration, and a further (much lower) renewal fee at 10 year intervals thereafter – application fee \$5,000, first renewal fee \$2,000, subsequent renewal fees \$500.
21. Another option considered, but discounted, because the higher application fee would likely discourage wine and spirit producers from registering their GIs, might be to raise the application fee for the 10 year renewal period above the currently modelled level of \$5000 mentioned above.
22. If consultation on the fees proposal can be completed prior to the Select Committee's consideration of the Ministry of Business, Innovation and Employment's Departmental Report on the Amendment Bill, any recommendation for change could be incorporated into the Departmental Report and the Select Committee's report to Parliament on the Amendment Bill. Otherwise, any change could be made by way of a Supplementary Order Paper at the Committee of the Whole House stage.

Other Fees

23. The consultation document also seeks input on other fees, such as the fees charged for hearings conducted by the Registrar, and for notices of opposition filed by third parties to decisions by the Registrar to register, amend, or remove a registered GI.

Select Committee Process

24. The due date for the Primary Production Committee's report to Parliament on the Amendment Bill is 17 September 2016. A number of submissions received by the Committee expressed an interest in the content of the regulations, and the proposed fees.

25. We consider that there would be value in deferring the submission of the Ministry's Departmental Report on the Amendment Bill until after the release of the exposure draft and fees consultation document. This would allow any issues raised that impact on the Amendment Bill to be included in the Departmental report and be considered by the Committee.
26. For example, the consultation process on the proposed regulations may identify:
 - i. desirable adjustments to the regulation making powers in the GI Act; or
 - ii. matters in the draft regulation that are more appropriately dealt with in the Act (and vice versa).
27. In light of the above, after consultation with the Clerk of the Committee, officials have developed the suggested timetable set out below for completing the Select Committee process. We seek your approval to submit to the Primary Production Select Committee the proposed timeline and explanation set out in the attached note (Annex 5). The Committee will further consider the Amendment Bill on 7 July 2016.

Suggested timetable for progressing the Amendment Bill

(Consultation period for fees and exposure draft of the regulations)	Wednesday 6 July – Friday 29 July 2016
Departmental Report submitted to Committee	8 August 2016
Consideration of Departmental Report	11 August 2016
Consideration of the Revision Tracked Version of the Amendment Bill	25 August 2016
Deliberation	8 September 2016
Bill Reported back to the House	16 September 2016 (the latest report back date is Saturday 17 September 2016)

Annexes

Annex 1: Cabinet Paper: Geographical Indications (Wines and Spirits) Registration Act 2006 – Proposed Regulations.

Annex 2: A copy of the exposure draft of the proposed regulations.

Annex 3: A copy of the commentary to accompany the exposure draft.

Annex 4: A copy of the fees consultation document.

Annex 5: Note to Primary Production Select Committee.

**Annex 1: Cabinet Paper: Geographical Indications (Wines and Spirits)
Registration Act 2006 – Proposed Regulations**

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

IN CONFIDENCE

Office of the Minister of
Commerce and Consumer Affairs

Chair,
Cabinet Economic Growth and Infrastructure Committee

Geographical Indications (Wines and Spirits) Registration Act 2006 – Proposed Regulations

Proposal

- 1 This submission seeks approval for the release of an exposure draft of the regulations (**the Regulations**), and a consultation document on fees, required for implementation of the Geographical Indications (Wines and Spirits) Registration Act 2006 (**the GI Act**)

Executive Summary

- 2 On 10 December 2014, Cabinet agreed that the GI Act be brought into force (EGI Min (14) 21/8 refers). The GI Act, will, when brought into force, establish a system for registering Geographical Indications (**GIs**) for wines and spirits. A GI is a name, usually a regional name, which is used to identify the origin of goods where some quality of the goods is influenced by their geographical origin. Examples of GIs include Champagne and Scotch Whisky.
- 3 Before the GI Act can be brought into force, some amendments are required to clarify drafting and correct inconsistencies in the GI Act as enacted and to ensure that the registration process is workable, sustainable and cost-effective (EGI Min (15) 5/9 refers). These amendments have been incorporated into the Geographical Indications (Wines and Spirits) Registration Amendment Bill (**the Amendment Bill**), which received its first reading on 17 March 2016. This Bill is currently being considered by the Primary Production Committee (**the Select Committee**).
- 4 Regulations will be required to implement the registration system established by the GI Act. No regulations were developed at the time the GI Act was enacted. The regulations will cover the procedures for examination and registration of a geographical indication, and those required for maintenance of the Register of Geographical Indications (**the Register**). The Register will be administered by the Intellectual Property Office of New Zealand (**IPONZ**).
- 5 In December 2015, Cabinet approved the issuance of drafting instructions for an exposure draft of the Regulations (EGI-15-MIN-0190 refers). A copy of the proposed exposure draft is attached to this submission. Also attached is a draft commentary on the draft Regulations, including questions for public comment.
- 6 Given the similarities between GIs and trade marks, the Regulations are largely based on the relevant provisions of the Trade Marks Act 2002 and the Trade Marks Regulations 2003. This will simplify administration by IPONZ as well as minimising the costs involved in implementing the GI Act. It will also make the process easier for those applying to register geographical indications, as they are likely to be familiar with the trade mark registration system as applicants and owners of registered trade marks.
- 7 The Regulations will also need to set out a schedule of fees. The costs of administering the GI registration system will be recovered entirely from fees paid by applicants for registration and others who interact with the registration system. A consultation document seeking public comment on a proposed fee schedule is also attached to this submission.

IN CONFIDENCE

- 8 One issue covered by the fees consultation paper relates to renewal periods and for the payment of renewal fees. The Amendment Bill as introduced provides for a renewal period of 10 years. That is, a renewal fee must be paid every ten years to keep the registration in force. The GI Act as enacted did not provide for renewal periods or the payment of renewal fees.
- 9 At the time this decision to introduce renewal fees was made, IPONZ had not had the opportunity to gather the information on the costs of administering the GI registration system. Subsequent modelling of the costs carried out by IPONZ suggest that, while a ten year renewal period is feasible, there are risks.
- 10 IPONZ modelling is based on the expectation that there will be about 40 applications in the first three years after the GI Act enters into force, most from New Zealand wine growers. After this, there are likely to be no more than 1-2 applications per year, mainly from foreign applicants. It is also anticipated that in the first two year there will be 6 disputes involving GIs which the Registrar of GIs will need to adjudicate and 1 -2 per year in the following few years.
- 11 There is however, considerable uncertainty in these estimates. If the numbers of GI applications are lower than these estimates, or the number of disputes is higher than anticipated, the revenue collected from the initial tranche of applications may not be sufficient to cover the costs of administering the Register until the first renewal fees become due 10 years after the GI Act enters into force.
- 12 To deal with this, I propose that the fees discussion document canvass two alternative options for the renewal period. One involves requiring renewal fees to be payable every five years; the other involves the payment of an initial renewal fee five years after the date of registration of a GI, and further, much lower renewal fees at ten year intervals thereafter. Subject to the results of the consultation, an appropriate amendment to the Amendment Bill could either be recommended to the Select Committee, or alternatively, could be introduced by Supplementary Order Paper in the Committee of the Whole House Stage.
- 13 I recommend that the exposure draft and fees consultation document be released for public comment. I intend to give interested parties until 29 July to provide comments.

Background

What is a Geographical Indication?

- 14 A GI is an indication (usually a regional name) used to identify the geographical origin of goods that have a given quality, reputation or other characteristic essentially attributable to their geographical origin. GIs have traditionally been used particularly in the EU for agricultural goods and foodstuffs that have qualities that are claimed to be influenced by unique local characteristics like climate and soil.
- 15 The use of GIs by New Zealand producers is largely confined to the wine industry, although foreign wine producers selling into the New Zealand market also use GIs. In the New Zealand spirits market, only foreign distillers use GIs to identify their products.
- 16 The World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights (**the TRIPS Agreement**) obliges New Zealand to provide protection for GIs for wines and spirits.
- 17 GIs are currently protected in New Zealand by range of measures, including the tort of passing off, the Fair Trading Act 1986, the Trade Marks Act 2002, standard 2.7.5 of the Australia New Zealand Food Standards Code (spirits) and the Wine (Specification) Notice 2006 (wine).

IN CONFIDENCE

The Geographical Indications (Wines and Spirits) Registration Act 2006

- 18 The GI Act is intended to provide a registration regime for GIs for wines and spirits. It replaced the earlier Geographical Indications Act 1994, which provided for registration of GIs for all products. The 1994 Act was never brought into force.
- 19 In December 2014, Cabinet agreed to bring the GI Act into force. Before the GI Act can be brought into force, some amendments are required to clarify drafting and correct inconsistencies in the GI Act as enacted and to ensure that the registration process is workable, sustainable and cost-effective (EGI Min (15) 6/9 refers).
- 20 These amendments have been incorporated into the Geographical Indications (Wines and Spirits) Registration Amendment Bill introduced on 3 November 2015. This Bill had its first reading on 17 March 2016, and is currently being considered by the Primary Production Select Committee. The Bill must be reported back by 17 September 2016.
- 21 The GI Act establishes a formal register for GIs. Any "interested person" will be able to apply to register a GI. The application will be subject to an examination process by the Registrar and a GI will only be registered if the criteria set down in the Act are satisfied. The Act also establishes procedures to enable interested third parties to challenge the Registrar's decision to register, remove or alter a registered GI, and to apply to remove or alter the registration of a GI. The registration process will be administered by IPONZ.
- 22 Once the Amendment Bill is enacted it will be possible to bring the GI Act into force by Order in Council once the Regulations are gazetted and IPONZ has completed its preparations for implementation.

Comment

Exposure Draft of the Regulations

- 23 No regulations were drafted at the time the GI Act was enacted. In December 2015, Cabinet agreed to the following (EGI-15-MIN-0190 refers):
 - a. that the Regulations be based largely on the relevant provisions of the Trade Marks Act 2002 and the Trade Marks Regulations 2003 (with some processes and procedures to be based on the Patents Regulations 2014);
 - b. that public consultation on the proposed regulations be based on an exposure draft of those regulations;
 - c. that the Minister of Commerce and Consumer Affairs be invited to issue drafting instructions to the Parliamentary Counsel Office to draft an exposure draft of the Regulations.
- 24 EGI also noted that the Minister of Commerce and Consumer Affairs would seek approval from Cabinet before releasing the exposure draft, together with a consultation document seeking public input on a proposed fee structure for the GI Act. This Cabinet paper seeks that approval for the attached exposure draft and consultation document.

- 25 The exposure draft of the Regulations covers a number of matters including:

- the documents and other information required to accompany an application for registration of a geographical indication;
- procedures for examination and acceptance of an application for registration of a GI;
- procedure governing opposition by interested third parties to acceptance of a registration;

IN CONFIDENCE

- the procedures to be followed for applications to remove or alter a registered GI, including procedures for third parties to oppose an application for removal or alteration;
- procedures governing hearings before the Registrar where the Registrar intends to exercise a discretion (in relation to an application or a registration) that is adverse to the person who wants to be heard; and
- miscellaneous matters, including extensions of time, renewals of registration, changes of name or substitution of registrants.

26 A commentary on the exposure draft, including questions for submitters, is also attached to this submission.

Fees Consultation Document

27 As discussed in earlier submissions to Cabinet in relation to the Amendment Bill, it is intended that the costs of setting up and maintaining the GI registration system established by the GI Act be recovered entirely from third party fees. The issue of fees is the subject of a separate consultation document which is also attached to this submission.

28 In the GI Act as enacted, once a GI is registered, it remained registered indefinitely. There is no requirement to pay renewal fees to keep the registration in force as is the case for registered trade marks.

29 This raises the issue of how to pay for the long term costs of maintaining the Register given the low number of applications expected after the initial tranche of applications in the first 1 - 3 years after the GI Act enters into force. To deal with this issue, the Amendment Bill proposes to amend the GI Act to provide for a ten year renewal period. That is, a renewal fee must be paid every ten years, with the first renewal fee due on the tenth anniversary of the registration date of a GI. The renewal fees will contribute to the long-term costs of maintaining the Register.

30 The Amendment Bill also provides that renewal fees can be set at a level that contributes to the administration of the Register of GIs as a whole. This will assist in keeping initial application fees lower than might otherwise be the case, and reduce the risk that high application fees will discourage some wine producers from registering their GIs. This approach to setting renewal fees has also been adopted in the Trade Marks Act 2002, and the Patents Act 2013.

31 At the time the decision was made to include a ten year renewal period in the Bill, IPONZ had not completed their estimates of the costs of administering the GI registration system. This work has now been completed.

32 Officials estimate that there will about 40 applications in the first three years after the GI Act enters into force, most from New Zealand wine growers. After this, there are likely to be no more than 2 applications per year for the next 7 years, and 1 per year for the next 6 years, mainly from foreign applicants. It is also estimated that there will be 3 disputes involving GIs which the Registrar of GIs will have to adjudicate in each of the first two years GIs after entry into force, and 1-2 per year for next 3 – 4 years. However, there is considerable uncertainty in these estimates.

33 IPONZ modelling of the costs now suggests that, if a renewal period of ten years is adopted, an initial application fee of \$5000 + GST and a renewal fee of \$1750 +GST will be required to ensure that revenue from fees will be sufficient to cover the costs of administering the GI registration system.

IN CONFIDENCE

- 34 While a ten renewal period with these application and renewal fees is feasible, the fee level is based on the estimates of application volumes set out above. There may be problems, however, if the number of applications is lower than estimated, or the number of disputes to be adjudicated is higher than estimated. In these circumstances, revenue gathered in the first few years after the GI Act enters into force may be insufficient to cover the costs of administering the register (which includes the adjudication of disputes) until the first renewal fees are received a little more than ten years after the GI Act enters into force.
- 35 In order to deal with this problem, I propose that the fees consultation document set out alternative options for the renewal period in addition to the ten year renewal period. Subject to the results of the consultation process, I will seek Cabinet approval for an appropriate change to the Amendment Bill.
- 36 If consultation on the fees proposal can be completed prior to the Select Committee's consideration of the Ministry of Business, Innovation and Employment's Departmental Report on the Amendment Bill, the change could be incorporated into the Departmental Report and the Select Committee's report to Parliament on the Amendment Bill. Otherwise, the change could be made by way of a Supplementary Order Paper at the Committee of the Whole House stage.
- 37 The two alternative options to be consulted on are (in addition to the ten year renewal period in the Bill):
- i. adopt a five year renewal period, where renewal fees must be paid every five years starting with the fifth anniversary of the date of registration of the GI; or
 - ii. require the first renewal fee to be paid on the fifth anniversary of the date of registration of the GI, with subsequent renewal fees payable at ten year intervals.
- 38 Another option considered, but discounted, because the higher application fee would likely discourage wine and spirit producers from registering their GIs, might be to raise the application fee for the 10 year renewal period above the currently modelled level of \$5000 mentioned above.
- 39 IPONZ modelling estimates that, if a five year renewal fee is adopted, the initial application fee would be \$3,500 + GST and the renewal fee would be \$1750+GST, payable every five years, starting on the fifth anniversary of the registration date of the GI.
- 40 If a scheme was adopted where the first renewal fee was due at five years, with subsequent renewal fees at ten year intervals, the initial application fee would be \$5000 +GST, the first renewal fee would be \$2000 +GST and the second and subsequent fees would be \$500 +GST.
- 41 By way of comparison, the fee charged to apply to register a geographical indication in Australia is AUD27,500 (including GST), and other fees may be charged as necessary on a cost-recovery basis. There is no requirement to pay renewal fees in Australia.

Consultation

- 42 The Ministry of Foreign Affairs and Trade and the Ministry for Primary Industries have been consulted on the development of the recommendations in this paper and support them. The Department of Prime Minister and Cabinet has been informed.

Financial Implications

- 43 The costs of the GI registration system will be fully recovered from third party fees and there are no financial implications from the release of this exposure draft.

Legislative Implications

44 The recommendations contained in this paper will lead to the drafting of Regulations to be made under the GI Act and potentially, changes to the Amendment Bill.

Regulatory impact Analysis

45 The Regulatory Impact Analysis requirements do not apply to this paper. A Regulatory Impact Statement was prepared when the GI Act was introduced and is available at <http://www.mbie.govt.nz/publications-research/publications/intellectual-property/gi-cabinet-paper-and-ris.pdf>. A full Regulatory Impact Analysis will be provided when final approval for the Regulations is sought.

Publicity

46 A press statement will be issued when the exposure draft and fees consultation paper is released for public comment.

Recommendations

47 The Minister of Commerce and Consumer Affairs recommends that the Committee:

1. **Note** that the Geographical Indications (Wine and Spirits) Registration Act 2006 (**the GI Act**) has not been brought into force;
2. **Note** that:
 - 2.1. In December 2014, Cabinet agreed to bring the GI Act into force (EGI Min (14) 21/8 refers);
 - 2.2. Before the GI Act can be brought into force, some amendments are required;
 - 2.3. That the amendments have been incorporated into the Geographical Indications (Wines and Spirits) Registration Amendment Bill (the Amendment Bill), which received its first reading on 17 March 2016, and is currently being considered by the Primary Production Select Committee;
3. **Note** that before the GI Act can be brought into force, regulations will be required to implement the GI registration system established by the GI Act;
4. **Note** that in December 2015, Cabinet:
 - 4.1. Agreed to the issuance of drafting instructions for an exposure draft of the regulations; and
 - 4.2. Noted that the Minister of Commerce and Consumer Affairs will seek approval from Cabinet before releasing the exposure draft of the Regulations, together with a consultation document seeking public input on a proposed fee structure for the GI Act (EGI-15-MIN 0190 refers).
 - 4.3. **Note** that the Amendment Bill provides that registered GIs will expire at the end of ten years unless they are renewed and a renewal fee paid. and

IN CONFIDENCE

5. **Agree** that the fees consultation document contains the following alternative renewal fee options:
 - 5.1. A ten year renewal period as in the Amendment Bill;
 - 5.2. A five year renewal period;
 - 5.3. A scheme where the first renewal fee is payable five years after the date of registration of a GI, with subsequent renewal fees being payable at ten year intervals.
6. **Note** that, subject to the results of the consultation, an appropriate amendment to the Amendment Bill could either be recommended to the Select Committee, or alternatively, introduced by Supplementary Order Paper at the Committee of the Whole House stage.
7. **Agree** to the release for public consultation of:
 - 7.1. The attached exposure draft of the GI Act Regulations; and
 - 7.2. The attached fees consultation document.

Authorised for lodgement

Hon Paul Goldsmith
Minister of Commerce and Consumer Affairs

Annex 2: A copy of the exposure draft of the proposed regulations

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

DRAFT FOR CONSULTATION

Geographical Indications (Wine and Spirits) Registration Regulations 2016

Governor-General

Order in Council

At Wellington this day of 2016

Present
in Council

These regulations are made under section 57 of the Geographical Indications (Wine and Spirits) Registration Act 2006 on the advice and with the consent of the Executive Council.

Contents

		Page
1	Title	6
2	Commencement	7

Part 1

Preliminary provisions

3	Overview	7
4	Interpretation	8
5	Transitional, savings, and related provisions	8

Part 2

Application for registration of geographical indication

Mandatory requirements

6	Mandatory requirements for application	9
---	--	---

**Geographical Indications (Wine and Spirits)
Registration Regulations 2016**

	<i>New Zealand geographical indication</i>	
7	Information required in application for registration of a New Zealand geographical indication	9
8	Information required before acceptance of application for registration of a New Zealand geographical indication	10
	<i>Foreign geographical indication</i>	
9	Information required in application for registration of a foreign geographical indication	11
10	Information required before acceptance of application for registration of a foreign geographical indication	12
	<i>Withdrawal or correction of application</i>	
11	Withdrawal of application	12
12	Correction of application	12
13	Registrar or court may amend application	12
	Part 3	
	Procedure for dealing with application for registration of geographical indication	
	<i>Examination</i>	
14	Examination of application	13
	<i>Acceptance</i>	
15	Acceptance of application	13
	<i>Non-complying application</i>	
16	Applicant must be notified of non-complying application	13
17	Time for response to notice of non-compliance	13
18	Applicant may request extension of time in relation to notice of non-compliance	14
19	Abandonment of application	14
	<i>Extension of time</i>	
20	Applicant for registration entitled to 1 extension in certain circumstances	14
	<i>Revocation of acceptance</i>	
21	Revocation of acceptance of application	14
22	Registrar must notify applicant of intention to revoke acceptance	15
23	Registrar must hold hearing on revocation of acceptance of application	15
	<i>Rejection of application</i>	
24	Rejection of application	15
25	Registrar must notify applicant of intention to reject application	15
26	Registrar must hold hearing on rejection of application	15

**Geographical Indications (Wine and Spirits)
Registration Regulations 2016**

	<i>Advertisement</i>	
27	Advertisement of accepted application	16
	<i>Notice of opposition</i>	
28	Opposition to accepted application	16
29	Time for filing notice of opposition	16
	<i>Counter-statement to notice of opposition</i>	
30	Counter-statement to notice of opposition	17
	<i>Evidence</i>	
31	Opponent's evidence	17
32	Applicant may file evidence	18
33	Opponent may file evidence in reply	18
34	Registrar's determination on opposition	18
	<i>Registration</i>	
35	When geographical indication must be registered	18
	Part 4	
	Renewal of registration	
36	Notice of expiry	19
37	Application for renewal	19
	Part 5	
	Restoration of expired geographical indication to register	
38	Application for restoration of expired geographical indication to register	19
	Part 6	
	Removal of registered geographical indication from register	
	Subpart 1—Removal proposed by Registrar	
39	Notice and advertising of proposed removal	20
40	Opposition to removal proposed by Registrar	20
41	Registrar's determination on opposition to removal	21
	Subpart 2—Application for removal	
	<i>Application for removal</i>	
42	Application to Registrar for removal of registered geographical indication	21
43	Information required for application for removal	21
	<i>Notice and advertising</i>	
44	Notice of proposed removal	21
	<i>Opposition to application for removal</i>	
45	Opposition to application for removal	22
46	Requirements for counter-statement to application for removal	22

**Geographical Indications (Wine and Spirits)
Registration Regulations 2016**

	<i>Evidence</i>	
47	Applicant's evidence	22
48	Person opposing application for removal may file evidence	23
49	Applicant for removal may file evidence in reply	23

Determination

50	Registrar's determination on opposition to removal	23
----	--	----

Part 7

Alteration of register

Subpart 1—Alteration to registered geographical indication
proposed by Registrar

51	Notice and advertising of proposed alteration	23
52	Opposition to alteration proposed by Registrar	24
53	Registrar's determination on opposition to alteration	24

Subpart 2—Application to alter registered geographical indication

Application for alteration

54	Application to Registrar for alteration of registered geographical indication	24
55	Information required for application for alteration	25

Notice and advertising

56	Notice of proposed alteration	25
----	-------------------------------	----

Opposition to application for alteration

57	Opposition to application for alteration	25
58	Requirements for counter-statement to application for alteration	25

Evidence

59	Applicant's evidence	26
60	Person opposing application for alteration may file evidence	26
61	Applicant for alteration may file evidence in reply	26

Determination

62	Registrar's determination on opposition to alteration	27
----	---	----

Subpart 3—Alterations related to registrant

Altering details of registrant

63	Change to name or address of registrant	27
----	---	----

Substitution of registrant

64	Substitution of registrant	27
----	----------------------------	----

Part 8

Decisions of Registrar

65	Registrar must notify decision	28
66	Registrar must give reasons for decision if required	28

**Geographical Indications (Wine and Spirits)
Registration Regulations 2016**

67	Registrar may waive requirement for information	28
----	---	----

**Part 9
General requirements**

Subpart 1—Applications, requests, and notices to Registrar

Form and content of documents

68	Documents must be in English or Māori	29
69	Content of documents filed in proceeding	29
70	Signatures	29
71	Electronic documents	30

Filing documents

72	Information or documents must be given electronically	30
73	Document filed when received in proper form	30
74	Evidence must be sent to relevant parties	31

Amendment of documents

75	Request to amend documents	31
76	Request to amend pleadings	31

Subpart 2—Addresses

77	Notice of address for service	32
78	Notice of email address	32
79	Change of address	32
80	Notice	32

Subpart 3—Agents

81	Agent may act on behalf of principal	33
82	Registrar may serve and give notices to agent	33
83	Registrar may require principal of agent to file authority with Registrar in certain cases	33
84	Registrar may refuse to recognise person as agent	34
85	Registrar must notify refusal to recognise person as agent	34
86	Notice to Registrar of revocation or alteration of authority	34
87	Notice of revocation of authority may be given by agent	35

**Part 10
Proceedings**

Case management

88	Registrar may require parties to attend case management conference	35
89	Registrar may give directions	36
90	Parties must comply with Registrar's directions	36
91	Compliance with Registrar's directions	36

Halt in proceedings

92	Registrar may halt proceeding	37
----	-------------------------------	----

**Geographical Indications (Wine and Spirits)
Registration Regulations 2016**

r 1

	<i>Consolidation of proceedings</i>	
93	Registrar may consolidate proceedings	38
	<i>Extension of time</i>	
94	Registrar may extend time	38
	<i>Evidence</i>	
95	Evidence restricted to particulars filed	39
	Part 11 Hearings	
	<i>Form of hearing</i>	
96	Form of hearing	39
97	Registrar may determine form of hearings, etc	39
	<i>Hearing by appearance</i>	
98	Notice of hearing by appearance	40
99	Venue for hearing by appearance	40
100	Conduct of hearing by appearance	40
	<i>Hearing fee</i>	
101	Hearing fee	40
	<i>Hearing before exercise of Registrar's discretion or other power</i>	
102	Hearing before exercise of Registrar's discretion or other power	41
	Part 12 Fees	
103	Amount of fees	41
104	Registrar may refuse to take step before fee paid	41
105	Requirement that prescribed fee accompany document to be filed	42
106	Form of payment	42
107	Currency	42
	Schedule 1	42
	Transitional, savings, and related provisions	
	Schedule 2	42
	Fees	

Regulations

1 Title

These regulations are the Geographical Indications (Wine and Spirits) Registration Regulations 2016.

2 Commencement

These regulations come into force on [X].

Part 1 Preliminary provisions

3 Overview

- (1) This regulation is intended only as a guide to the general scheme and effect of these regulations.
- (2) In these regulations,—
 - (a) this Part defines terms used in these regulations.
 - (b) Part 2 relates to an application for registration of a geographical indication:
 - (c) Part 3 contains procedural provisions for considering an application for registration of a geographical indication:
 - (d) Part 4 relates to renewing the registration of a geographical indication:
 - (e) Part 5 relates to restoring an expired geographical indication to the register:
 - (f) Part 6 relates to removing a registered geographical indication from the register as follows:
 - (i) subpart 1 relates to a removal proposed by the Registrar:
 - (ii) subpart 2 relates to an application for removal:
 - (g) Part 7 relates to altering the register as follows:
 - (i) subpart 1 relates to alterations to a registered geographical indication proposed by the Registrar:
 - (ii) subpart 2 relates to an application to alter a registered geographical indication:
 - (iii) subpart 3 relates to alterations related to the registrant:
 - (h) Part 8 contains general provisions relating to decisions of the Registrar:
 - (i) Part 9 contains general requirements as follows:
 - (i) subpart 1 relates to applications, requests, and notices to the Registrar:
 - (ii) subpart 2 relates to addresses:
 - (iii) subpart 3 relates to agents:
 - (j) Part 10 contains procedural rules for proceedings:
 - (k) Part 11 contains rules for hearings:
 - (l) Part 12 relates to fees.

4 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Geographical Indications (Wine and Spirits) Registration Act 2006

address for service means—

- (a) a postal address in New Zealand; or
- (b) a post office box or document exchange box in New Zealand

agent means a person—

- (a) who is authorised by the agent's principal (X) to act for X in any proceeding in accordance with these regulations or to take any step on X's behalf under these regulations; and
- (b) for whom recognition has not been refused by the Registrar under regulation 84

filing date means—

- (a) the date a document is received at the Intellectual Property Office of New Zealand or by the Registrar; or
- (b) if the date a document is received at the Intellectual Property Office of New Zealand or by the Registrar is not a working day, the date of the next working day

proceeding includes an application, request, notice, or hearing in accordance with the Act or these regulations

working day means a day of the week other than—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and
- (b) a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- (c) if 1 January falls on a Friday, the following Monday; and
- (d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday; and
- (e) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
- (f) the day observed as the anniversary day in Wellington.

5 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

Part 2

Application for registration of geographical indication

Mandatory requirements

6 Mandatory requirements for application

- (1) An application must, when it is filed,—
 - (a) be made in the approved form; and
 - (b) contain, or be accompanied by, the information specified in regulation 7 or 9 (as appropriate); and
 - (c) be accompanied by the prescribed fee; and
 - (d) be signed by the applicant.
- (2) An application that does not comply with subclause (1) is invalid and must not be given a filing date.
- (3) An application that complies with subclause (1) must be given a filing date and must be examined.
- (4) In this section,—

application means an application for registration of—

- (a) a New Zealand geographical indication, or
- (b) a foreign geographical indication

approved form means a form approved and made available by the Registrar for the purposes of an application.

New Zealand geographical indication

7 Information required in application for registration of a New Zealand geographical indication

An application for registration of a New Zealand geographical indication must, when it is filed, contain, or be accompanied by, the following information:

- (a) a statement of the basis on which the applicant claims to be an interested person;
- (b) the geographical indication the applicant is applying to register;
- (c) details of the boundaries of the territory, region, or locality to which the geographical indication relates, including a written description and map of the boundaries;
- (d) whether the geographical indication relates to a wine or a spirit;
- (e) an explanation of the given quality, or reputation, or other characteristic that is essentially attributable to the territory, region, or locality defined by the boundaries:

- (f) evidence regarding the given quality, or reputation, or other characteristic described in paragraph (e):
- (g) a description of any proposed conditions on the use of the geographical indication.

8 Information required before acceptance of application for registration of a New Zealand geographical indication

- (1) An applicant must supply the following information to the Registrar before the application can be accepted:
 - (a) a description of the history of the founding and development of the area for the growing of grapes for wine or the production of spirits:
 - (b) a description of the history relating to use of a word or expression to indicate the area as a geographical indication, including—
 - (i) whether, and to what extent, the word or expression is known to retailers of wines or spirits beyond the area described in the application; and
 - (ii) whether, and to what extent, the word or expression has been traditionally used in that area, or elsewhere;
 - (c) whether the geographical indication is a place name that has been approved by the New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa as an official geographic name for a geographic feature within the area described in the application;
 - (d) if the geographical indication is not a place name that has been approved by the New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa as an official geographic name for a geographic feature within the area described in the application,—
 - (i) information about whether the geographical indication is of cultural significance to the local community, including Māori; and
 - (ii) what steps have been taken by the applicant to ensure that use of the geographical indication is not offensive to a significant section of that community;
 - (e) a description of the degree of discreteness and homogeneity of the geographical indication in respect of the following attributes:
 - (i) the geological formation of the area:
 - (ii) the degree to which the climate of the area is uniform, having regard to the temperature, atmospheric pressure, humidity, rainfall, number of hours of sunshine, and any other weather conditions experienced in the area throughout the year:
 - (iii) whether part or all of the area is within a natural drainage basin:

- (iv) if the geographical indication relates to a wine, the availability of water from an irrigation scheme:
 - (v) the elevation of the area:
 - (vi) any relevant traditional divisions within the area:
 - (f) any other information requested by the Registrar.
- (2) An applicant may supply, in addition to the information specified in subclause (1)(e), any other information the applicant considers relevant to whether a given quality, reputation, or other characteristic is essentially attributable to the geographical origin of a wine or spirit.
- (3) An applicant may supply the information referred to in subclause (1) and (2) after filing the application.
- (4) In this regulation, **area** means the territory, region or locality within the boundaries described in the application.

Foreign geographical indication

9 Information required in application for registration of a foreign geographical indication

An application for registration of a foreign geographical indication must, when it is filed, contain, or be accompanied by, the following information:

- (a) a statement of the basis on which the applicant claims to be an interested person:
- (b) the foreign geographical indication the applicant is applying to register:
- (c) whether the foreign geographical indication relates to a wine or a spirit:
- (d) the country of origin in which the foreign geographical indication is protected:
- (e) a statement that the foreign geographical indication is protected in its country of origin and has not fallen into disuse in that country:
- (f) a description of any proposed conditions on the use of the geographical indication in New Zealand:
- (g) if the application is for registration of a translation of a foreign geographical indication, a translation of the foreign words in the geographical indication:
- (h) if the application is for registration of a transliteration of a foreign geographical indication, a transliteration of the foreign characters in the geographical indication:
- (i) the registration number of the foreign geographical indication (if any):
- (j) a copy of the regulations, rules, or other documents that specify the protection given to the foreign geographical indication in its country of ori-

gin (including any conditions on the use of the foreign geographical indication).

10 Information required before acceptance of application for registration of a foreign geographical indication

- (1) An applicant must supply any other information requested by the Registrar before the application can be accepted.
- (2) An applicant may supply that information after filing the application.

Withdrawal or correction of application

11 Withdrawal of application

- (1) An applicant for registration of a geographical indication may, at any time, withdraw the application by notice to the Registrar.
- (2) The notice must—
 - (a) be in writing; and
 - (b) be signed by the applicant.

12 Correction of application

- (1) An applicant for registration of a geographical indication may, at any time, request the Registrar to alter the application to correct—
 - (a) the name, address for service, or email address of the applicant; or
 - (b) an error or omission.
- (2) The request must—
 - (a) be in writing; and
 - (b) be signed by the applicant; and
 - (c) contain the correction to be made to the application.
- (3) The Registrar may alter the application to make the correction if, in the Registrar's opinion, the correction does not materially alter the meaning or scope of the application.

13 Registrar or court may amend application

The Registrar or the court, as the case may be, may at any time (whether before or after acceptance) correct any error in connection with an application for registration of a geographical indication if, in the Registrar's or the court's opinion, the correction does not materially alter the meaning or scope of the application.

Part 3

Procedure for dealing with application for registration of geographical indication

Examination

14 Examination of application

The Registrar must examine an application that has been given a filing date in order to determine whether it complies with the requirements of the Act and these regulations.

Acceptance

15 Acceptance of application

The Registrar must, subject to any conditions the Registrar thinks fit, accept an application if the Registrar considers that the application complies with the requirements of the Act and these regulations.

Non-complying application

16 Applicant must be notified of non-complying application

If the Registrar considers that an application does not comply with the requirements of the Act or these regulations, the Registrar must—

- (a) give the applicant a notice of non-compliance; and
- (b) give the applicant an opportunity to respond to the notice, or to amend the application, within the time specified by the Registrar.

17 Time for response to notice of non-compliance

- (1) The Registrar must, in a notice of non-compliance given under regulation 16, specify a deadline of not less than 6 months after the notice was given for the applicant to—
 - (a) respond to the notice; or
 - (b) amend the application.
- (2) After each response or proposed amendment by the applicant, the Registrar may, if the application still does not comply with the requirements of the Act and these regulations,—
 - (a) issue a further notice; and
 - (b) specify a new deadline.

18 Applicant may request extension of time in relation to notice of non-compliance

- (1) An applicant may, before the deadline specified in a notice of non-compliance given under regulation 16 has expired, apply to the Registrar for an extension of time to comply.
- (2) The Registrar may allow an extension (and may allow subsequent extensions) in the Registrar's discretion.
- (3) The Registrar must not allow an extension if the application for extension is made after the deadline has expired.

19 Abandonment of application

The Registrar must treat the application as abandoned if, within the time specified by the Registrar, the Registrar does not receive a response or a proposed amendment from the applicant to a notice given under regulation 16.

Extension of time

20 Applicant for registration entitled to 1 extension in certain circumstances

- (1) This regulation applies to any deadline for doing anything under these regulations in relation to—
 - (a) an application for registration of a geographical indication, up until the application is accepted; and
 - (b) a proposal under regulation 21 to revoke the acceptance of an application for registration.
- (2) If a deadline to which this regulation applies has expired, an applicant is entitled to an extension of not more than 2 months after that expiry if the applicant—
 - (a) applies to the Registrar, within 2 months after that expiry, for an extension of time to do the thing; and
 - (b) at the time of application, does the thing.
- (3) An applicant is entitled to only 1 extension under this regulation.

Revocation of acceptance

21 Revocation of acceptance of application

- (1) The Registrar may revoke the acceptance of an application before the geographical indication to which the application relates is registered if the Registrar is satisfied that the application was accepted because of an error or omission made by the Registrar.
- (2) If the Registrar revokes the acceptance of an application,—
 - (a) the application is to be treated as if it had not been accepted; and

- (b) the Registrar must examine the application under regulation 14 again.

22 Registrar must notify applicant of intention to revoke acceptance

- (1) The Registrar must notify the applicant if the Registrar proposes to revoke acceptance of an application under regulation 21.
- (2) The notice must—
- (a) be in writing; and
 - (b) specify the ground or grounds for revocation; and
 - (c) advise the applicant that the applicant may require a hearing; and
 - (d) specify a period of not less than 1 month after the applicant has received the notice during which the applicant may require a hearing; and
 - (e) advise the applicant that the Registrar will revoke acceptance at the end of that period if the applicant has not required a hearing.

23 Registrar must hold hearing on revocation of acceptance of application

The Registrar must, as soon as practicable, hold a hearing in relation to the proposed revocation of acceptance of an application if the applicant requires it.

Rejection of application

24 Rejection of application

The Registrar must reject an application if, within the time specified by the Registrar in a written notice given to the applicant, the applicant does not satisfy the Registrar that the applicant has complied with the requirements of the Act and these regulations for registering a geographical indication.

25 Registrar must notify applicant of intention to reject application

- (1) The Registrar must notify the applicant if the Registrar proposes to reject an application.
- (2) The notice must—
- (a) be in writing; and
 - (b) specify the ground or grounds for rejection; and
 - (c) advise the applicant that the applicant may require a hearing; and
 - (d) specify a period of not less than 1 month after the applicant has received the notice during which the applicant may require a hearing; and
 - (e) advise the applicant that the Registrar will reject the application at the end of that period if the applicant has not required a hearing.

26 Registrar must hold hearing on rejection of application

The Registrar must, as soon as practicable, hold a hearing in relation to the proposed rejection of an application if the applicant requires it.

*Advertisement***27 Advertisement of accepted application**

- (1) The Registrar must advertise that an application has been accepted.
- (2) The advertising must be in the format, manner, and frequency that the Registrar thinks appropriate.

*Notice of opposition***28 Opposition to accepted application**

- (1) An interested person may oppose an application by filing, with the Registrar, a notice of opposition to an application for registration of a geographical indication.
- (2) The notice of opposition must—
 - (a) be in writing; and
 - (b) be signed by the opponent; and
 - (c) contain, or be accompanied by, the following information—
 - (i) a statement of the basis on which the opponent claims to be an interested person; and
 - (ii) the geographical indication to which the opposition relates; and
 - (iii) the ground or grounds of opposition; and
 - (iv) if a ground of opposition relates to section 14, 15, 16, or 17 of the Act, the trade mark number of the relevant trade mark; and
 - (v) a statement of case that sets out the facts on which the opponent relies and the relief sought; and
 - (d) be accompanied by the prescribed fee.
- (3) The Registrar must, as soon as practicable after a notice of opposition is filed, send a copy of the notice and statement of case to the applicant for registration of the geographical indication.

29 Time for filing notice of opposition

- (1) A notice of opposition under regulation 28 must be given to the Registrar within 3 months after the date when acceptance of the application was first advertised.
- (2) The Registrar may, on the request of a person wishing to oppose the application for registration of a geographical indication, extend the period for filing a notice of opposition—
 - (a) by up to 1 month, without the applicant's consent; or
 - (b) by up to 2 months, with the applicant's consent.

- (3) The Registrar must not extend the period for filing a notice of opposition if the request for extension is received after the period for filing the notice has expired.

Counter-statement to notice of opposition

30 Counter-statement to notice of opposition

- (1) An applicant to whom a notice of opposition has been sent must file a counter-statement with the Registrar within 2 months after being sent the notice and statement of case.
- (2) A counter-statement must contain—
 - (a) a response to the opponent's notice of opposition, by admitting, denying, or claiming lack of knowledge of each assertion made in the notice of opposition; and
 - (b) a brief statement of the facts on which the applicant relies in support of the registration of the geographical indication.
- (3) The counter-statement must be signed by the applicant.
- (4) If the applicant does not file a counter-statement within the period specified in subclause (1), the application for registration of the geographical indication must be treated as having been abandoned.
- (5) If the applicant files a counter-statement within the period specified in subclause (1), the Registrar must send a copy of the counter-statement to the opponent.

Evidence

31 Opponent's evidence

- (1) The opponent must, within 4 months after being sent a copy of the counter-statement—
 - (a) file evidence in support of the opponent's case; or
 - (b) notify the Registrar that the opponent does not intend to file evidence; or
 - (c) notify the Registrar that the opponent withdraws the notice of opposition.
- (2) The Registrar must notify the applicant as soon as practicable after the opponent has notified the Registrar that the opponent either does not intend to file evidence or withdraws the notice of opposition.
- (3) The opponent discontinues opposition if—
 - (a) the opponent does not, within the period specified in subclause (1), file evidence or notify the Registrar that the opponent does not intend to file evidence; or

- (b) the opponent notifies the Registrar that the opponent withdraws the opposition.

32 Applicant may file evidence

The applicant may file evidence in support of the applicant's case within 4 months—

- (a) after receiving a copy of the opponent's evidence; or
- (b) after being notified by the Registrar that the opponent does not intend to file evidence.

33 Opponent may file evidence in reply

The opponent may, if the applicant has filed evidence in support of the applicant's case, file evidence strictly in reply within 3 months after receiving a copy of the applicant's evidence.

34 Registrar's determination on opposition

The Registrar must,—

- (a) hear the parties, if required, and
- (b) consider the evidence; and
- (c) determine whether, and subject to what conditions, if any, the geographical indication is to be registered.

Registration

35 When geographical indication must be registered

(1) The Registrar must register a geographical indication if the Registrar has accepted the application for its registration and—

- (a) no notice of opposition is given in accordance with regulations 28 and 29; or
- (b) a notice of opposition has been given in accordance with regulations 28 and 29 but—
 - (i) all notices of opposition are withdrawn; or
 - (ii) the Registrar determines under regulation 34 that the geographical indication is to be registered.

(2) This regulation is subject to sections 9 to 17 of the Act.

Part 4 Renewal of registration

36 Notice of expiry

- (1) The Registrar must, not later than 2 months before the date the registration of a geographical indication is due to expire, send a notice to the last known postal or email address of—
 - (a) the registrant; and
 - (b) each of the producer representatives.
- (2) In addition to the matters specified in section 47B(2) of the Act, the notice must state—
 - (a) that the registration will expire if it is not renewed; and
 - (b) the last day that it can be renewed; and
 - (c) the amount of the renewal fee.
- (3) In this regulation,—

notice means the notice that the Registrar must give under section 47B(1)(a) of the Act

producer representatives means other persons and organisations that the Registrar considers are representative of the producers of the wine or spirits to which the geographical indication relates.

37 Application for renewal

An application for renewal of the registration of a geographical indication must—

- (a) be in writing; and
- (b) specify the registration number of the geographical indication to which the application relates; and
- (c) be filed with the Registrar before the date of expiry of the geographical registration, but not earlier than 1 year before that date; and
- (d) be accompanied by the prescribed fee.

Part 5

Restoration of expired geographical indication to register

38 Application for restoration of expired geographical indication to register

- (1) The Registrar may restore an expired geographical indication to the register on an application by an interested person.
- (2) An application must—
 - (a) be in writing; and

- (b) specify the former registration number of the expired geographical indication to which the application relates; and
- (c) be filed with the Registrar not later than 12 months after the date on which the registration of the geographical indication expired; and
- (d) be accompanied by the prescribed fee.

Part 6

Removal of registered geographical indication from register

Subpart 1—Removal proposed by Registrar

39 Notice and advertising of proposed removal

- (1) If the Registrar proposes on his or her initiative to remove a registered geographical indication from the register under section 45 of the Act, the Registrar must notify the registrant of, and advertise, the proposed removal.
- (2) The advertising must be in the format, manner, and frequency that the Registrar thinks appropriate.
- (3) The notice sent to the registrant must include—
 - (a) the registered geographical indication to which the proposed removal relates; and
 - (b) the grounds on which the removal of the registered geographical indication has been proposed by the Registrar.

40 Opposition to removal proposed by Registrar

- (1) The registrant or another interested person may oppose a proposal by the Registrar on his or her own initiative to remove a registered geographical indication from the register by filing a notice of opposition within 2 months after the date on which the proposed removal was first advertised.
- (2) The notice of opposition must contain, or be accompanied by,—
 - (a) the registration number of the geographical indication to which the notice relates; and
 - (b) if the opponent is not the registrant, a statement of the basis on which the opponent claims to be an interested person; and
 - (c) the grounds on which the proposed removal of the registered geographical indication from the register is opposed; and
 - (d) a statement of case setting out the facts relied on in support of the opposition.
- (3) The opponent may, within 4 months after filing the notice of opposition, file evidence in support of the opponent's case.

41 Registrar's determination on opposition to removal

The Registrar must,—

- (a) hear the opponent, if required; and
- (b) consider the evidence; and
- (c) determine whether to remove the registered geographical indication from the register.

Subpart 2—Application for removal

Application for removal

42 Application to Registrar for removal of registered geographical indication

- (1) An interested person may apply to the Registrar to remove a registered geographical indication from the register.
- (2) An application must—
 - (a) be in writing; and
 - (b) contain the information specified in regulation 43; and
 - (c) be signed by the applicant.

43 Information required for application for removal

An application for removal must contain—

- (a) a statement of the basis on which the applicant claims to be an interested person; and
- (b) the grounds for removal and the provisions of the Act to which those grounds relate.

Notice and advertising

44 Notice of proposed removal

- (1) If the Registrar receives an application to remove a registered geographical indication from the register under regulation 42, the Registrar must—
 - (a) send a copy of the application to the registrant; and
 - (b) advertise the proposed removal.
- (2) The advertising must be in the format, manner, and frequency that the Registrar thinks appropriate.