



COVERSHEET

Minister	Hon David Clark	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Review of Geographical Indications regime to implement the EU-NZ Free Trade Agreement: release of discussion paper	Date to be published	20 January 2023

List of documents that have been proactively released

Date	Title	Author
9 November 2022	Review of Geographical Indications regime to implement the EU-NZ Free Trade Agreement: release of discussion paper	Office of the Minister of Commerce and Consumer Affairs
9 November 2022	Review of Geographical Indications regime to implement the EU-NZ Free Trade Agreement: release of discussion paper [DEV-22-MIN-0258 Minute]	Cabinet Office

Information redacted

YES

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- Confidential information received by the Government.

In Confidence

Office of the Minister of Commerce and Consumer Affairs
Chair, Cabinet Economic Development Committee

Review of Geographical Indications regime to implement the EU-NZ Free Trade Agreement: release of discussion paper

Proposal

- 1 To seek approval to publicly release the attached discussion document *EU-NZ Free Trade Agreement: Reform of Geographical Indications Law in New Zealand*.

Executive Summary

- 2 On 30 June 2022 New Zealand concluded negotiations for a free trade agreement (the **FTA**) with the European Union (**EU**) and its 27 member states. The agreement will deliver significant economic gains, create new opportunities for New Zealand businesses and cut costs through more favourable access to the EU. In short it will play an important role in our Trade Recovery Strategy.
- 3 The intellectual property (**IP**) chapter of the FTA falls within my Commerce and Consumer Affairs portfolio. A number of IP changes have been agreed. These are primarily in the areas of geographical indications (**GIs**) and copyright. While there is a long lead in time for copyright changes to be made (by 2028), the GIs changes must be implemented before the FTA can enter into force (expected to be mid to late 2024).
- 4 This does not provide much time to do the necessary public consultation on how the changes should be implemented and what New Zealand's GIs regime should look like.
- 5 I recommend that Cabinet approve release of the discussion document for public consultation. My officials have proposed the **attached** discussion paper be released so that public consultation can begin as soon as practical.
- 6 Getting consultation underway at the earliest date possible is important to ensure that implementation strikes the right balance between the interests of rights holders, Māori (including Māori rights holders), the wider New Zealand economy and our international obligations.
- 7 The changes negotiated with the EU provide a higher level of protection for EU GIs than our current GIs regime provides, which is limited to wines and spirits. For example, New Zealand has agreed to protect EU GIs related to other types of beverages and foods, including agricultural products.
- 8 Public consultation presents an opportunity to seek views on whether there is a sound basis for reforming the GIs Act to encompass a registration regime for GIs for a greater range of products (ie beyond wine and spirits). If submissions indicate there is a good case for extending the registration regime, I will seek Cabinet's agreement to carry out further consultation to determine the details of an extended regime.
- 9 The discussion paper also seeks views on the enforcement of registered GIs and a number of minor issues with the current GIs Act.
- 10 Once public submissions have closed, officials will analyse the submissions and finalise their advice to me on how to implement the FTA obligations.

- 11 Changes to implement new copyright obligations have a longer lead in time and will not prevent the FTA being ratified or entering into force. I am proposing therefore to publicly consult on GIs reforms only at this stage as they must be in place by 2024. A delay to implementing the GIs reforms could hold up implementation of the FTA.
- 12 A delay in implementing the FTA would, in practice this will delay New Zealand businesses from accessing the benefits of the FTA until entry into force of the changes.
Confidential information provided to the Government

Background to GIs

- 13 The *Geographical Indications (Wines and Spirits) Act 2006 (the GIs Act)* provides a GIs registration for wine and spirits.
- 14 A GI is an indication (usually a regional name) used to identify the geographical origin of a good that has a given quality, reputation or other characteristic essentially attributable to its geographical origin. GIs have traditionally been used in the EU for agricultural goods (most commonly foods and beverages) with qualities claimed to be influenced by unique local characteristics like climate and soil. Well-known GIs include Champagne, Scotch Whisky and Prosciutto di Parma.
- 15 GIs can create value for local communities through products that are deeply rooted in tradition, culture and geography. Development and use of GIs can support rural development and promote new employment opportunities for rural communities. However, the mere existence or registration of a GI does not guarantee any increased benefits for rural communities. Producers still need to invest in marketing and promotional activities to build consumer recognition of, and reputation in, the GI to persuade consumers to pay a premium for products labelled with the GI.
- 16 The use of GIs by New Zealand producers is largely confined to the wine industry. 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.

GIs obligations made to the EU as part of the FTA

- 17 At the conclusion of negotiations in June 2022, New Zealand had committed to:
 - 17.1 Protect 2,133 EU GIs for a wide range of agricultural products, foods and beverages to a higher standard of protection than the GIs Act.
 - 17.2 Protect up to an additional 30 EU GIs every three years, subject to an examination and opposition procedure based on specified grounds for objecting being agreed.
 - 17.3 Provide administrative enforcement of the EU GIs. This obligation requires New Zealand to enforce the rights of EU GIs, “with or without receiving a request by an interested person” and “by appropriate administrative and judicial steps”.
- 18 Currently, in New Zealand GIs are treated as private rights. The onus is on the GIs holders to take legal action to address infringement of their IP rights. MBIE are not aware of any applications ever having been made in the New Zealand courts concerning the infringement of a registered GI. GIs holders therefore bear the cost of enforcing their rights. The FTA requires administrative enforcement to be provided to address infringement of an EU GI at no cost to the EU or its producers. This is a significant change in our enforcement regime for GIs.

- 19 Given the significant changes to the GIs Act required to meet FTA obligations, I propose reviewing the GIs Act immediately. The first step is to release the discussion document.

Reform process and timing

- 20 We need to start reviewing and reforming the GIs Act as soon as practical to ensure it is done in a thorough, open and transparent manner and within the timeframes.
- 21 Subject to your agreement, the first stage will be to release a public discussion document before the end of November 2022 to run until the end of February 2023.
- 22 My officials are developing a Māori engagement plan to ensure that the Crown's obligations to Māori are met. The starting point for this plan will be to ensure continuity for Māori groups and organisations who engaged with MFAT during the negotiations stage so that there is a natural flow through to the implementation stage.¹
- 23 I plan to bring policy proposals back to Cabinet in the second quarter of 2023 to align with the timing of Cabinet's decisions regarding signature of the FTA. Following these decisions officials would begin work on drafting a bill to reform the GIs Act. This would likely form part of the FTA Implementation Bill, which is expected to be introduced into the House in 2024 by the Minister of Trade and Export Growth.
- 24 Once the GIs legislative reforms have been introduced my officials will begin developing the regulations that will be needed to support the GIs reforms.

Main issues covered in the discussion document

- 25 The questions in the discussion document are targeted at drawing out how the GIs regime works in practice and what changes are needed to implement the FTA obligations and achieve maximum benefit for New Zealand. It also takes the opportunity to test aspects of the GIs Act that have not been reviewed since enactment in 2006. The document is divided into three parts:
- 25.1 **Registration:** Whether we should extend the GIs registration regime for products other than wines and spirits (over and above what we are required to implement for the EU GIs).
- 25.2 **Enforcement:**
- 25.2.1 Civil enforcement: How civil enforcement action through the courts should be provided for, which court should hear cases, who should be able to take legal action and what remedies the court can order.
- 25.2.2 Administrative enforcement: what administrative enforcement should look like in practice and what similar enforcement provisions are already in place that might be adapted to GIs.
- 25.2.3 Border protection measures, including who can file Customs notices.
- 25.3 **Other issues:** This part seeks views on miscellaneous issues such as whether New Zealand should have a GIs logo to indicate a product is protected by a GI, the value of New Zealand's existing enduring GIs, options for cost recovery for

¹ Over the last few years MFAT has engaged around the country with Māori, including Te Taumata, Wakatu, Ngā Toki Whakauranga, Federation of Māori Authorities and National Iwi Chairs Forum on FTA issues, including in relation to EU proposals for protecting their GIs.

administering the regime, and any other issues with the current registration regime.

GIs and the Treaty of Waitangi

- 26 *Ko Aotearoa Tēnei* is the Waitangi Tribunal's first whole of government report that addresses the work of more than 20 government agencies and reported that many current laws and policies fall short of the partnership framework set out in te Tiriti o Waitangi. The Tribunal found that current IP regulatory settings marginalise Māori rights over their cultural expressions and traditional knowledge. In response to the Tribunal's report, Te Puni Kōkiri is leading a whole of government programme of work Te Tumu mō te Pae Tawhiti which will include the development of a sui generis IP and legal system to protect mātauranga Māori and other taonga.
- 27 MBIE is working with Te Puni Kōkiri officials to support this work programme. The implementation of GIs reforms will be run alongside Te Pae Tawhiti (albeit at a faster pace). In doing our work on GIs we will consciously ensure we do not prejudice the outcomes of this longer-term whole of government work programme.
- 28 This is being done in two ways:
- 28.1 using the *Ko Aotearoa Tēnei* report to structure the discussion as part of public consultation
 - 28.2 working with MFAT, Te Arawhiti and Te Puni Kōkiri to develop a Māori engagement plan.
- 29 MBIE is also working with MFAT to identify issues that Māori raised about GIs during negotiations and how to continue our engagement with Māori on those issues – either through the GIs work or within the context of the broader Te Pae Tawhiti work.
- 30 MFAT engaged with Māori on GIs during the negotiations stage. MBIE officials are developing a Māori engagement plan for the implementation phase.

Opportunities for Māori and the public to have a say

- 31 I am keen to get feedback from the public on the issues in the discussion document. To achieve this, the public will be able to provide feedback by:
- 31.1 making a formal submission through the MBIE website (we expect industry bodies to respond predominantly through this avenue)
 - 31.2 by meeting with MBIE officials in person or via teleconference or videoconference.
- 32 I will have further details on our Māori engagement once I have seen the Māori engagement plan MBIE officials are presently developing.

Next steps

- 33 Subject to Cabinet approval, the discussion document will be released for public consultation for a period of approximately 15 weeks. Submissions will close at the end of February 2023 for the discussion document, but views expressed at hui and other public meetings may continue after this date and will also be incorporated into the analysis of feedback.
- 34 MBIE will consider the feedback and develop policy proposals for reforming the GIs Act.

35 I intend to seek policy decisions on the proposed reforms in the second quarter of 2023.

Consultation

36 MBIE consulted Te Puni Kōkiri, Te Arawhiti, the Ministry of Justice, Ministry for Foreign Affairs and Trade, the Ministry for Primary Industries, New Zealand Customs Service, and the Treasury.

Financial Implications

37 There are no fiscal implications from the proposals in this paper. Any fiscal implications arising from implementation of new obligations under the EU-NZ FTA will be addressed in the Cabinet paper and associated National Interest Analysis seeking approval to sign and ratify the agreement.

Human Rights

38 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Climate implications

39 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Legislative Implications

40 There are no legislative implications from the proposals in this paper, though I do anticipate legislative change once policy decisions are made by Cabinet.

Regulatory Impact Analysis

41 The Treasury's Regulatory Impact Analysis team has determined that the EU-NZ Free Trade Agreement: Reform of Geographical Indications Law in New Zealand is exempt from the requirement to provide a Regulatory Impact Statement (RIS). The exemption is based on advice that the discussion document includes the key features of an interim RIS.

42 The Ministry of Business, Innovation & Employment's QA Panel has reviewed the discussion document and confirmed that it meets these requirements. A full RIS will be completed at a later date to inform Cabinet's final decisions on this proposal once it returns from consultation.

Gender Implications

43 No gender implications arise from the proposals in this paper.

Disability Perspective

44 No disability implications arise from the proposals in this paper.

Publicity

45 The GIs FTA obligations have received a low level of media interest so far with a focus on the obligation to protect certain descriptive names as GIs, like feta and gruyere. This may increase with the release of the discussion document.

- 46 The Prime Minister and the Minister for Trade and Export Growth issued a joint media statement on 1 July 2022 on the conclusion of negotiations with the EU. Subject to your approval to publicly consult I will release a media statement to encourage the public to take the opportunity to make a submission. MBIE will publish the discussion document and related resources such as a link to the negotiated FTA on its website. MBIE will advise interested parties by email when the consultation materials are released.
- 47 I intend to proactively release this Cabinet paper by publishing it on MBIE's website, with any necessary redactions within 30 business days.

Recommendations

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

- 1 **agree** to release the attached *EU-NZ Free Trade Agreement: Reform of Geographical Indications Law in New Zealand*;
- 2 **authorise** the Minister of Commerce and Consumer Affairs to make editorial or minor content changes to the discussion document prior to public release and decide the exact dates for release of the document and close of the consultation;
- 3 **note** that the discussion document will be released for public consultation for a period of approximately 15 weeks;
- 4 **note** that the Minister of Commerce and Consumer Affairs intends to report back to Cabinet for agreement on policy decisions for geographical indications reforms in the second quarter of 2023.

Authorised for lodgement

Hon David Clark

Minister of Commerce and Consumer Affairs