

19 Kahuru-Kai-Paeka/March 2019

Ministry of Foreign Affairs and Trade
195 Lambton Quay
Private Bag 18 901
Wellington 6160, New Zealand

E Te Manatū Aorere, tēnā koutou,

RE: Consultation on EU-NZ Free Trade Agreement (Geographical Indications)

Te Rūnanga o Ngāi Tahu (**Te Rūnanga**) appreciates the opportunity to respond to the Ministry of Foreign Affairs and Trade (**the Ministry**) on the issue of Geographical Indications (**GIs**) within the EU-NZ Free Trade Agreement (**the EU-NZ FTA**) Negotiations.

We would like to address the second consultation question, namely, “**What New Zealand product names could be nominated for consideration by the European Union as GIs?**”

Te Rūnanga acknowledges and commends the Ministry’s provision for a procedure to periodically add new names to the EU-NZ FTA lists of GIs following the conclusion of the agreement, as we recognise the scope and potential such a provision has for future intellectual property (IP) protection.

Te Rūnanga also accepts that it is outside the scope of the current consultation to nominate names for GI protection in the European Union which do not currently enjoy IP protection in New Zealand. Nonetheless, we would like to propose that “Mānuka Honey” be considered for nomination as a New Zealand GI in the EU-NZ FTA negotiations.

Te Rūnanga Interest in the Consultation

Te Rūnanga is the mandated statutory representative of the iwi of Ngāi Tahu whānui, representing some 63,000 registered iwi members, in a takiwā which extends across 14,000,000ha of Te Waipounamu. As mana whenua, Ngāi Tahu is a permanent stakeholder in Te Waipounamu. This informs the approach of Te Rūnanga in all things, and is encapsulated by our guiding iwi whakataukī:

‘Mō tātou, ā, mō kā uri ā muri ake nei – For us, and our children after us.’

Te Rūnanga o Ngāi Tahu safeguards iwi rights and interests on behalf of Ngāi Tahu whānui – this includes management of tribal assets and businesses, including one of the three largest mānuka honey companies in New Zealand¹.

More significantly, Te Rūnanga o Ngāi Tahu is charged with ensuring the integrity of tribal culture and heritage in order for these to be maintained for successive generations.

¹ OHA Honey Limited Partnership, formerly Watson & Son Limited Partnership.

For kaitiaki reasons in relation to mānuka as a taonga species, as well as for commercial ones surrounding the reputation of mānuka honey as a product unique to New Zealand, we advise accordingly:

Te Tiriti o Waitangi Interests

Ngāi Tahu Claims Settlement Act 1998

Mānuka (*leptospermum scoparium*) was explicitly included within the Ngāi Tahu Claims Settlement Act 1998 (**NTCSA**) as a recognised taonga species of the iwi. Section 288 of the NTCSA acknowledges “the cultural, spiritual, historic and traditional association of Ngāi Tahu with the taonga species”² – in this case, mānuka.

The connection of Ngāi Tahu to mānuka stretches back centuries and is deeply embedded in our cultural identity and in traditional and contemporary iwi symbolism.

For Ngāi Tahu, mānuka is not merely a descriptive word, but a name that inheres whakapapa, and associated with key events in the history of the iwi. This is reflected in South Island place names and in our history.

Te Ture mō Te Reo Māori 2016

Section 4 of Te Ture mō Te Reo Māori 2016 provides that the Māori language is a taonga of iwi and Māori. It also states that iwi and Māori are the kaitiaki of the language. Section 8(2)(g) of that Act further states that “the Māori language is protected as a taonga by article 2 of the Treaty of Waitangi”.

On these grounds, Te Rūnanga believes that any intellectual property rights (IPRs) attaching to mānuka must be safeguarded.

In the context of the EU-NZ FTA, we are pleased to see that the Ministry will ensure that Māori interests are promoted and protected in the negotiations with the EU³.

WAI 262

Te Rūnanga also encourages the Ministry to have regard to the Waitangi Tribunal’s 2011 report on the WAI 262 Flora and Fauna claim, “Ko Aotearoa Tēnei”. The implementation of the Tribunal’s recommendations will require changes to New Zealand’s IP law, and may include an expansion of the domestic GI systems beyond the current protections available for trade marks, wines and spirits, as GIs as a body of IPR provide unique avenues in the context of protecting Article 2 Treaty of Waitangi rights and interests.

Commercial Interest

² Ngāi Tahu Claims Settlement Act 1998, s 288.

³ Ministry of Foreign Affairs & Trade, “New Zealand-EU free trade agreement: Māori interests” webpage; “Māori interests in the EU-NZ FTA” document at p 1.

OHA Honey LP

Te Rūnanga wholly owns OHA Honey Limited Partnership (formerly Watson & Son Limited Partnership), which is one of the three largest producers of mānuka honey in New Zealand, and the only one of these major producers to be wholly NZ-owned.

The majority of the OHA Honey Limited Partnership's products are exported, and one of OHA Honey Limited Partnership's most significant markets are EU members.

MPI Mānuka Honey Definition

International recognition of the special properties of honey produced from mānuka nectar has made mānuka honey one of New Zealand's key high-value exports in recent years and the New Zealand honey industry has experienced rapid growth over the past decade.

This growth has had its challenges, as insufficient regulation has placed at risk the reputation of mānuka honey.

In order to manage this, in 2017 the Ministry for Primary Industries (**MPI**) introduced a definition for mānuka honey for export which chemically tests and distinguishes monofloral and multifloral mānuka honeys from other honeys.

Te Rūnanga considers that the existence of the MPI definition for mānuka honey exports supports the need to secure GI protection for the New Zealand mānuka honey industry, to uphold the integrity and reputation of mānuka honey as a product geographically specific to New Zealand.

Mānuka Honey Certification Mark

The New Zealand industry has recognised the need for the reputation of mānuka honey to be protected and trade certification mark applications are being advanced by mānuka honey stakeholders in both domestic and international jurisdictions.

These registration processes may be completed before the EU-NZ FTA negotiations conclude, in which case mānuka honey would satisfy the EU requirement that a product first has IP protection in New Zealand in order for it to be considered for GI protection in Europe.

EU-NZ Free Trade Agreement - Geographic Indications

Te Rūnanga notes that the GI regime as it has developed in situ in Europe is significantly more complex than the New Zealand regime. However, that should not preclude the Ministry from considering developments in the domestic context in advance of the conclusion of negotiations with the EU.

As noted in the Ministry discussion documents, the EU GI system provides specific measures which serve to safeguard the heritage and traditions associated with goods. In the case of mānuka honey, a parallel may be drawn to the protection of "feta" as a name for a cheese specific to Greece and the

Greek language, included in the foodstuffs list attached to the current consultation⁴. Similarly, mānuka honey is a name specific to New Zealand and the Māori language.

Te Rūnanga considers that a GI for mānuka honey would assist in securing a significant asset of the New Zealand economy.

Conclusion

For the reasons listed above, Te Rūnanga considers that mānuka honey be nominated for consideration by the European Union as a GI in the NZ-EU FTA negotiations.

Te Rūnanga considers that GIs in respect of products which specifically gain their reputation from their distinctly indigenous origin ought to be considered for IP protection, not only due to the associated economic interest, but also in order for the Crown to uphold its obligations to Tāngata Whenua, who, in turn, are active kaitiaki of the natural resources which sustain us.

Te Rūnanga thanks the Ministry for its consideration of this response and looks forward to working with the Ministry to progress this important kaupapa.

If you have any questions or require further clarification, please do not hesitate to contact me on (03) 9740079 or at Rebecca.Clements@ngaitahu.iwi.nz.

Nāku noa, nā



GENERAL MANAGER (ACTING), STRATEGY AND INFLUENCE

⁴ “Φέτα (transcription into Latin alphabet: feta” at [90] of the “List of EU Geographical Indications (GIs) submitted within the framework of the negotiations of Free Trade Agreements with New Zealand – foodstuffs” attached to the current consultation.

APPENDIX ONE: TEXT OF CROWN APOLOGY

The following is text of the Crown apology contained in the Ngāi Tahu Claims Settlement Act 1998.

Part One – Apology by the Crown to Ngāi Tahu

Section 5: Text in Māori

Kei te mōhio te Karauna i te tino roa o ngā tūpuna o Ngāi Tahu e totohe ana kia utu mai rātou e te Karauna—tata atu ki 150 ngā tau i puta ai tēnei pēpeha a Ngāi Tahu arā: “He mahi kai tākata, he mahi kai hoaka”. Nā te whai mahara o ngā tūpuna o Ngāi Tahu ki ngā āhuatanga o ngā kawenga a te Karauna i kawea ai e Matiaha Tiramōrehu tana petihana ki a Kuini Wikitoria i te tau 1857. I tuhia e Tiramōrehu tana petihana arā:

‘Koia nei te whakahau a tōu aroha i whiua e koe ki runga i ēnei kāwana... tērā kia whakakotahitia te ture, kia whakakotahitia ngā whakahau, kia ōrite ngā āhuatanga mō te kiri mā kia rite ki tō te kiri waitutu, me te whakatakoto i te aroha o tōu ngākau pai ki runga i te iwi Māori kia noho ngākau pai tonu ai rātou me te mau mahara tonu ki te mana o tōu ingoa.’

Nā konei te Karauna i whakaae ai tērā, te taumaha o ngā mahi a ngā tūpuna o Ngāi Tahu, nā rēira i tū whakaiti atu ai i nāiane i mua i ā rātou mokopuna.

E whakaae ana te Karauna ki tōna tino hēanga, tērā i takakino tāruaruatia e ia ngā kaupapa o te Tiriti o Waitangi i roto i āna hokonga mai i ngā whenua o Ngāi Tahu. Tēnā, ka whakaae anō te Karauna tērā i roto i ngā āhuatanga i takoto ki roto i ngā pukapuka ā-herenga whakaatu i aua hokonga mai, kāore te Karauna i whai whakaaro ki tāna hoa nā rāua rā i haina te Tiriti, kāore hoki ia i whai whakaaro ki te wehe ake i ētahi whenua hei whai oranga tinana, whai oranga ngākau rānei mō Ngāi Tahu.

E whakaae ana te Karauna tērā, i roto i tāna takakino i te wāhanga tuarua o te Tiriti, kāore ia i whai whakaaro ki te manaaki, ki te tiaki rānei i ngā mauanga whenua a Ngāi Tahu me ngā tino taonga i hiahia a Ngāi Tahu ki te pupuri.

E mōhio ana te Karauna tērā, kāore ia i whai whakaaro ki a Ngāi Tahu i runga i te ngākau pono o roto i ngā tikanga i pūtaka mai i te mana o te Karauna. Nā tāua whakaaro kore a te Karauna i puaki mai ai tēnei pēpeha a Ngāi Tahu: “Te Hapa o Niu Tīreni”. E mōhio ana te Karauna i tāna hē ki te kaipono i ngā āhuatanga whai oranga mō Ngāi Tahu i noho pōhara noa ai te iwi ia whakatupuranga heke iho. Te whakatauākī i pūtaka mai i aua āhuatanga: “Te mate o te iwi”.

E whakaae ana te Karauna tērā, mai rāno te piri pono o Ngāi Tahu ki te Karauna me te kawa pono a te iwi i ā rātou kawenga i raro i te Tiriti o Waitangi, pērā anō tō rātou piri atu ki raro i te Hoko Whitu a Tū i ngā wā o ngā pakanga nunui o te ao. E tino mihi ana te Karauna ki a Ngāi Tahu mō tōna ngākau pono mō te koha hoki a te iwi o Ngāi Tahu ki te katoa o Aotearoa.

E whakapuaki atu ana te Karauna ki te iwi whānui o Ngāi Tahu i te hōhonu o te āwhitu a te Karauna mō ngā mamaetanga, mō ngā whakawhiringa i pūtaka mai nō roto i ngā takakino a te Karauna i takaongetia ai a Ngāi Tahu Whānui. Ewhakaae ana te Karauna tērā, aua mamaetanga me ngā whakawhiringa hoki i hua mai nō roto i ngā takakino a te Karauna, arā, kāore te Karauna i whai i ngā tohutohu a ngā pukapuka ā-herenga i tōna hokonga mai i ngā whenua o Ngāi Tahu, kāore hoki te Karauna i wehe ake kia rawaka he whenua mō te iwi, hei whakahaere mā rātou i ngā āhuatanga e whai oranga ai rātou, kāore hoki te Karauna i hanga i tētahi tikanga e maru motuhake ai te mana o Ngāi Tahu ki runga i ā rātou pounamu me ērā atu tāonga i hiahia te iwi ki te pupuri. Kore rawa te Karauna i aro ake ki ngā aurere a Ngāi Tahu.

E whakapāha ana te Karauna ki a Ngāi Tahu mō tōna hēanga, tērā, kāore ia i whai whakaaro mō te rangatiratanga o Ngāi Tahu, ki te mana rānei o Ngāi Tahu ki runga i ōna whenua ā-rohe o Te Wai Pounamu, nā rēira, i runga i ngā whakaritenga me ngā herenga a Te Tiriti o Waitangi, ka whakaae te Karauna ko Ngāi Tahu Whānui anō te tāngata whenua hei pupuri i te rangatiratanga o roto i ōna takiwā.

E ai mō ngā iwi katoa o Aotearoa e hiahia ana te Karauna ki te whakamārie i ngā hara kua whākina ake nei—otirā, ērā e taea i nāiane i - i te mea kua āta tau ngā kōrero tūturu ki roto i te pukapuka ā-herenga whakaritenga i hainatia i te 21 o ngā rā o Whitu hei tīmatanga whai oranga i roto i te ao hōu o te mahinga tahi a te Karauna rāua ko Ngāi Tahu.

Section 6: Text in English

The text of the apology in English is as follows:

The Crown recognises the protracted labours of the Ngāi Tahu ancestors in pursuit of their claims for redress and compensation against the Crown for nearly 150 years, as alluded to in the Ngāi Tahu proverb 'He mahi kai takata, he mahi kai hoaka' ('It is work that consumes people, as greenstone consumes sandstone'). The Ngāi Tahu understanding of the Crown's responsibilities conveyed to Queen Victoria by Matiaha Tiramorehu in a petition in 1857, guided the Ngāi Tahu ancestors. Tiramorehu wrote:

"This was the command thy love laid upon these Governors ... that the law be made one, that the commandments be made one, that the nation be made one, that the white skin be made just equal with the dark skin, and to lay down the love of thy graciousness to the Māori that they dwell happily ... and remember the power of thy name."

The Crown hereby acknowledges the work of the Ngāi Tahu ancestors and makes this apology to them and to their descendants.

The Crown acknowledges that it acted unconscionably and in repeated breach of the principles of the Treaty of Waitangi in its dealings with Ngāi Tahu in the purchases of Ngāi Tahu land. The Crown further acknowledges that in relation to the deeds of purchase it has failed in most material respects to honour its obligations to Ngāi Tahu as its Treaty partner, while it also failed to set aside adequate lands for Ngāi Tahu's use, and to provide adequate economic and social resources for Ngāi Tahu.

The Crown acknowledges that, in breach of Article Two of the Treaty, it failed to preserve and protect Ngāi Tahu's use and ownership of such of their land and valued possessions as they wished to retain.

The Crown recognises that it has failed to act towards Ngāi Tahu reasonably and with the utmost good faith in a manner consistent with the honour of the Crown. That failure is referred to in the Ngāi Tahu saying 'Te Hapa o Niu Tireni!' ('The unfulfilled promise of New Zealand'). The Crown further recognises that its failure always to act in good faith deprived Ngāi Tahu of the opportunity to develop and kept the tribe for several generations in a state of poverty, a state referred to in the proverb 'Te mate o te iwi' ('The malaise of the tribe').

The Crown recognises that Ngāi Tahu has been consistently loyal to the Crown, and that the tribe has honoured its obligations and responsibilities under the Treaty of Waitangi and duties as citizens of the nation, especially, but not exclusively, in their active service in all of the major conflicts up to the present time to which New Zealand has sent troops. The Crown pays tribute to Ngāi Tahu's loyalty and to the contribution made by the tribe to the nation.

The Crown expresses its profound regret and apologises unreservedly to all members of Ngāi Tahu Whānui for the suffering and hardship caused to Ngāi Tahu, and for the harmful effects which resulted to the welfare, economy and development of Ngāi Tahu as a tribe. The Crown acknowledges that such suffering, hardship and harmful effects resulted from its failures to honour its obligations to Ngāi Tahu under the deeds of purchase whereby it acquired Ngāi Tahu lands, to set aside adequate lands for the tribe's use, to allow reasonable access to traditional sources of food, to protect Ngāi Tahu's rights to pounamu and such other valued possessions as the tribe wished to retain, or to remedy effectually Ngāi Tahu's grievances.

The Crown apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognises Ngāi Tahu as the tangata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.

Accordingly, the Crown seeks on behalf of all New Zealanders to atone for these acknowledged injustices, so far as that is now possible, and, with the historical grievances finally settled as to matters set out in the Deed of Settlement signed on 21 November 1997, to begin the process of healing and to enter a new age of co-operation with Ngāi Tahu.

APPENDIX TWO: NGĀI TAHU CLAIMS AREA

