

*Opposition to application for removal***45 Opposition to application for removal**

- (1) The registrant or another interested person may oppose an application for removal of a registered geographical indication by filing, within 2 months after the date on which the proposed removal was first advertised,—
 - (a) a counter-statement that complies with regulation 46; and
 - (b) if the application for removal is on grounds of disuse, evidence of the recent use of the geographical indication.
- (2) The Registrar must, as soon as practicable, send a copy of any counter-statement and any supporting documents to the applicant.
- (3) The Registrar must determine the application on the documents filed by the applicant if the registrant or other interested person does not, within the period specified in subclause (1), file the information required by subclause (1).

46 Requirements for counter-statement to application for removal

- (1) A counter-statement to an application to remove a registered geographical indication must contain—
 - (a) if the person is not the registrant, a statement of the basis on which the person claims to be an interested person; and
 - (b) a response to the applicant's grounds for removal, by admitting, denying, or claiming lack of knowledge of, each assertion made in the application; and
 - (c) a brief statement of the facts on which the person relies in support of continued registration.
- (2) The counter-statement must be signed by the person opposing the application for removal.

*Evidence***47 Applicant's evidence**

- (1) The applicant must, within 4 months after being sent a copy of the counter-statement and any supporting documents,—
 - (a) file evidence in support of the application for removal; or
 - (b) notify the Registrar that the applicant does not intend to file evidence; or
 - (c) notify the Registrar that the applicant withdraws the application.
- (2) The Registrar must notify the person opposing the application as soon as practicable after the applicant has notified the Registrar that the applicant either does not intend to file evidence or withdraws the application.
- (3) The applicant discontinues the application if—

- (a) the applicant does not, within the period specified in subclause (1), file evidence or notify the Registrar that the applicant does not intend to file evidence; or
- (b) the applicant notifies the Registrar that the applicant withdraws the application.

48 Person opposing application for removal may file evidence

A person opposing an application for removal of a registered geographical indication may file evidence in support of the registration within 4 months after—

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

49 Applicant for removal may file evidence in reply

An applicant for removal may, if the registrant or other interested person has filed evidence in support of the registration, file evidence strictly in reply within 3 months after receiving a copy of the evidence filed in support of the registration by the registrant or other interested person.

Determination

50 Registrar's determination on opposition to removal

The Registrar must,—

- (a) hear the parties, if required; and
- (b) consider the evidence; and
- (c) determine whether to remove the registered geographical indication from the register.

Part 7

Alteration of register

Subpart 1—Alteration to registered geographical indication proposed by Registrar

51 Notice and advertising of proposed alteration

- (1) If the Registrar proposes on his or her initiative to alter a registered geographical indication, or the conditions or boundaries relating to it, under section 46 of the Act, the Registrar must notify the registrant of, and advertise, the proposed alteration.
- (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 alteration relates; and
 - (b) the proposed alteration to the geographical indication or the conditions or boundaries relating to it; and
 - (c) the grounds on which the alteration has been proposed by the Registrar.

52 Opposition to alteration proposed by Registrar

- (1) The registrant or another interested person may oppose a proposal by the Registrar on his or her own initiative to alter a registered geographical indication, or the conditions or boundaries relating to it, by filing a notice of opposition within 2 months after the date on which the proposed alteration 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 alteration of the registered geographical indication, or the conditions or boundaries relating to it, 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.

53 Registrar's determination on opposition to alteration

The Registrar must,—

- (a) hear the opponent, if required; and
- (b) consider the evidence; and
- (c) determine whether to alter the registered geographical indication or the conditions or boundaries relating to it.

Subpart 2—Application to alter registered geographical indication

Application for alteration

54 Application to Registrar for alteration of registered geographical indication

- (1) An interested person may apply to the Registrar to alter a registered geographical indication or the conditions or boundaries relating to it.

- (2) An application must—
- (a) be in writing; and
 - (b) contain the information specified in regulation 55; and
 - (c) be signed by the applicant.

55 Information required for application for alteration

An application for alteration must contain—

- (a) a statement of the basis on which the applicant claims to be an interested person; and
- (b) the proposed alteration of the registered geographical indication or the conditions or boundaries relating to it; and
- (c) the grounds on which the alteration is proposed.

Notice and advertising

56 Notice of proposed alteration

- (1) If the Registrar receives an application to alter a registered geographical indication, or the conditions or boundaries relating to it, the Registrar must—
 - (a) send a copy of the application to the registrant; and
 - (b) advertise the proposed alteration.
- (2) The advertising must be in the format, manner, and frequency that the Registrar thinks appropriate.

Opposition to application for alteration

57 Opposition to application for alteration

- (1) The registrant or another interested person may, within 2 months after the date on which the proposed alteration was first advertised, oppose an application for alteration of a registered geographical indication, or the conditions or boundaries relating to it, by filing a counter-statement that complies with regulation 58.
- (2) The Registrar must, as soon as practicable, send a copy of any counter-statement to the applicant.
- (3) The Registrar must determine the application on the documents filed by the applicant if the registrant or other interested person does not, within the period specified in subclause (1), file the information required by subclause (1).

58 Requirements for counter-statement to application for alteration

- (1) A counter-statement to an application to alter a registered geographical indication, or the conditions or boundaries relating to it, must contain—

- (a) if the person is not the registrant, a statement of the basis on which the person claims to be an interested person; and
 - (b) a response to the applicant's grounds for the proposed alteration, by admitting, denying, or claiming lack of knowledge of, each assertion made in the application; and
 - (c) a brief statement of the facts on which the person relies in opposing the proposed alteration of the registered geographical indication, or the conditions or boundaries relating to it.
- (2) The counter-statement must be signed by the person opposing the application for alteration.

Evidence

59 Applicant's evidence

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

60 Person opposing application for alteration may file evidence

A person opposing an application for alteration of a registered geographical indication, or the conditions or boundaries relating to it, may file evidence in support of the registration within 4 months after—

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

61 Applicant for alteration may file evidence in reply

An applicant for alteration may, if the registrant or other interested person has filed evidence in support of opposition to the alteration, file evidence strictly in

reply within 3 months after receiving a copy of the evidence filed in support of opposition to the alteration by the registrant or other interested person.

Determination

62 Registrar's determination on opposition to alteration

The Registrar must,—

- (a) hear the parties, if required; and
- (b) consider the evidence; and
- (c) determine whether to alter the registered geographical indication, or the conditions or boundaries relating to it.

Subpart 3—Alterations related to registrant

Altering details of registrant

63 Change to name or address of registrant

- (1) If the name or address of a registrant changes, the registrant may request the Registrar to alter the registrant's name or address on the register.
- (2) A request to alter the registrant's name or address on the register must—
 - (a) be in writing; and
 - (b) be signed by the registrant; and
 - (c) contain the new name or address to be entered on the register.

Substitution of registrant

64 Substitution of registrant

- (1) This regulation applies if, after the date of registration of a geographical indication,—
 - (a) the registrant consents to substitution of another interested person as the registrant of a specified geographical indication; or
 - (b) in the case of a registrant that is a natural person, the registrant dies; or
 - (c) in the case of a registrant that is a body corporate or any other entity, the body corporate or other entity ceases to exist.
- (2) The Registrar may, on application by an interested person, alter the register in relation to the specified geographical indication by—
 - (a) removing the registrant's name and address; and
 - (b) entering the applicant as the new registrant.
- (3) An application to alter the register by substituting a new registrant must—
 - (a) be in writing; and

- (b) be signed by the applicant; and
- (c) contain the current registrant's name and address; and
- (d) be accompanied by evidence that the applicant is an interested person; and
- (e) be accompanied by evidence that—
 - (i) the registrant consents to the applicant becoming the new registrant in relation to the registered geographical indication; or
 - (ii) the registrant has died or ceased to exist (as appropriate).

Part 8 Decisions of Registrar

65 Registrar must notify decision

- (1) The Registrar must,—
 - (a) in the case of a decision by the Registrar at the conclusion of a proceeding, notify all the parties to the proceeding in writing; and
 - (b) in the case of the Registrar's exercise of any other discretionary power under the Act or these regulations, notify the party or parties affected in writing.
- (2) For the purpose of an appeal under section 48 of the Act, a decision is given—
 - (a) when the notice of the decision is sent by the Registrar; or
 - (b) if a person to whom the notice has been sent requires the Registrar to notify the reasons for the decision, when the reasons for the decision are sent by the Registrar.

66 Registrar must give reasons for decision if required

- (1) A person who is sent a notice under regulation 65 may require the Registrar to notify that person of the reasons for the decision, if the Registrar has not already done so.
- (2) Notice that a person requires the reasons for a decision must be sent to the Registrar within the time for appealing against the decision.

67 Registrar may waive requirement for information

The Registrar may waive a requirement in these regulations for information to be provided in any proceeding or document if the Registrar is satisfied that the information is unnecessary.

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

- (1) A document filed with the Registrar in, or that is related to, a proceeding must be in English or Māori.
- (2) The Registrar may require a person who files a document in Māori to provide the Registrar with a translation into English within the time specified by the Registrar.
- (3) Despite subclause (1), a person may file a document that is not in English or Māori if—
 - (a) if it is necessary to do so (for example, a convention document); and
 - (b) the document is accompanied by a translation into English that has been verified to the satisfaction of the Registrar.

69 Content of documents filed in proceeding

- (1) A document filed with the Registrar in, or that is related to, a proceeding must contain—
 - (a) the name, address for service, and email address of the person filing the document; and
 - (b) if that person has an agent, the name, address for service, and email address of the agent; and
 - (c) the application number or registration number of the geographical indication that is the subject of the proceeding.
- (2) In this regulation, **person filing the document** means—
 - (a) the person that files the document; or
 - (b) if a document is filed by a person (for example an agent) on behalf of another person, the person on whose behalf the document has been filed.

70 Signatures

- (1) If a document is required to be signed for the purposes of these regulations, the document must,—
 - (a) in the case of a partnership,—
 - (i) contain the full names of all partners; and
 - (ii) be signed by a qualified partner or any other person who has, to the satisfaction of the Registrar, authority to sign; and

- (b) in the case of a body corporate, be signed by a director or other principal officer, or any other person who has, to the satisfaction of the Registrar, authority to sign; and
 - (c) in the case of an unincorporated association, be signed by any person who appears to the Registrar to be duly qualified.
- (2) A document may be signed in accordance with section 22 of the Electronic Transactions Act 2002.

71 Electronic documents

Any requirement in these regulations for a document to be in writing is satisfied if the document complies with section 18 of the Electronic Transactions Act 2002.

Filing documents

72 Information or documents must be given electronically

- (1) Any information or document that a person must or may give to the Registrar under any provision of the Act or these regulations must be given to the Registrar electronically.
- (2) Despite subclause (1), the Registrar may approve other means by which the information or document may be given to the Registrar.
- (3) In this regulation,—

give means issue, supply, produce, provide, file, send, serve, or give in any other way

information or document means any evidence, application, authority, request, form, certificate, statement, notice, or any other type of information or document that—

- (a) is referred to in the Act or these regulations; and
- (b) relates to any geographical indication application or registration, or to proceedings.

73 Document filed when received in proper form

- (1) A document is filed with the Registrar when it is received in proper form.
- (2) A document is only in proper form if—
 - (a) it is legible; and
 - (b) it complies with the requirements of the Act and these regulations; and
 - (c) it is accompanied by the prescribed fee (if any).

74 Evidence must be sent to relevant parties

- (1) A person who files evidence with the Registrar in, or that is related to, a proceeding must send a copy of the evidence to each relevant party at the same time as filing it with the Registrar.
- (2) Evidence may be sent to a relevant party electronically.
- (3) In this section, **relevant party** means the opposite party (if any) and any other party to the proceeding.

Amendment of documents

75 Request to amend documents

- (1) The Registrar may amend a document filed in a proceeding (other than an application for registration of a geographical indication) to correct a clerical error or obvious mistake if—
 - (a) the person who filed the document requests the Registrar to amend the document; and
 - (b) the Registrar is of the opinion that it is fair and reasonable in all the circumstances of the case to amend the document.
- (2) A request must—
 - (a) be in writing; and
 - (b) be signed by the person making the request; and
 - (c) contain—
 - (i) details of the document requested to be amended; and
 - (ii) details of the requested amendment.
- (3) A request to amend a document that is a pleading within meaning of regulation 76 must comply with this regulation and regulation 76.

76 Request to amend pleadings

- (1) A request under regulation 75 to amend a pleading must, in addition to complying with that regulation, be made prior to the hearing to which the pleading relates.
- (2) If a request to amend a pleading is made,—
 - (a) the Registrar must, on receipt of the request, notify the opposite party of the request; and
 - (b) the opposite party may make submissions on the request within a time specified by the Registrar; and
 - (c) the Registrar must, after considering those submissions (if any), notify the parties of the decision that the Registrar intends to make on the request.

- (3) If the Registrar intends to allow an amendment to a pleading described in subclause (4)(a), the Registrar must give the opposite party an opportunity to file, within a time specified by the Registrar, an amended counter-statement.
- (4) In this regulation, **pleading** means any of the following:
- (a) an application to remove a registered geographical indication:
 - (b) an application to alter a registered geographical indication:
 - (c) a notice of opposition to—
 - (i) an application for registration of a geographical indication.
 - (ii) a proposal by the Registrar to remove a registered geographical indication:
 - (iii) an application to remove a registered geographical indication.
 - (iv) a proposal by the Registrar to alter a registered geographical indication:
 - (v) an application to alter a registered geographical indication.

Subpart 2—Addresses

77 Notice of address for service

The following persons must, at the time when the person first gives any information or a document to the Registrar in respect of a matter, file a notice of address for service with the Registrar.

- (a) an applicant for registration of a geographical indication:
- (b) the registrant of a registered geographical indication:
- (c) an agent:
- (d) any party to a proceeding under these regulations.

78 Notice of email address

A person must, at the time when the person first gives any information or a document to the Registrar in respect of a matter, file a notice of an email address with the Registrar for the purpose of—

- (a) receiving documents related to proceedings; and
- (b) receiving general correspondence.

79 Change of address

A person who has filed a notice of address for service or a notice of an email address must, if the address has changed, file a notice of change of address as soon as practicable after the address has changed.

80 Notice

- (1) A notice of address or a notice of change of address must—

- (a) be in writing; and
 - (b) contain the name and the address (or the new address) of the person giving the notice
- (2) An address that is notified to the Registrar under these regulations must be sufficiently detailed to enable the Registrar to contact the addressee at that address.

Subpart 3—Agents

81 Agent may act on behalf of principal

- (1) An agent may, subject to the scope of the agent's authority, act for the agent's principal in any proceeding in accordance with these regulations or take any step on the principal's behalf under these regulations.
- (2) Despite subclause (1), the Registrar may require that a document that must be signed for the purposes of these regulations be signed by the principal and not by the agent.

82 Registrar may serve and give notices to agent

- (1) The Registrar satisfies any requirement under these regulations of service on, notice to, or correspondence with a person by serving on, giving notice to, or corresponding with that person's agent.
- (2) Subclause (1) does not apply to the extent that any written authority filed with the Registrar by the agent's principal expressly excludes the authority of the agent for the matter that is the subject of the service, notice, or communication.

83 Registrar may require principal of agent to file authority with Registrar in certain cases

- (1) This regulation applies if—
 - (a) the Registrar receives a communication that refers to a person as an agent (A) of a principal (X) and, at the time of the communication, the Registrar does not have a written authority in respect of A that complies with the requirements in subclause (3); or
 - (b) the Registrar has a written authority in respect of an agent that complies with the requirements in subclause (3) and the Registrar receives a communication informing the Registrar that the principal (X) has appointed a new agent (A).
- (2) The Registrar may, by notice in writing, require X to file with the Registrar, within the time specified by the Registrar, a written authority in respect of A.
- (3) The written authority must—
 - (a) be signed by X and not by any agent; and
 - (b) contain—

- (i) A's name and address for service; and
 - (ii) if A is authorised to act in respect of a particular geographical indication,—
 - (A) the application number or registration number of the geographical indication; or
 - (B) details of the geographical indication (if an application or registration number has not been assigned); and
 - (iii) a statement of any limitation on the authority of A to act on X's behalf.
- (4) In subclause (2), the time specified by the Registrar must be,—
- (a) if X's address is inside New Zealand, not less than 1 month from the date on which the Registrar receives the communication referred to in subclause (1); and
 - (b) if X's address is outside New Zealand, not less than 2 months from the date on which the Registrar receives the communication referred to in subclause (1).

84 Registrar may refuse to recognise person as agent

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
- (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.

85 Registrar must notify refusal to recognise person as agent

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.

86 Notice to Registrar of revocation or alteration of authority

- (1) A principal (X) must, as soon as practicable, give written notice to the Registrar of the revocation or alteration of the authority of X's agent (A).
- (2) The notice must—
 - (a) be signed by X, and not by an agent; and
 - (b) contain—
 - (i) A's name; and

- (ii) if A is (or has been) authorised to act in respect of a particular geographical indication,—
 - (A) the application number or registration number of the geographical indication; or
 - (B) details of the geographical indication (if an application or registration number has not been assigned); and
 - (iii) if A's authority has been revoked, a statement to that effect; and
 - (iv) if A's authority has been altered, a statement setting out the alteration in authority and the matters for which A continues to have authority.
- (3) A notice that complies with the requirements of this regulation is effective from the date that it is received by the Registrar.

87 Notice of revocation of authority may be given by agent

- (1) An agent (A) of a principal (X) may give written notice to the Registrar of the revocation of A's authority as X's agent.
- (2) The notice must—
 - (a) be signed by A; and
 - (b) contain—
 - (i) X's name and address for service; and
 - (ii) A's name; and
 - (iii) if A is (or has been) authorised to act in respect of a particular geographical indication,—
 - (A) the application number or registration number of the geographical indication; or
 - (B) details of the geographical indication (if an application or registration number has not been assigned); and
 - (iv) a statement that A's authority as X's agent has been revoked.
- (3) A notice that complies with the requirements of this regulation is effective from the date that it is received by the Registrar.

Part 10
Proceedings

Case management

88 Registrar may require parties to attend case management conference

- (1) The Registrar may, at any stage in a proceeding, give a direction requiring the parties to attend a case management conference to review the proceeding and the steps that have been or must still be taken.

- (2) The Registrar must give each party notice of the conference at least 10 working days before the conference.
- (3) The parties may attend the conference in person or by any method that is acceptable to the Registrar.

89 Registrar may give directions

- (1) The Registrar may, at any stage in a proceeding, give directions that are consistent with the Act and these regulations requiring a party to do things to secure the just, speedy, and inexpensive determination of the proceeding within a time limit specified by the Registrar.
- (2) The Registrar may give a direction on the Registrar's own initiative or on the application of a party to the proceeding.
- (3) Without limiting the generality of directions that may be given by the Registrar, the Registrar may—
 - (a) fix the time by which a step in the proceeding must be taken, and
 - (b) specify the steps that must be taken to prepare the proceeding for a hearing; and
 - (c) direct how a hearing is to be conducted, and
 - (d) require parties to use their best endeavours to agree on how information or evidence that may be confidential or privileged is to be treated; and
 - (e) give directions about how information that may be confidential or privileged is to be treated if the parties have not been able to reach an agreement within the time limit specified by the Registrar; and
 - (f) require parties to file copies of documents; and
 - (g) require parties to provide other parties to the proceeding with copies of documents, and
 - (h) require parties to file better or further particulars; and
 - (i) require parties to provide other parties to the proceeding with better or further particulars.

90 Parties must comply with Registrar's directions

All parties to a proceeding must comply with a direction given by the Registrar under this Part.

91 Compliance with Registrar's directions

- (1) If a party (P) fails to comply with a direction given by the Registrar under this Part, the Registrar must,—
 - (a) request P to provide an explanation for P's non-compliance to the Registrar and to the opposite party (if any) within a time specified by the Registrar; and

- (b) in that request, advise P of the potential consequences of non-compliance.
- (2) The opposite party (if any) may provide comments on the explanation to the Registrar within a time limit specified by the Registrar.
- (3) The Registrar must, after considering the explanation (if any) and comments from the opposite party (if any), consider whether P has a reasonable excuse for P's non-compliance, and—
 - (a) notify P and the opposite party (if any) of the decision that the Registrar intends to make; and
 - (b) in that notice—
 - (i) advise that each party may request a hearing concerning the non-compliance; and
 - (ii) specify a period during which a party may request a hearing concerning the non-compliance, being a period of not less than 10 working days after the party receives the notice.
- (4) If a party requests a hearing concerning the non-compliance, the Registrar must,—
 - (a) as soon as practicable, hold a hearing; and
 - (b) make a decision only after holding a hearing.
- (5) If the Registrar's decision is that P has not satisfied the Registrar that P has a reasonable excuse for P's non-compliance, the Registrar may, in addition to exercising his or her power under section 57B of the Act,—
 - (a) extend the period for P to comply with the direction; or
 - (b) modify, or waive compliance with, the direction; or
 - (c) direct that P take no further step in the proceeding.

Halt in proceedings

92 Registrar may halt proceeding

- (1) The Registrar may halt a proceeding, if the Registrar thinks it appropriate, on the application of a party or on the Registrar's own initiative.
- (2) The Registrar may halt the proceeding for the period and on the terms that the Registrar thinks appropriate, but the Registrar must not halt the proceeding for more than 6 months.
- (3) The Registrar may halt the proceeding for further periods, but on each occasion for no more than 6 months.
- (4) The Registrar may recommence the proceeding at any time while the proceeding is halted.

*Consolidation of proceedings***93 Registrar may consolidate proceedings**

- (1) If the Registrar is satisfied that 1 or more of the conditions in subclause (2) is met, the Registrar may require that—
 - (a) 2 or more of the proceedings—
 - (i) be consolidated on terms that the Registrar thinks appropriate; or
 - (ii) be heard at the same time; or
 - (iii) be heard one after the other; or
 - (b) any of the proceedings be halted until after the determination of any other of them.
- (2) The conditions are that, in relation to 2 or more proceedings,—
 - (a) a common question of law or fact arises in the proceedings; or
 - (b) the proceedings relate to identical geographical indications; or
 - (c) for any other reason it is desirable to consolidate the proceedings under this regulation.

*Extension of time***94 Registrar may extend time**

- (1) The Registrar may extend the time specified by these regulations for a step to be taken in a proceeding for a period not exceeding 3 months if Registrar is satisfied that the extension is reasonable in the circumstances.
- (2) The Registrar may extend the time specified by these regulations for a step to be taken in a proceeding for any period (whether or not in addition to the period specified in subclause (1)) specified by the Registrar if the Registrar is satisfied that there are genuine and exceptional circumstances that justify the extension.
- (3) Subclause (1) and (2) does not apply in relation to the matters described in regulation 20(1).
- (4) The Registrar may grant an extension under this regulation on that terms the Registrar considers appropriate.
- (5) If more than 1 extension is granted under subclause (1), the total period of those extensions must not exceed 3 months.
- (6) Despite subclause (1) and (2), the Registrar may not extend the time specified by these regulations if these regulations provide that time must not be extended.

Evidence

95 Evidence restricted to particulars filed

A party to a proceeding may only file evidence in the proceeding that relates to the particulars filed by that party or any other party to the proceeding.

**Part 11
Hearings**

Form of hearing

96 Form of hearing

- (1) A hearing may be—
- (a) a hearing by appearance, that is, the appearance of a party before the Registrar, whether in person or by any other method acceptable to the Registrar; or
 - (b) a hearing by submissions, that is, the consideration by the Registrar of written submissions filed by a party and a review of the other documents filed in the proceedings without an appearance; or
 - (c) a hearing on the papers, that is, a review of the documents filed in the proceedings.
- (2) A party may, subject to subclause (3), elect whether to be heard by appearance, by submissions, or on the papers.
- (3) If the Registrar considers that a party has failed, without reasonable excuse, to attend a hearing or to agree to a hearing date, the Registrar may, in his or her discretion,—
- (a) direct a hearing on the papers for that party; or
 - (b) direct that the party take no further part in the proceeding; or
 - (c) treat the request for a hearing as withdrawn.
- (4) Subclause (3)(a) does not prevent any other party to the proceeding being heard by appearance or by submissions.

97 Registrar may determine form of hearings, etc

- (1) After the relevant evidence has been filed, the Registrar may determine, by correspondence or by holding a pre-hearing conference of the parties, each of the matters specified in subclause (2).
- (2) The matters are:
- (a) whether a hearing is required;
 - (b) the form of the hearing;
 - (c) the time for filing submissions;

- (d) the venue of the hearing;
- (e) any other matter necessary for arranging a hearing.

Hearing by appearance

98 Notice of hearing by appearance

- (1) The Registrar must give each party to a hearing by appearance notice of the date and venue of the hearing not less than 1 month before the date of the hearing.
- (2) Subclause (1) does not apply if—
 - (a) the date and venue have been determined at a pre-hearing conference; or
 - (b) the parties waive compliance with subclause (1); or
 - (c) in the Registrar's opinion, notice of 1 month is not practicable for reasons of urgency.

99 Venue for hearing by appearance

- (1) If 1 party resides or has a principal place of business in Wellington, the hearing must be held—
 - (a) in Wellington; or
 - (b) at the place in New Zealand (if any) that is agreed by all the parties and the Registrar as the venue for the hearing.
- (2) If no party resides or has a principal place in Wellington, the Registrar must determine where in New Zealand the hearing will be held.
- (3) The Registrar may require the party or parties concerned to pay the Registrar's costs in holding the hearing at a venue outside Wellington.

100 Conduct of hearing by appearance

- (1) The Registrar must determine how a hearing by appearance must be conducted.
- (2) Members of the public may attend a hearing by appearance, unless the Registrar decides that it is not appropriate for members of the public to attend.

Hearing fee

101 Hearing fee

- (1) Each party who requests a hearing (other than a hearing on the papers) must pay the fee for a request for a hearing set out in Schedule 2.
- (2) The fee must be paid,—
 - (a) in the case of hearing by appearance, not less than 10 working days before the date set for the hearing; or
 - (b) in the case of a hearing by submissions, when the party files the submissions.

- (3) In the case of a hearing required under regulation 102, the fee must accompany the filing of the notice seeking a hearing.
- (4) The Registrar must refund a fee paid by a party who withdraws from the hearing if the Registrar receives notice of the withdrawal not less than 5 working days before the date set for the hearing.

Hearing before exercise of Registrar's discretion or other power

102 Hearing before exercise of Registrar's discretion or other power

- (1) This regulation applies if section 40 of the Act requires the Registrar to give an interested person an opportunity of being heard before the Registrar adversely exercises any discretionary or other power under the Act or these regulations in relation to—
 - (a) a registered geographical indication; or
 - (b) a geographical indication that is the subject of an application for registration under section 8 of the Act.
- (2) If a person wishes to be heard before the power is exercised, the person must file with the Registrar a notice seeking a hearing.
- (3) The notice must—
 - (a) state the basis on which the person claims to be an interested person; and
 - (b) state the matter in respect of which a hearing is sought; and
 - (c) be signed by the person.
- (4) The person must file the notice within 10 working days after receiving notice from the Registrar of the decision that the Registrar proposes to make.

Part 12
Fees

103 Amount of fees

- (1) The amount of each fee that must be paid under these regulations is set out in Schedule 2.
- (2) The fees prescribed by these regulations are exclusive of goods and services tax.

104 Registrar may refuse to take step before fee paid

- (1) The Registrar may refuse to take any step under the Act or these regulations in respect of which a fee is payable unless the fee is first paid.
- (2) The Registrar may refuse to accept any application, notice, or request under the Act or these regulations in respect of which a fee is payable unless the fee is first paid.

105 Requirement that prescribed fee accompany document to be filed

- (1) A requirement in these regulations that the prescribed fee must accompany a document to be filed with the Registrar is satisfied if the person filing the document has, before filing the document, made an arrangement acceptable to the Registrar for payment of the fee.
- (2) This regulation is subject to the provisions of the Act.

106 Form of payment

A fee payable under the Act or these regulations must be paid by electronic means.

107 Currency

A fee payable under the Act or these regulations must be paid in New Zealand currency.

Schedule 1

Transitional, savings, and related provisions

r 5

Part 1

Provisions relating to these regulations as made

There are no transitional, savings, or related provisions relating to these regulations as made.

Schedule 2

Fees

r 103

Regulation	Matter for which fee is prescribed	Amount of fee (NZ\$)
	Application to apply for registration of a geographical indication	
	Notice of opposition to registration of geographical indication	
	Renewal of registration of geographical indication	
	Application for restoration of expired geographical indication to the register	
	Application for removal of geographical indication	

Application for alteration of a registered
geographical indication or the conditions or
boundaries relating to it
Hearing by Registrar (payable by each party)

Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced [a regulatory impact statement/regulatory impact statements] on [date] to help inform the decisions taken by the Government relating to the contents of this instrument.

[A copy of this regulatory impact statement/Copies of these regulatory impact statements] can be found at—

- [Insert URL link(s) to the RIS on the agency's/agencies' Internet site(s)]
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*:


These regulations are administered by the Ministry of Business, Innovation, and Employment.

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

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



Exposure Draft: Geographical Indications (Wines and Spirits) Registration Act Regulations

Commentary and Request for Feedback
July 2016

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Have your say

Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by 5pm on **Friday 29 July 2016**.

Your submission may respond to any or all of these issues. We also encourage your input on any other relevant issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please also include your name and (if applicable) the name of your organisation in your submission. Please include your contact details in the cover letter or e-mail accompanying your submission.

You can make your submission:

- By sending your submission as a Microsoft Word document to: ***mail@iponz.govt.nz***.
- By mailing your submission to:

Business Law, Building, Resources and Markets Ministry of Business, Innovation & Employment
PO Box 1473

Wellington 6140 New Zealand

Please direct any questions that you have in relation to the submissions process to:
mail@iponz.govt.nz.

Use of information

The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers regulations required to implement the Geographical Indications (Wines and Spirits) Registration Act 2006.

We may contact submitters directly if we require clarification of any matters in submissions. Except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

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If your submission contains any confidential information, please indicate this on the front of the submission. Any confidential information should be clearly marked within the text. If you wish to provide a submission containing confidential information, please provide a separate version excluding the relevant information for publication on our website.

Private information

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

Background

1. On 10 December 2014, the government decided that the Geographical Indications (Wines and Spirits) Registration Act 2006 (“**the GI Act**”) be brought into force. 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.
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.
3. 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 Select 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. Before finalising the GI Act Regulations, the government has agreed to release an exposure draft of the proposed Regulations. The purpose of the exposure draft is to give interested persons an early indication of what the Regulations will look like and provide an opportunity to comment on the proposed Regulations. Feedback is sought by 29 July 2016.
6. Following the end of the consultation period, the Ministry will consider public submissions on the exposure draft, and decide what, if any changes need to be made to the proposed Regulations before they are submitted to government for approval. The Regulations will enter into force when the GI Act enters into force. The final Regulations will be made public at least 28 days before the GI Act enters into force so that interested parties can familiarise themselves with them.

What factors were considered in drafting the Regulations?

7. In developing the exposure draft of the Regulations, the prime objective is to develop a set of regulations to provide for efficient and cost effective procedures for implementing the GI Act, while ensuring the interests of applicants, third parties and the public are protected.
8. MBIE has identified the following as criteria against which to assess the draft regulations:
 - The regulations should allow IPONZ to implement the Act in an efficient and cost effective manner;
 - The regulations should minimise compliance costs for applicants for registration of geographical indications and third parties who have an interest in registered geographical indications;
 - The regulations should ensure that the interests of applicants, third parties and the public are properly taken into account when decisions relating to the registration of geographical indications are taken.

Options

9. In developing regulations, there are essentially two options:
 - i. Draft a new set of regulations from scratch without reference to regulations developed for other legislation administered by IPONZ;
 - ii. Base the regulations, as far as possible, on relevant provisions of regulations developed for legislation dealing with similar matters and administered by IPONZ, in particular, the Trade Mark Regulations 2003.

Analysis of options

Option 1: Develop a new set of regulations from scratch

10. This would involve developing new regulations rather than basing them on existing regulations developed for other legislation administered by IPONZ. An advantage of this may be that such regulations could be written to take account of current “best practice” in developing regulations, including taking account of technological developments. This may reduce the compliance costs imposed on users of the geographical indications registration system.
11. However, developing a completely new set of regulations is likely to take longer than deriving them from existing regulations. If procedures under these regulations are different from the procedures currently implemented by IPONZ, it may be costly for IPONZ to implement them, as they may not be able to adapt existing processes. As IPONZ operates an all-electronic system, this could lead to significant IT costs. There would also be additional costs in developing and maintaining staff training material.

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12. It is likely that many of those who will be interacting with the registration system will also interact with IPONZ in respect of one or more of the other registered intellectual property rights administered by IPONZ, in particular the trade marks system. If the GI Act regulations are significantly different from the regulations associated with these other registered intellectual rights, there may be significant costs for applicants and third parties, in becoming familiar with the regulations and setting up appropriate internal procedures, compared with regulations based on existing regulations.
13. The number of applications to register geographical indications is likely to be low. It is anticipated 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 2 applications per year for the next 7 years, and 1 per year for the next 6 years, mainly from foreign applicants.
14. This means that the costs of establishing and maintaining the registration process for geographical indications will have to be spread over a very small number of applications. By comparison, IPONZ receives around 20,000 trade mark applications per year.
15. Given the small number of applications, and the need to keep fees charged to users of the registration system at a level which does not discourage its use, it would be difficult to justify the time, effort and cost of a completely new set of regulations. The costs to IPONZ of implementing a new set of regulations will have to be recovered from fees charged to users. These costs will need to be recovered from users of the system, and, in light of the small number of applications, the additional costs may also outweigh any saving.

Option 2: Base the GI Act Regulations on the Trade Marks Regulations 2003 (preferred option)

16. Under this option, the GI Act Regulations would be based as far as possible on relevant portions of the Trade Marks Act 2002, and the Trade Marks Regulations 2003. Geographical Indications are similar to trade marks in that they consist of a word or words, or occasionally a symbol.
17. Like applications to register trade marks, applications to register geographical indications 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.
18. In light of the similarities with the processes for registering trade marks, there would be advantages in basing the GI Act regulations on the relevant parts of the Trade Marks Act and Regulations. Some provisions in the Trade Marks Act 2002 will need to be translated into the GI Act Regulations, as some procedures, such as opposition to acceptance, which are split between the Trade Marks Act and the Regulations are left almost wholly to the regulations in the GI Act.

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19. Using the Trade Marks Act and Regulations as a basis for the GI Act Regulations will make it easier and cheaper for IPONZ to implement, as existing IPONZ processes, including IT processes can be adapted, rather than developing new ones. This will help keep the fees charged to users of the geographical indications registration system lower than might otherwise be the case.
20. Many users of the geographical indications system are likely to be users of the trade mark registration system. It will be easier and less costly for these users to become familiar with and comply with the GI Act regulations if they are similar to the Trade Mark Regulations.
21. The Trade Mark Regulations date from 2003 (although some there have been some updates since then) and they may no longer represent “best regulatory practice”. This may result in increased compliance costs for users of the geographical indications registration system if the GI Act Regulations are based on the Trade Mark Regulations. It is, however, considered that any increased compliance costs would more than be offset by savings in compliance costs and lower fees resulting from using a set of regulations based on existing procedures.

How to use this document

22. We have included some suggested questions but we welcome any other relevant information that you wish to provide. All paragraphs are numbered for ease of reference.

Provisions of the Exposure Draft

23. As noted above the draft Regulations are largely based on the Trade Marks Regulations 2003. The draft Regulations depart from the Trade Marks Regulations in two areas:
- Those areas which are specific to GIs, such as the documentation required to accompany an application for registration; and
 - Provisions relating to some opposition proceedings, where the procedure set out in Regulations 92 – 94 of the Patents Regulations has been adopted. This reflects the fact that opposition proceedings involving geographical indications are likely to involve much more complex evidence than trade mark opposition proceedings.

Question 1: The Regulations are based largely on corresponding provisions in the Trade Marks Regulations 2003. Do you agree with this approach? If not, why?

The Draft Regulations

Commencement

24. The Regulations will come into force at the same time as the GI Act. The GI Act will be brought into force by Order-in-Council once the Amendment Bill has been enacted and IPONZ has completed its preparations for implementing the GI Act.

Part 1: Preliminary provisions

25. These consist of draft Regulations 3 - 5. Regulation 3 "Overview" provides a guide to the way in which the Regulations are organised. Regulation 4, "Interpretation" defines the terms used in the Regulations.

Part 2: Application for Registration of a Geographical Indication

26. These regulations prescribe the information that must be filed with an application for registration of a geographical indication. They also prescribe the information that must be filed before an application can be accepted.
27. They also deal with withdrawal and correction of an application.

Part 2: Application for Registration of a Geographical Indication

Part 2 sets out the minimum information that must be filed with an application to register a geographical indication.

Question 2: Do you consider that all of the information set out in Regulations 7 and 9 needs to be filed with the application? If not what information do you think should not be required at filing?

Part 3: Procedure for dealing with an application for a registration of a geographical indication

Procedure from application to acceptance

28. This Part of the Regulations deals with the way in which the Registrar must deal with an application to register a geographical indication. It requires the Registrar to examine an application, and to notify the applicant whether or not the application meets the requirements for acceptance.
29. If the application does not meet the requirements for acceptance, the Registrar must send a notice of non-compliance to the applicant and require the applicant to respond to the notification by a set deadline. If the applicant does not respond by the deadline, the application is treated as abandoned. Applicants can seek extensions of the deadline. If the applicant does respond by the deadline, the Registrar can either accept the application or issue a further notice of non-compliance.
30. If the Registrar accepts an application, these regulations allow the Registrar to revoke acceptance if the application was accepted in error. If the applicant disputes the revocation, they can ask for a hearing before the Registrar.
31. If the Registrar decides that a particular geographical indication should not be registered, the Registrar must notify the applicant and offer the applicant a hearing.
32. If an application to register a geographical indication is accepted, the Registrar must advertise it. Interested persons who want to oppose the registration of the geographical indication have three months (with the possibility of extensions) to file an opposition with the Registrar.

Opposition

33. These regulations deal with the procedure that must be followed if an opposition is filed. They set out what evidence each party must file, and when, the procedure for amending a notice of opposition, and how the Registrar must deal with the opposition.
34. The opposition process is modelled on the opposition process in the Patents Regulations 2014. This process is preferred over the process in the Trade Marks Act and Regulations, as geographical indication oppositions are likely to involve more complex evidence than is usually encountered in trade mark oppositions. The patents opposition process is more suited to issues involving complex evidence.

Opposition Procedures

Question 3: The pre-registration opposition procedure (and the other opposition proceedings set out in the Regulations) is modelled on the pre-grant opposition procedure in the Patents Regulations 2014. Do you consider this procedure to be appropriate? If not what alternative procedures should be used?

Registration

35. If no person files an opposition or if an opposition is filed, and the opposition is withdrawn or unsuccessful, the Registrar must register the geographical indication

Part 4: Renewal of Registration

36. Regulations 33 – 34 deal with how the registration of a geographical indication is renewed and when it must be renewed by. The Registrar is required to notify the registrant and wine growers organisations in the area that the geographical indication relates to. Any person can apply to renew the geographical indication

Part 5: Restoration of an expired geographical indication

37. If the registration of a geographical indication is not renewed within the time specified in Regulation 38, Regulation 35 sets out how it can be restored to the Register. A registration can be restored if an application is made within 12 months of the date the registration expired.

Restoration of a lapsed registration

Question 4: The procedure is modelled on the procedure for restoring a lapsed trade mark. Do you agree with this approach. If not, why?

Question 5: Who should be able to apply for restoration of a lapsed registration? Should it be limited to the registrant, or should anyone be permitted to apply for restoration?

Part 6: Removal of a registered geographical indication from the Register

38. This part sets out the procedure for removing a geographical indication from the Register, and the procedure by which an interested person may oppose the removal. Under s45 of the GI Act, the Registrar may propose the removal of a geographical indication on her own initiative, or if an interested person applies to have the indication removed. Any proposal or application to remove the indication from the Register must be advertised by the Registrar.
39. If there is no opposition, or any opposition is withdrawn, or an opposition is unsuccessful, the Registrar must remove the indication from the Register.
40. If an interested person does wish to oppose the removal of an indication from the Register, a notice of opposition must be filed within 2 months of the advertisement of the proposal or application to remove the indication. As with opposition to registration, the procedure is modelled on the procedure in the Patents Regulations 2014.

41. Any proposal to remove a geographical indication from the Register must be advertised by the Registrar.

Part 7: Alteration of the Register

42. Under s46 of the GI Act, the Registrar may alter a registration on her own initiative or an interested party may apply to alter a registration. The procedures are essentially the same as those described in Part 6.

Part 8 Decisions of the Registrar

43. This Part relates to decisions made by the Registrar in respect of proceedings involving an application to register a geographical indication, or in respect of a registered geographical indication. Any such decision must be notified to all parties to the proceedings concerned. Parties may require the Registrar to provide them with the reasons for the decision, if the Registrar has not already done so.

Part 9: General Requirements

44. This part sets out the general requirements for applications, requests, notices and other documents sent to the Registrar. It sets out:

- formal requirements for these documents;
- any required information that must accompany the documents;
- Signature requirements;
- A requirement for documents to be filed electronically;
- Requirements for addresses;
- Provisions relating to agents acting on behalf of persons dealing with the Registrar.

Part 10: Proceedings

45. Part 10 sets out rules for proceedings before the Registrar, such as hearings and oppositions. It includes provisions on the Registrar's management of proceedings, directions made by the Registrar, the Registrar's powers to halt proceedings, and to extend time limits for proceedings set out in the Regulations.

Part 11: Hearings

46. This part sets out the rules for the conduct of hearings before the Registrar. These include:
- How the hearing can be held (e.g. by appearance before the Registrar, or by written submissions);
 - how parties to a hearing must be notified of the hearing;

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- where a hearing must be held;
- the form and contents of any request for a hearing.

Part 12: Fees

47. This part sets out how fees must be paid and when. It also provides that the Registrar can refuse to take any step where the Act or Regulations require a fee to be paid until the fee is actually received by the Registrar.
48. The Regulations will include a fees schedule as Schedule 2. The fees are the subject of a separate consultation document, which was released at the same time as the exposure draft of the Regulations.

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Annex 4: A copy of the fees consultation document

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

Geographical Indications (Wines and Spirits)

Registration Act 2006:

Proposed Fee Structure

Discussion Document: July 2016

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How to have your say

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- By mailing your submission to:

Business Law, Building, Resources and Markets Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140 New Zealand

Please direct any questions that you have in relation to the submissions process to:
mail@iponz.govt.nz

If you would like to meet directly with MBIE officials, then please make your request well before submissions close. The closing date for submissions is: **29 July 2016**.

Publication of submissions

The information provided in submissions will be used to inform MBIE's development of the fees required to implement the Geographical Indications (Wines and Spirits) Registration Act 2006.

We may contact submitters directly if we require clarification of any matters in submissions.

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Geographical Indications (Wines and Spirits) Registration Act 2006: Proposed Fee Structure

1. Background

1. The Geographical Indications (Wines and Spirits) Registration Act 2006 (**'the GI Act'**), will, when it enters into force, establish a registration system for geographical indications in New Zealand. The registration system will be administered by the Intellectual Property Office of New Zealand (IPONZ), a business unit of MBIE.
2. Before the GI Act can be brought into force, some amendments need to be made to ensure that the registration system runs smoothly and sustainably. These amendments are contained in the Geographical Indications (Wines and Spirits) Registration Amendment Bill (**'the Amendment Bill'**), currently before Parliament. See <http://www.legislation.govt.nz/bill/government/2015/0086/latest/d56e2.html?search=qs+bill+geographical+resel+25+h&p=1&s=1>
3. Regulations will also be required to implement the registration system established by the GI Act. An exposure draft of proposed regulations has been drafted, and input is being sought on the proposed regulations in parallel with this consultation on fees.
4. This document sets out the issues that have been considered by MBIE in formulating its approach to the proposed fees. It seeks input from interested parties on the proposed fees issues and the likely costs and benefits of the proposals.

2. Proposed Fee Structure

5. It is intended that the costs of establishing and maintaining the register of geographical indications (**"the Register"**) will be met entirely from fees paid by applicants for registration and third parties who interact with the Registrar of Geographical Indications (**"the Registrar"**). That is, there will be no subsidy from the government, or from the fees collected in respect of the other registered intellectual property rights administered by IPONZ. This approach is in line with that taken for other registered intellectual property rights, such as patents, trade marks and designs.
6. Using this approach does present a challenge in setting fees. It is estimated that there will be about 30 applications made to register geographical indications in the first year after the GI Act enters into force, 5 in the second year, 5 in the third year and 2 each year thereafter. This raises the question of how to sustainably fund the long-term maintenance of the register of geographical indications.
7. In the GI Act as enacted, a geographical indication, once registered, would remain on the register indefinitely, unless removed. There is no provision for collecting fees in respect of registered geographical indications. The small number of ongoing applications for registration would not be enough to fund the maintenance of the

register unless application fees were very high. If initial application fees are too high, this may discourage users from registering their geographical indications, defeating the purposes of the GI Act.

8. In order to deal with this issue, the Amendment Bill proposes that geographical indications will be registered for a period of ten years, renewable for further ten year periods on payment of a renewal fee. The Bill also provides that renewal fees may be used to recover some or all of the costs incurred by the Registrar in administering the registration system. This would allow initial application fees to be set at a lower level than would otherwise be the case.
9. The charging of renewal fees may also provide an incentive for users of a registered geographical indication to allow the registration to lapse if it is no longer in use or providing any value for its users. This would allow the indication to be used by others in a non-geographical indication sense, perhaps as part of a trade mark. This is particularly important for a right that can be renewed indefinitely – it would be undesirable to have the GI Register cluttered with GIs that are not being used.

2.1. Setting the level of fees

10. As mentioned above, the revenue recovered from fees must fully recover the cost of establishing and maintaining the register of geographical indications. Taking account of this, there are a number of ways in which the level of fees could be set:

- **Cost to serve per unit:** this involves setting individual fees to recover the actual cost of the action that the fee is intended to cover;
- **Cost to serve entire register:** fees are set at a level that which will encourage users to participate in the registration process and maintain the integrity of the register. Some fees will be set at below the 'cost to serve per unit', while other may be set higher;
- **Consider the fees charged in similar foreign jurisdictions:** currently, the only similar jurisdiction with a register of geographical indications is Australia, although some other jurisdictions are in the process of establishing a register. This approach provides little guidance in setting fee levels, although it does provide a benchmark.













2.2. Criteria for setting fees

11. In considering the options set out above, the following criteria have been used:
 - **Efficiency** considers the likely productive and allocative efficiency impacts as well as the cost effectiveness with which the collection processes could be expected to operate.
 - **Equity** considers whether the option is equitable across different users and the amount of possible cross-subsidisation across IPONZ services i.e. fair allocation

of costs.

- **Effectiveness** considers how effective the option is in collecting the cost of operating the service and how accurately costs are recovered from users of these services.

12. The following table rates the options according to the criteria set out above:

	Efficiency	Equity	Effectiveness	Overall Rating
Cost to Serve per unit				
Cost to Serve entire register				
Consider the fees charged by overseas offices				

13. On this basis, IPONZ considers that the most appropriate approach is the “cost to serve entire register”. This is also the basis for setting fees for other registered intellectual property rights such as patents and trade marks.

Question 1:

Do you agree with the “cost to serve entire register” approach to setting fees under the GI Act? If not, what alternative approach do you think should be used?

2.3. Fee Levels

14. In terms of absolute magnitude, the initial application fee, and the renewal fee are the most significant, as most of the cost of establishing and maintaining the register of geographical indications must be recovered from these fees. Other fees, such as fees charged for proceedings, including opposition proceedings, or alteration or removal of geographical indications from the register are likely to make up a small proportion of the fee revenue.

15. It is estimated that the cost of processing and examining an application to register a geographical indication to acceptance will be approximately \$4000. This estimate includes allowances for IT costs, management and administrative costs, overhead costs, as well as the direct personnel costs for the examination process.

16. In setting the application fee, the fee needs to be set high enough to cover a reasonable proportion of the cost of processing and examining the application. At the

same time it must not be set so high that it would discourage wine or spirit producers from using the registration system. To achieve this, and align with the principle of “cost to serve entire register”, revenue from renewal fees may need to be used to supplement the initial application fee, as is done for other registered intellectual property rights such as patents and trade marks.

17. In addition, the fees for procedures such as proceedings and hearings should be set at a level that does not discourage their use. This is likely to mean setting the fees for these procedures significantly below the “cost to serve”. It is estimated that the “cost to serve” for an opposition procedure is about \$8,000. The “cost to serve” for a hearing is estimated to be about \$5700, and for applications to alter or remove a registered geographical indication is \$2770.
18. Revenue from renewal fees may need to be used to assist in keeping fees for proceedings and hearings at a reasonable level. However, renewal fee levels should not be set at a level that might discourage users of registered geographical indications from renewing them. At the same time the renewal fee should provide some incentive for users to allow registrations to lapse if they are not providing value to their users.
19. As mentioned earlier, it is expected that there will be about 30 applications in the first year after entry into force of the GI Act, 5 in the second year, 5 in third year and 2 applications per year in following years. This means much of the ongoing cost of maintaining the register will have to be met from renewal fees.
20. The renewal fee will therefore have to be higher than the “cost to serve”. At the same time it should not be so high so as to discourage wine or spirit producers from renewing their registrations.

2.3.1. GST

21. Note that in the analysis that follows, all fee levels are quoted exclusive of GST. Under s11A(1)(n) of the Goods and Services Tax Act 1985, New Zealand resident applicants and registrants of geographical indications will have to pay GST on any fees that are paid to IPONZ, while non-resident applicants and registrants will not. The quoting of fees as GST exclusive is consistent with the way fees are quoted for the other intellectual property rights administered by IPONZ.

2.4. Possible Application and Renewal Fee levels

22. As noted earlier, the Amendment Bill proposes that the registration of a registered geographical indication must be renewed by paying renewal fees at ten year intervals. The first renewal fee would be payable on the tenth anniversary of the date of registration of the geographical indication. The ten year renewal period was decided upon before IPONZ had had an opportunity to model the likely costs and revenue flows involved in administering the geographical indication registration system.

23. IPONZ, with support from Deloitte, have now modelled the likely costs and revenue flows based on the estimates of application volumes set out earlier. 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.

24. 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 receipt of the first renewal fees. This gap could be as much as 6 – 7 years based on the ten year renewal period set out in the Amendment Bill.

25. One way of mitigating this risk would be to adopt a renewal period different from the ten year period currently set in the Amendment Bill. This consultation document therefore considers renewal periods other than the ten year period set out in the Amendment Bill. The alternative renewal period take account of the needs of users and stakeholders of the geographical indication registration system, as well as the need for IPONZ to cover its costs.

26. If, as a result of this consultation, a renewal period other than the ten year period set out in the Amendment Bill is considered to be more desirable, the Ministry will seek approval to change the Amendment Bill accordingly prior to its enactment.

27. The following renewal periods have been considered:

- i. A ten year renewal period (as in the Amendment Bill);
- ii. A five year renewal period;
- iii. A scheme whereby the first renewal fee is payable five years from the date of registration, and at ten year intervals thereafter.

28. In developing these options, the following criteria have been used:

- i. The revenue raised from fees must be sufficient to cover the long run cost to IPONZ of administering the Register;
- ii. The application fee must be set at a level sufficient to cover a reasonable portion of the cost of processing and examining the application, but not so high that it would discourage wine or spirit producers or other users from using the registration system.
- iii. The renewal period should be set so as to minimise the risk to IPONZ that, if application volumes are significantly below expectations, fees received will be insufficient to maintain the register. As the potential risk to IPONZ is significant this criterion is given the most weight;

- iv. The renewal fee needs to be set at a level sufficient to cover the ongoing costs of maintaining the GI Register, but:
- high enough to encourage GI Registrants to allow their GI registrations to lapse if they are no longer of value to them; and
 - not so high as to discourage Registrants from renewing registrations that are of value.
29. The options set out below are based on the combination of application fees and renewal fees that result in the closest to a “breakeven” amount over a 16 year modelling period.

2.4.1. Option 1: Ten year Renewal Period

30. This involves the payment of a renewal fee every ten years, with the first renewal fee payable on the tenth anniversary of the date of registration of the GI. The combination of application and renewal fees for the ten year renewal period that provides the best “break even” figure over the modelling period is:

- application fee \$5,000;
- renewal fee \$2,500.

2.4.2. Option 2: Five year renewal period

31. This involves the payment of a renewal fee every five years, with the first renewal fee payable on the fifth anniversary of the date of registration of the GI. The combination of application and renewal fees for the five year renewal period that provides the best “break even” figure over the modelling period is:

- Application fee: \$3,500;
- Renewal fee: \$1,750;

2.4.3. Option 3: Ten year renewal period with first renewal fee payable at five years, subsequent renewal fees at ten year intervals thereafter (preferred option)

32. The first renewal fee would be payable on the fifth anniversary of the date of registration of the geographical indication, and subsequent renewal fees payable at ten year intervals after that. This means, for example that the second renewal fee would become payable on the 15th anniversary of the date of registration of the geographical indication.

33. The combination of application and renewal fees for the this renewal scheme that provides the best “break even” figure over the modelling period is:

- Application fee: \$5,000
- First renewal fee \$2,000, subsequent renewal fees \$500.

2.4.4. Comment

34. The Ministry considers that all three options meet the criteria (i), (ii) and (iv) set out earlier. In regard to option (iv), Option 1 does not meet this criterion, because of the delay before the first renewal fee is paid. Options 2 and 3 meet criterion (iv) – the receipt of renewal fees at five years after the date of registration significantly reduces the risk to IPONZ.
35. The Ministry prefers Option 3 over Option 2 because it involves much lower renewal fees in the long term - \$500 every ten years instead of \$1,750 every five years.

Renewal Period

Question 2: Do you agree with the Ministry's preferred renewal period option? If not, what other option should be adopted? Why?

2.5. Other Fees

36. In addition to the application and renewal fees, there are a number of other points in the application process where fees could be charged. These include:
- Response to compliance report setting out objections to an application for registration of a GI;
 - Request for extension of time;
 - Acceptance of an application for registration of a GI;
 - Publication or advertisement of an application or registration;
 - Issue of certificate of Registration;
 - Establishment of a GI Committee under s53 of the GI Act;
 - Notices of Opposition and other proceedings under the Act and Regulations;
 - Hearings.

2.5.1. Response to compliance report, extension of time request, acceptance, publication/advertisement of application and registration

37. It is proposed that the costs of carrying out these functions be grouped together into the application fee. They all relate to the processing of an application to register a GI. Grouping them together into the application fee reduces compliance costs and complexity in the application process.

2.5.2. Establishment of Geographical Indications Committee

It is not proposed to charge a fee if a Geographical Indications Committee is convened under s53 of the GI Act. It is estimated that the Committee will be convened on average once a year. As the Committee will most likely be convened in relation to opposition to registration of GIs, or alteration or removal of a registered GI, it is proposed that the cost of convening the committee will be allocated between hearings and oppositions.

2.5.3. Notices of Opposition, hearings and applications for alteration and removal of GIs from the Register

38. Procedures allowing for decisions to register GIs to be opposed, to allow applications for alteration or removal of registered GIs from the Register to be made and opposed, are important to ensure that the registration process takes proper account of the interests of all those with an interest in a GI, including third parties .
39. In setting fees for these processes the fees should be kept low enough so that GI users and third parties are not discouraged from using them. On the other hand, they need to be high enough to discourage frivolous proceedings from being started.
40. Hearings and opposition procedures will be costly. This is largely due to the significant amount of time that hearing officers will need to spend in considering evidence provided by the parties to these procedures and in drafting decisions. It is estimated that the “cost to serve” for an opposition procedure is about \$8,000. The “cost to serve” for a hearing is estimated to be about \$5700, and for applications to alter or remove a registered GI \$2770.
41. However, given that these procedures are essential to ensure that the interests of all persons with an interest in a geographical indication, the fees for hearings, notices of opposition, and applications to alter or remove geographical indications from the register should be kept below the cost to serve. On this basis, it is proposed that the following fees be set:

- Hearings: \$1700
- Notices of opposition: \$700
- Applications to remove or alter a registered GI: \$1000

Fees for hearings and oppositions, and alterations to the register

Question 3 : Do you agree with proposed fees for hearings, oppositions, and applications to alter or remove a registered geographical indication? If not, what alternative fee levels would be more appropriate?

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Note to Primary Production Select Committee:

GEOGRAPHICAL INDICATIONS (WINES AND SPIRITS) REGISTRATION AMENDMENT BILL – PROPOSED NEXT STEPS

The purpose of this note is to seek the Committee's approval to a suggested timeframe for progressing the Geographical Indications (Wines and Spirits) Amendment Bill (**"the Amendment Bill"**) through the Select Committee process.

The Amendment Bill amends the Geographical Indications (Wines and Spirits) Registration Act 2006 (**"the GI Act"**) and will enable it to be brought into force. To enable this, it will be necessary to develop a set of regulations for the GI Act. None were developed when the GI Act was enacted. It will also be necessary to develop a fee schedule for the Act.

A number of submissions received by the Committee expressed an interest in the content of the regulations, and the proposed fees.

As part of the process for developing the regulations and fee schedule, it will be necessary to consult interested stakeholders. It is intended that this be done by releasing an exposure draft of the proposed regulations, together with a consultation document on proposed fees.

We are in the process of obtaining Cabinet approval to release the exposure draft and fees consultation document. This will allow interested persons to make submissions on the proposed regulations and fees before Parliament sits again in early August. Copies of these documents will be provided to the Clerk of the Committee once Cabinet has approved their release.

We propose that submission of the Departmental report be deferred 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. In addition, the fees consultation document seeks public input on possible alternatives to the ten year renewal period set out in the Bill. These alternatives are being considered as modelling of the revenue and costs associated with administration of the Register of Geographical Indications has suggested that the ten year renewal period may lead to shortfalls in revenue, as set out in the fees consultation document.

For example, the consultation process may identify:

- a) desirable adjustments to the regulation making powers in the GI Act;
- b) matters in the draft regulation that are more appropriately dealt with in the Act (and vice versa) .

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.



Suggested Timeframe for progressing Amendment Bill

(Consultation period for fees and exposure draft of regulations)	Monday 4 July to Friday 29 July 2016
Departmental Report submitted to the Committee	8 August 2016
Consideration of the Departmental report	11 August 2016
Consideration of the Revised Track version of the Amendment Bill	25 August 2016
Deliberation	8 September 2016
Bill reported back	16 September 2016 (the latest report back date is Saturday 17 September 2016)

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BRIEFING

**Cabinet Paper: Proposed Amendments to the
Geographical Indications (Wine and Spirits)
Registration Act 2006**

Date:	12 March 2015	Priority:	High
Security classification:	In Confidence	Tracking number:	2089 14 - 15

Action sought		
	Action sought	Deadline
Hon Paul Goldsmith Minister of Commerce and Consumer Affairs	Agree to the recommendations.	19 March 2015

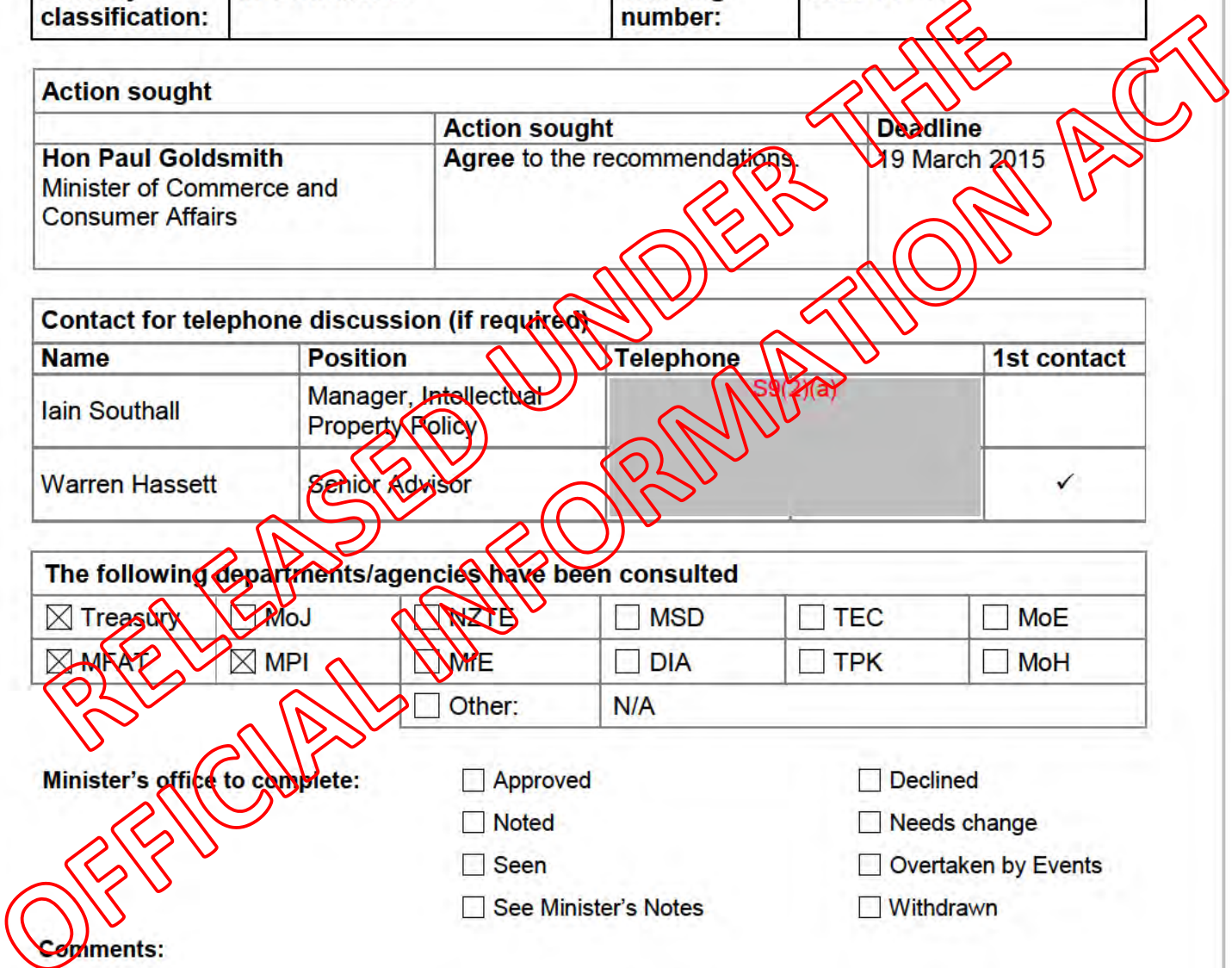
Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Iain Southall	Manager, Intellectual Property Policy	[Redacted]	
Warren Hassett	Senior Advisor	[Redacted]	✓

The following departments/agencies have been consulted					
<input checked="" 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

Cabinet Paper: Proposed Amendments to the Geographical Indications (Wine and Spirits) Registration Act 2006

Date:	12 March 2015	Priority:	High
Security classification:	In confidence	Tracking number:	2089 14 - 15

Purpose

To seek your approval for the attached submission to the Cabinet Economic Growth and Infrastructure Committee ('**EGI**') relating to proposed amendments to the Geographical Indications (Wine and Spirits) Act 2006 ('**the GI Act**').

Recommended action

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

- a **Note** that, on December 10 2014, Cabinet agreed that the Geographical Indications (Wine and Spirits) Act 2006 ('**the GI Act**') be brought into force. *Noted*
- b **Note** that Cabinet also directed the Ministry of Innovation, Business and Employment, working closely with the Ministry for Primary Industries and the Ministry of Foreign Affairs and Trade, to report to Cabinet by 31 March 2015 on the amendments required to bring the GI Act into force. *Noted*
- c **Note** that the amendments will be incorporated into the Geographical Indications (Wine and Spirits) Amendment Bill ('**the Amendment Bill**'), which has a category 3 in the 2015 legislative program. *Noted*
- d **Note** that MBIE, working with MFAT and MPI, have identified a number of additional amendments that may be required, and rather than delay the submission of the attached Cabinet Paper and introduction of the Amendment Bill, Officials intend to report back to Cabinet separately in the next few months on these additional amendments. *Noted*
- e **Note** that if the additional amendments referred to above cannot be finalised before introduction, they will be provided as a Supplementary Order Paper to the Select Committee considering the Amendment Bill. *Noted*

- f **Sign**, if you agree, the attached submission to the Cabinet Economic Growth and Infrastructure Committee, and submit it to the Cabinet Office by 10am 19 March 2105, for consideration by the Committee at its meeting on 25 March 2015

Agree / Disagree

- g **Forward** a copy of the Cabinet submission to the Minister of Trade and the Minister of Primary Industries for their information.

Agree/Disagree

Iain Southall
Manager Intellectual Property
Labour and Commercial Environment,

..... / /

Hon Paul Goldsmith
Minister Commerce and Consumer
Affairs

..... / /

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Background

1. On 10 December 2014, Cabinet agreed that the GI Act be brought into force, and directed the Ministry of Business, Innovation and Employment (**MBIE**), working closely with the Ministry for Primary Industries (**MPI**) and the Ministry of Foreign Affairs and Trade (**MFAT**) to report to Cabinet on the amendments required to bring the GI Act into force by 31 March 2015 [EGI Min (14) 21/8 refers].
2. A GI is a name, usually a regional name, that is used identify the origin of goods where some quality of the goods is influenced by their geographical origin. 6(e)(vi) and 9(2)(j)
The GI Act will, when brought into force, establish a system for registering Geographical Indications (**GIs**) for wines and spirits.
3. Cabinet decided to implement the GI Act at this time 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.
 - 6(a) and 6(e)(vi)
4. MBIE, MFAT, and MPI have identified a number of amendments to the GI Act that should be made before it is brought into force. These amendments fall into two categories: substantive amendments to improve the workability of the registration regime and ensure it is cost-effective, and 'minor and technical' amendments required to correct drafting errors and correct inconsistencies in the GI Act as enacted.

Proposed substantive amendments to the GI Act

5. The most important substantive amendment proposals are intended to address a significant problem with the current GI Act regarding funding for the ongoing maintenance of the Register of Geographical Indications.

Funding for the register of Geographical Indications

6. The funding problem arises from the fact that the GI Act does not provide for a sustainable source of funding for the ongoing maintenance of the GI Register. Once a GI is registered, there is no provision for recovering the costs of maintaining the Register from GI users.

The reason that this is a significant problem is that it is anticipated that most applications for GI registration will be made within the first one - two years of the GI Act's entry into force. The New Zealand wine industry has a list of 30 'priority' GIs that they will apply to register on entry into force. In later years there may be no more than zero - two applications a year. The revenue from these applications may be insufficient to pay for the ongoing costs of maintaining the Register.

8. At present, the likely costs of establishing and maintaining the register are not known. The Intellectual Property Office of New Zealand, which will administer the GI Act, will shortly commence work to determine the likely costs.

9. If nothing is done to deal with the funding issue, the result could be very high initial application fees, as these fees would need to cover the costs of examining the applications for registration and the ongoing costs of maintaining the register. A very high initial fee may discourage GI users from registering their GIs. This could disadvantage local GI users in export markets, as other countries may not recognise New Zealand GIs unless they are registered in New Zealand.
10. The preferred option for dealing with this issue is to provide that GIs are registered for a fixed term, and will lapse unless a renewal fee is paid. There will be no limit on the number of times a GI registration can be renewed. The proposed fixed term is 10 years, the same as for registered trade marks.
11. The renewal fees will then provide an ongoing source of revenue for maintenance of the register. As a result the initial application fee will be lower than if there was no provision for renewal fees. Even so, the initial application fees could be significant, possibly of the order of \$10,000 per application.

Other substantive amendments to the GI Act

12. The other substantive amendments proposed for the GI Act relate to relatively minor procedural issues. They are summarised as follows:
 - i. in order to ensure that the renewal system for GIs works effectively, provide that the Registrar of Geographical Indications must notify the person who applied for a GI registration and any other person who the Registrar thinks may have an interest that a renewal is due, and also provide that the Register include sufficient information to allow the Registrar to fulfil these requirements;
 - ii. where a registered GI has lapsed due to non-payment of a renewal fee, the GI can be restored if an application for restoration is made within a prescribed time period after lapsing – this will reduce the risk that GI users will be adversely affected by inadvertent lapsing of a GI, while protecting the interests of third parties;
 - iii. provide that the Registrar may refuse to register a GI if its use or registration would be likely to offend a significant section of the community, including Maori and also that the GI Act be amended to allow for a registered GI to be cancelled on the grounds of offensiveness;
 - iv. amend the GI Act to deem the terms ‘New Zealand’, ‘North Island’ and ‘South Island’ to be New Zealand registered GIs to facilitate registration of these terms as GIs in other countries;
 - v. as a consequence of the amendment proposed in the previous paragraph amend the GI Act to provide that use of the term ‘New Zealand’ by a wine producer would not constitute use of ‘New Zealand’ as GI if the term is required by other laws or regulations to denote the country of origin of a wine and such use is in the course of trade and not in such a manner as to mislead the public;
 - vi. amend the GI Act to restrict amendments to the indication itself only where the amendment does not substantially alter the character of the indication so as to avoid amendments being made which may mislead or confuse consumers;
 - vii. provide that the Registrar has the power to make an award of costs in proceedings before the Registrar, and also has the power to require parties to proceedings who are not resident in New Zealand to provide security for costs to discourage frivolous and vexatious proceedings, and to provide an incentive for parties to proceedings to settle ‘out of court’.

Consultation

13. NZWine and the Distilled Spirits Association of New Zealand were consulted on these proposed amendments. It was not possible to carry out wider consultation, due to the deadline of 31 March 2015 imposed by Cabinet for reporting back on the proposed amendments.
14. NZWine agreed with most of the proposed amendments. They did have reservations regarding the proposal to allow the registration of GIs to be refused if their use or registration would likely be offensive to a significant section of the community, including Maori.
15. One of NZWine's concerns was over the scope of the term 'community' – they were worried that this might include other countries. In response, MBIE noted that, in the corresponding provision in the Trade Marks Act 2002, 'the community' was interpreted as the New Zealand community. There is no reason why the Registrar or the courts on appeal would take a different approach.
16. Another concern was that refusing registration of GIs on the grounds of offensiveness might create a 'precedent' that other countries might use to refuse registration of New Zealand GIs. However, we consider that if use or registration of a New Zealand GI would be offensive in another country, its registration in that other country would likely be refused regardless of New Zealand's approach. In any case, if a New Zealand GI would be offensive in another country, it would probably not be useful as a GI in that country, as consumers may shun any product carrying it.
17. The New Zealand Distilled Spirits Association has indicated that it agrees with NZWine's comments.
18. Both NZWine and the New Zealand Distilled Spirits Association are aware and comfortable that the likely small number of applications to register a GI may mean that the initial application fees may be relatively high in order to cover the costs of administering the GI regime.

Submission to EGI

19. The amendments described above will, subject to your agreement, be incorporated into the Geographical Indications (Wines and Spirits) Amendment Bill, which has a priority 3 of the 2015 legislative program. **Attached** to this report is a draft submission to EGI, together with a Regulatory Impact Statement, seeking approval for these amendments.
20. We recommend that you sign, the attached submission to EGI, and submit it to the Cabinet Office by **10 am Thursday 19 March 2015**, so that it can be considered by EGI at its meeting on 25 March 2015.
21. As the Minister of Trade and the Minister of Primary Industries have an interest in this submission, we recommend that you forward a copy of the submission to them, for their information.

Next Steps

22. Following on from Cabinet approval for the proposed amendments, MBIE will prepare instructions for the Parliamentary Counsel Office to draft the Geographical Indications (Wines and Spirits) Amendment Bill. It is expected that the Bill will be ready for introduction by June or July 2015.

23. Implementation of the amended GI Act will require the drafting of regulations setting out the procedures to be followed under the Act. The development of these regulations will proceed in tandem with the Parliamentary process for the amendment Bill and is expected to take about six – nine months.

Possible further amendments to the GI Act

24. In developing the amendments to the GI Act proposed in the attached draft Cabinet submission, MBIE, working with MFAT and MPI has become aware that there may be other amendments to the GI Act that would be desirable to ensure that the implementation of the GI Act runs smoothly.
25. We will need time to do some additional policy work and consultation in order to determine whether these amendments really are necessary, and to ensure that any amendments properly address the problems identified. If these amendment proposals cannot be finalised before introduction, they will be provided as a Supplementary order Paper to the Select Committee considering the Amendment Bill.
26. Rather than delay the submission of the attached Cabinet Paper, we intend to report back to Cabinet separately in the next few months on these additional amendments. This is to meet the Cabinet deadline of 31 March 2015 referred to above, and avoid undue delay to the introduction of the Amendment Bill.

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The Chair
Cabinet Economic Growth and Infrastructure Committee

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

Proposal

- 1 This paper seeks approval for amendments to the Geographical Indications (Wine and Spirits) Registration Act 2006 (**'the GI Act'**), to allow the GI Act to be brought into force.

Executive Summary

- 2 On 10 December 2014, Cabinet agreed that the GI Act be brought into force, and directed the Ministry of Business, Innovation and Employment (**MBIE**), working closely with the Ministry for Primary Industries (**MPI**) and the Ministry of Foreign Affairs and Trade (**MFAT**) to report to Cabinet on the amendments required to bring the Act into force by 31 March 2015 (EGI Min (14) 21/8 refers).
- 3 The Geographical Indications (Wines and Spirits) Registration 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, that is used identify the origin of goods where some quality of the goods is influenced by their geographical origin.
6(e)(vi) and 9(2)(j)
- 4 The amendments required to bring the GI Act into force fall into two categories: minor amendments required to correct drafting errors and correct inconsistencies in the GI Act as enacted and more substantive amendments to ensure that the registration process is workable, sustainable and cost-effective. These amendments will be incorporated into the Geographical Indications (Wines and Spirits) Amendment Bill (**'the Amendment Bill'**), which has a priority 3 of the 2015 legislative program.
- 5 It is intended that, as with all other registered intellectual property rights, the costs of administering the GI Act will wholly be met from fees charged to users. The registration process will be administered by the Intellectual Property Office of New Zealand (**IPONZ**). IPONZ intends to commence work in the near future to determine the likely costs of implementing the GI Act. This work will be used to set the level of fees to be paid by users.
- 6 A significant problem with the GI Act as enacted is that it does not provide a sustainable long-term source of funding for the maintenance of the register of GIs. Once a GI is registered, it remains on the register indefinitely until removed or cancelled. There is no provision that would enable costs to be recovered from GI users once a GI has been placed on the register. As it is anticipated that most applications to register GIs will be made within a year or two of entry into force with few or no applications in subsequent years, there is no source of long-term funding for maintenance of the GI register.

- 7 I recommend that this problem be dealt with by amending the GI Act to provide that a GI registration lapses after a fixed term of ten years. The registration will be renewable on payment of a renewal fee, with no limit on the number of renewals. Provision will be made for restoration of a lapsed GI. The level of renewal fees will be set so as to cover the ongoing costs of maintaining the register of GIs.
- 8 I also recommend that the GI Act be amended to provide that a GI registration can be refused if registration or use of the GI would likely be offensive to a significant section of society including Māori. This will mirror a similar provision in the Trade Marks Act 2002, and ensure that terms that would be refused registration as trade marks on the grounds of offensiveness cannot be registered as GIs.
- 9 Other substantive amendments to the GI Act recommended in this submission include:
- providing that the terms 'New Zealand', 'North Island', and 'South Island' are deemed to be New Zealand registered GIs to facilitate the protection of those terms in foreign countries;
 - providing that amendments to a geographical indication will only be allowed if the amendment does not substantially change the character of the GI;
 - providing the Registrar of GIs with the power to make an award of costs, and seek security for costs in proceedings before the Registrar.

Background

What is a Geographical Indication?

10 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).

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 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

13 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.

14 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. Cabinet also agreed to the Ministry of Business, Innovation and Employment (MBIE), working closely with the Ministry of Foreign Affairs and Trade (MFAT) and the Ministry of Primary Industries (MPI), commencing work to implement the GI Act (EGI Min (14) 21/8 refers).

15 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(e)(vi) and 9(2)(j)

16 The GI Act establishes a formal register for GIs. Any 'interested person' will be able to apply to a register a GI. The application will be subject to an examination process by the Registrar of Geographical Indications 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 a GI, and to apply to cancel the registration of a GI. The registration process will be administered by the Intellectual Property Office of New Zealand (IPONZ).

17 As provided in the GI Act, a wine producer can use a GI for a wine only if at least 85% of the wine originates from the area denoted by the GI ('the 85% rule').

18 MBIE has identified a number of deficiencies with the drafting of the GI Act that will require amendment to enable it to be brought into force, and have also identified a range of amendments that could be made to the GI Act to improve its overall workability. Cabinet also directed MBIE, working closely with MFAT and MPI, to report back to Cabinet by 31 March 2015 on the required amendments.

19 In the course of developing the amendments proposed in this 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. In particular, one issue that has been flagged by MPI is whether amendment to the 85% rule is needed. These will require some additional policy work before they can be finalised. Officials will report back to Cabinet separately on these possible amendments in the next few months, rather than delay submission of this paper. This is in order to meet the Cabinet deadline referred to above, and avoid undue delay to introduction of the Amendment Bill.

20 The amendments proposed in this paper can be split into two categories:

- More substantive amendments required to ensure that the registration process for GIs is cost-effective, and workable, and complies with New Zealand's international obligations (Regulatory Impact Statement required); and
- Minor amendments to correct drafting errors, remove inconsistencies and clarify some provisions to ensure that they reflect the original policy intent (no Regulatory Impact Statement required).

Significant Amendments

Provision of a sustainable funding mechanism for the maintenance of the Register of GIs

- 21 It is intended that, as with all other registered intellectual property rights, the costs of administering the GI Act will wholly be met from fees charged to users. At present, the GI Act only provides for a fee to be paid at the time an application for registration is made. It is anticipated that, when the GI Act is brought into force there will be perhaps 30 – 40 applications made initially, mostly from local applicants. Following this, the number of applications in outlying years is likely to drop to perhaps 0 – 2 applications per year, mostly from foreign applicants.
- 22 This raises the question of how the ongoing maintenance of the register of GIs will be funded. The income from new applications (if any) in outlying years will probably not be sufficient to cover the costs of maintaining the register. These costs will include the costs of maintaining a website and a publicly accessible on-line register.
- 23 In the absence of any other funding mechanism, ongoing maintenance of the register would need to be met from initial application fees, which may need to be very high. This would likely deter applications for registration. It would also require the Registrar to accumulate a large short run surplus to fund a long term government service. This is undesirable.
- 24 Registered GIs, like other registered IP rights, such as trade marks and patents, provide a significant private benefit to their users. In these circumstances, there is a strong case, as set out in Treasury guidelines, for recovering the costs of providing the good from those who directly benefit from the provision of the private benefit, that is, local and foreign wine and spirit producers.
- 25 I consider that the best way of achieving this in the case of GIs is to fund the ongoing maintenance of the register from the renewal fees paid by GI users. This will involve registering GIs for a limited term specified in the GI Act, with the right of renewal on payment of a prescribed renewal fee. There would be no limit on the number of times a GI could be renewed.
- 26 This will mean that renewal fees will need to be set at a level higher than the cost to the Registrar of processing the renewal fee. Such a provision will also allow initial application fees to be kept low to facilitate the registration of GIs. The initial application fee will only have to cover to the cost of the examination of the application, plus a contribution towards maintaining the register until the first renewal fee became due.
- 27 The use of renewal fees in this way is not unusual – renewal fees paid under the Trade Marks Act 2002 and the Patents Act 2013 are set at a level where they cover some of the costs of maintaining the respective registration systems. There would need to be explicit authority in the GI Act for this, along the lines of similar provisions in the Patents Act 2013 and the Trade Marks Act 2002.
- 28 In order to ensure that the renewal system works effectively, I also recommend that the GI Act provide that the Registrar must:
- notify the person who applied to register the GI that a renewal fee is due; and
 - inform any other party the Registrar considers may have an interest in the GI, and also to advertise the fact that the renewal is due.
- 29 I also recommend that the GI Act be amended to ensure that the Register of GIs holds sufficient information to allow the Registrar meet the requirements set out above.

Term of registration

- 30 The preceding proposal to register GIs for a fixed term with provision for renewal raises the question of what the term should be. A registered GI performs similar functions to a trade mark, and most GI users are likely to own registered trade marks. It is likely to be simpler for GI users if the term of a registered GI is the same as for a registered trade mark, which is ten years.
- 31 More frequent renewals would likely increase the administration costs of processing renewals incurred by the registrar and GI users. A significantly longer term would mean that the initial application fee would be higher as it would have to contribute to maintenance of the register for a longer period, as well as covering the costs of the initial examination. I therefore recommend that the term of a registered GI be 10 years.

Restoration of lapsed registrations

- 32 If as proposed above, GIs are registered for a fixed term and lapse if not renewed, there may be occasions when a GI lapses due to unintentional failure to pay a renewal fee. If there is no provision for restoring a GI, the only way to restore protection following an unintentional lapsing would be for users of the GI to incur the cost of a new application to register a GI. This cost would likely be higher than the cost of a restoration procedure.
- 33 The need to make a new application for registration may cause problems for GI users, as lapsing of the New Zealand registration for a GI may affect the validity of any foreign registrations of that GI.
- 34 Once a GI registration lapses, the GI becomes available for use by third parties in a non-GI sense, for example, as a trade mark. Any procedure for restoration of lapsed GI registrations should provide certainty for third parties about the status of lapsed GIs. Accordingly, I recommend that the GI Act provide that a registered GI that has lapsed due to non-payment of a renewal fee can be restored, but only if the application for restoration is filed within a prescribed time period after lapsing. This will protect the interests of third parties who may wish to use a lapsed GI in a non-GI sense.

Restriction on registration of offensive GIs

- 35 There is no provision in the GI Act that would allow the Registrar to refuse to register a GI if use or registration of the GI would be offensive. There is also no provision that allows a third party to apply to oppose or cancel a registration on grounds of offensiveness.
- 36 It is possible to register GIs as trade marks. However, under s17(1)(c) of the Trade Marks Act 2002 registration can be refused if use or registration of the mark would be likely to be offensive to a significant section of society, including Māori. In the absence of a similar provision in the GI Act, it would be possible to register a term as a GI that would be refused registration as a trade mark for wine or spirits on the grounds of offensiveness. This is undesirable.
- 37 This may be a particular issue with some Māori names, where use or registration of the name 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.

- 38 Experience with the similar provision in the Trade Marks Act 2002 suggests that very few potential GIs are likely to be objectionable under such a provision. The adoption of this provision may impose costs on applicants proposing to register Māori terms, for example they may need to consult with local iwi before submitting their application. Wine producers considering registering trade marks containing Māori names may need to do this anyway, so this should not be an onerous provision.
- 39 I therefore propose that the GI Act provide that the Registrar may refuse to register a GI if its use or registration would be likely to offend a significant section of the community, including Māori. I also propose that section 45 of the Act be amended to allow for a registered GI to be cancelled on the grounds of offensiveness. This will ensure that the grounds for cancellation of a GI are aligned with the grounds for refusal of registration in the GI Act.

Deemed registration of 'New Zealand, North Island, South Island' as GIs

- 40 If the provisions for registering a GI in the GI Act are brought into force as enacted, GIs could not be entered on the register until and unless applications for registration are made. That is, the GI Act makes no provision for 'pre-registered' GIs.
- 41 Currently, the terms 'New Zealand', 'North Island', and 'South Island' are in use by New Zealand wine makers as GIs. If these terms are to be recognised as GIs in foreign markets, they will need to be registered in New Zealand. 6(e)(vi) and 9(2)(j)

- 42 I consider that this issue is best dealt with by amending the GI Act to deem the terms 'New Zealand', 'North Island' and 'South Island' to be New Zealand registered GIs and I recommend that the GI Act be amended accordingly. However, registration of these terms in New Zealand cannot guarantee that other countries will accept them for registration, as they will still need to meet the other countries' criteria for registration.

- 43 If this course is followed, I also recommend that the GI Act be amended to provide that use of the term 'New Zealand' by a wine producer would not constitute use of 'New Zealand' as GI if the term is required by other laws or regulations to denote the country of origin of a wine, and such use is in the course of trade and not in such a manner as to mislead the public.

- 44 This provision is necessary as the Wine Regulations 2006 require wine to be labelled with their country of origin. In the absence of such a provision, a wine produced in New Zealand, but which was not eligible to use 'New Zealand' as a GI (for example because it did not meet the 85% rule), might be in breach of the GI Act if the term 'New Zealand' was used for the purpose of indicating the country of origin of the wine.

Amendment of Registered GIs

- 45 The Act provides a procedure for a GI registration to be amended. As enacted, the indication itself, the conditions of use and related boundaries may be altered without restriction. It is not, however, in the public interest to allow complete freedom to amend the indication registered as GI.
- 46 For example, if the term 'Martinborough' was registered as a GI, it would not be desirable to allow this to be amended to, say, 'South Wairarapa', which encompasses a much larger area, and would effectively be a different GI. In this case, the term 'South Wairarapa' should be the subject of a separate application for registration, rather than an application to amend an existing registration.

- 47 However, it is also not desirable to prohibit all amendments to the indication itself. This would prevent amendments to the indication to reflect minor changes in spelling or usage. A reasonable middle ground would be to allow amendments to the indication itself only where the amendment did not substantially alter the character of the indication. I recommend that the GI Act be amended accordingly.
- 48 An example of an amendment that would not substantially alter the character of the indication might be a change from 'Wanganui' to 'Whanganui' to reflect the decision of the New Zealand Geographic Board in respect of this name. On the other hand, the amendment of 'Wanganui' to 'South Taranaki' would not be permitted as this would substantially alter the character of the indication. The decision as to whether an amendment would be allowable or not would be made by the Registrar.

Award of costs in proceedings under the GI Act

- 49 There is no provision in the GI Act to allow the Registrar to make an award of costs to a prevailing party in any proceedings before the Registrar. In the absence of this power, there is a risk that some parties may initiate frivolous or vexatious proceedings that have little chance of success, or may pursue proceedings that might be better dealt with through negotiations between the parties. Such proceedings would impose unnecessary costs on parties to defend and on the Registrar.
- 50 Other statutes dealing with registered intellectual property rights, such as the Patents Act 2013 and the Trade Marks Act 2002 make provision for the award of costs, and for the provision of security for costs (see, for example, sections 212 and 213 of the Patents Act 2013).
- 51 Accordingly, I recommend that the GI Act be amended to provide the Registrar with the power to award costs and seek security for costs, as appropriate. If the Registrar is to have the power to award costs, I also recommend that the Registrar be able to require any party to proceedings to provide security for costs where the Registrar considers there is a risk that the party, especially foreign based parties, may not be able to comply with any order on costs.

Minor amendments

Commencement (Section 2)

- 52 As enacted, the GI Act provides for it to be brought into force by Order-in-Council. I recommend that the Act amended to provide that the GI Act will enter into force on a specific date (yet to be determined).

Purpose (Section 3)

- 53 I recommend that section 3 be amended to provide that one of the purposes of the Act is to protect the interests of consumers. This recognises that one of the main reasons for registering GIs is so that consumers can be confident that a wine labelled with a registered GI actually originates from the region denoted by the GI. It would also more closely align the purposes of the GI Act with those of the Fair Trading Act 1986, the legislative vehicle under which registered GIs are enforced.

Registration of GIs (Section 8) and removal from register (s45)

- 54 As enacted, section 8 provides that a GI must be registered unless one or more of the conditions set out in sections 10 – 15 apply. However, sections 16 and 17 also set out conditions under which a GI should not be registered. There was no policy intent to omit reference to sections 16 and 17. I recommend that section 8 be corrected to refer to sections 10 – 17.

55 If section 8 is amended as set out above, the grounds for removal of a GI registration under s45 will not be the same as on which registration can be refused. However, the policy intent behind s45 was that the grounds for cancellation of a GI should be the same as the grounds for refusal of registration. I recommend that section 45 be amended so that the grounds for cancellation are consistent with the grounds for refusal.

56 This amendment would also ensure that s45 complies with New Zealand's obligations under the New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Cooperation (ANZTEC).

Sections 22 - 24 – Restrictions on use of foreign registered geographical indications

57 I recommend that sections 22 and 24 be amended to clarify that foreign registered GIs must be:

- used in accordance with the scope of the registration in their country of origin
- used in accordance with any conditions imposed by their country of origin and
- used in accordance with their registration in New Zealand, which includes any conditions imposed by the Registrar of Geographical Indications

58 This is not clear from the present wording of sections 22 and 24.

Section 29 – Prior continuous use of GI

59 Section 29 allows a 'New Zealand person or entity who was using a GI prior to 1994 to continue using it, even though it was later registered under the GI Act. The policy intent was that the protection would apply to successors in title to the person or entity, but this is not clear from section 29 as drafted. To make this clear I recommend that s29 be amended to provide that 'New Zealand person or entity' includes a successor in title. This will ensure that the protection of s29 is not lost as a result of changes in ownership of an entity.

Section 34 – Registrar of Geographical Indications

60 I recommend that section 34 be amended to make it clear that the Registrar of GIs is appointed by the Chief Executive of the Ministry responsible for administering the Act (MBIE). I also recommend that there be a new provision setting out the powers and functions of the Registrar, and allow those functions to be delegated (except for the power of delegation), along the lines of similar provisions found in the Trade Marks Act 2002 for the Commissioner of Trade Marks and the Patents Act 2013 for the Commissioner of Patents.

Section 53 – When the Registrar may establish geographical indications committee

61 Section 53(3) provides that the function of the Committee is to advise the Registrar on issues relating to the boundaries and the use of a place name as a geographical indication. However, section 54(3) implies that the Registrar can establish the GIC to advise the Registrar on matters that do not relate to boundaries and the use of a place name.

62 To deal with this conflict, I recommend that section 53 should be amended to clarify that the functions of the GIC include the ability to advise the Registrar on the matters that do not relate to issues associated with the boundaries and use of a place name as GI.

Provision for use of agents

- 63 There is no explicit provision in the GI Act for applicants or other interested parties to deal with the Registrar through an agent. Legislation relating to other registered intellectual property rights, such as patents and trade marks, makes explicit provision for agents and there is no reason why this should not be the case with GIs. I recommend that the GI Act should be amended to clarify that applicants and other interested parties can use agents when dealing with the Registrar.

Consultation

- 64 The following agencies have been consulted: Ministry for Primary Industries, Ministry of Foreign Affairs and Trade and the Treasury. The Department of Prime Minister and Cabinet has been informed.
- 65 NZWine and the Distilled Spirits Association of New Zealand were consulted on these proposed amendments. It was not possible to carry out wider consultation, due to the deadline of 31 March 2015 imposed by Cabinet for reporting back on the proposed amendments.
- 66 Both NZWine and the New Zealand Distilled Spirits Association are aware that the likely small number of applications to register a GI may mean that the initial application fees may need to be relatively high in order to cover the costs of administering the GI regime. Both organisations are comfortable with this.

Fiscal Implications

- 67 An increase to the IPONZ Baseline (Vote Commerce: Registration and Granting of Intellectual Property Rights) will be required when the costs of implementing the GI Act are known, although this will be recovered through fees from users of registered GIs. This would require fees to be set at an appropriate level to ensure full cost recovery so there would be no overall impact on the government's operating balance. Once the costs are known, changes to baselines will be sought.
- 68 IPONZ will be commencing work in the near future to determine the costs involved in implementing the GI Act. This work will then be used to determine the level of fees that will be required to recover these costs. The small number of applications for GI registration that are likely to be filed may mean that the application fees would need to be high so a whole of life cost recovery approach may be required which in may deter some interested parties from applying for registration.

Human Rights

- 69 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

- 70 The proposals in this submission involve amendments to the GI Act. These will be made through the Geographical Indications ((Wines and Spirits) Amendment Bill which has a Category 3 priority (to be passed if possible in the year) in the 2015 legislation program.
- 71 Additionally a comprehensive set of regulations also need to be developed setting out procedures under the Act. Fees will also be set in the regulations.

Regulatory Impact Analysis

- 72 A regulatory impact statement for the policy proposals listed under the heading 'Significant Amendments' is included as **Appendix A**. The remaining policy proposals relate to minor amendments to correct drafting errors, remove inconsistencies and clarify some provisions to ensure that they reflect the original policy intent, for which a Regulatory Impact Statement is not required.

Quality of the Impact Analysis

- 73 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 meets the criteria necessary for ministers to fairly compare the available policy options and take informed decisions on the proposals in this paper.

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Recommendations

74 The Minister of Trade and the Minister of Commerce and Consumer Affairs recommend that the Committee:

- a. **Note** that the Geographical Indications (Wine and Spirits) Registration Act 2006 (**the GI Act**) has not been brought into force;
- b. **Note** that:
 - in December 2014, Cabinet agreed to bring the GI Act into force;
 - Cabinet also agreed to the Ministry of Business, Innovation and Employment (MBIE), working closely with the Ministry of Foreign Affairs and Trade (MFAT) and the Ministry of Primary Industries (MPI), commencing work to implement the GI Act (EGI Min (14) 21/8 refers).
 - before the GI Act can be brought into force, some amendments are required and directed officials to report back to Cabinet by 31 March 2015 on such amendments;
 - some substantive amendments are needed to improve the workability and cost-effectiveness of the registration process;
 - some minor amendments are needed to clarify some provisions of the Act, correct drafting errors and remove inconsistencies;
 - an increase to the IPONZ baseline will be sought once the costs of implementing the GI Act are known.
- c. **Note** that In the course of developing the amendments proposed in this paper, MBIE, working with MFAT and MPI have also noted a number of other provisions in the GI Act where amendment may also be desirable to improve the workability of the GI Act, and that Officials will report back to Cabinet separately on these possible amendments in the next few months, rather than delay submission of this paper.
- d. **Agree** to the following substantive amendments to improve the workability and cost-effectiveness of the GI Act:
 - provide a registration renewal regime whereby registrations must be renewed every 10 years;
 - require the Registrar of Geographical Indications to give notice of pending expiration of a registered GI to the person who applied for a GI registration and any other person who the Registrar thinks may have an interest in a registered GI;
 - provide that the Register of Geographical Indications contains sufficient information to allow the Registrar to fulfil the requirements set out in the recommendation above;
 - provide that, where a registered GI has lapsed due to a failure to pay a renewal fee, the GI can be restored if an application for restoration is made within a prescribed time period after lapsing;
 - provide that the Registrar may refuse to register a GI if its use or registration would be likely to offend a significant section of the community, including Māori and also that section 45 of the Act be amended to allow for a registered GI to be cancelled on the same grounds;
 - deem the terms 'New Zealand', 'North Island' and 'South Island' to be New Zealand registered GIs for wine;

- clarify that use of the term 'New Zealand' would not constitute use of 'New Zealand' as GI if the term is required by other laws or regulations to denote the country of origin of a wine, and such use is in the course of trade and not in such a manner as to mislead the public;
 - restrict amendments to the indication of a registered GI to those where the amendment does not substantially alter the character of the indication;
 - provide that the Registrar of Geographical Indications has the power to make an award of costs in proceedings before the Registrar;
 - provide that the Registrar of Geographical Indications has the power to require parties to proceedings to provide security for costs.
- e. **Agree** to the following minor amendments:
- require the GI Act to enter into force on a specific date;
 - provide that one of the purposes of the Act is to protect the interests of consumers;
 - correct section 8 to refer to sections 10 – 17 (instead of sections 10 – 15) as conditions under which a GI must not be registered;
 - require that foreign registered GIs must be used in accordance with the scope of the registration in their country of origin, any conditions imposed by their country of origin and with their registration in New Zealand which, includes any conditions imposed by the Registrar of Geographical Indications;
 - clarify that under section 29 the reference to a 'New Zealand person or entity' includes a successor in title;
 - clarify that under section 34 the Registrar of GIs is appointed by the Chief Executive of the Ministry responsible for administering the Act;
 - introduce a new provision setting out the powers and functions of the Registrar, and allow those functions to be delegated (except for the power of delegation);
 - align the grounds for cancellation of a registered under section 45 with the grounds for refusal of registration in section 8;
 - clarify that the functions of the Geographical Indications Committee provided for under section 53(3) include the ability to advise the Registrar on the matters related to issues other than those associated with the boundaries and use of a place name as GI;
 - provide that applicants for GIs and other interested parties may deal with the Registrar through an agent.
- f. **Invite** the Minister of Commerce and Consumer Affairs to issue instructions to the Chief Parliamentary Counsel to give effect to the amendment proposals outlined in recommendations 4 and 5 above.

Hon Paul Goldsmith
Minister of Commerce and Consumer Affairs

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Regulatory Impact Statement

Implementation of the Geographical Indications (Wine and Spirits) Registration Act 2006 ('the Act')

Agency Disclosure Statement

1. This Regulatory Impact Statement has been prepared by the Ministry of Business, Innovation and Employment (**MBIE**), in consultation with the Ministry of Foreign Affairs and Trade (**MFAT**) and the Ministry for Primary Industries (**MPI**).
2. It provides an analysis of proposals for amending the Geographical Indications (Wine and Spirits) Registration Act 2006 to improve its workability and ensure that it meets its policy objectives when it is brought into force. The most significant proposals are directed to providing a long term sustainable source of funding for maintaining the Register of Geographical Indications ('the Register').
3. The cost of establishing and maintaining the Register are not known, although work will commence in the near future to determine the costs involved in implementing the Act. It is not possible to reliably estimate the renewal fees that would be payable under the proposed renewal regime because the first applications for renewal would not be made until the mid-2020s at the earliest.
4. No formal cost-benefit analysis has been carried out for any of the proposals. Instead, qualitative judgements of the impacts (positive and negative) of the options considered have been used to determine the preferred options.
5. The industry groups representing New Zealand wine producers and spirit producers (NZWine and the New Zealand Distilled Spirits Association respectively) have been consulted on the proposals, however there has not been time for wider public consultation. NZWine and the Distilled Spirits Association have expressed general support for the preferred options set out in this Regulatory Impact Statement.

Iain Southall

Manager, Intellectual Property Policy
Labour and Commercial Environment

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Executive Summary

6. The Act was enacted in 2006 but never brought into force. On 10 December 2014, Cabinet agreed that the Act be implemented in order to avoid the risk that non-implementation might undermine the trade strategies of the New Zealand wine industry, and to facilitate efforts to begin negotiations between New Zealand and the European Union (EU) on a Free Trade Agreement.
7. MBIE has identified some problems with the Act that will require amendment before the Act can be implemented. Some of these amendments are minor and technical and not dealt with in this Regulatory Impact Statement (RIS). Others are more substantial and are required to ensure the workability and sustainability of the registration process, and are the subject of this RIS.
8. A significant problem with the Act, as enacted, is that it does not provide a sustainable long-term source of funding for the maintenance of the Register. Once a geographical indication (GI) is registered, it remains on the Register indefinitely until removed or cancelled. There is no provision that would enable costs to be recovered from GI users once a GI has been placed on the Register.
9. This could be a significant problem, as it is anticipated that there will be about 30–40 applications for registration within the first year or two of entry into force, mostly for New Zealand wine GIs, and 0–2 applications per year subsequently. If the initial application fee has to cover the cost of examining the initial application and contribute to the maintenance of the Register for an indefinite period, the initial application fee might need to be set at a level that might deter many GI users from applying to register their GIs.
10. Currently, the actual costs involved in establishing and maintaining the Register are not known. The Intellectual Property Office of New Zealand (IPONZ), which will have responsibility for administering the Act, will be commencing work in the near future to determine the costs involved in implementing the Act.
11. The preferred option for dealing with the funding issue is to provide that GIs will lapse after a fixed term, unless renewed by paying the prescribed renewal fee, the level of renewal fee being such that the long-term costs of maintaining the Register can be met from these fees.
12. In relation to the specified term, the preferred option is ten years, the same as for registered trade marks. A shorter term, such as five years, may lead to lower initial application fees, but this is likely to be offset by increased costs to both the Registrar and GI users of more frequent renewals. A longer term, such as twenty years, may reduce the costs associated with renewals, but may lead to higher initial application fees, as the initial fee will have to contribute towards the cost of maintaining the Register for a longer period of time.
13. Providing the GIs lapse after a specified period of time also has the advantage that GIs that are no longer in use are likely to lapse, as their users are unlikely to want to pay the renewal fee. This will make these GIs available for third parties to use in a non-GI sense, for example as part of their trade marks.
14. The other changes proposed are intended to ensure that the GI registration system operates smoothly and meets the objectives set out in this RIS. These are:
 - where a GI registration has lapsed due to failure to pay a renewal fee the registration may be restored, if an application for restoration is made within a prescribed time period;
 - deem the terms ‘New Zealand’, ‘North Island’ and ‘South Island’ to be New Zealand registered GIs;
 - provide that the Registrar may refuse a GI whose use or registration would likely be offensive to a significant section of society, including Māori;

- provide that, once registered, amendments to a GI would only be permitted if the amendments did not substantially alter the character of the indication (while allowing amendments to the associated boundaries and conditions of use); and
- provide the Registrar with the ability to make awards of costs, and seek security for costs, where appropriate.

Background

15. 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 for agricultural goods and foodstuffs that have qualities influenced by unique local characteristics like climate and soil. Well-known products identified by GIs include Champagne, Scotch Whisky and Prosciutto de Parma (Parma Ham).
16. 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. 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 are licensed to distribute products bearing foreign GIs in New Zealand including various brands of 'bourbon', 'cognac', 'scotch whisky' and 'tequila'.
17. In 2006 the Act was enacted but has never been brought into force. On 10 December 2014 Cabinet agreed to implement the Act. The issues surrounding the decision to implement the Act are discussed more fully in the RIS accompanying the Cabinet submission recommending implementation¹.
18. Cabinet decided to implement the Act at this time to avoid potential risks should the 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 EU; and
 - if Free Trade negotiations with the EU commence, the non-implementation of the Act may make it easier for the EU to push its GI agenda onto New Zealand.
19. The 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 of Geographical Indications (**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 a GI, and to apply to cancel the registration of a GI. A wine producer can use a registered GI for the wine if at least 85% of the wine originates from the area denoted by the GI (**'the 85% rule'**).
20. We have identified a number of problems with the Act that require amendments before it can be implemented. Some of these are required to correct drafting errors and to remove inconsistencies. These are not dealt with in this RIS. Others are required to improve the workability and sustainability of the registration procedure, and these are dealt with in this RIS.

¹31 March 2015 9EGI Min (14) 21/8

21. The main issue dealt with in this RIS is the provision of sustainable funding for the long term maintenance of the Register given that most applications for registration will be filed within the first few years of entry into force. Some of the other proposals arise as consequence of the proposed solution to the funding issue. Other proposals are intended to ensure that the registration process works smoothly and do not impose undue costs and complexity on GI users and third parties.
22. Cabinet has agreed for MBIE, working with MFAT and MPI, to commence a policy process to develop the amendments. MBIE has been directed to report back to Cabinet on possible amendments by 31 March 2015.

Objectives

23. Provide a regulatory environment for a protection of GIs in the New Zealand wine and spirits industries that:
 - a. is cost-effective, sustainable and accessible (that is, it minimises the costs and 'red-tape' imposed on GI users so as to facilitate the registration of GIs); and
 - b. provides a sound trading and marketing environment that facilitates, rather than creates barriers to, the trade in wine and spirits (that is, it does not impose unjustified restrictions on the legitimate activities of wine producers, or mislead or confuse consumers).

Impact Analysis

24. In this analysis the symbols used in the tables summarising the analyses of the proposals have the meaning set out below (comparisons are with the status quo):

- ✓ = positive
- ✗ = negative
- = neutral

25. Some of the proposals relating to the issue of sustainable funding for the Register have not been compared with the status quo. These proposals arise as a 'consequence' of the initial preferred option on this issue, so that there is no formal 'status quo'.

Issue 1, Part 1: Provision of a Sustainable Source of Funding for the Operation of the Act

Status Quo and Problem Definition

26. 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 will remain on the Register indefinitely unless the registration is removed or cancelled. There is no provision in the Act for recovering costs from GI users once the GI has been registered.
27. It is anticipated that once the Act is brought into force, there will be an initial 'burst' of about 30 - 40 applications for registration, mostly from New Zealand producers. The New Zealand Wine industry has indicated that it has developed a list of 30 'priority' New Zealand GIs for which it will seek registration. Following this, the number of applications is likely to drop to perhaps 0 - 2 applications per year, mostly from foreign applicants.
28. This raises the question of how the long-term maintenance of the Register will be paid for. This includes the ongoing costs of establishing and maintaining a website and a publicly accessible electronic register. Income from new applications (if any) may not be sufficient to cover these ongoing costs.
29. Currently, the actual costs involved in establishing and maintaining the Register are not known. IPONZ, which have the responsibility for administering the Act, will be commencing work in the near future to determine the costs involved in implementing the Act. This work will then be used to determine the level of fees that will be required to cover these costs. The small number of applications for GI registration that are likely to be filed may mean that the fees may need to be high (perhaps up to \$10,000 per application).
30. One possible option is Crown funding, however, this is not considered to be a viable option. GIs, like other intellectual property rights, are private goods. Therefore, the case for taxpayer funding is weak. As section 3.2.3 of the Treasury's *Guidelines for Setting Public Charges in the Public Sector* states there is a strong case for recovering the costs of a private good from those who benefit from it. In this case, the beneficiaries are grape growers, wine producers and distillers of spirits.
31. Another problem is that it is not desirable for GIs to be registered for an indefinite term. If a GI falls into disuse, there is no value in the GI remaining on the Register. In fact, the continued registration of that GI may unnecessarily restrict the activities of some wine or spirit producers. Although the affected producers could apply to have the GI registration removed, there will be significant costs associated with this. An application for removal of a registration will need to be accompanied by appropriate evidence, and will likely need the assistance of a lawyer or patent attorney in its preparation.

Options and Impact Analysis

32. We considered the following options for sustainable funding of the Register:
 - a. A single upfront fee at the time of registration (status quo)
 - b. Contracting NZWine² and the New Zealand Distilled Spirits Association (NZDSA) to pay an annual maintenance fee to IPONZ
 - c. Meet the costs through fees collected under other intellectual property laws
 - d. A periodic registration renewal system (*preferred option*)

² NZWine is an industry body representing New Zealand winegrowers and is funded by a compulsory levy on winegrowers.

A. *A single upfront fee at the time of registration (status quo)*

33. This would involve charging a single upfront fee at the time of registration. This fee would have to cover the costs of the initial examination of the application and contribute to the ongoing maintenance of the Register. It is likely that the fee will need to be much larger than for the other options. There are some major downsides to this.
34. First, there is a significant risk that a large upfront fee will deter applications. If New Zealand GIs are not registered in New Zealand, this may make it difficult for New Zealand producers to use and register their GIs in other countries. Many countries will only register foreign GIs if they are also registered in their country of origin. This is the case for foreign GIs registered under the Act.
35. Second, it is not good financial practice to accumulate very large surpluses in the short run to fund a government service in the long run.
36. This option will not address the issue of GIs that have fallen into disuse remaining on the Register.

B. *Contracting NZWine and NZDSA to pay an annual maintenance fee to IPONZ*

37. Under this option, NZWine and NZDSA would be required, under a contract, or possibly by regulation, to pay an annual fee to the Registrar to cover the costs of administering the Register. It is likely that most GIs registered under the Act will be for New Zealand wines. There is a precedent for such an agreement. The wine industry makes a contribution via NZWine to the cost of New Zealand standards provided by MPI.
38. This option would go some way towards meeting the Treasury *Guidelines* on cost recovery. It would mean, though, that NZWine and NZDSA would be contributing to the registration regime that benefits foreign wine and spirits producers. While NZWine represents domestic wine producers, it does not represent foreign wine producers. NZWine is funded by a compulsory levy on all New Zealand wine growers, not all of whom will use GIs.
39. This option will not address the issue of GIs that have fallen into disuse remaining on the Register.

C. *Meet the costs through fees collected under other intellectual property laws*

40. Under this option, the costs of administering the GI registration regime would be met through fees collected under other intellectual property statutes, in particular those relating to patents, trade marks and designs. This would mean that patent, trade mark and design owners would pay some of the costs of operating and maintaining the Register. This option is also contrary to public charging principals because some of the fee collected from these owners would be used to fund a service they obtain no benefit from, either directly or indirectly.
41. The Auditor-General's *Charging Fees for Public Sector Good and Services* does not rule out cross-subsidies in certain circumstances. However, paragraph 2.14 states that any cross-subsidising must be clearly authorised and transparent and the reasons for doing so clearly documented. There is no case for requiring patent, trade marks and designs applicants to subsidise a GI register which does not provide them with any benefit.
42. This option will not address the issue of GIs that have fallen into disuse remaining on the Register.

D. A periodic registration renewal system (preferred option)

43. Under this option, GIs would be registered for a limited term specified in the Act, with a right of renewal on payment of a prescribed renewal fee. There would be no limit on the number of times a GI could be renewed. If the renewal fee is not paid, the GI registration would lapse. The renewal fees would then provide an ongoing source of revenue to fund the maintenance of the Register.
44. This approach is consistent with the principle that there is a strong case for recovering the costs of a private good from those who benefit from it. This will mean that initial application fees will be lower than would be the case for the status quo, as they will only have to contribute to the costs of the initial examination and the costs of maintaining the Register until the first renewal fee is due. This will assist in ensuring that the GI registration system is accessible to GI users. It is MBIE's preferred option.
45. If renewal fees are to be used to fund ongoing maintenance of the Register, the renewal fee will need to be set at a level that is significantly higher than the costs to the Registrar of processing an application to renew a registration. There would need to be explicit authority in the Act for this, along the lines similar to the Patents Act 2013 and the Trade Marks Act 2002.
46. A further advantage of a renewal fee system is that, if a registered GI falls into disuse, its users are likely to allow the registration to lapse through non-payment of the renewal fee. This will minimise the risk of unused GIs remaining on the Register.

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Objective	Single upfront registration fee	Annual fee paid by NZWine and NZDSA	Cross subsidise from fees collected under other IP laws	Renewal Fees
GI regime is cost-effective, sustainable and accessible	Results in very high initial application fees which could deter wine producers from registering their GIs, and would not provide sustainable long-term funding for maintenance of the Register.	— Would result in high costs to NZ wine and spirit producer's growers as they would be subsidising foreign wine and spirits producers and foreign wine producers, but would provide sustainable long-term funding for the Register.	✓ Minimise costs to GI users, while providing sustainable long-term funding for the Register.	✓ Enables initial application fees to be kept low to facilitate applications, while ensuring a sustainable source of long-term funding for the Register.
Provides a sound trading and marketing environment that facilitates, rather than creates barriers to, the trade in wine and spirits	Result in very high registration fees which could deter wine producers from registering their GIs, which may make it difficult for NZ wine producers to protect their GIs in foreign markets, and leave unused GIs on the Register.	* Would leave unused GIs on the Register, which may unnecessarily restrict the activities of some wine and spirit producers.	* Would leave unused GIs on the Register. Patent, trade mark and design applicants would be subsidising GI applicants, even though they obtain no benefit from the GI regime. There is no justification for this.	✓ Minimises barriers to GI users to register their GIs, while minimising risk of unused GIs remaining on the Register.

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Issue 1, Part 2: Limitation on the Term of a Geographical Indication

Term of a Registered GI – Problem Definition

47. If, as proposed above, GIs are to be registered for limited terms, with a right of renewal, what should the term of a GI be?

Options and Impact Analysis

48. We have considered three options:

- a. A five year term
- b. A ten year term
- c. A twenty year term

A: *A five year term*

49. If the term is five years, GIs that have fallen into disuse will remain on the Register for only short periods before lapsing as their users may be unwilling to pay the renewal fee. However, a five year term may lead to excessive costs for GI applicants compared to the other options. Applicants will incur costs in applying for renewal of a GI registration. There will also be costs incurred by the Registrar in processing the renewal, which will have to be covered from the renewal fee. There will also be costs to the Registrar in notifying interested parties that renewal of a GI is due.

B: *A ten year term*

50. A ten year term will increase the likelihood of registered GIs that have fallen into disuse remaining on the Register compared with a five year term. However, the costs imposed on GI users will be less than if the term were five years.
51. Ten years is also the term for registered trade marks. Most GI applicants are likely to be owners of registered trade marks. The imposition of a ten year term for registered GIs may simplify administration for GI applicants, making it easier for them to keep track of renewals and reducing the risk that renewal payments will be missed. A ten year term is MBIE's preferred option.
52. A ten year term may mean that the initial application fee is higher than for a five year term as the initial fee will have to contribute towards maintenance of the Register for ten years instead of five. However, we consider that the higher fee will be offset by the lower costs to both GI users and the Registrar due to the reduced frequency of renewals.

C: *A twenty year term*

53. If the term of a registered GI is twenty years, there is a risk that registered GIs that have fallen into disuse will remain on the Register for significant periods of time.
54. There is also a risk that this relatively long period between renewals may lead to significant numbers of registered GIs lapsing through inadvertent failure to pay the renewal fee. This may arise because the entities who originally applied to register the GIs may have ceased to exist, or changed name or address without informing the Registrar, and so may not receive notice from the Registrar that a renewal fee is due. There is also no provision in the Act that requires all the users of a GI to be listed on the Register, so it may be difficult for the Registrar to ensure that all users are aware of the impending renewal.
55. A twenty year term will likely mean a higher application fee than for five or ten year terms, as the application fee will have to contribute to maintenance of the Register for a much longer period.

56. If significant numbers of GI registrations lapse inadvertently, this could cause problems for GI users if the GIs are also registered in other countries. Many countries will register foreign GIs only for as long as they are registered in their country of origin, so lapsing of the New Zealand registration could lead to lapsing of the registrations in other countries. There may be considerable costs for GI users in regaining protection in other countries.

Objective	Five year term	Ten year term (preferred Option)	Twenty year term
GI regime is cost-effective, sustainable and accessible	✘ May impose higher costs on GI users than the other options due to the costs of more frequent renewals.	✔ Application fees may need to be higher as the initial application fee will need to contribute to maintenance of the Register for 10 years instead of five, but this will be offset by lower renewal costs due to the reduced frequency of renewals. Alignment of term with that of registered trademarks may simplify administration and reduce risk that renewal payments will be missed.	✘ Reduces the long term costs of renewing GIs, but may lead to inadvertent failure to pay the renewal fee because of the long interval between renewals. Application fee would be higher than for the other options, as the initial fee will have to contribute to maintenance of the Register for twenty years.
Provides a sound trading and marketing environment that facilitates, rather than creates barriers to the trade in wine and spirits	✔ Unused GIs are likely to lapse quickly, and will appear on the register for shorter periods of time than the other options.	✔ Reduces risk that unused GIs will remain on the Register for long periods of time.	✘ Significant risk that GI registrations will lapse inadvertently, leading to potential loss of protection for these GIs if they are registered in other countries. There is also a significant risk that unused GIs will remain on the Register for long periods of time.

Issue 1, Part 3: Restoration of Lapsed GI Registrations

Status Quo and Problem Definition

57. If GI are registered for fixed periods and must be renewed if protection is to be maintained, it is possible that some GIs will lapse through inadvertent failure to pay the renewal fee before the term expires. This could be a particular problem given that, under the Act, a GI does not have a formal 'owner' who can take responsibility for maintaining the registration. Instead, responsibility for ensuring that a GI registration remains current lies with users of the GI. There is a risk that individual users assume that another user will pay the renewal fee, with the result that the fee may not be paid at all.
58. If the registration of a New Zealand registered GI lapses, and the GI is also registered in other countries, the registration in those other countries may lapse. Many countries will register foreign GIs only for as long as they are registered in their country of origin.

Options and Impact Analysis

59. We have considered the following options:

- a. No provision for restoration (status quo)
- b. Allow restoration without conditions, on the application of any interested person
- c. Allow restoration without conditions, on the application of any interested person but only within a prescribed time period from lapsing (preferred option)
- d. Allow restoration only if the lapsing was unintentional

A. *No provision for restoration*

60. Under this option, if a GI registration lapses because of non-payment of a renewal fee, the registration could not be restored. The only way that protection could be regained would be to file a fresh application for registration. This would be very costly, as the Registrar would have to treat the application as a new application and examine it from scratch. There is also a risk that it may not be possible to regain registration if the GI has been registered as a trade mark between the date of lapsing and the date the fresh application was filed.

61. This could be unfair to GI users given there may be significant risk of inadvertent lapsing due to the fact that no one person has responsibility for maintaining the registration, and there is no requirement in the Act for GI users to be listed on the Register. This will make it difficult for the Registrar to ensure that all users are informed of an impending renewal.

B. *Allow restoration without conditions, on the application of any interested person*

62. This option would minimise the costs imposed on GI users. The costs of processing an application would be much less than the costs of filing a new application. However, there would be little incentive for users to pay the renewal fee on time. This could lead to significant numbers of GIs on the Register being marked as 'lapsed' but which could be restored at any time.

63. This would effectively mean that third parties could not use lapsed GIs in a non-GI sense, for example as trade marks, because of the possibility that they could be restored at any time. This would unreasonably restrict the ability of wine producers to use terms that should otherwise be free for them to use.

- C. *Allow restoration without conditions, but only within a prescribed time period from lapsing (preferred option)*
64. Under this option, a lapsed GI could be restored, but only within a prescribed time period from lapsing. The time period will be specified in the regulations, but is likely to be no more than 12 months. Failure to file an application for registration within this period would result in the GI becoming unrestorable and a fresh application would be required.
65. This option would minimise the costs imposed on users of registered GIs. There would be an obligation on the Registrar to publicly notify that a renewal fee is due to reduce the risk of a registered GI lapsing due to inadvertent failure to pay a renewal fee.
66. This option would also provide greater certainty to third parties, as they would know that if an application to restore a GI was not made within the prescribed time limit, the GI registration could not be restored. This is MBIE's preferred option.
- D. *Allow restoration only if the lapsing was unintentional*
67. Under this option, restoration would only be possible if an interested party applying for restoration could make a *prima facie* case that the lapsing was not intentional, for example, if lapsing was due to an error or omission on the part of the users of the GI, and that there was no undue delay in making the application for restoration. This would involve providing evidence, such as a statutory declaration, setting out the circumstances that led to the GI registration lapsing. Provision would need to be made for applications to restore a GI to be advertised and for interested third parties to oppose restoration.
68. A provision along these lines would encourage those with an interest in maintaining a GI registration to pay renewal fees on time. It would also avoid the risk that GI users, having made a positive decision to allow a GI to lapse, then attempt to restore it, for example, to restrict the activities of a third party who begins to use the lapsed GI in a non-GI sense.
69. However, this approach is costly and complex for GI users, while providing no compensating benefits for third parties. As GIs have no formal 'owner' who could take responsibility for renewing the registration it might be difficult to obtain the evidence that the failure to pay the renewal fee was unintentional. This could make it very difficult to restore a GI that has lapsed due to inadvertent failure to pay a renewal fee.

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Objective	No provision for restoration	Allow restoration without conditions	Allow restoration without conditions, but only within a prescribed time from lapsing (preferred option)	Allow restoration only if the lapsing was unintentional
GI regime is cost-effective, sustainable and accessible	<p style="text-align: center;">✘</p> <p>The need to file a new application imposes significant costs on GI users; possibility that registration will be refused if the lapsed GI has subsequently been registered as a trade mark.</p>	<p style="text-align: center;">✔</p> <p>Minimises costs to GI users.</p>	<p style="text-align: center;">✔</p> <p>Minimises costs to GI users.</p>	<p style="text-align: center;">✘</p> <p>Will be costly and complex for GI users.</p>
Provides a sound trading and marketing environment that facilitates, rather than creates barriers to, the trade in wine and spirits	<p style="text-align: center;">✔</p> <p>Provides greater certainty to third parties.</p>	<p style="text-align: center;">✘</p> <p>May unnecessarily restrict the activities of wine and spirit producers due to the potential presence on the Register of lapsed GIs that could be restored at any time; little incentive to pay renewal fees on time.</p>	<p style="text-align: center;">✔</p> <p>Provides greater certainty to third parties.</p>	<p style="text-align: center;">✔</p> <p>Provides greater certainty to third parties.</p>

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Issue 2: Deemed Registration of 'New Zealand', 'North Island' and 'South Island' as GIs

Status Quo and Problem Definition

70. If the provisions for registering a GI in the Act are brought into force as enacted, GIs could not be entered on the Register until and unless applications for registration are made. That is, the Act makes no provision for 'pre-registered' GIs.
71. Currently, the term 'New Zealand', 'North Island' and 'South Island' are in use by New Zealand wine producers as GIs. If these terms are to be recognised as GIs in foreign markets, they will need to be registered in New Zealand. However, given the diversity of geologic and climatic conditions in New Zealand as a whole, or in the North Island, or in the South Island, it is possible that these terms might not meet the requirements for registration.
72. The definition of 'geographical indication' contained in s6 of the GI Act is:
*"A **geographical indication** is an indication that identifies a wine or spirit as originating in the territory of a country, or a region or locality in that territory, where a given quality, or reputation, or other characteristic, of the wine or spirit is essentially attributable to its geographical origin."*
73. If these terms are not registered in New Zealand, it could be difficult to register them in other countries. Many other countries, for example the EU, will not register a foreign GI unless it is protected in its country of origin. This may make it difficult to protect the integrity of New Zealand GIs in foreign markets, as it would permit foreign wine makers to use these terms to trade on the reputation of New Zealand wines.

Options and Impact Analysis

74. The following options have been considered.
- a. Require full applications to be made to register the terms 'New Zealand', 'North Island' and 'South Island' (status quo)
 - b. Change the definition of geographical indication
 - c. Deem that 'New Zealand', 'North Island' and 'South Island' to be New Zealand registered geographical indications (preferred option)
- A. *Require a full application to be made to register the terms 'New Zealand, 'North Island' and 'South Island' (status quo)*
75. This option would impose significant costs on GI users, as they would have to pay the application fee. However, there is no guarantee that the Registrar would register these terms. Even if the Registrar did decide to register the terms, the registration could be challenged, perhaps successfully, by third parties.
76. If these terms cannot be registered in New Zealand, they will not be able to be protected in other countries. This substantially reduces the benefits from using these terms as GIs.
- B. *Change the definition of geographical indication*
77. This would involve changing the definition of 'geographical indication' such that terms such as 'New Zealand', 'North Island' and 'South Island' could be registered. This is not desirable, though, as it would mean departing from the internationally recognised definition of 'geographical indication' in the WTO TRIPS Agreement³.

³ World Trade Organization Trade-Related Aspects of Intellectual Property Rights Agreement

78. This would provide a broader standard of GI protection, including for foreign GIs, than minimum standards set out in the TRIPS Agreement. There is no evidence that providing such broader protection, other than special cases such as 'New Zealand', 'North Island' and 'South Island', would provide any benefits to New Zealand.
- C. *Deem that 'New Zealand', 'North Island' and 'South Island' to be New Zealand registered geographical indications (preferred option)*
79. This would involve amending the Act to deem the terms 'New Zealand', 'North Island' and 'South Island' to be New Zealand registered GIs. This is MBIE's preferred option. However, registration of these terms in New Zealand, while necessary in order to obtain registration of these terms in other countries, does not guarantee that other countries will accept them for registration. They will still need to meet other countries' criteria for registration.
80. If this course is followed, it will also be necessary to amend the Act to provide that the term 'New Zealand' by a wine producer would not constitute use of 'New Zealand' as a GI if the term is required by other laws or regulations to denote the country of origin of a wine and such use is in the course of trade and not in such a manner as to mislead the public. Section 26 of the Act makes similar provision in relation to use of wine or spirits producer's name and or address. The Wine Regulations 2006 require wine labels to carry a statement of the country of origin.
81. In the absence of this provision, a wine producer who (say) used 'New Zealand' to denote the country of origin of a wine is required by the Wine Regulations 2006 could be in breach of the Act if the wine did not meet the requirements set out in the Act for use of a New Zealand registered GI. The following example is intended to clarify the intent:

A New Zealand wine producer produces a wine that is a blend of 60% New Zealand wine and 40% Australian wine, the blending and bottling taking place in New Zealand. New Zealand is therefore the 'country of origin' of the wine.

If the term 'New Zealand' is a registered GI, the producer would not be entitled to use 'New Zealand' as a GI on the label because the wine does not meet the 85% rule.

However, Regulation 7(1) of the Wine Regulations 2006 requires the wine to be labelled in a manner that indicates the country of origin of the wine. In this case, the label would have to indicate that the country of origin is New Zealand (and also that the wine contains wine from Australia).

In this case, the use of the words 'New Zealand' on the label should not constitute use of the term 'New Zealand' as a GI, if use of the term is required to satisfy Regulation 7 of the Wine Regulation 2006.

Objective	Require full applications to register 'New Zealand', 'North Island', 'South Island' (status quo)	Change definition of GI	Pre-register 'New Zealand', 'North Island', 'South Island' as GIs (preferred option)
GI regime is cost-effective, sustainable and accessible	Would require the wine industry to bear the costs of registration of New Zealand', 'North Island', and 'South Island' as GIs.	— Would require the wine industry to bear the costs of registration of New Zealand', 'North Island', and 'South Island' as GIs.	✓ Would relieve the wine industry of the costs of registration of 'New Zealand', 'North Island', and 'South Island' as GIs if they chose to use them.
Provides a sound trading and marketing environment that facilitates, rather than creates barriers to, the trade in wine and spirits	May prevent the wine industry from registering New Zealand', 'North Island', and 'South Island' as GIs overseas if registration in New Zealand is refused.	✗ Would provide broader GI protection than the minimum required by the TRIPS Agreement with no additional benefit to New Zealand, which may unduly restrict the trade in wine and spirits in New Zealand.	✓ Provides the wine industry with the opportunity to register 'New Zealand', 'North Island' and 'South Island' as GIs overseas, without providing broader GI protection in New Zealand than is required by the TRIPs Agreement.

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Issue 3: Refusal of Registration of 'Offensive' GIs

Status Quo and Problem Definition

82. There is no provision in the Act that would allow the Registrar to refuse to register a GI if use or registration of the GI would be offensive. There is also no provision that allows a third party to apply to oppose or cancel a registration on grounds of offensiveness. In the absence of a similar provision in the Act, it would be possible to register a term as a GI that would be refused registration as a trade mark for wines or spirits on the grounds of offensiveness. This is undesirable.

Options and Impact Analysis

83. Two options have been considered:

- a. No provision relating to 'offensive' GIs (status quo)
- b. Adopt a provision along the lines of s17(1)(c) of the Trade Marks Act 2002 (preferred option)

A. *No provision relating to 'offensive GIs' (status quo)*

84. It is possible to register GIs as trade marks. However, under s17(1)(c) of the Trade Marks Act 2002 registration can be refused if use or registration of the trade mark would likely be offensive to a significant section of society, including Māori. This may be a particular issue with some Māori names, where use or registration of the name 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.

B. *Adopt a provision along the lines of s17(1)(c) of the Trade Marks Act 2002 (preferred option)*

85. This option involves adopting a provision along the lines of s17(1)(c) of the Trade Marks Act 2002. There will also need to be a provision that permits a third party to oppose or apply to cancel a registration on the ground of offensiveness.

86. Experience with the similar provision in the Trade Marks Act 2002 suggests that very few potential GIs are likely to be objectionable under such a provision. The adoption of this provision may impose costs on applicants proposing to register Māori terms in particular, for example they may need to consult with local iwi before submitting their application. Wine producers considering registering trade marks with Māori names may need to do this anyway, so this should not be an onerous provision.

87. Where a GI involves a Māori name, the Registrar may seek advice from the Māori Advisory Committee established under the Trade Marks Act 2002 before making a decision as to its registrability. Section 39 of the Act provides that the Registrar may obtain advice on, and may consult, in respect of matters connected with registration of GIs.

88. Adoption of this provision will also require s45 of the Act to be amended to allow for a registered GI to be cancelled on the grounds of offensiveness. This will ensure that the grounds for cancellation of a GI are aligned with the grounds for refusal of registration in s8 of the Act.

Objective	No Provision	Adopt a provision like s17(1)(c) of the Trade Marks Act 2002 (preferred option)
GI regime is cost-effective, sustainable and accessible	Minimises costs to GI users.	<p style="text-align: center;">—</p> Potentially some additional costs for GI users, but such users may face these costs in any case if they are considering registering trade marks.
Provides a sound trading and marketing environment that facilitates, rather than creates barriers to, the trade in wine and spirits	Would enable GIs to be registered that might be refused registration as trademarks on the grounds of offensiveness.	<p style="text-align: center;">✓</p> Ensures that GIs that would be refused registration on the grounds of offensiveness cannot be registered.

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Issue 4: Amendments to Registered GIs

Status Quo and Problem Definition

89. Section 46 of the Act provides a procedure for a GI registration to be amended. As enacted, the indication itself, the conditions of use and related boundaries may be altered. It is not, however, in the public interest to allow complete freedom to amend the registration.
90. For example, if the term 'Martinborough' was registered as a GI, it would not be desirable to allow this to be amended to, say, 'South Wairarapa', which encompasses a much larger area, and is effectively a different GI. In this case, the term 'South Wairarapa' should be a subject of a separate application for registration, rather than an application to amend an existing registration.

Options and Impact Analysis

91. Three options have been considered:
- a. Allow any amendment to the indication itself (status quo)
 - b. Prohibit any amendment to the indication itself, except for the purpose of correcting obvious errors in the indication as originally registered
 - c. Allow amendment to the indication itself, but prohibit amendments that would substantially alter its character (preferred option)
- A. *Allow any amendment to the indication itself (status quo)*
92. Allowing any amendment to the indication itself could result in the indication being amended in a manner that may be misleading to consumers. This could affect the interests of wine and spirit producers and other third parties as the change to the name would take effect from the date that the original GI application was filled – i.e. the change would have retrospective effect.

An example might be if 'South Wairarapa' was registered as a GI, and this was amended to 'Martinborough', without changing the boundaries. In this case, wine labelled 'Martinborough' would actually originate from an area much larger than the area that consumers would usually associate with Martinborough. This would effectively allow wine producers who are not situated in or near Martinborough to take unfair advantage of Martinborough's reputation as a GI.

- B. *Prohibit any amendment to the indication itself, except for the purpose of correcting obvious errors in the indication as originally registered*
93. Prohibiting all amendments to the registered GI could be unfair on GI users. It would mean that relatively minor changes, for example to the spelling of the indication to reflect changes in usage or to reflect decisions of the New Zealand Geographic Board would not be possible. This could result in the indication no longer accurately reflecting the name of the region involved as it is actually used. Such an outcome could disadvantage GI users and potentially confuse consumers.
94. Prohibiting all amendments would mean that the only way a GI registration could be amended would be a fresh application. This would be much more costly than an application to amend an existing registration.

- C. Allow amendment to the indication itself, but prohibit amendments that would substantially alter its character (preferred option)
95. Allowing amendments to the indication itself, while prohibiting changes to the indication that would substantially alter its character strikes a reasonable balance between the interests of GI users and those of third parties and consumers. This would allow for minor amendments, but not more substantial ones. This would ensure that the indication can be amended to reflect the way in which the name of the region the GI relates to reflects actual usage. This is MBIE's preferred option.
96. There would be some additional costs to GI users, as they may have to prepare and submit evidence to the Registrar to enable the Registrar to determine whether or not the proposed amendment was permissible.

An example of an amendment that would not substantially alter the character of the indication might be a change from 'Wanganui' to 'Whanganui' to reflect the decision of the New Zealand Geographic Board in respect of this name. On the other hand, the amendment of 'Wanganui' to 'South Taranaki' would not be permitted as this would substantially alter the character of the indication. The decisions as to whether an amendment would be allowable or not would be made by the Registrar.

Objective	Allow any amendment to the indication itself (status quo)	Prohibit all amendments to the indication itself	Allow amendments to the indication itself that do not substantially alter its character (preferred option)
GI regime is cost-effective, sustainable and accessible	Minimises the costs involved in amending entries on the Register, as there would be no need to justify the amendment.	* This option would mean that any change to an indication (other than correction of an error) would require a new application to be filed. This would be much more costly than an application to amend.	* Some additional costs to GI users, as the Registrar will need to consider whether the proposed amendment is permissible – this will likely require GI users to submit evidence to the Registrar.
Provides a sound trading and marketing environment that facilitates, rather than creates barriers to, the trade in wine and spirits	May allow the indication to be amended in a manner that may mislead or confuse consumers.	* If indications themselves could not be amended, this could mean that the indications no longer reflect how the name of region concerned is actually used, which could disadvantage users and potentially confuse or mislead consumers.	✓ Ensures that the indications on the Register accurately reflect the way in which the name of the region the GI relates to is actually used, so as to minimise the risk that consumers will be misled or confused by any change.

Issue 5: Award of Costs in Proceedings under the GI Act

Status Quo and Problem Definition

97. There is no provision in the Act to allow the Registrar to make an award of costs to a prevailing party in any proceedings before the Registrar. In the absence of this power, there is a risk that some parties may initiate proceedings that have little chance of success, or may pursue proceedings that might be better dealt with through negotiations between the parties. This may impose unnecessary costs on parties and on the Registrar.

Options and Impact Analysis

98. Two options have been considered:

- a. No provision for the award of costs (status quo)
- b. Provide for the award of costs (preferred option)

99. This option may encourage frivolous or vexatious proceedings involving GIs, and may discourage parties' from seeking a negotiated settlement, adding costs for both GI users and the Registrar. Other statutes dealing with registered intellectual property rights, such as the Patents Act 2013 and the Trade Marks Act 2002, make provision for the award of costs, and for the provision of security for costs⁴.

100. Adopting this option would provide the Registrar with the power to award costs and seek security for costs, as appropriate. If a Registrar is to have the power to award costs, there will also be a need for the Registrar to be able to require parties to proceedings who are not resident in New Zealand to provide security for costs. The ability to award costs and seek security for costs has the potential to:

- discourage parties from initiating proceedings which are frivolous and vexatious or which would otherwise have little chance of success; and
- encourage parties to negotiate a settlement without recourse to proceedings before the Registrar, and avoid the costs and time associated with such proceedings.

101. Providing the Registrar with the ability to award costs, and security for costs, will assist in minimising the costs of proceedings before the Registrar, and promote a timely resolution of disputes and help ensure that the GI regime is accessible and cost effective.

Objective	No Provision (status quo)	Provide for the award of costs (preferred option)
GI regime is cost-effective, sustainable and accessible	May add to costs for both the Registrar and GI users.	✓ Reduce costs to the Registrar and GI users by reducing the likelihood of proceedings before the Registrar.
Provides a sound trading and marketing environment that facilitates, rather than creates barriers to, the trade in wine and spirits	May encourage parties to initiate proceedings which are frivolous and vexatious or which would otherwise have little chance of success.	✓ Encourages parties to proceedings to settle 'out of court'.

⁴ See, for example, sections 212 and 213 of the Patents Act 2013

Consultation

102. NZWine and NZDSA were consulted on these proposed amendments. It was not possible to carry out wider consultation, due to the deadline of 31 March 2015 imposed by Cabinet for reporting back on the proposed amendments.
103. NZWine agreed with most of the proposed amendments. They did have reservations regarding the proposal to allow the registration of GIs to be refused if their use or registration would likely be offensive to a significant section of the community, including Māori.
104. One of NZWine's concerns was over the scope of the term 'community' – they were worried that this might include other countries. In response, MBIE noted that, in the corresponding provision in the Trade Marks Act 2002, 'the community' was interpreted as the New Zealand community. There is no reason why the Registrar would take a different approach.
105. Another concern raised, was that refusing registration of GIs on the grounds of offensiveness might create a 'precedent' that other countries might use to refuse registration of New Zealand GIs. However, we consider that if use or registration of a New Zealand GI would be offensive in another country, its registration in that country would likely be refused regardless of New Zealand's approach. In any case, if a New Zealand GI would be offensive in another country, it would probably not be useful as a GI, as consumers may shun any product carrying it.
106. NZDSA has indicated it agrees with NZWine's comments.
107. In addition, MFAT and MPI have been consulted on the proposals. Both MFAT and MPI supported the amendments proposed in this RIS. They also proposed that a further amendment should be included, but have agreed that this further amendment be progressed in a separate policy process to allow time for a robust analysis of the proposal.

Conclusions and Recommendations

108. MBIE's preferred options are to amend the GI Act to provide that:
 - a. GIs are registered for a fixed term, with a right of renewal on payment of a renewal fee, with no limit on the number of renewals, the level of the renewal fee being set to recover the ongoing costs of maintaining the Register
 - b. The term of the registered GIs is ten years
 - c. Where a GI registration has lapsed due to failure to pay a renewal fee, registration may be restored, if an application for restoration is made within a prescribed time period
 - d. Deem the terms 'New Zealand', 'North Island' and 'South Island' to be New Zealand registered GIs
 - e. Provide that, once registered, amendments to a GI would only be permitted if the amendments did not substantially alter the character of the indication, while allowing amendments to the associated boundaries and conditions of use
 - f. Provide the Registrar with the ability to make awards of costs, and seek security for costs, where appropriate
109. These recommendations will ensure that the GI Act operates in a manner that minimises costs to GI users and third parties while ensuring the GI regime does not impose undue restrictions on trace in wine and spirits. Aligning provisions, where possible, with similar provisions in other statutes relating to registered intellectual property rights, will assist in providing greater certainty as to how these provisions will operate in practice.

Implementation Plan

110. The proposals for amendment of the Act will be incorporated into the Geographical Indications (Wines and Spirits) Amendment Bill (**the Bill**). We anticipate that this will be introduced into Parliament by mid-2015. This Bill has been assigned a priority 3 (to be passed if possible in 2015) in the 2015 legislative program.
111. Before the amended 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. Work on developing the regulations will begin prior to passage of the Bill. This will include work on determining the likely costs of implementing the amended Act, this work to begin in the near future.
112. It is intended that IPONZ, which is a business unit of MBIE, will be responsible for implementing the Act. IPONZ would need to develop and implement the Register, 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

113. The operation of the Act will be monitored as part of IPONZ's normal reporting processes. In addition, MBIE will seek view of NZWine and NZDSA regarding the operation of the Act from the point of view of GI users.

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BRIEFING

**Geographical Indications (Wines and Spirits) Registration
Amendment Bill – Approval to Introduce**

Date:	9 October 2015	Priority:	High
Security classification:	In Confidence	Tracking number:	1064 15-16

Action sought		
	Action sought	Deadline
(Hon Paul Goldsmith Minister of Commerce and Consumer Affairs	Agree to the recommendations.	15 October 2015

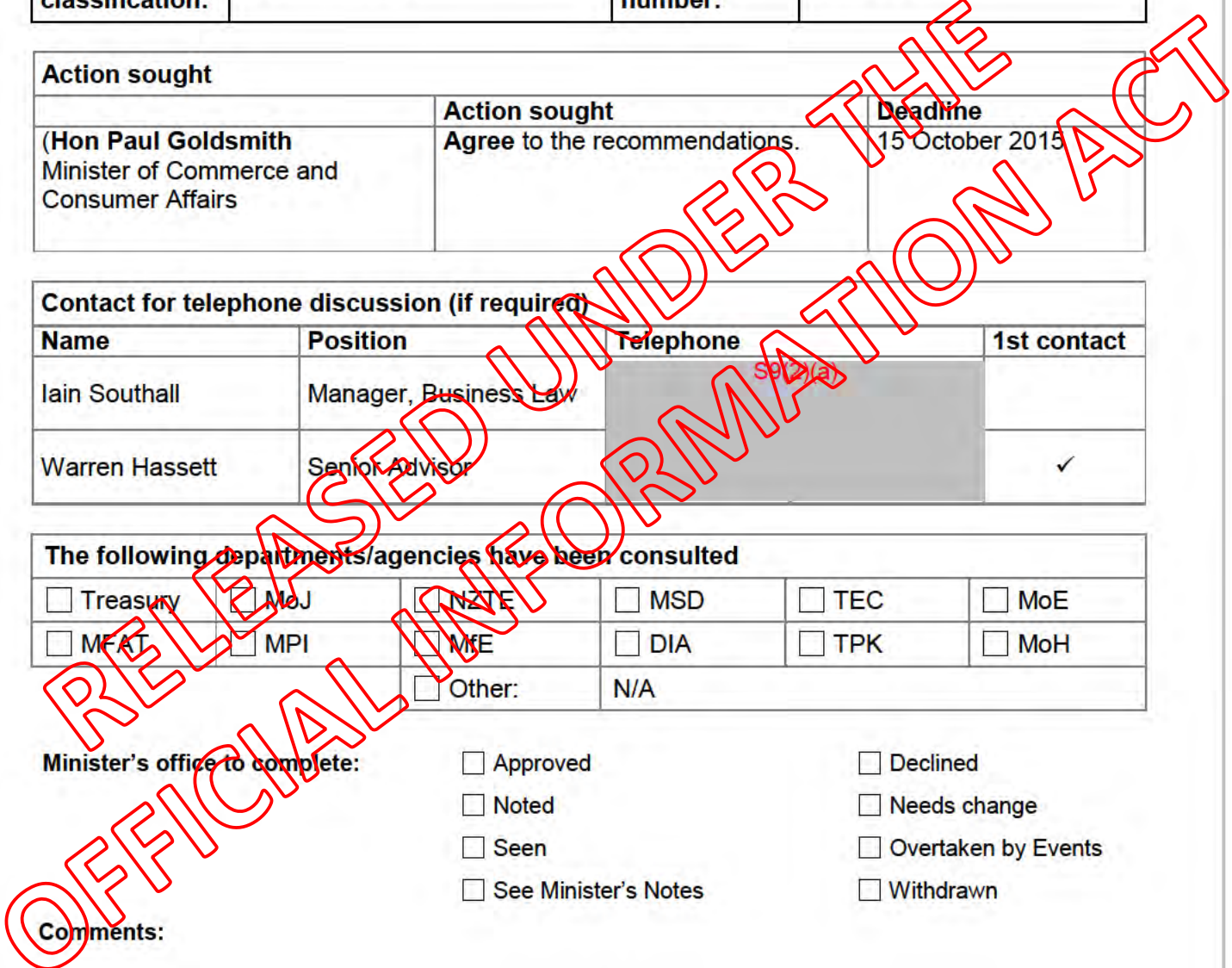
Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Iain Southall	Manager, Business Law	[REDACTED]	
Warren Hassett	Senior Advisor	[REDACTED]	✓

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 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 Amendment Bill – Approval to Introduce

Date:	9 October 2015	Priority:	High
Security classification:	In confidence	Tracking number:	1064 15-16

Purpose

To seek your agreement to the attached submission to the Cabinet Economic Growth and Infrastructure Committee, which seeks approval for some further amendments to the Geographical Indications (Wines and Spirits) Registration Act 2006 ('the **GI Act**') and also for approval to introduce the Geographical Indications (Wines and Spirits) Registration Amendment Bill ('the **Amendment Bill**').

Recommended action

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

a **Note** that:

- i. On 25 March 2015, Cabinet agreed to a number of amendments to the GI Act intended 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); and
- ii. that officials have identified a number of other aspects of the GI Act where amendment would be desirable, most of these amendments being 'minor and technical'; and
- iii. the amendments will be made through the Geographical Indications (Wines and Spirits) Registration Bill which has a priority three in the government's legislative program;

Noted

b **Note** that the Amendment Bill will, when enacted, allow the Geographical Indications (Wines and Spirits) Registration Act 2006 ('the **GI Act**') to be brought into force;

Noted

c **Note** the Amendment Bill also includes a substantive amendment to the '85% rule';

Noted

d **Note** that:

- i. as the Amendment Bill includes a substantive amendment, approval for this amendment and the further amendments to the GI Act is to be sought from the Cabinet Economic Growth and Infrastructure Committee ('**EGI**');

- ii. the submission to EGI, in addition to seeking approval for the amendments referred to above, also seeks approval to introduce the Amendment Bill, rather than make a separate submission to the Cabinet Legislation Committee ('LEG'); and
- iii. the draft submission to EGI is attached to this briefing.

Noted

- e **Note** that, given the priority that the government has given to this Bill you may wish to consider, in the first reading speech, that the period for Select Committee consideration of the Bill be shortened from the normal six months.

Noted

- f **Sign**, if you agree, the attached submission to EGI, and submit it to the Cabinet Office by 10am on Thursday 15 October 2015 for consideration by EGI at its meeting on 21 October 2015.

Agree/Disagree

- g **Forward** a copy of the Cabinet submission to the Minister of Trade and the Minister for Primary Industries for their information.

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) Registration 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 has a priority three on the government's legislative program.
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.
4. On 25 March 2015, Cabinet agreed to a number of amendments to the GI Act. These amendments were intended 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).
5. In the course of developing the amendments proposed in the March paper, MBIE, working with MFAT and MPI, noted a number of other provisions in the GI Act where amendment would also be desirable to improve the workability of the GI Act. Officials indicated that they would report back to Cabinet separately on these possible amendments in the following few months, rather than delay submission of the March paper, which had to be submitted by a March 31 deadline set in the December 2014 paper.
6. Most of these other amendments proposed are 'minor and technical' and do not change the policy intent behind the provisions involved. No Regulatory Impact Statement is provided for these amendments. The attached Cabinet submission seeks approval for these amendments.
7. There is one substantive amendment, which was proposed by MPI. This is an amendment to the '85% rule' in the GI Act. Under the '85% rule', if a wine is labelled with a New Zealand registered geographical indication, at least 85% of the wine must be made from grapes harvested in the region to which the indication relates. The other 15% may come from another New Zealand region or another country. A Regulatory Impact Statement is provided for this amendment.

Further proposed amendments to the GI Act

Amendment to the 85% rule for wine

8. Under the GI Act, if a wine has a New Zealand registered geographical indication on its label, at least 85% of the wine must be made from grapes harvested in the region to which the New Zealand registered geographical indication relates. The GI Act is silent as to where the other 15% may originate from. A New Zealand registered geographical indication for wine is one that identifies the wine as originating in New Zealand, and will generally be a New Zealand regional name.

9. 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, and dilute the reputation of New Zealand registered geographical indications.
10. To deal with these issues, we propose that the GI Act be amended to require that, where a wine is labelled with a New Zealand registered GI, all the wine must be made from grapes harvested in New Zealand. This is in addition to the 85% rule. A Regulatory Impact Statement has been prepared for this amendment, and is annexed to the attached Cabinet submission.

Other amendments to the GI Act

11. The other amendments proposed for the GI Act are 'minor and technical' amendments intended to clarify the wording of the GI Act as enacted, and remove inconsistencies. They do not change the policy intent of the GI Act. Of these amendments, the most significant would amend the Trade Marks Act 2002.
12. The purpose of these amendments is to ensure that the treatment of trade marks registered under the Trade Marks Act 2002 which contain, or are similar to geographical indications registered under the GI Act is consistent with the provisions in the GI Act dealing with geographical indications that are, or contain registered trade marks.

Regulations for the GI Act

13. 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.
14. A consultation document on the proposed regulations is currently being prepared. We anticipate that we will be in a position to seek Cabinet approval for the consultation document by the end of November. The document itself will not be released until the Amendment Bill is introduced and becomes publicly available.

Submission to EGI

15. A draft submission to EGI is attached to this briefing. It seeks approval for the amendments to the GI Act that are additional to those approved by Cabinet in March, as described above under the heading 'Further proposed amendments to the GI Act'. As the amendment proposed for the 85% rule is a substantive amendment, it is intended the submission be made to EGI.
16. Given the priority that the government has given to this Bill, the submission to EGI also seeks approval to introduce the Amendment Bill. This avoids making a separate submission to LEG, which would otherwise unnecessarily delay introduction of the Bill.
17. A copy of the draft Amendment Bill, together with a Regulatory Impact Statement and Departmental Disclosure Statement is annexed to the submission to EGI. The draft Bill has not been proof read by the Parliamentary Counsel Office, but we do not anticipate any significant changes will arise. A final draft will be sent to your office in time for it to be lodged with the Cabinet Office.

Next Steps

18. We recommend that you sign, if you agree, the attached submission to EGI, and submit it to the Cabinet Office by 10am, 15 October 2015, so that the submission can be considered by EGI at its meeting on 21 October.
19. In light of the priority that the government has given to this Bill, you may wish to consider whether to propose, in the first reading speech, that the period for Select Committee consideration of the Amendment Bill be shortened from the normal six months. The period can be shortened to four months without triggering debate under Standing Order 290(2).
20. A draft press statement, announcing introduction of the Amendment Bill, together with a draft first reading speech, for your consideration are attached to this briefing.

Annexes

- Annex One: Draft submission to EGI, including a Regulatory Impact Statement, Departmental Disclosure Statement and draft Bill.
- Annex Two: Draft Press Release.
- Annex Three: Draft First Reading Speech.

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Annex One: Draft Submission to EGI, including a Regulatory Impact Statement, Departmental Disclosure Statement and draft Bill

Withholding Draft bill in full unders S(9)(2)(h). Pages 8 - 29 Have been removed.

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Regulatory Impact Statement

Amendment of the 85% rule in section 21(a) of the Geographical Indications (Wine and Spirits) Registration Act 2006 (the GI Act).

Agency Disclosure Statement

1. This Regulatory Impact Statement (RIS) has been prepared jointly by the Ministry of Business, Innovation and Employment (MBIE) and the Ministry for Primary Industries (MPI).
2. This RIS provides an analysis of a proposal to amend section 21 of the GI Act so that New Zealand registered geographical indications for New Zealand wine may only be used to identify wine if the wine is made solely from grapes harvested in New Zealand.
3. The analysis is constrained by lack of reliable data on cross-country blended wine sold using New Zealand geographical indications in the New Zealand market. Eight of the submitters to MPI's widely circulated July 2015 discussion document indicated they were selling cross-country blended wine in the New Zealand market but none were using New Zealand geographical indications for their cross-country blended wine.
4. Because the GI Act is not yet in force, any problem that may be caused by the current wording of s21 is a potential rather than an actual problem. The impact of the proposed amendment will only become apparent once the GI Act is in force and local wine producers have begun registering New Zealand geographical indications.
5. It has not been possible to carry out a quantitative cost-benefit analysis on the proposal. The time required to carry out a formal cost-benefit analysis would likely mean that the proposed amendment could not be incorporated into the GI Act when it enters into force in 2016. This could potentially defeat one of the objectives of bringing the GI Act into force at this time, as discussed later in this RIS. In addition, as the GI Act is not yet in force, there is no data available that would assist in a quantitative assessment of the economic effects of any changes to the GI Act.

Iain Southall
Manager, Business Law
Building, Resources and Markets
Ministry of Business, Innovation and Employment

Executive summary

6. It is proposed that section 21(a) of the GI Act be amended so 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 ('100% rule'). The GI Act is not yet in force, and so there is no regime established to register geographical indications in New Zealand. A New Zealand registered geographical indication for New Zealand wine is one which identifies a wine as originating from within New Zealand. In December 2014, cabinet agreed to bring the GI Act into force.
7. As the GI Act stands, it will, when in force, require that if a New Zealand registered geographical indication, e.g. Marlborough, is used to describe a wine, at least 85% of the wine must be obtained from grapes harvested in Marlborough ('the 85% rule'). The GI Act is silent on where the grapes that make up the remaining 15% of the wine must originate from. This means up to 15% of the wine could be made from grapes harvested in another country ('cross-country blending') or another New Zealand region.
8. The New Zealand wine industry considers that New Zealand wine's integrity and reputation have enabled the industry to position a large portion of its wine as high quality wine. Published data shows New Zealand wine attracting a significant price premium over wine from other countries in its key markets, like the United Kingdom¹. This has contributed to the industry's success and its rapid growth over the last decade².
9. A key risk of blending New Zealand wine with a non-New Zealand wine is that the characteristics of the wine may be altered such that the reputation of the New Zealand registered geographical indication could be adversely affected. Consumers might buy a wine labelled with a New Zealand registered geographical indication because of the particular characteristics associated with that geographical indication, but if the wine is a cross-country blend, it may lack those characteristics (and have different characteristics).
10. Another risk of allowing 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. This is a potential risk to the integrity of New Zealand wine and its positioning at the premium end of the market.

¹ In the year to 30 June 2014, around 83% of wine exports by volume were to Australia, the United States and the United Kingdom.

² The New Zealand grape wine industry was worth NZ\$1.33 billion in export revenue in the year ended 30 June 2014, rising from NZ\$435 million in 2005, and making it New Zealand's sixth largest export commodity by value in 2014. Annual export volumes rose from 51 million litres in 2005 to 187 million litres in 2014.

11. There is also a risk that if New Zealand allows cross-country blended wine to carry New Zealand registered geographical indications, this could make it difficult to register New Zealand geographical indications in some foreign markets, particularly the European Union (EU). One of the main reasons for bringing the GI Act into force at this time is to facilitate the registration of New Zealand geographical indications overseas. The EU takes approximately 30% of New Zealand wine exports and it does not permit cross-country blending under its own geographical indications regime.
12. MPI released a discussion paper on 13 July 2015, seeking industry submissions on the proposed amendment to the 85% Rule. Of the 133 submissions received 130 submitters supported the proposed amendment. The remaining three submitters opposed all blending, including with grapes from another New Zealand region.

Background

What is a 'geographical indication'?

13. 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. Geographical indications have been used particularly in the EU for agricultural goods and foodstuffs that have qualities that are claimed to be influenced by unique local characteristics. 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'.
14. The use of geographical indications by New Zealand producers is largely confined to the wine industry. Foreign wine producers selling into the New Zealand market also use geographical indications.
15. The World Trade Organisation (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights ('the TRIPS Agreement') requires New Zealand to provide protection for geographical indications for wines and spirits. Currently geographical indications in New Zealand are protected by a range of measures, including the tort of passing off, the Fair Trading Act 1986, the Trade Marks Act 2002, the Australia New Zealand Food Standards Code and the Wine (Specifications) Notice 2006. The GI Act is currently not in force.
16. The GI Act was enacted at a time when it was expected that negotiations would soon begin on a Wine Agreement with the EU. Negotiations were never started, and at the time, the New Zealand wine industry did not support implementation of the GI Act. As a result, the GI Act was never brought into force.
17. More recently, the New Zealand wine industry has argued that the GI Act should be brought into force so that New Zealand geographical indications can be registered here. The industry is concerned about the possible misuse of New Zealand geographical indications in overseas markets, and wishes to protect their geographical indications in those markets. Some other

countries will not register foreign geographical indications unless they are registered in their country of origin.

18. In addition, implementation of the GI Act [Act](#) would support New Zealand's interests in launching Free Trade Agreement negotiations between New Zealand and the EU.
19. It will not be compulsory to register geographical indications under the GI Act. Winemakers and traders will be able to register their geographical indications with the Registrar of Geographical Indications if they choose to or they can continue to seek the protection of other legislation mentioned above.
20. The 85% rule in the GI Act has some relevance to the following regulatory provisions for wine labelling and exporting:
 21. The Wine Regulations 2006 requires that grape wine sold in the New Zealand market must be labelled to indicate the country or countries of origin. If a wine is a cross-country blend, the country of origin of all the wines used in the blend must be stated on the label.
 22. The Wine (Specifications) Notice 2006 currently requires that, if a wine is labelled with an area of origin, no less than 85% of the wine must come from the area of origin. Any change to the current 85% rule in the GI Act would require corresponding amendment to this notice.
 23. Export approvals under the Wine (New Zealand Grape Wine Export Eligibility Requirements) Notice 2006 applies only to wine made solely from New Zealand grapes. This notice does not cover cross-country blended wine.
 24. Foreign geographical indications for wine sold in New Zealand will also be able to be registered under the GI Act and they will not have to comply with the 85% rule in section 21 of the GI Act.

Why change now?

25. Any change to the 85% rule requires amendment to the GI Act. An amendment bill, the Geographical Indications (Wines and Spirits) Amendment Bill is currently being prepared and is expected to be introduced later in 2015. This Bill will correct inconsistencies and ensure that the registration process runs smoothly and sustainably.
26. Making the change now will enable the change to be incorporated into the GI Act when it comes into force. One of the purposes of bringing the GI Act into force is to facilitate registration of New Zealand geographical indications in other countries, in particular the EU. As discussed later in this RIS, retaining the current 85% rule may prevent New Zealand geographical indications being registered in the EU.

Status Quo and Problem Definition

27. Section 21 of the GI Act provides that a New Zealand registered geographical indication can be used in trade to identify a wine only if at least 85% of the wine is made from grapes harvested in the region to which the geographical indication relates. The GI Act is silent on where the other 15% of the wine must originate from. This means up to 15% of the wine could be made from grapes harvested in another country or another New Zealand region.
28. New Zealand Winegrowers and majority of submitters to MPI's July 2015 discussion paper claim that the New Zealand grape wine industry operates at the high value end of the global wine market, and New Zealand wine's integrity and reputation is crucial to its success in these markets. This is supported by data published in May 2015 in Wine by Numbers Global Trade 2014, showing that the average imported (or landed) price over the year ended 31 December 2014 for New Zealand bottled grape wine was the highest of any imports in the United Kingdom (New Zealand wine at NZ\$9.15 per litre compared to second placed French wine at NZ\$7.36 and Australian wine at NZ\$5.28). It was second only to France in the United States market. In China, New Zealand bottled wine was worth more than double the price of wine from the next highest country.
29. In the year to 30 June 2014, New Zealand exported 51.8 million litres of grape wine to the United Kingdom market (about 28% of New Zealand wine exports). Based on a price differential of NZ\$3.87 per litre over Australian wine, this equates to approximately NZ\$175 million in imported (or landed) price premium over Australian wine.
30. New Zealand's two other major export markets are Australia (exports worth NZ\$381 million in the year to 30 June 2014) and the United States (NZ\$328 million). The EU (taking 30% of New Zealand wine exports), Australia and the United States are all high value markets for New Zealand wine where integrity and reputation are key to its success.
31. Since 2008 grape wine export volumes have increased by 110 percent from 89 million litres to 187 million litres a year. Grape wine export revenue increased by 63 percent from \$800 million to \$1.33 billion in 2014. New Zealand Winegrowers predicts that exports will be worth \$2 billion by 2020. With forecast growth in wine production over the coming years and the plateaued demand in the New Zealand domestic market, expanding existing export markets and finding new markets will be critical for the continued success and growth of this industry.
32. New Zealand Winegrowers, individual winemakers and the New Zealand Government (through New Zealand Trade and Enterprise) have made significant investments to maintain this reputation through marketing activities that protect and promote the New Zealand wine brand.
33. The importance of reputation is reflected in two of the objects of the Wine Act 2003:
 - Section 3(a): 'provide for the setting of standards for identity, truthfulness in labelling, and safety of wine'; and

- Section 3(d): “enable the setting of export eligibility requirements to safeguard the reputation of New Zealand wine in overseas markets”.

34. A key risk of cross-country blending of wine is the ‘dilution’ of the reputation of New Zealand geographical indications. A cross-country blend may have characteristics that are different from those that consumers might associate with New Zealand geographical indications. As a result the link in consumers’ minds between a New Zealand geographical indication and the characteristics associated with that indication may be lost.
35. Consumers might buy a wine labelled with a New Zealand registered geographical indication because of the particular characteristics they associate with that geographical indication. If the wine is a cross-country blend, it may lack those characteristics (and have different characteristics). This may cause consumers to avoid buying wine carrying that geographical indication, effectively destroying the value of the indication.
36. Another risk 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).
37. There is also a risk that consumers might be misled or confused by a cross country blended wine carrying a New Zealand registered geographical indication. Such a wine will be labelled with both the geographical indication and a country of origin statement indicating that the wine originated in New Zealand and at least one other country. This may lead consumers to question the extent to which the wine actually originated from the region that the geographical indication relates to.
38. It may also defeat one of the objects of the geographical indication registration system which is to assure consumers that wine carrying a New Zealand registered geographical indication actually does originate from the region indicated on the label. Consumers may well assume that if wine is labelled with a geographical indication, all of the wine is made from grapes harvested in the region to which the geographical indication relates.
39. Cross-country blending therefore poses a reputational risk for New Zealand wine. This may jeopardise New Zealand’s wine’s positioning as a ‘premium’ product in overseas markets, receiving higher prices than wine from other countries.
40. At present very few New Zealand winemakers are selling cross-country blended wine in the New Zealand market. However, none are using New Zealand geographical indications to describe this wine. As a result, cross-country blending currently does not affect the reputation of New Zealand wines, either in the local or export markets. However, there is the potential for reputational risks to occur in the future, particularly after the GI Act comes into force.

41. If the current 85% rule is retained for wine carrying New Zealand registered geographical indications, there is a risk that it may not be possible to register New Zealand geographical indications in the EU. The EU imposes a 100% rule for wines that are sold in the EU and that carry an EU registered geographical indication. The inability to register New Zealand geographical indications in the EU would pose a significant risk to the New Zealand industry's ability to retain New Zealand wine's premium position in the EU market.

Objectives and criteria for analysing the options

42. Objective: The proposed amendment aims to provide an appropriate level of protection for the integrity and reputation of New Zealand wine in the domestic and global markets.

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

- Risks to New Zealand wine's reputation and protecting the position of New Zealand wine at the premium end of domestic and global markets. This is discussed in paragraphs 28 to 32 above.
- Protecting New Zealand wine's reputation by facilitating registration of New Zealand geographical indications in key off shore markets.
- Clarity for wine consumers, so that they can be confident that a wine bearing a new Zealand registered geographical indication will have the characteristics they associate with that geographical indication.
- Impact on incentives for innovation (e.g. developing innovative products) – what effect will the option have on winemaker's incentives to develop new products. With expansion into new markets, both in terms of countries and new generation of wine consumers, demand for more innovative wine products is likely to grow.
- The impact on local wine producers, including the impact on their production costs and revenue.

44. None of the options (including the status quo), will affect the registration process for geographical indications, so there are no additional costs to government, or additional fees imposed on users of registered geographical indications.

Options

45. This RIS analyses the following four options, including status quo. The industry was consulted on status quo and option 1, and was asked for views on a potential third option of no blending with grapes from another New Zealand region (as in option 3 below).

- Status Quo: Keep the 85% rule and remain silent on where the grapes for the other 15% of wine are sourced from. A winemaker could source up to 15% of wine from grapes harvested in another country.

- Option 1 (100% New Zealand rule with up to 15% from another New Zealand region): Amend the GI Act to require that where blending occurs the remaining 15% of the wine can come only from grapes harvested in another New Zealand region.
- Option 2 (100% New Zealand rule with up to 15% only from neighbouring New Zealand region): Amend the GI Act to require that where blending occurs the remaining 15% of the wine can come only from grapes harvested in a neighbouring New Zealand region. For example, a wine with 'Marlborough' as its geographical indication could include up to 15% of its wine content from grapes harvested in Nelson.
- Option 3 (100% New Zealand rule with 100% from the specified region): Amend the GI Act to require that all grapes that make up the wine must come from the registered New Zealand geographical indication specified.

46. No non-regulatory options were considered as the potential problems that might be caused by the 85% rule can only be dealt with through amendment of the GI Act.

Analysis of options

Option 1: 100% rule with up to 15% of the wine sourced from another New Zealand region

47. Under this option, if a wine is labelled with a New Zealand registered geographical indication, 100% of the wine would have to be made from grapes harvested in New Zealand. At least 85% of the wine would have to be made from grapes harvested from the region to which the geographical indication relates. The other 15% could come from anywhere in New Zealand but not another country.
48. This option will avoid the reputational risk associated with the current 85% rule, and will also avoid any risk that other countries, especially the EU, will refuse to register New Zealand geographical indications.
49. Compared with the current 85% rule, wine labelled in accordance with the 100% rule will be more in line with consumer expectations regarding wine labelled with a New Zealand registered geographical indication.
50. There will be some impact on the incentive for winemakers to innovate. Cross-country blends permitted under the current 85% rule would not be possible if a New Zealand registered geographical indication was to be used on the label. The inability to use New Zealand registered geographical indications on such blends may discourage the development of innovative cross-country blends.
51. Any winemaker currently producing cross-country blended wine in New Zealand would be able to continue such blending but would not be able to register and use a New Zealand geographical indication to market their wine in New Zealand.

52. 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. This practice is currently permitted under the GI Act and the Wine (Specifications) Notice. Option 1 would allow this practice to continue.

Option 2: 100% rule with up to 15% of the wine sourced only from a neighbouring New Zealand region

53. Under this option, if a wine is labelled with a New Zealand registered geographical indication, 100% of the wine would have to be made from grapes harvested in New Zealand. At least 85% of the wine would have to be made from grapes harvested from the region to which the geographical indication relates. The other 15% could be made from grapes harvested in a region adjacent to the region to which the geographical indication relates.
54. This option will avoid the reputational risk associated with the current 85% rule, and will also avoid any risk that other countries, especially the EU, will refuse to register New Zealand geographical indications.
55. Wine labelled in accordance with this rule will be closer to consumer expectations regarding wine labelled with a New Zealand registered geographical indication than wine labelled according to the current 85% rule or the rule described in Option 1.
56. There may be some restriction on the incentive of winemakers to innovate by blending different New Zealand wines. Some blends of New Zealand wines that would be permitted under the current rule would not be permitted under this option. For example, a wine producer wishing to blend (say) Marlborough wine with wine from Hawkes Bay would not be able to do so and still use 'Marlborough' on the label if 'Marlborough' was a registered geographical indication. This may discourage some innovation.
57. Adopting Option 2 would likely cause problems for some local wine producers. For example, under the status quo and option 1 a winemaker making wine from grapes grown in Marlborough may blend the wine with up to 15% of wine made from grapes grown in (say) Hawkes Bay. Option 2 would restrict the ability of winemakers to do this because the additional grapes could only be sourced from a neighbouring region. This could result in lost revenue for wine growers by making it more difficult for them to fulfill advance orders in the event of reduced grape production in their home region. Adverse climatic events impacting on grape production can affect two or three adjacent regions within New Zealand.

Option 3: 100% rule with 100% of the wine sourced from the specified region

58. Under this option, if a wine is labelled with a New Zealand registered geographical indication, all (100%) of the wine would have to be made from grapes harvested in the region to which the geographical indication relates.

59. This option will avoid the reputational risk associated with the current 85% rule, and will also avoid any risk that other countries, especially the EU, will refuse to register New Zealand geographical indications. It does, however, go further than is necessary to avoid the risk.
60. Wine labelled in accordance with this rule will likely conform completely with consumer expectations regarding wine labelled with a New Zealand registered geographical indication. Consumers may tend to assume that if a wine labelled with a geographical indication it is made from grapes sourced wholly from the relevant region. To this extent, this rule provides greater clarity to consumers than the current rule, or the rules of Options 1 or 2.
61. This option could significantly limit the ability of winemakers to innovate by blending different wines from different New Zealand regions. Blends of wine made from grapes sourced from different regions could not be labelled with a geographical indication if that indication was registered. The inability to use registered geographical indications on such blends could significantly reduce the incentive for wine producers to produce innovative blends.
62. There may be a significant impact on the wine industry. Unlike status quo, and options 1 and 2, under option 3 a winemaker would not be permitted to blend with grapes from another region at all for wines labelled with a registered geographical indication. In the event of reduced grape harvests in their home region, wine producers may find that they cannot fill advance orders, leading to significant loss of revenue.

Summary of Analysis

63. The symbols used in the table summarising the analyses of the proposals have the meaning set out below:

✓ = positive

✗ = negative

— = neutral

Note that the symbols represent relative impacts rather than an absolute measure. For example, an option with two ticks is better than one with one tick, but not necessarily twice as good. The best option cannot be assessed by simply counting the ticks and crosses.

Table 1: Summary of options for the 85% rule for geographical indications

Assessment Criteria	Status quo: Current 85% rule	Option 1: 100% New Zealand rule with up to 15% from another New Zealand region	Option 2: 100% New Zealand rule with up to 15% only from neighbouring New Zealand region	Option 3: 100% New Zealand with 100% from the specified region
Reputational risk	✗	✓	✓✓	✓✓✓
Facilitating off-shore registration	✗	✓	✓	✓
Clarity for consumers	✗	✓	✓✓	✓✓✓
Impact on incentives for innovation	-	✗	✗✗	✗✗✗
Impacts on industry	-	-	✗	✗✗

Conclusions and recommendations

64. On the basis of the analysis of options, MBIE and MPI's preferred option is Option 1. That is, wine carrying a New Zealand registered geographical indication must contain wine made entirely (100%) from grapes harvested in New Zealand. Up to 15% of the wine can be made from grapes grown in a New Zealand region other than that indicated by the geographical indication.
65. Looking at the first four criteria, Option 3 would seem to be the best option, although the differences between the options are likely to be small. Option 3 however, would have a significant impact on the industry (the fifth criterion), given current industry practices regarding blending of wine from different New Zealand regions. These practices are currently permitted under both the GI Act and the Wine (Specifications) Notice.
66. It is clear from public submissions that the practice of blending wine made from grapes harvested in one New Zealand region with up to 15% of wine made from grapes from another New Zealand region is well established in the local wine industry. The practice allows winemakers to fill advance orders in the event of grape production shortfalls in their home region. Prohibiting this practice (Option 3) or restricting it to a neighbouring region (Option 2) could make it difficult or impossible to fill advance orders, leading to a significant drop in revenue for some winemakers.
67. The potential loss in income for some winemakers is considered to more than offset the relatively small benefits of Options 2 and 3. Consequently, MBIE and MPI consider that Option 1 is the best option.

Consultation

68. In May 2015 New Zealand Winegrowers wrote to the Government to seek the proposed amendment.

69. After initial analysis of the proposal, MBIE and MPI released a discussion paper on 13 July 2015 for industry consultation with the intention of seeking submissions from anyone who may be impacted by the proposal in order to:

- test the problem definition and get a deeper understanding of the issues;
- determine the level of industry support for the proposal;
- become aware of the likely impacts of the proposal on makers and traders of wine and wine products; and
- seek other options to address the issue.

70. MPI sent the discussion paper to key stakeholders, and published it on its website. The closing date for submissions was 27 July 2015. A consultation period of 13 days was considered adequate as New Zealand Winegrowers has a comprehensive database of grape growers and winemakers, MPI has an extensive database of wine exporters, and there are also a number of good database of wine importers, traders and retailers among different industry organisations as listed below. 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 and MBIE hold on their databases;
- The Food and Grocery Council;
- The Customs Brokers Association;
- The Retailers Association; and
- Spirits New Zealand.

71. A total of 133 submissions were received. Submissions were received from:

- 104 submitters who are winemakers that also grow grapes,
- 15 submitters who are exclusively grape growers,
- 12 submitters who are exclusively winemakers, and
- 2 submitters who are industry representative bodies.

72. Eight submitters stated that their business was involved in blending wines. They all supported option 1.

73. Of the 133 submitters, 130 submitters supported the proposal, without any amendments. The remaining three submitters suggested that 100% of the grapes must come from the same New Zealand region (as in option 3 above). No other options were suggested by any of the submitters.

74. With respect to the ability to blend with grapes from other New Zealand regions, New Zealand Winegrowers and a number of other submitters suggested retaining the current provision that up to 15% of the wine could come from grapes harvested in another New Zealand region.
75. MBIE and MPI consulted MFAT when preparing the July 2015 discussion paper and when preparing this RIS. These three departments and the Treasury will be consulted when developing a Cabinet paper on the proposed change.

Implementation plan

76. The proposed amendment to the 85% rule in section 21 of the GI Act will be incorporated into the Geographical Indications (Wine and Spirits) Registration Amendment Bill currently in preparation.
77. Once the GI Act is in force, compliance with the restriction set out in section 21 of the GI Act will be enforced through the provisions of the Fair Trading Act 1986. Under section 33 of the GI Act, a breach of the restrictions on the use of a geographical indication contravenes section 9 of the Fair Trading Act 1986.

Monitoring, evaluation and review

78. As mentioned earlier, cross-country blended wines are not currently causing problems for the reputation of New Zealand wines, either in the New Zealand or export markets. The amendment to the 85% rule is intended to mitigate future risks, rather than deal with an existing problem.
79. This will make it difficult to determine whether the change to the 85% rule is meeting its objectives. However, some factors that could be taken into account include:
- The effect on the development of innovative cross-country blends both within the New Zealand market, and for export;
 - The ease with which New Zealand geographical indications can be registered in other countries, in particular the EU;
 - Whether New Zealand wine is maintaining its premium position in overseas markets.
80. MPI will seek the views of the wine industry regarding the operation of the amended rule during MPI's quarterly catch-ups with New Zealand Winegrowers.
81. Winemakers and bottlers are required under the Wine Regulations 2006 to have a Wine Standards Management Plan that is subject to verification (annually for export wine), including record keeping and labelling. This verification will provide MPI with additional oversight of the system.

The Chair
Cabinet Economic Growth and Infrastructure Committee

Geographical Indications (Wine and Spirits) Registration Amendment Bill – Approval to Introduce

Proposal

- 1 This paper seeks approval for amendments to the Geographical Indications (Wine and Spirits) Registration Act 2006 (**‘the GI Act’**), to allow the GI Act to be brought into force, and approval to introduce the amendment Bill, the Geographical Indications (Wines and Spirits) Registration Amendment Bill.

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, that 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 On 10 December 2014, Cabinet agreed that the GI Act be brought into force, and directed the Ministry of Business, Innovation and Employment (**MBIE**), working closely with the Ministry for Primary Industries (**MPI**) and the Ministry of Foreign Affairs and Trade (**MFAT**) to report to Cabinet on the amendments required to bring the Act into force by 31 March 2015 (EGI Min (14) 21/8 refers).
- 4 On 25 March 2015, Cabinet agreed to a number of amendments to the GI Act. These amendments were intended 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).
- 5 In the course of developing the amendments proposed in the March paper, MBIE, working with MFAT and MPI, noted a number of other provisions in the GI Act where an amendment may also be desirable to improve the workability of the GI Act. Officials indicated that they would report back to Cabinet separately on these possible amendments in the following few months, rather than delay submission of the March paper, which had to be submitted by a 31 March 2015 deadline set in the December 2014 paper.
- 6 Most of the amendments proposed are ‘minor and technical’ and do not change the policy intent behind the provisions involved. No Regulatory Impact Statement is provided for these amendments.
- 7 There is one substantive amendment, which was proposed by MPI. This is an amendment to the ‘85% rule’ in the GI Act. Under this rule, if a wine is labelled with a New Zealand registered geographical indication, at least 85% of the wine must be made from grapes harvested in the region to which the indication relates. The other 15% may come from another New Zealand region or another country.

- 8 Using New Zealand registered geographical indications on wine which contains wine from another country may mislead consumers, and diminish the integrity and reputation of New Zealand wines. Accordingly, I propose that the GI Act be amended to require that if a wine is to be labelled with a New Zealand geographical indication all (100%) of the wine must be made from grapes harvested in New Zealand, with up to 85% of the wine being made from grapes harvested in the region to which the indication relates.

Policy

What is a Geographical Indication?

- 9 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 and Scotch Whisky.
- 10 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.
- 11 The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (**'the TRIPS Agreement'**) obliges New Zealand to provide protection for geographical indications for wines and spirits.
- 12 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

- 13 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.
- 14 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. Cabinet also agreed to the Ministry of Business, Innovation and Employment (**MBIE**), working closely with the Ministry of Foreign Affairs and Trade (**MFAT**) and the Ministry for Primary Industries (**MPI**), commencing work to implement the GI Act (EGI Min (14) 21/8 refers).
- 15 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 of Geographical Indications 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 a GI, and to apply to cancel or alter the registration of a GI. The registration process will be administered by the Intellectual Property Office of New Zealand (**IPONZ**).

- 16 MBIE identified a number of areas where the GI Act would require amendment to enable it to be brought into force, and have also identified a range of amendments that could be made to the GI Act to improve its overall workability. Cabinet also directed MBIE, working closely with MFAT and MPI, to report back to Cabinet by 31 March 2015 on the required amendments. These amendments were considered by Cabinet on 25 March 2015 (EGI Min (15) 6/9 refers).
- 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.
- 18 Most of the amendments proposed in this submission are minor and technical, intended to clarify the language of the GI Act and ensure that the Act reflects the original policy intent. They do not make any substantive changes to the policy behind the GI Act. No Regulatory Impact Statement has been prepared for these amendments.
- 19 One amendment does involve a substantive issue. This is an issue that was flagged by MPI regarding the '85% rule'. A Regulatory Impact Statement has been prepared in relation to this proposed amendment.
- 20 As this submission proposes a substantive amendment to the GI Act, in addition to the minor amendments referred to above, it is being submitted to the Cabinet Economic Growth and Infrastructure Committee (EGI). In the absence of this substantive amendment, the submission would have been submitted to the Cabinet Legislation Committee (LEG), where approval to introduce the Amendment Bill would have been sought.
- 21 In order to ensure that introduction of the Bill is not unduly delayed I recommend that EGI, in addition to agreeing to the amendments proposed in this submission, also approve introduction of the amendment Bill. This will avoid the need for a separate submission to LEG. To this end, this submission also includes the information normally required for submissions to LEG.

Further Proposed Amendments to the GI Act

Amendment to the 85% rule for wine

- 22 Under the GI Act, if a wine has a New Zealand registered geographical indication on its label, at least 85% of the wine must be made from grapes harvested in the region to which the New Zealand registered geographical indication relates. The GI Act is silent as to where the other 15% may originate from. A New Zealand registered geographical indication for wine is one that identifies the wine as originating in New Zealand, and will generally be a New Zealand regional name.
- 23 As enacted, the GI Act would allow a wine carrying a New Zealand registered geographic indication to contain up to 15% of wine from outside New Zealand. Using New Zealand registered geographical indications on wine which contains wine from another country may mislead consumers, and diminish the integrity and reputation of New Zealand wines.

- 24 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, and dilute the reputation of New Zealand registered geographical indications.
- 25 To deal with these issues, I recommend that the GI Act be amended to require that, where a wine is labelled with a New Zealand registered GI, all the wine must be made from grapes harvested in New Zealand. This is in addition to the 85% rule.
- 26 This change to the GI Act will not prevent winemakers from supplying the domestic and export markets with wines consisting of a blend of New Zealand and foreign wine. Such blends will not be able to carry New Zealand registered geographic indications, however.

Proposed amendments to sections 21(a), 22(a), 23(a), 24(a), and 32(2)

- 27 These sections all contain a reference to wine that is obtained from grapes harvested in the 'geographical origin or origins' to which a registered geographical indication relates. This wording is grammatically incorrect, and it would be desirable to correct it.
- 28 I recommend that sections 21(a), 22(a), 23(a), 24(a), 32(2) be amended to replace the words 'grapes harvested in the geographical origin or origins' with clearer, more grammatical wording.

Proposed Amendment to s29 of the GI Act

29 Section 29 relates to an exception from the restrictions imposed on the use of registered geographical indications. The exception is intended to apply to use by a New Zealand entity of a geographical indications where the entity has been using the indication continuously since before 15 April 1994. This exception is provided for in the TRIPS Agreement, 15 April 1994 is the date New Zealand signed the TRIPS Agreement.

30 As currently worded, s29 is unclear whether the use must have been continuous between a date prior to 15 April 1994 and the current time. I propose a minor amendment to s29 to clarify that the use must be from before 15 April 1994.

Status of a Geographical Indication that has been removed for non-payment of renewal fees

31 In March 2015, Cabinet agreed to provide a registration renewal regime for registered geographical indications, whereby registrations must be renewed every 10 years. It was also agreed that, where a registered geographical indication lapses due to a failure to pay a renewal fee, the indication can be restored to the register if an application for restoration is made within a prescribed time period after lapsing.

32 A consequence of this is that if the registration of a geographical indication lapses, there will be a period after lapsing during which the indication can be restored to the register. Because of this, it will be necessary for the Registrar, when considering an application to register a geographical indication, to take account of registrations which have lapsed, but which could still be restored.

- 33 In the absence of a provision for this, it would be possible for a geographical indication identical to the lapsed indication to be registered, and then for the lapsed indication to be restored. This would leave two identical geographical indications on the register, and would conflict with section 10 of the GI Act, which provides that the Registrar must not register a geographical indication that is identical to an already registered indication for the same product.
- 34 It will also be necessary to provide that the Registrar must take account of lapsed trade mark registrations that can still be restored to the Trade Marks register. This is to avoid conflict with s14 and s15 of the GI Act which provide that the Registrar must not register a geographical indication which is identical to a trade mark registered for the same or similar goods or services.
- 35 I therefore propose that a geographical indication, or a trade mark, that has been removed from its respective register for non-payment of the renewal fee must be taken into account after the date of expiry of the registration for the period when the registration may still be restored when determining the registrability of a later GI application.

Proposed amendments to the Trade Marks Act 2002

- 36 The purpose of these proposed amendments is to ensure that the treatment of trade marks registered under the Trade Marks Act 2002 which contain, or are similar to geographical indications registered under the GI Act is consistent with the provisions in the GI Act dealing with geographical indications that are, or contain registered trade marks.
- 37 Section 63(4) of the GI Act repeals current s20 of the Trade Marks Act 2002, and replaces it with a new provision. The intention behind new s20 as originally proposed in the GI Act was to provide a 'first in time, first in right' approach to resolving conflicts between registered trade marks (or applications to register a trade mark) and registered geographical indications.
- 38 Under the 'first in time, first in right' approach, it was intended that 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.
- 39 Sections 14–17 of the GI Act give the Registrar of Geographical Indications the power to refuse to register a geographical indication if it is identical to, or similar to, a registered trade mark or trade mark application with an application date earlier than that of the trade mark or trade mark application. That is, the GI Act already contains a 'first in time, first in right' provision relating to the registration of geographical indications.
- 40 As it currently stands, the wording proposed for s20 of the Trade Marks Act 2002 does not provide for a 'first in time, first in right' approach. I propose that the wording proposed for s20 of the Trade Marks Act be amended to ensure that it does provide for this approach, along the lines of sections 14–17 of the GI Act *mutatis mutandis*.
- 41 Also, the wording proposed for s20 of the Trade Marks Act provides for separate provisions for wines and spirits. This is unnecessary, and one provision, referring to both wines and spirits can be used.

- 42 Section 18 of the GI Act provides the Registrar with the discretion to allow a GI to be registered even if it conflicts with an earlier registered trade mark if the trade mark owner has consented to registration of the GI, or the Registrar considers that the GI may co-exist with the trade mark. There is, however, no corresponding provision in the Trade Marks Act 2002 regarding co-existence between a registered trade mark and a registered GI.
- 43 For consistency, I propose that a similar provision in the Trade Marks Act 2002 that allows a trade mark containing a previously registered GI to be registered if the Commissioner of Trade Marks or a court considers that a case of honest concurrent use exists, such that it is proper for the trade mark to be registered. I consider this is consistent with the general approach taken in the GI Act to conflicts between trade marks and GIs.
- 44 I also propose that section 60 of the Trade Marks Act 2002 be amended to allow the Commissioner of Trade Marks to take account of lapsed geographical indication registrations when deciding whether or not to register a trade mark during the period when the registration of the geographical indication can be restored.
- 45 Section 60 will also need to be amended to provide an exception to this rule where:
- (i) The geographical indication is a foreign geographical indication; and
 - (ii) The indications is not, or is no longer protected in its country of origin; or
 - (iii) The indication has fallen into disuse in its country of origin.

Fees

- 46 The GI Act will be administered by the Intellectual Property Office of New Zealand (IPONZ). An increase to the IPONZ Baseline (Vote Commerce: Registration and Granting of Intellectual Property Rights) will be required when the costs of implementing the GI Act are known.
- 47 It is intended that all of the costs of administering the GI Act will be recovered from fees charged to applicants for registration and renewal of 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.
- 48 This will mean that renewal fees will need to be set at a level higher than the cost to the Registrar of processing the renewal fee. Such a provision will also allow initial application fees to be kept low to facilitate the registration of GIs. The initial application fee will only have to cover to the cost of the examination of the application, plus a contribution towards maintaining the register until the first renewal fee became due.
- 49 The use of renewal fees in this way is not unusual – renewal fees paid under the Trade Marks Act 2002 and the Patents Act 2013 are set at a level where they cover some of the costs of maintaining the respective registration systems. The GI Act will be amended to provide explicit authority for this, along the lines of similar provisions in the Patents Act 2013 and the Trade Marks Act 2002.

- 50 Setting renewal fees higher than the cost of processing the fee also means that geographical indications that are no longer in use will be likely to lapse through non-payment of the renewal fee. This will mean these geographical indications available for third parties in a non-geographical indication sense, for example as trade marks.
- 51 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.
- 52 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, will 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.
- 53 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 will be around \$5000+GST, with a renewal fee payable of around \$2500+GST.
- 54 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.
- 55 By way of comparison, the fee charged to apply to register a geographical indication in Australia is AUD 27,500 (including GST), and other fees may be charged as necessary on a cost-recovery basis. There is no requirement to pay renewal fees.
- 56 Cabinet approval for fees to be charged under the GI Act will be sought when approvals are sought for the GI Act regulations.

Regulatory Impact Analysis

- 57 Regulatory Impact Statements were produced for the December 2014 and March 2015 Cabinet papers referred to above.

Proposed Amendment to the 85% Rule

- 58 A regulatory impact statement for the proposed amendment to the 85% rule is included as **Appendix A**.

Quality of the Impact Analysis

- 59 The Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Statement (RIS) prepared by the Ministry of Business, Innovation and Employment. The panel noted that the RIS could have been improved by the inclusion of a more extensive cost benefit analysis. However, they consider that the information and analysis summarised in the RIS is sufficient and meets the criteria necessary for ministers to fairly compare the available policy options and take informed decisions on the proposals in this paper.

Fiscal Implications

60 The recommendations in this submission do not give rise to any financial implications.

Publicity

61 I intend to release a press statement when the Amendment Bill is introduced.

Compliance

Treaty of Waitangi

62 The Bill is consistent with the Treaty of Waitangi.

Human Rights

63 The Bill appears to be consistent with the rights and freedoms provided for in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Disclosure Statement

64 A disclosure statement has been prepared and is attached to this submission.

Privacy

65 The Bill complies with the principles and guidelines set out in the Privacy Act 1993.

Relevant International Standards and Obligations

66 The relevant international obligations are Articles 22-24 of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights ('the TRIPS Agreement'). The Bill is compliant with these obligations.

LAC Guidelines

67 The Bill is compliant with the LAC Guidelines on Process and Content of Legislation.

Consultation

68 The following agencies have been consulted and support this submission: Ministry for Primary Industries, Ministry of Foreign Affairs and Trade and the Treasury. The Department of Prime Minister and Cabinet has been informed.

69 During the development of the Bill, New Zealand Winegrowers, the body representing New Zealand wine growers and producers, and Spirits New Zealand, representing spirits producers and sellers, were consulted.

Binding on the Crown

70 This Bill amends the Geographical Indications (Wines and Spirits) Registration Act. This Act is binding on the Crown. The Bill will not change this.

Creating new agencies or amending law relating to existing agencies

Not applicable.

Allocation of decision making powers

Not applicable

Associated Regulations

- 71 The Bill itself will not require regulations. The principal Act amended by the Bill (the GI Act) will require regulations before it can be brought into force.
- 72 These regulations will deal with:
- The procedures for filing applications for registration of a geographical indication, and the documents required to accompany the application;
 - The procedures for examination and acceptance or refusal of an application;
 - A procedure for third parties to oppose a decision to register a geographical indication;
 - Procedures for the Registrar or third parties to remove or amend a registered geographical indication;
 - Procedures for the regulation of hearings and *inter parte* proceedings before the Registrar; and
 - Fees.
- 73 Policy decisions will be required in respect of these regulations. It is expected that these policy decisions will be taken to Cabinet in early 2016 and that drafting instructions will be sent to the Parliamentary Counsel Office by May 2016.
- 74 The regulations will likely consist of 160 – 180 regulations of moderate complexity. They will be modelled on corresponding provisions in the Trade Marks Regulations 2003.
- 75 MPI proposes to amend the Wine (Specifications) Notice 2006 to reflect the proposed change to the 85% rule in s21 of the GI Act.

Other Instruments

- 76 The Bill does not include a power to create other instruments.

Definition of Minister or Department

- 77 The Bill does not contain a definition of a Minister or Department.

Commencement

- 78 The Bill will commence on the day after the date of Royal assent. The Bill amends the GI Act and provides that the GI Act will enter into force on 1 July 2018, unless brought into force sooner by Order in Council. This will allow the regulations necessary to implement the GI Act to be finalised and gazetted.
- 79 It is expected that the regulations will be finalised and gazetted within three months of enactment of the amendment Bill.

Parliamentary Stages

- 80 The Bill should be introduced in November 2015 and enacted by July 2016. The Bill will be referred to the Commerce Committee.

Recommendations

81 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 (MBIE), working closely with the Ministry of Foreign Affairs and Trade (MFAT) and the Ministry of Primary Industries (MPI), 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 and directed officials to report back to Cabinet by 31 March 2015 on such amendments;
 - 2.4. Cabinet agreed to these amendments on 25 March 2015 (EGI Min (15) 6/9 refers);
3. **Note** that the amendments will be incorporated into the Geographical Indications (Wines and Spirits) Registration Amendment Bill, which has priority 3 on the legislation program;
4. **Note** that in the course of developing the amendments proposed in the March Cabinet Paper, MBIE, working with MFAT and MPI have also noted a number of other provisions in the GI Act where amendment may also be desirable to improve the workability of the GI Act;
5. **Agree** to the following amendments to improve the clarity and effectiveness of the GI Act:
 - 5.1. require that, where a wine is labelled with a New Zealand registered geographical indication, all the wine must be made from grapes harvested in New Zealand;
 - 5.2. sections 21(a), 22(a), 23(a) 24(a), and 32(2) be amended to replace the words 'harvested in the geographical origin or origins...' with clearer, more grammatical wording.
 - 5.3. amend s29 to clarify that use of a geographical indication must be from before 15 April 1994 if the indication is to take advantage of the exception to the restrictions on use of a registered geographical indication provided by s29;
 - 5.4. provide that a geographical indication, or a trade mark, that has been removed from its respective register for non-payment of the renewal fee must be taken into account when determining the registrability of a later GI application during the period when the geographical indication or trade mark may be restored its respective register;
6. **Agree** to the following consequential amendments to the Trade Marks Act 2002:

- 6.1. Provide for a 'first in time, first in right' approach to resolving conflicts between registered trade marks (or applications to register a trade mark) and registered geographical indications;
- 6.2. Provide that the 'first in time, first in right provision' referred to above does not apply, if the Registrar or the court, as the case may be, considers that a case of honest concurrent use exists that, in the opinion of the court or the Registrar, makes it proper for the trade mark to be registered subject to any conditions that the court or the Commissioner may impose;
- 6.3. Provide that a geographical indication that has been removed from the register of geographical indications must be taken into account when deciding whether or not to register a trade mark during the period when the registration of the geographical indication can be restored; except, in the case of a foreign geographical indication, where that indication is not, or is no longer, protected in its country of origin, or has fallen into disuse in its country of origin;
7. **Approve** for introduction the Geographical Indications (Wines and Spirits) Registration Amendment Bill, subject to final approval of the government caucus and sufficient support in the House of Representatives;
8. **Note** that the costs of administering the GI Act will be fully recovered through fees, and that Cabinet approval for the fees will be sought when approval for the GI regulations is sought;
9. **Agree** that the Bill be introduced in November 2015.
10. **Agree** that the government propose that the Bill be:
 - 10.1. Referred to the Commerce Committee; and
 - 10.2. Enacted by July 2016.

Hon Paul Goldsmith
Minister of Commerce and Consumer Affairs

Departmental Disclosure Statement

Geographical Indications (Wine and Spirits) Registration Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment (MBIE)

MBIE certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

2 October 2015

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OFFICIAL INFORMATION ACT

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Part One: General Policy Statement

This Bill amends the Geographical Indications (Wine and Spirits) Registration Act 2006 (the **principal Act**). The principal Act was enacted in 2006, but has not yet been brought into force. The principal Act provides a mechanism whereby geographical indications for wines or spirits (**GIs**) can be registered. Section 6(1) of the principal Act defines a geographical indication as an indication that identifies a wine or spirit as originating in the territory of a country, or a region or locality in that territory, where a given quality, or reputation, or other characteristic, of the wine or spirit is essentially attributable to its geographical origin.

In order for a wine or spirit to carry a registered geographical indication on its label, the wine or spirit must meet the requirements set out in sections 21 to 24 of the principal Act.

In December 2014, the Government decided that the principal Act should be brought into force in order 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 European Union.

The Ministry of Business, Innovation, and Employment identified some issues with the principal Act that should be addressed before the principal Act is brought into force.

Minor Amendments

Some of these amendments are minor and technical and are intended to clarify wording, correct inconsistencies, or ensure consistent treatment of trade marks and geographical indications where they are similar.

Other more substantive amendments to the principal Act are being made to ensure the workability and sustainability of the register of geographical indications.

Fixed terms for geographical indications

Once a GI is registered, it remains on the register indefinitely until removed or cancelled. There is no provision that would enable costs of maintenance of the register to be recovered from GI users once a GI has been placed on the register or to encourage the removal of obsolete GIs.

This issue is addressed by amending the principal Act to provide that GIs will lapse after a fixed term of 10 years, unless renewed. Renewal fees will allow the long-term costs of maintaining the register to be met from and has the advantage that GIs that are no longer in use are likely to lapse, which will make GIs available for third party use in a non-GI context, (for example, as trade marks). There is no limit on the number of times a GI registration can be renewed.

Origin of wine

Another issue that has been identified is with the requirement in the principal Act that for a wine to be labelled with a New Zealand registered GI at least 85% of the wine must come from grapes harvested in the region to which the GI relates (the **85% rule**). There is no restriction on where the other 15% of the wine must originate from. As it stands, the other 15% can originate from another country.

A wine labelled with a New Zealand registered GI that contains wine from another country could mislead consumers, and diminish the integrity and reputation of New Zealand wines.

To deal address this, the principal Act will is being amended to provide that where a wine is labelled with a New Zealand registered GI, all the wine must be made from grapes harvested in New Zealand.

Miscellaneous amendments

Other amendments being made to the principal Act are intended to ensure that the GI registration system operates smoothly and meets the objectives set out in section 3 of the principal Act. Those amendments include—

- providing for restoration of a GI to the register in accordance with prescribed requirements and on fulfilment of any conditions specified by the Registrar;
- providing that the terms “New Zealand”, “North Island”, and “South Island” are enduring New Zealand registered GIs;
- providing that the Registrar may refuse an application for registering a GI whose use or registration would likely be offensive to a significant section of community, including Māori;
- providing that amendments to a registered GI would only be permitted if the amendments did not substantially alter the character of the GI (while allowing amendments to the associated boundaries and conditions of use of the GI); and
- providing the Registrar with the ability to award costs, and require security for costs, in relation to proceedings for opposition to the registration, removal, or alteration of a GI.

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Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
Economic Analysis of Geographical Indications (Wine and Spirits) Registration Act 2006, Covec Ltd 2014, http://www.mbie.govt.nz/info-services/business/intellectual-property/geographical-indications/resolveuid/3326f31d8114443db46811e6f9572abd	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<ol style="list-style-type: none"> 1. Geographical Indications (Wine and Spirits) Registration Act 2006), Ministry of Business, Innovation and Employment, December 2014 <i>Note that portions of this RIS have been redacted under the OIA</i> 2. Implementation of the Geographical Indications (Wine and Spirits) Registration Act 2006, March 2015, Ministry of Business Innovation and Employment <i>Note that portions of this RIS have been redacted under the OIA</i> 3. Amendment of the 85% rule in Section 21(a) of the Geographical Indications (Wine and Spirits) Registration Act 2006. <p>These regulatory impact statements can be found at: http://www.mbie.govt.nz/info-services/business/intellectual-property/geographical-indications/implementation-geographical-indications-wines-spirits-registration-act-2006</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
The Regulatory impact Statements did not meet the threshold for RIA Team Assessment.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

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Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The Ministry of Foreign Affairs and Trade was consulted during the development of this Bill.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The amendments proposed in the Bill deal largely with procedural matters that, with one exception do not affect the criteria for registering GIs or the rights provided by registration.

One provision of the Bill requires the Registrar of Geographical Indications to refuse to register a geographical indication whose use or registration would likely be offensive to a significant section of society, including Maori.

Without this provision, it would be possible to register a Maori geographical name where use or registration of that name in association with alcoholic beverages may be offensive to Maori. The provision mirrors a similar provision in the Trade Marks Act 2002.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

NO

Offences, penalties and court jurisdictions

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

YES

New section 42(3)(aa) requires the name and address of the registrant to be recorded in the register. Although not a requirement in the principal Act, this information would be recorded and published even in the absence of a requirement.

3.5.1. Was the Privacy Commissioner consulted about these provisions?

NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
New Zealand Winegrowers, the industry body representing New Zealand grape growers and winemakers, and Spirits New Zealand, the industry body representing New Zealand spirits producers and importers, were consulted during the development of this Bill.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
The proposals have been assessed and agreed to by the Intellectual Property Office of New Zealand, who will be responsible for administering the GI Act.	

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Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>Under the GI Act (as enacted), the costs of administering the Register of Geographical Indications would be wholly funded from fees charged to applicants for registration, and to third parties wishing to oppose, remove or amend registrations.</p> <p>In order to keep the initial application fees low, so as not to discourage use of the registration system, the initial application fee will be less than the actual cost of processing the application.</p> <p>The Bill will establish a system whereby renewal fees must be paid to keep a registration current. Funds collected through renewal fees will be used to subsidise application fees and other fees, as is done with other registered intellectual property rights including patents and trade marks.</p> <p>The Bill will provide for explicit authority for the renewal fees to be used in this way, so that the total fees collected will cover the cost of administering the Register.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>This Bill provides a decision-making power to the Registrar to restore a geographical indication to the register, award costs, require security for costs, treat proceedings as abandoned if security for costs is not given.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
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This Bill amends the power to make regulations in relation of recovery of costs as incurred by the Registrar or on a cross-subsidisation basis within the GI regime.	
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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Hon Paul Goldsmith

Minister of Commerce and Consumer Affairs

X October 2015



Media Statement

Wine and Spirit geographical registration coming

Commerce and Consumer Affairs Minister Paul Goldsmith today introduced a Bill that enables geographical indicators for wines and spirits to be registered in New Zealand.

The Bill amends the Geographical Indications (Wines and Spirits) Registration Act which was passed in 2006 but never brought into force.

"It will set up a geographical indications registration regime for wines and spirits, similar to the trade mark registration regime," says Mr Goldsmith.

"A geographical indication indicates that a wine or spirit comes from a specific region and possesses particular qualities or characteristics as a result.

"Being able to register regional names for our wine and spirits, such as Marlborough or Martinborough, will reinforce the qualities and reputation of those products," says Mr Goldsmith.

The Bill amends the Act to ensure that the process for registering geographical indicators runs smoothly.

Mr Goldsmith says being able to register geographical indications for wines and spirits will make it easier for their users to enforce them in New Zealand. It will also make it easier for our exporters to promote and protect their wine and spirits in some overseas markets," says Mr Goldsmith

"The use of geographical indications by New Zealand producers is largely confined to the wine industry. Well known products that are identified by geographical indications include Champagne, Scotch Whisky and Prosciutto de Parma," he says.

"Some consumers are prepared to pay a significant premium for wines from certain New Zealand geographic regions. The reputation of New Zealand wines must be jealously guarded if we are to continue growing our wine exports," says Mr Goldsmith.

Media contact: Cameron Gray 021 763 970

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Geographical Indications (Wines and Spirits) Amendment Bill

FIRST READING SPEECH

MINISTER OF COMMERCE AND CONSUMER AFFAIRS

Mr Speaker

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

The Bill amends the Geographical Indications (Wines 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, 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 TRIPS Agreement, which is the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, obliges New Zealand to provide protection for geographical indications for wines and spirits. Geographical indications 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, and the relevant provisions of the Australia New Zealand Food Standards Code.

The Geographical Indications (Wines and Spirits) Registration Act 2006 provides for a registration system for geographical indications, but this Act is not yet in force. It was passed in anticipation that New Zealand would soon begin negotiations on a Wine Agreement with the European Union. However, negotiations never began. At the time, the local wine industry did not have an interest in registering geographical indications, so the Act was never brought into force.

More recently the local wine industry has become concerned about the potential misuse of New Zealand geographical indications in export markets. This misuse has the potential to adversely affect the reputation of New Zealand wine, which commands a premium price in export markets. This risk can be mitigated by registering New Zealand geographical indications in these export markets. However most countries will not register geographical indications unless they are registered in their country of origin. As a result, the government has decided to bring the Act into force. An additional advantage of bringing the Act into force is that it will support New Zealand's interests in launching Free Trade Agreement negotiations between New Zealand and the EU.

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. These amendments are contained in the Amendment Bill.

Most of these amendments are 'minor and technical'.

Some amendments are more significant. These include:

- Geographical indication registrations expire after ten years unless a renewal fee is paid – the renewal fees will contribute towards the ongoing maintenance of the Register of Geographical Indications, and help keep the initial application fees down;
- Providing that the terms 'New Zealand', 'South Island' and 'North Island' will be protected as registered geographical indications without the need for an application to be made. These terms are in use as geographical indications by local wine producers, but may not otherwise meet the definition of 'geographical indication' in the Act;
- Giving the Registrar of geographical indications the power to refuse to register a geographical indication if registration or use of the indication would be likely to be offensive to a significant section of society, including Maori. This mirrors a provision in the Trade Marks Act and ensures that geographical indications that might be refused registration as trade marks on offensiveness grounds cannot be registered as geographical indications.

Once the Amendment Bill is enacted, the Geographical Indications (Wines and Spirits) Registration Act can then be brought into force. It will then be possible for interested parties to apply to register geographical indications. The Act will be administered by the Intellectual Property Office of New Zealand, which is also responsible for other registered intellectual property rights such as trade marks and patents.

I move that this Bill be now referred to the **Commerce Select Committee** for consideration.



BRIEFING

Geographical Indications (Wine and Spirits) Registration Regulations 2017

Date:	1 June 2017	Priority:	Medium
Security classification:	In Confidence	Tracking number:	3558 16-17

Action sought		
	Action sought	Deadline
Hon Jacqui Dean Minister of Commerce and Consumer Affairs	Agree to submit the attached paper to the Cabinet Office by 10 am Thursday 15 June 2017 for consideration by EGI on Wednesday 21 June 2017.	15 June 2017

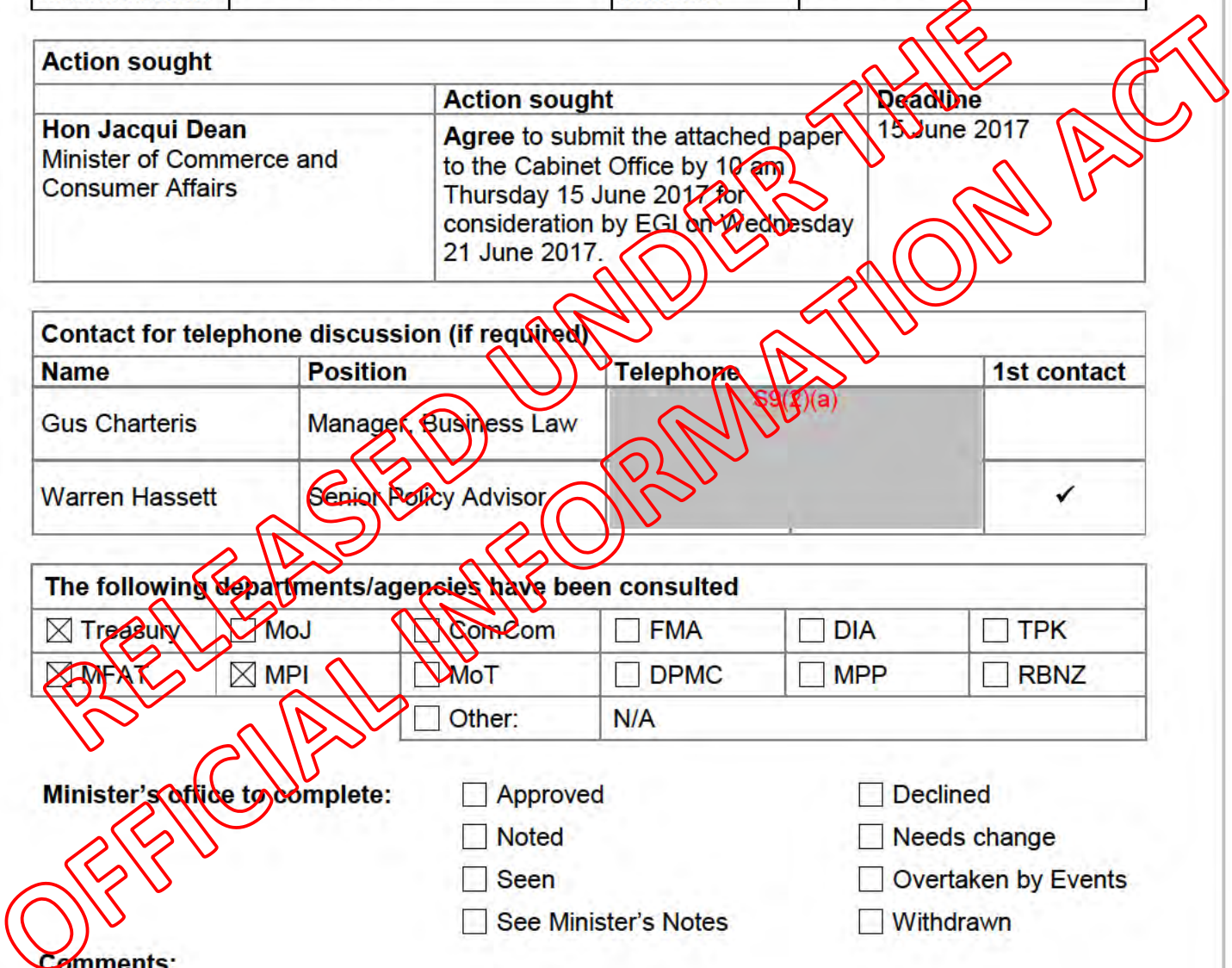
Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Gus Charteris	Manager, Business Law	s9(2)(a)	
Warren Hassett	Senior Policy Advisor		✓

The following departments/agencies have been consulted					
<input checked="" type="checkbox"/> Treasury	<input type="checkbox"/> MoJ	<input type="checkbox"/> ComCom	<input type="checkbox"/> FMA	<input type="checkbox"/> DIA	<input type="checkbox"/> TPK
<input checked="" type="checkbox"/> MFAT	<input checked="" type="checkbox"/> MPI	<input type="checkbox"/> MoT	<input type="checkbox"/> DPMC	<input type="checkbox"/> MPP	<input type="checkbox"/> RBNZ
<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 Regulations 2017

Date:	1 June 2017	Priority:	Medium
Security classification:	In Confidence	Tracking number:	3558 16-17

Purpose

To seek your agreement to submit the attached paper to the Cabinet Economic Growth and Infrastructure Committee (**EGI**) seeking approval for:

- The Geographical Indications (Wine and Spirits) Registration Regulations 2017 and a proposed fee schedule.
- The entry into force of the Geographical Indications (Wine and Spirits) Registration Act 2006 and accompanying regulations on 27 July 2017.

Executive summary

1. The Geographical Indications (Wine and Spirits) Registration Act 2006 (**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, that is used to identify the origin of goods where some quality of the goods is influenced by their geographical origin.
6(e)(vi) and 9(2)(j)
2. Although the GI Act was enacted in 2006, implementation was delayed. It was considered that bringing the GI Act into force at that time would be premature in light of proposals to negotiate a wine agreement with the European Union (**EU**). However, negotiations never began, and, at the time, the New Zealand wine industry did not support implementation of the GI Act, and the GI Act was never brought into force¹.
3. On 10 December 2014, Cabinet agreed that the GI Act be brought into force. One driver for this was that the New Zealand wine industry now supports implementation of the GI Act. In addition, it was thought at the time that implementation of the GI Act would assist in encouraging the EU to begin FTA negotiations with New Zealand. The EU has taken a strong interest in the implementation of the GI Act.
4. On 25 March 2015, Cabinet agreed to a number of amendments to the GI Act. These amendments were intended to clarify drafting and correct inconsistencies in the GI Act as enacted, and to ensure that the registration process was workable, sustainable and cost-effective [EGI Min (15) 6/9 refers]. These amendments were contained in the Geographical Indications (Wine and Spirits) Amendment Act (**the Amendment Act**), which received Royal assent on 25 November 2016.

¹ Section 62 of the GI Act, which repealed the Geographical Indications Act 1994, was brought into force by the Geographical Indications Act 1994 Repeal Order 2008

5. Regulations are required to implement the registration system established by the GI Act. Regulations were not developed at the time the GI Act was enacted. The regulations will cover the procedures for examination and registration of a GI, 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**).
6. Given the similarities between geographical indications and trade marks, it was proposed that the regulations be based on the relevant provisions of the Trade Marks Act 2002 and the Trade Mark Regulations 2003, as set out in the Regulatory Impact Statement annexed to the attached Cabinet paper. This would simplify administration by IPONZ as well as minimising the costs involved in implementing the GI Act. It would 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. In December 2015, Cabinet agreed to the issuance of drafting instructions for an exposure draft of the Geographical Indications (Wine and Spirits) Registration Regulations [EGI-15-MIN-0190 refers]. The exposure draft was released for public consultation in July 2016 [EGI-16-MIN-0145 refers].
8. Fourteen submissions on the exposure draft were received. The submissions supported the approach of basing the regulations on the Trade Mark Regulations 2003. Submissions also identified some aspects of the regulations where they considered that amendment was required to simplify or clarify the regulations. Other amendments were required to take account of the incorporation of some provisions from the exposure draft into the GI Act by the Amendment Act.
9. The regulations will also contain a schedule of fees. The costs of administering the 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 input on the proposed fees schedule was released at the same time as the release of the exposure draft of the GI Regulations. Public submissions on the proposed fee schedule generally supported the proposed fee schedule and the way that fees were proposed to be set.
10. Once Cabinet has approved the proposed fee schedule and the amendments to the exposure draft, it will be possible to bring the GI Act and regulations into force. To this end, a draft paper for EGI is attached to this report seeking approval for:
- i. The Geographical Indications (Wine and Spirits) Registration Regulations 2017.
 - ii. A proposed fee schedule for the GI Act.
 - iii. The entry into force of the GI Act and accompanying regulations on 27 July 2017.
11. We recommend that you submit the attached paper to EGI to the Cabinet Office by 10 am on Thursday 15 June 2017 for consideration at its meeting on Wednesday 21 June 2017.

Recommended action

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

- a **Note** that the Geographical Indications (Wine and Spirits) Registration Act 2006 ('the GI Act') has not been brought into force, and that no regulations were made when the GI Act was enacted.

Noted

- b **Note** that, in December 2014, Cabinet agreed to bring the GI Act into force.

Noted

- c **Note** that in December 2015 Cabinet agreed:

- i. 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) and
- ii. that public consultation on the proposed regulations be based on an exposure draft of those regulations.

Noted

- d **Note** that the exposure draft and a consultation document on a proposed fee schedule for the GI Act were released for public submissions in July 2016.

Noted

- e **Note** that amendments to the exposure draft are proposed to take account of:

- i. Minor and technical issues raised in public submissions on the exposure draft;
- ii. the fact that the Geographical Indications (Wine and Spirits) Amendment Act shifted some provisions from the regulations to the GI Act;
- iii. issues that have arisen during the development of the Intellectual Property Office of New Zealand (**IPONZ**) on-line system for processing applications for registration.

Noted

- f **Note** the proposed amendments to the exposure draft do not change the substance of the regulations, but are being made to ensure that the procedures set out in the regulations run smoothly and provide certainty to registrants and interested persons dealing with the Registrar.

Noted

- g **Note** that public submissions generally supported the approach to setting fees, and the fee schedule proposed in the fees consultation document.

Noted

- h **Note** that officials have prepared the attached paper to the Cabinet Economic Growth and Infrastructure Committee ('**EGI**') seeking approval for:

- i. The Geographical Indications (Wine and Spirits) Registration Regulations 2017.
- ii. A proposed fee schedule for the GI Act.

iii. The entry into force of the GI Act and accompanying regulations on 27 July 2017.

Noted

- i **Agree** to submit the attached paper to the Cabinet Office by 10 am Thursday 15 June 2017 for consideration by EGI at its meeting on Wednesday 21 June 2017.

Agree/Disagree

Gus Charteris
Manager, Business Law

Hon Jacqui Dean
**Minister of Commerce and Consumer
Affairs**

1 June 2017

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Background

What is a Geographical Indication?

1. A GI is a name (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. Examples of GIs include Champagne, Scotch Whisky and Feta.
2. 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.
3. 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, the Australia New Zealand Food Standards Code (for spirits), and the Wine (Specifications) Notice 2006 (for wine).
4. The use of GIs in New Zealand by local 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.

The Geographical Indications (Wines and Spirits) Registration Act 2006

5. In 2006 the GI Act was passed. This Act will, when in force, establish a regime for registering GIs for wines and spirits in New Zealand. The registration regime will be administered by IPONZ. The GI Act replaced the earlier Geographical Indications Act 1994, which provided for registration of GIs for all products. The 1994 Act was never brought into force.
6. In December 2007 Cabinet agreed to delay implementation of the GI Act. At the time it was anticipated that negotiations with the EU for a bilateral wine agreement would soon begin. It was considered that implementing the GI Act **6(a) and 6(e)(vi)** would be premature ahead of concluding these negotiations.
7. Negotiations on the wine agreement were never started, and at the time, the New Zealand wine industry did not support implementation of the GI Act. As a result, the GI Act was never brought into force (apart from section 62, which repealed the Geographical Indications Act 1994). Consequently, no regulations were ever drafted.
8. More recently, the New Zealand wine industry has argued that the GI Act should be brought into force so that New Zealand GIs can be registered here. The industry is concerned about the possible misuse of New Zealand GIs in overseas markets, and wishes to protect their GIs in those markets. Some other countries will not register foreign GIs unless they are first registered in their country of origin.
9. In addition, it was thought at the time that implementation of the GI Act would assist in encouraging the EU to begin FTA negotiations with New Zealand. The EU has taken a strong interest in the implementation of the GI Act.
10. In light of these factors, Cabinet agreed in December 2014 that the GI Act should be brought into force. Before the GI Act could be brought into force, some amendments were 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. These amendments were approved by Cabinet in March 2015 [EGI Min (15) 6/9 refers] and incorporated into the Amendment Act which received Royal assent on 25 November 2015.

The Geographical Indications (Wine and Spirits) Registration Regulations 2017

11. The GI Act establishes a formal register for GIs and will operate as set out below:
 - Any 'interested person' will be able to apply to register a GI.
 - The application will be subject to an examination process by the Registrar of Geographical Indications ('the Registrar').
 - A GI will only be registered if the criteria for registration set down in the Act are satisfied.
12. The GI Act also establishes procedures to enable interested third parties to challenge the Registrar's decision to register a GI, and to apply to remove or alter the registration of a GI.
13. The GI Act leaves the substance of the procedures associated with the registration process to the regulations. As mentioned above, no regulations were drafted at the time the GI Act was passed.
14. The regulations will deal with such matters as:
 - The information required to be filed with an application to register a GI.
 - The procedures to be followed during examination of the application.
 - Procedures to be followed for renewing a registration, and for applications to alter or remove a registered GI.
 - Procedures governing oppositions by interested third parties to acceptance of a GI for registration, and to alteration or removal of a registered GI.
 - The conduct of proceedings, such as hearings, before the Registrar.
 - The information required to be filed with an application to register a GI.

Regulations to be based on the Trade Mark regulations

15. GIs are very similar to trade marks in that they consist of signs, usually words. 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. The registration system established by the GI Act is very similar to the trade mark registration system established by the Trade Marks Act 2002, which is also administered by IPONZ.
16. In light of this, it was proposed that the regulations be modelled on the Trade Mark Regulations, as set out in the Regulatory Impact Statement annexed to the attached Cabinet paper. This will minimise the cost to IPONZ of administering the GI Act, as IPONZ can simply adapt existing procedures rather than develop new ones. In addition, many of those who may interact with the GI registration system will have dealt with the trade mark registration system and so will be familiar with the procedures. Basing the regulations on the Trade Mark Regulations will minimise the costs involved in becoming familiar with the regulations.

Exposure Draft

17. In December 2015, Cabinet agreed to the following: [EGI-15-MIN-0190 refers]:
 - a. That the regulations for the GI Act 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 the regulations.

The exposure draft of the regulations was released for public consultation on 6 July 2016.

Submissions on the exposure draft

18. Fourteen submissions were received, mostly from wine growers, including New Zealand Winegrowers, the umbrella organisation representing New Zealand wine producers. Patent attorney firms, the New Zealand Law Society, and Spirits New Zealand also provided submissions. The submissions on the exposure draft of the regulations supported the approach of basing the regulations on the Trade Mark Regulations 2003.
19. Submissions also identified some aspects of the regulations where they considered that amendments were required to simplify or clarify the regulations. These aspects were mostly concerned with those regulations relating to aspects of the GI regime that differ from the trade mark registration regime, such as the specific information that must be filed with an application to register a GI.

Amendments to the exposure draft

20. We propose that amendments be made to the exposure draft to take account of the public submissions. Other amendments proposed for the exposure draft are necessary to take account of the fact that the Amendment Act shifted some provisions from the regulations to the GI Act. In addition, a number of technical amendments have been proposed by MBIE to deal with issues that have arisen during the development of IPONZ's on-line system for processing applications for registration.
21. These proposed amendments do not change the substance of the regulations, but are being made to ensure that the procedures set out in the regulations run smoothly and provide certainty to registrants and interested persons dealing with the Registrar.
22. The proposed amendments to the exposure draft are set out in Annex 1 of the attached submission to EGI.

Fees

All costs of the registration system to be met from fees

23. It is intended that the costs of establishing and maintaining the Register of Geographical Indications ('the Register') will be met entirely from fees paid by applicants for registration and third parties who interact with the Registrar. That is, there will be no subsidy from the government, or from the fees collected in respect of the other registered intellectual property rights administered by IPONZ such as patents, trade marks, and designs. This approach is in line with that taken for these other registered intellectual property rights.

Projected small number of applications presents a challenge

24. Using this approach does present a challenge in setting fees. It is estimated that there will be about 30 - 35 applications made to register GIs in the first year after the GI Act enters into force, five in the second year, five in the third year and two each year thereafter.
25. This means that the costs of establishing and maintaining the registration process for GIs will have to be spread over a very small number of applications. The fees charged by IPONZ will be higher than those that are charged in connection with other registered intellectual property rights, such as trade marks.
26. The GI Act requires that GIs will be registered for an initial period of 5 years, and renewable for further 10 year periods on payment of a renewal fee. The GI Act also provides that renewal fees may be used to recover some or all of the costs incurred by the Registrar in administering the registration system.

Fees consultation document

27. In July 2016, Cabinet approved the release of a fees consultation document (EGI-16-MIN - 0145 refers). Three options for setting fees considered. These were:
- i. Cost to serve per unit.
 - ii. Cost to serve entire Register (preferred option).
 - iii. Consider the fee regimes charged in similar foreign jurisdictions.

These options are discussed briefly below. A full analysis of the options is set out in the Regulatory Impact Statement annexed to the attached Cabinet paper.

Cost to serve entire Register (preferred option)

28. Under this option, fees would be set at a level so that the sum total of fees collected covers the cost of establishing and maintaining the register as a whole. This option allows fees to be set at a level which would not discourage wine producers from registering their GIs. It also enables third parties to participate in the registration process and maintain the integrity of the register.
29. Some fees would be set at below the 'cost to serve per unit' while other fees (such as renewal fees) may be set at a higher level. The cost to serve entire register model is the model used for setting fees for the other registered intellectual property rights administered by IPONZ.
30. Although the initial application fee and initial renewal fee are somewhat higher than the cost to serve per unit option, all other fees are considerably lower. This will assist in ensuring that the integrity of the register is maintained.

Cost to serve per unit

31. The 'cost to serve per unit' option involved setting individual fees at a level that recovered the actual cost of the action that it was intended to cover. However, adopting this option would mean that fees for ancillary procedures such as oppositions, removal, alterations and restorations relating to registered GIs would be set at a level that is likely to discourage their use.
32. This could affect the integrity of the register. If the cost of procedures relating to the opposition to registration of a GI, or its alteration or removal was too high, persons who may be adversely affected by the registration, alteration or removal may be deterred from taking action to protect their interests. For this reason this option was not preferred

Cost to serve entire Register (preferred option)

33. Under this option, fees would be set at a level so that the sum total of fees collected covers the cost of establishing and maintaining the register as a whole. This option allows fees to be set at a level which would not discourage wine producers from registering their GIs. It also enables third parties to participate in the registration process and maintain the integrity of the register.
34. Some fees would be set at below the 'cost to serve per unit' while other fees (such as renewal fees) may be set at a higher level. The cost to serve entire register model is the model used for setting fees for other registered intellectual property rights administered by IPONZ.
35. Although the initial application fee and initial renewal fee are somewhat higher than the cost to serve per unit option, all other fees are considerably lower. This will assist in ensuring that the integrity of the register is maintained.

Consider the fees regimes in similar foreign jurisdictions

36. Currently, the only similar jurisdiction with a GI register is Australia, although some other jurisdictions are in the process of establishing a register.
37. In Australia, the initial application fee is AUD27,500 with other fees charged on a cost-recovery basis. There are no renewal fees. This approach was discounted. An application fee similar to the level charged in Australia would likely deter local wine and spirit producers from registering their GIs. The lack of a renewal fee means that there is a risk that the ongoing costs of maintaining the register may not be met. For these reasons, this option offered no advantages over the other options.

Submissions on the fees consultation document

38. Submitters were generally supportive of the proposal to set fees on a 'cost to serve entire register basis'. They recognised the difficulties posed by the likely small number of applications, and the fact that most applications would be received shortly after entry into force of the GI Act.

Proposed fee schedule

39. We propose a fee schedule for the GI Act based on the cost to serve the entire register approach. This is set out below (fees are exclusive of GST)²:

Application for registration	\$5,000
Renewal fee	First renewal fee \$2000 payable after five years, \$500 every 10 years thereafter
Filing a Notice of Opposition to registration	\$700
Hearing fee (payable by each Party)	\$1,700
Application for removal or alteration of a registered GI	\$1,000
Application to restore a GI that has lapsed due failure to renew registration	\$2000 if lapsing was due to failure to renew registration after five years; \$500 if lapsing was due to failure to renew registration after 10 years.

40. This fee schedule was set out in the fees consultation document referred to earlier. New Zealand Winegrowers, the representative body for local grape growers and winemakers, which is expected to file most applications to register GIs, has indicated that it is comfortable with the fees of this level. New Zealand Winegrowers recognises that fees will need to be higher than those for similar registered intellectual property rights, such as trade marks.

41. The attached submission to EGI seeks approval for the fee schedule proposed above.

Entry into force of the GI Act and Regulations

42. Once the amendments to the exposure draft and the proposed fee schedule have been approved by Cabinet, it will be possible to bring the GI Act and Regulations into force. The attached submission seeks approval to submit the Geographical Indications (Wine and Spirits) Registration Act Commencement Order 2017 to the Executive Council. This will bring the GI Act and Regulations into force on 27 July 2017.
43. Copies of the Commencement order and Regulations are annexed to this report. The Commencement Order is still subject to PCO's final Quality Assurance processes.

² IPONZ fees are quoted exclusive of GST, as fees paid by non-New Zealand residents are zero-rated for GST under section 11A(1)(n) of the Goods and Services Tax Act 1985.

44. Once the GI Act and the accompanying regulations have entered into force, wine and spirit producers will be able to submit applications to register their GIs to IPONZ.

Next steps

45. If you agree, we recommend that you submit the attached submission to EGI to the Cabinet Office by 10am Thursday 15 June 2017 for consideration by EGI at its meeting on Wednesday 21 June 2017.
46. Draft talking points for you to use at the EGI meeting are attached as Annex 2.
47. We also recommend that you issue a press statement when the GI Act enters into force on 27 July 2017. A draft press statement will be provided to your Office in mid-July.

Annexes

Annex 1: Cabinet paper: Geographical Indications (Wine and Spirits) Registration Regulations 2017.

Annex 2: Draft Talking points for EGI.

Annex 3: Copy of Geographical Indications (Wine and Spirits) Registration Regulations 2017.

Annex 4: Copy of Geographical Indications (Wine and Spirits) Registration Act Commencement Order 2017.

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

Geographical Indications (Wine and Spirits) Registration Regulations 2017

Proposal

1. This paper seeks approval for regulations required to implement the Geographical Indications (Wine and Spirits) Registration Act 2006 (**the GI Act**) and for the submission to the Executive Council of an Order-in-Council bringing the GI Act and accompanying regulations into force.

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, that is used to identify the origin of goods where some quality of the goods is influenced by their geographical origin. **s 9(2)(j), s 6(e)**
3. Although the GI Act was enacted in 2006, implementation was delayed. It was considered that bringing the GI Act into force at that time would be premature in light of proposals to negotiate a wine agreement with the European Union (EU). However, negotiations never began, and, at the time, the New Zealand wine industry did not support implementation of the GI Act, and the GI Act was never brought into force (apart from section 62 of the GI Act, which repealed the Geographical Indications Act 1994).
4. On 10 December 2014, Cabinet agreed that the GI Act be brought into force. One driver for this was that the New Zealand wine industry now supported implementation of the GI Act. In addition, it was thought at the time that implementation of the GI Act would assist in encouraging the EU to begin FTA negotiations with New Zealand. The EU has taken a strong interest in implementation of the GI Act.
5. On 25 March 2015, Cabinet agreed to a number of amendments to the GI Act. These amendments were intended to clarify drafting and correct inconsistencies in the GI Act as enacted and to ensure that the registration regime to be established by the GI Act was workable, sustainable and cost-effective [EGI Min (15) 6/9 refers]. These amendments were contained in the Geographical Indications (Wine and Spirits) Amendment Act 2016 (**the Amendment Act**), which received Royal assent on 25 November 2016.

In Confidence

6. Regulations are required to implement the registration system established by the GI Act. The regulations will cover the procedures for examination and registration of a GI, 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”**).
7. In December 2015, Cabinet agreed to the preparation of an exposure draft of the Geographical Indications (Wine and Spirits) Registration Regulations [EGI-15-MIN-0190 refers]. The exposure draft was released for public consultation in July 2016 [EGI-16-MIN-0145 refers].
8. Given the similarities between GIs and trade marks, the exposure draft was largely based on the relevant provisions of the Trade Marks Act 2002 and the Trade Mark Regulations 2003 as set out in the attached Regulatory Impact Statement. 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 GIs, as they are likely to be familiar with the trade mark registration system as applicants and owners of registered trade marks.
9. Fourteen submissions on the exposure draft were received. The submissions generally supported the approach of basing the regulations on the Trade Mark Regulations 2003. Submitters also identified some aspects of the regulations where submitters considered that amendment was required to simplify or clarify the regulations. Other amendments are required to take account of the incorporation of some provisions from the exposure draft of the Regulations into the GI Act. These provisions deal mainly with opposition proceedings and were inserted in the GI Act by the Amendment Act.
10. I recommend that the Committee agree to the amendments as set out in this submission. Most of the amendments arise from the public submissions on the exposure draft and are largely minor and technical and do not change the substance of the proposed regulations. There are a few substantive amendments regarding the information that must be provided with an application to register a GI.
11. The regulations will also set fees for matters related to the administrative procedures for the registration regime for GIs established by the GI Act. The costs of administering the 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 input on a proposed fees schedule was released at the same time as the release of the exposure draft.
12. Public submissions on the proposed fees generally supported the proposed fees and the way that fees were proposed to be set. I recommend that the Committee agree to the fees schedule set out in Appendix 2 of this paper.
13. If the Committee agrees to the proposed regulations and fees, I also recommend that the Committee agree to the submission of the Geographical Indications (Wine and Spirits) Registration Regulations 2017 and the Geographical Indications (Wine and Spirits) Registration Act Commencement Order 2017 to the Executive

In Confidence

Council. The Geographical Indications (Wine and Spirits) Registration Act Commencement Order 2017 will bring the GI Act into force on 27 July 2017 and the regulations will come into force on the same date.

Background

What is a Geographical Indication?

14. A GI is an name, 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 (mainly in the EU) that have qualities that are claimed to be influenced by unique local characteristics like climate and soil.
s 6(e), s 9(2)(j)
15. 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.
16. GIs are currently protected in New Zealand by a range of measures, including the tort of passing off, the Fair Trading Act 1986, the Trade Marks Act 2002, the Australia New Zealand Food Standards Code (for spirits), and the Wine (Specifications) Notice 2006 (for wine).
17. 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.

The Geographical Indications (Wine and Spirits) Registration Act 2006

18. In 2006 the GI Act was passed. It was 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 2007 Cabinet agreed to delay implementation of the GI Act. At the time it was anticipated that negotiations with the EU for a bilateral wine agreement would soon begin. It was considered that implementing the GI Act s 6(a), s 6(e) would be premature ahead of concluding these negotiations.
20. Negotiations on the wine agreement were never started, and at the time, the New Zealand wine industry did not support implementation of the GI Act. As a result, the GI Act was never brought into force (apart from section 62, which repealed the Geographical Indications Act 1994). Consequently, no regulations were ever drafted.
21. In December 2014, Cabinet agreed to bring the GI Act into force. One driver for this was that the New Zealand wine industry now supported implementation of the GI Act. In addition, it was thought at the time that implementation of the GI Act

In Confidence

would assist in encouraging the European Union (EU) to begin FTA negotiations with New Zealand. The EU has taken a strong interest in implementation of the GI Act.

22. Before the GI Act could be brought into force, some amendments were 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 were incorporated into the Amendment Act.

Geographical Indications (Wine and Spirits) Registration Regulations 2017

Background

23. Under the GI Act, any 'interested person' can apply to register a GI. The application will be subject to an examination process by the Registrar of Geographical Indications ('the Registrar'). The Registrar or any interested person may also apply to alter or remove a registered GI from the Register.
24. The GI Act also establishes procedures to enable third parties to oppose the Registrar's decision to register a GI. It will also be possible to oppose the alteration or removal of a registered GI.
25. The GI Act leaves the substance of the procedures referred to above to the regulations. As mentioned earlier, no regulations were made when the GI Act was passed.

Regulations to be based on the Trade Mark Regulations

26. GIs are very similar to trade marks in that they consist of signs, usually words. 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.
27. In light of this, it was proposed that the regulations be modelled on the Trade Mark Regulations, as set out in the Regulatory Impact Statement annexed to this paper. This will minimise the cost to IPONZ of administering the GI Act, as IPONZ can simply adapt existing procedures rather than develop new ones.
28. In addition, many of those who may interact with the GI registration system will have dealt with the trade mark registration system and so will be familiar with the procedures. Basing the regulations on the Trade Mark Regulations will minimise the costs involved in becoming familiar with the regulations.

In Confidence

Exposure Draft

29. In December 2015, Cabinet agreed to the following [EGI-15-MIN-0190 refers]:
- a. 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).
 - 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.
30. The exposure draft was released for public submissions by the Ministry of Business, Innovation and Employment ('**MBIE**') on 6 July 2016. The draft covered a number of matters including:
- The documents and information required to accompany an application for registration of a GI.
 - Procedures for examination and acceptance of an application for registration of a GI.
 - Procedures governing oppositions by interested third parties to acceptance of a GI for registration.
 - The procedures to be followed for applications to remove or alter a registered GI, including procedures for interested parties to oppose an application for removal or alteration.
 - Procedures governing hearings before the Registrar of Geographical Indications 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.
 - Miscellaneous matters, including extensions of time, renewals of registration, changes of name or substitution of registrants.

Amendments to the Exposure Draft

31. Public submissions on the exposure draft indicated that a number of minor and technical amendments were also needed to the proposed regulations. Other amendments proposed for the regulations are necessary to take account of the fact that some provisions from the exposure draft have been incorporated into the GI Act. In addition, a number of technical amendments have been proposed by MBIE to deal with issues that have arisen during the development of IPONZ's on-line system for processing applications for registration.

In Confidence

32. These proposed amendments do not change the substance of the regulations, but ensure that the procedures set out in the regulations run smoothly and provide certainty to applicants and interested persons dealing with the Registrar.
33. Submissions on the exposure draft also indicated that some more substantive amendments were needed to meet the concerns raised by submitters. These concerns relate to the information that must be provided with an application to register a geographical indication. The submissions suggested that the relevant provisions in the exposure draft were overly prescriptive. The proposed amendments reduce the amount of information that must be supplied with an application for registration, while giving the Registrar the ability to request more information if this is necessary for examination of the application.
34. The GI Act as originally enacted left opposition procedures entirely to the regulations. That is, the issue of whether or not there should be provision for opposition proceedings, as well as the procedures for conducting oppositions were to be set out in the regulations.
35. After considering submissions to the Select Committee that was considering the Bill that became the Amendment Act, officials recommended to the Select Committee that the Bill be amended to provide explicitly for opposition procedures. It was also recommended that only 'interested persons' should be able to oppose registration, or the alteration or removal of a registered geographical indication. The procedures for conducting opposition proceedings remain in the regulations.
36. These amendments relating to opposition procedures brought the GI Act into line with other intellectual property legislation, such as the Patents Act 2013 and the Trade Marks Act 2002. Both explicitly provide for opposition procedures.
37. A number of other procedures originally provided for in the exposure draft were also incorporated into the GI Act by the Amendment Act. The exposure draft was amended accordingly.
38. The amendments proposed for the draft regulations are attached as Appendix 1 to this paper. I recommend that the Committee agree to the amendments to the regulations as outlined in Appendix 1.
39. If the Committee agrees to these amendments, I also recommend that the Committee agree to the submission of the Geographical Indications (Wine and Spirits) Registration Act Commencement Order 2017 to the Executive Council. This Order will bring the GI Act into force on 27 July 2017.

Fees

Costs to be recovered entirely from fees

40. It is intended that all of the costs of administering the GI Act will be recovered from fees charged to applicants for registration and renewal of registration, and other interested parties, such as those opposing applications to register a GI. The level of individual fees may not reflect the actual cost of the service or function the fee

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is intended to cover, as long as the total income from fees covers the whole cost of administering the GI Act.

41. It is likely that the number of GIs registered under the Act will be small. Officials estimate that there will be about 35 applications in the first three years after the GI Act enters into force, most from New Zealand wine producers. After this, there are likely to be no more than 2 applications per year for the next 7 years (most from foreign wine or spirit producers), and 1 per year for the next 6 years. However, there is considerable uncertainty in those estimates.
42. Given the small number of applications, IPONZ has endeavoured to keep the costs involved as low as possible. The work involved will be carried out by existing IPONZ staff. No additional staff will be required. The GI register will be online, but the system will be basic.
43. 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.
44. The GI Act requires that GIs will be registered for an initial period of 5 years, renewable for further 10 year periods on payment of a renewal fee. The GI Act also provides that renewal fees may be used to recover some or all of the costs incurred by the Registrar in administering the registration system.

Fees consultation document

45. In July 2016, Cabinet approved the release of a fees consultation document (EGI-16-MIN - 0145 refers). Three options for setting fees were considered. These were:
 - i. Cost to serve per unit.
 - ii. Cost to serve entire Register (preferred option).
 - iii. Consider the fee regimes charged in similar foreign jurisdictions.

These options are discussed briefly below. A full analysis is contained in the attached Regulatory Impact Statement.

Cost to serve per unit

46. The 'cost to serve per unit' option involved setting individual fees at a level that recovered the actual cost of the action that it is intended to cover. However, adopting this option would mean that fees for ancillary procedures such as oppositions, removal, alterations and restorations relating to registered GIs would be set at a level that was likely to discourage their use.
47. This could affect the integrity of the register. If the cost of procedures relating to the opposition to registration of a GI, or its alteration or removal was too high, persons who may be adversely affected by its registration, alteration or removal may be deterred from taking action to protect their interests. For this reason this option was not preferred.

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Cost to serve entire Register (preferred option)

48. Under this option, fees would be set at a level so that the sum total of fees collected covered the cost of establishing and maintaining the register as a whole. This option allowed fees to be set at a level which will not discourage wine and spirit producers from registering their GIs. It also enables third parties to participate in the registration process and maintain the integrity of the register.
49. Some fees would be set at below the 'cost to serve per unit' while other fees (such as renewal fees) may be set at a higher level. The cost to serve entire register model is the model used for setting fees for other registered intellectual property rights administered by IPONZ – patents, trade marks and designs.
50. Although the initial application fee and initial renewal fee are somewhat higher than the cost to serve per unit option, all other fees are considerably lower. This will assist in ensuring that the integrity of the register is maintained.

Consider the fees regimes in similar foreign jurisdictions

51. Currently, the only similar jurisdiction with a register of GIs is Australia, although some other jurisdictions are in the process of establishing a register.
52. In Australia, the initial application fee is AUD27,500 with other fees charged on a cost-recovery basis. There are no renewal fees. This approach was discounted. An application fee similar to the level charged in Australia would likely deter local wine producers from registering their GIs. The lack of a renewal fee means that there is a risk that the ongoing costs of maintaining the register may not be met. For these reasons, this option offered no advantages over the other options.

Submissions on the fees consultation document

53. Fourteen submissions were received. Submitters were generally supportive of the proposal to set fees on a 'cost to serve entire register basis'. They recognised the difficulties posed by the likely small number of applications, and the fact that most applications would be received shortly after entry into force of the GI Act and Regulations.

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Proposed fee schedule

54. Proposed fee levels on the basis of cost to serve the entire register are set out below (fees are exclusive of GST)¹:

Application for registration	\$5,000
Renewal fee	First renewal fee \$2000 payable after five years, \$500 every 10 years thereafter
Filing a Notice of Opposition to registration	\$700
Hearing fee (payable by each Party)	\$1,700
Application for removal or alteration of a registered GI	\$1,000
Application to restore a GI that has lapsed due failure to renew registration	\$2000 if lapsing was due to failure to renew registration after five years; \$500 if lapsing was due to failure to renew registration after 10 years.

55. This fee schedule was set out in the fees consultation document referred to earlier. New Zealand Winegrowers, the representative body for local grape growers and winemakers, which is expected to file most applications to register GIs, has indicated that it is comfortable with the fees of this level. They recognise that fees will need to be higher than those for similar registered intellectual property rights, such as trade marks.
56. I recommend that the Committee agree to the fees set out in the table above.

Entry into force of the GI Act and Regulations

57. If the Committee agrees to the amendments to the regulations, and the proposed fees schedule, it will be possible to bring the GI Act and the GI Regulations into force. I recommend that the Committee agree to submit the Geographical Indications (Wine and Spirits) Registration Regulations 2017 to the Executive Council.
58. I also recommend that the Committee agree to the submission of the Geographical Indications (Wine and Spirits) Registration Act Commencement Order 2017 to the Executive Council. This Order will bring the GI Act into force on 27 July 2017.
59. Once the GI Act and the accompanying regulations have entered into force, wine and spirit producers will be able to submit applications to register their GIs to IPONZ.

¹ IPONZ fees are quoted exclusive of GST, as fees paid to IPONZ by non-New Zealand residents are zero-rated for GST under section 11A(1)(n) of the Goods and Services Tax Act 1985.

Timing and 28 Day Rule

60. It is intended that the Geographical Indications (Wine and Spirits) Registration Act Commencement Order 2017 and the Geographical Indications (Wine and Spirits) Registration Regulations 2017 will be gazetted on 29 June 2017 and enter into force on 27 July 2017.

Compliance

61. The regulations comply with each of the following:
- 61.1. the principles of the Treaty of Waitangi;
 - 61.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990
 - 61.3. the principles and guidelines set out in the Privacy Act 1993;
 - 61.4. the relevant international standards and obligations;
 - 61.5. the LAC Guidelines on the Process and Content of Legislation (2014 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

62. There are no grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

63. The draft Geographical Indications (Wine and Spirits) Registration Regulations 2017 and the draft Geographical Indications (Wine and Spirits) Registration Act Commencement Order 2017 have been certified by the Parliamentary Counsel Office as being in order for submission to the Cabinet.

Consultation

64. In July 2016, the Ministry of Business, Innovation and Employment (**MBIE**) released an exposure draft of proposed regulations and a consultation document seeking public submissions on the proposed regulations and a proposed fee schedule [EGI-16-MIN- 0145 refers]. Fourteen submissions were received, mostly from wine growers. Patent attorney firms, the New Zealand Law Society, and Spirits New Zealand also provided submissions.
65. The Ministry of Foreign Affairs and Trade and the Ministry for Primary Industries were consulted on this paper and agree with the recommendations. The Treasury and the Department of the Prime Minister and Cabinet have been informed.

Financial Implications

66. The recommendations in this paper have no financial implications. The costs incurred by IPONZ in administering the GI Act will be recovered from third party fees.

Regulatory Impact Analysis

67. The Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Statement (RIS) prepared by MBIE. They consider that the information and analysis summarised in the RIS meets the criteria necessary for Ministers to fairly compare the available policy options and take informed decisions on the proposals in this paper.
68. A copy of the Regulatory Impact Statement is attached to this paper as Appendix 3.

Publicity

69. A press statement will be released when the GI Regulations are gazetted and also when the GI Act enters into force.

Recommendations

70. 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 (apart from section 62, which repealed the Geographical Indications Act 1994);
 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 were required;
 - 2.3. The amendments were incorporated into the Geographical Indications (Wine and Spirits) Amendment Act 2016 which received Royal assent on 25 November 2016.
 3. **Note** that regulations are required before the registration system under the GI Act can be implemented as no regulations were made when the GI Act was enacted;
 4. **Note** that:
 - 4.1. In December 2015 Cabinet agreed to the issuance of drafting instructions for an exposure draft of proposed regulations (EGI-15-MIN-0190 refers); and
 - 4.2. that the exposure draft and a fees consultation document were released for public consultation in July 2016 (EGI-16-MIN 0145 refers); and
 - 4.3. amendments to the exposure draft are proposed to taken account of:
 - 4.3.1. issues raised in public submissions on the exposure draft;

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- 4.3.2. the fact that the Amendment Act shifted some provisions from the regulations to the GI Act; and
- 4.3.3. issues that have arisen during the development of IPONZ's on-line system for processing applications for registration.
- 4.4. Public submissions generally supported the approach to fees and the fee schedule proposed in the fees consultation document.
5. **Agree** to the amendments to the exposure draft set out in Appendix 1 to this paper.
6. **Note** that the costs of administering the registration regime for geographical indications established by the GI Act will be recovered entirely from fees charged to applicants for registration, and to third parties who deal with the Registrar of Geographical Indications in respect of opposition proceedings, and applications to alter or remove registered geographical indications.
7. **Agree** to the fees set out in Appendix 2 to this paper.
8. If the proposals in recommendations 5 and 7 above are agreed to, **authorise** the submission to the Executive Council of:
 - 8.1. the Geographical Indications (Wine and Spirits) Registration Regulations 2017; and
 - 8.2. the Geographical Indications (Wine and Spirits) Registration Act Commencement Order 2017
9. **Note** that the Geographical Indications (Wine and Spirits) Registration Act 2006 and the Geographical Indications (Wine and Spirit) Registration Regulations will come into force on 27 July 2017.

Authorised for lodgement

Hon Jacqui Dean
Minister of Commerce and Consumer Affairs

APPENDIX 1: PROPOSED AMENDMENTS TO THE EXPOSURE DRAFT (OTHER THAN THE PROPOSED FEES)

Issue	Proposed Amendment	Reason for Amendment
Payment of Fees		
<p>Deadlines for payment of fees</p>	<p>Amend the requirements relating to when fees must be paid so that, unless a prior arrangement has been made with the Registrar, —</p> <ul style="list-style-type: none"> • fees for renewal or restoration of registration must be paid at the time the relevant application is filed • fees for applications to register a GI, notices of opposition, applications to remove or alter a GI, and hearing fees must be paid within 10 working days after the Registrar has issued an invoice. <p>Provide that the time for payment can only be extended once under an arrangement agreed with the Registrar.</p>	<p>The electronic system currently used by IPONZ for trade marks and patents requires all fees to be paid at the time of filing unless a prior arrangement has been made with IPONZ.</p> <p>A different approach has been adopted for payment of the GI Act fees. This different approach has been adopted to keep the costs for establishing the register of GIs low.</p>
<p>Form of payment</p>	<p>Provide that fees are to be paid by electronic means and clarify that the fees must be paid to the Registrar.</p>	<p>Section 57(1)(i) of the GI Act provides for regulations that specify the person to whom fees should be paid. However, the draft regulations are silent about whom the fees must be paid to. The proposed amendments are based on section 238 of the Patents Act 2013 and regulation 7 of the Patents Regulations 2014.</p>

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Issue	Proposed Amendment	Reason for Amendment
Information required for registration of a Geographical Indication		
Interested person	Remove the requirement for applications for registration of a GI to include a statement on the basis on which the applicant claims to be an interested person.	The exposure draft required that applicants must state the basis on which the applicant claims to be an 'interested person'. Section 36 of the GI Act provides that an 'interested person' may apply for registration of a GI. However, the GI Act does not define what an 'interested person' is for the purposes of section 36. The question of whether or not an applicant is an interested person is best left to opposition or removal proceedings, where the applicant's status as an 'interested party' can be contested.
Information required for registration of a Geographical Indication		
Boundaries of a New Zealand Geographical Indication	Provide that applications for registration of a New Zealand GI must include the geographical coordinates that define the region to which the GI relates, and that these coordinates must be provided in a form approved by the Registrar.	<p>The exposure draft required the applicant to supply details of the boundaries of the region to which the GI relates, including a written description and map.</p> <p>IPONZ has been working with Land Information New Zealand on defining the boundaries for New Zealand geographical indications. As a result of that work, it will not be necessary for an applicant to provide a map, as IPONZ will generate a map from geographical co-ordinates provided by the applicant. Future changes in mapping requirements will be accommodated by requiring applicants to provide the co-ordinates in a form approved by the Registrar.</p>

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Issue	Proposed Amendment	Reason for Amendment
<p>Quality, reputation or other characteristic</p>	<p>Remove the prescriptive requirement for specified evidence of quality, reputation or other characteristic to be provided and, instead, provide a general requirement that applications must contain evidence of quality, reputation or other characteristic attributable to the geographical area and specify that the following information may be provided:</p> <ul style="list-style-type: none"> • Information about the history of the area to which the GI relates, in respect of the growing of grapes for wine or the production of spirits, and the use of a word or expression to indicate that area; • Information about viticultural practices, winemaking practices used for wines or spirits from the area; • Geological and geographical information about the area; • Evidence in relation to the marketing and sales of wine or spirits from the area. <p>Replace the requirement for this evidence to be provided when the application for registration of a New Zealand GI is filed with a requirement that allows this evidence to be provided after the application has been filed but before it has been accepted.</p>	<p>The exposure draft required that specified evidence about the given quality, reputation, quality or other characteristics attributable to the geographical area must be provided when an application for registration of a New Zealand GI is filed. Submissions on the exposure draft suggested that this requirement was too prescriptive, and that:</p> <ul style="list-style-type: none"> • It should not be necessary for this information to be provided at the time of filing of the application; • Not all of the information may be relevant for all applications; • Applicants may not possess all of the information, or may not be able to obtain it. • It should be up to the applicant to provide evidence that they believe supports the application; • The Registrar should be able to request additional evidence only if it is relevant to the examination of the application.

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Issue	Proposed Amendment	Reason for Amendment
<p>Translations and transliterations of foreign geographical indications</p>	<p>Amend the exposure draft to clarify that a translation or transliteration of a foreign geographical indication is part of the information that must be provided when an application to register a foreign GI is filed, and that a translation or transliteration of a foreign GI will not be registered by itself.</p> <p>In addition, allow the translation or transliteration of a foreign geographical indication after the application has been filed but before it has been accepted.</p>	<p>The GI Act was not intended to provide for registration of transliterations or translations of geographical indications.</p> <p>It will be optional for applicants to complete those fields in the online application form that relate to translations and transliterations because not every application for registration of a foreign GI will involve a translation or transliteration. Therefore it will be necessary to allow applicants to send translations and transliterations to the Registrar after they have filed the application to register a foreign GI.</p>
<p>Registration number of a foreign geographical indication</p>	<p>Remove the requirement that an applicant must supply the registration number of the foreign GI.</p>	<p>Regulation 9(h) requires an applicant to provide a copy of the regulations, rules or other documents that specify the protection given to the GI in its country of origin. This should provide all the information necessary to identify the foreign registration (including the registration number (if any)), so that there is no need to have a separate requirement to provide the registration number.</p>
<p>Substitution of Applicant</p>		
<p>Application to substitute applicant</p>	<p>Insert a regulation that sets out the procedure to enable an interested person to apply to substitute their name for the name of the applicant in an application for registration.</p>	<p>The Geographical Indications (Wine and Spirits) Registration Amendment Act inserted a provision into the GI Act providing for substitution of an applicant.</p>

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Issue	Proposed Amendment	Reason for Amendment
Abandonment of Application		
<p>Application must not be treated as abandoned if applicant is awaiting outcome of related proceedings</p>	<p>Provide that an application for registration of a GI will not be treated as abandoned if the application is awaiting the outcome of any of the following proceedings ('related proceedings'):</p> <ul style="list-style-type: none"> • Opposition proceedings in relation to a prior application to register a geographical indication or trade mark; • Proceedings for removal of a previously registered geographical indication; • Proceedings for cancellation, revocation or invalidity of a previously registered trademark. 	<p>An application to register a GI is likely to be refused if the GI is the same as, or is included in, a previous application to:</p> <ul style="list-style-type: none"> • register a geographical indication or trade mark; or • a previously registered GI or trade mark; <p>Under these circumstances the applicant may:</p> <ul style="list-style-type: none"> • oppose registration of the previous application to register a GI or trade mark; or • apply to remove the previously registered GI or trade mark from the relevant register. <p>These related proceedings can take considerable time to resolve. The exposure draft provided that an application to register a GI will be treated as abandoned if the applicant does not respond to a notice of non-compliance from the Registrar refusing to accept the application within 6 months of the date of the notice. This time period can be extended if the applicant requests it.</p> <p>It would be unreasonable, however, to treat an application as abandoned, or require the applicant to make multiple requests for extensions if the applicant cannot respond because the proceedings mentioned above have not been resolved. The proposed amendment will prevent an application from being abandoned until any related proceedings are resolved.</p>

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Issue	Proposed Amendment	Reason for Amendment
<p>Applicant must notify Registrar of related proceedings</p>	<p>Provide that, where there are related proceedings, the applicant must:</p> <ul style="list-style-type: none"> • notify the Registrar, before the time limit specified in the notice of non-compliance, that the application is awaiting the outcome of the related proceedings; and • notify the Registrar of the outcome of the proceedings 	<p>These amendments are required to ensure that the Registrar is aware of any related proceedings. Notification of related proceedings will avoid an application being abandoned if the applicant is awaiting the outcome of those proceedings</p>
<p>Other Amendments</p>		
<p>Address for service can be in New Zealand or Australia</p>	<p>Amend the definition of “address for service” to allow addresses in Australia to be used for service of documents, as well as addresses in New Zealand.</p>	<p>The address for service is an address where documents can be served in relation to court proceedings. The exposure draft required an address for service to be in New Zealand only.</p> <p>The Trans-Tasman Proceedings Act 2010 allows New Zealand residents to serve documents on addresses in Australia in the same way that documents can be served on addresses in New Zealand. There is now no reason to limit an address for service to addresses in New Zealand.</p> <p>Similar amendments have been proposed (separately) for the address for service provisions in the Patents Regulations 2014, the Trade Marks Regulations 2003, the Designs Regulations 1954, and the Plant Variety Rights Act 1987.</p>

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Issue	Proposed Amendment	Reason for Amendment
<p>Signature requirements</p>	<p>Remove the following signature requirements so that the things described can be done by email without a signature:</p> <ul style="list-style-type: none"> • application for registration of a GI to be signed by the applicant; • withdrawal of an application for registration; • correcting an application; • changing the name or address of a registrant of a GI. 	<p>The initial operational system that IPONZ will establish for registration of GIs will use online forms for these actions and these forms will not accommodate signatures (electronic or otherwise).</p>
<p>Requirement to file 'statement of case' in opposition proceedings</p>	<p>Remove requirement for a separate 'statement of case' in a notice of opposition to the registration of a GI.</p> <p>Replace with a requirement that the notice of opposition set out the relevant facts and relief sought.</p>	<p>Submissions on the draft regulations argued that the requirement for a 'statement of case' setting out the relevant facts and relief sought added an extra level of complexity. It was suggested that the information sought could be included in the notice of opposition.</p>
<p>Form of evidence</p>	<p>Provide that evidence in proceedings be given by way of statutory declarations or affidavits.</p>	<p>This amendment will bring the evidential requirements into line with the requirements in connection with the other registered intellectual property rights administered by IPONZ.</p>
<p>Opposition to removal or alteration proposed by the Registrar</p>	<p>Provide that opposition to a proposal by the Registrar, on his or her own initiative, can be done by filing a counterstatement rather than a notice of opposition.</p> <p>Clarify that if the opponent notifies the Registrar that the opponent is withdrawing the opposition, the opposition will be discontinued.</p> <p>Clarify that if there is no opposition to the Registrar's proposal to remove a registered geographical indication, the Registrar will proceed with the removal.</p>	<p>If removal or alteration is initiated by the Registrar, there is no other party (apart from the opponent) to the proceedings, so there is no need for a notice of opposition.</p>

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Issue	Proposed Amendment	Reason for Amendment
When evidence is to be sent to relevant parties	Provide that evidence filed in support of proceedings under the GI Act must be provided to relevant parties as soon as practicable after filing, rather than at the same time it is filed with the Registrar.	This amendment is consistent with the corresponding requirements in the Trade Marks Regulations 2003.
Request to amend documents filed in proceedings under the GI Act	Amend the provisions in the regulations relating to requests to amend a document filed in proceedings under the GI Act so that these provisions have the same effect as section 194 of the Trade Marks Act 2002.	The exposure draft was not consistent with the provision in the Trade Marks Act 2002 that deals with requests to amend documents that have been filed in proceedings.
Filing evidence out of time	Provide that applications to file evidence out of time may be made and that the Registrar may allow evidence to be filed out of time if there are genuine and exceptional circumstances or the evidence could not have been filed earlier.	This amendment is consistent with the corresponding requirements in the Trade Marks Regulations 2003.
Requirements for a document to be considered 'filed'	<p>Provide that a document must comply with the following requirements in order to be considered 'filed':</p> <ul style="list-style-type: none"> • It must be legible. • It must be in English or Maori. • It must be in writing. • It must be filed electronically or by another method approved by the Registrar. • It must be signed in accordance with the relevant regulations. • Any fee relating to the document must have been paid. 	<p>Clarify that a document need only comply with requirements of the Act and Regulations relating to the 'form' of the document as opposed to the 'substantive' requirements relating to the information contained in the document.</p> <p>This amendment is consistent with a similar amendment proposed for the Patent Regulations 2014.</p>

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Issue	Proposed Amendment	Reason for Amendment
<p>Extensions of time</p>	<p>Provide that extensions of time can be validly granted in cases where an extension request was received by IPONZ before expiry of the relevant deadline, but not processed by the Registrar until after the deadline had passed.</p>	<p>The High Court, in considering wording in the Trade Mark Regulations similar to the original wording of the extension of time provisions found that an extension of time was not valid unless the extension request was received <u>and</u> granted before the relevant deadline had passed. This is not the intention – many requests for extension of time are received close to the expiry of the relevant deadline, and it is not always possible to process the request and grant the extension before the deadline expires.</p>
<p>Provisions incorporated in the GI Act</p>	<p>Remove from the regulations those provisions that have now been incorporated into the GI Act.</p>	<p>It is not necessary to have these provisions in the regulations given that the provisions have been incorporated into the GI Act.</p>

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APPENDIX 2: PROPOSED FEE SCHEDULE

	Application for registration	Renewal fee	Filing a Notice of Opposition to registration of a GI	Hearing fee	Application for removal or alteration of a registered GI	Application to restore a GI that has lapsed due to failure to renew registration
(all fees are exclusive of GST)	\$5000	First renewal fee \$2000 payable after five years, \$500 every 10 years thereafter	\$700	\$1200	\$1000	\$2000 if lapsing was due to failure to renew registration after five years; non-payment of first renewal fee; \$500 if lapsing was due to failure to renew registration after 10 years.

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APPENDIX 3: REGULATORY IMPACT STATEMENT

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



Regulatory Impact Statement

Geographical Indications (Wine and Spirits) Regulations

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Regulatory Impact Statement

Geographical Indications (Wine and Spirits) Regulations

Agency Disclosure Statement

1. This Regulatory Impact Statement has been prepared by the Ministry of Business, Innovation and Employment (**MBIE**). It provides an analysis of proposals for the regulations and fees required to implement the Geographical Indications (Wine and Spirits) Registration Act 2006 ('the GI Act').
2. The RIS has been prepared on the assumption that 30 – 35 applications to register a geographical indication will be filed in the first year after entry into force of the GI Act, five in the second year, five in the third year, and 0-2 applications per year thereafter, and that most applications will involve New Zealand geographical indications. This assumption is based on information provided by NZ Winegrowers¹ regarding the number of likely applications they will file to protect New Zealand wine geographical indications. If the number of applications is significantly less than expected, the fees collected may not be sufficient to cover the costs of establishing and maintaining the register of geographical indications.
3. No formal cost-benefit analysis has been carried out for any of the options. Instead, qualitative judgements of the impacts (positive and negative) of the options considered have been used to determine the preferred options.
4. An exposure draft of the proposed regulations, together with a proposed fee schedule was released for public consultation in July 2016.

Gus Charteris
Manager, Business Law
Building, Resources and Markets
Ministry of Business, Innovation and Employment

¹ NZ Winegrowers is the umbrella organisation representing New Zealand wine producers.

Executive summary

5. The GI Act was passed in 2006, but has not yet been brought into force. This Act, when in force, will establish a registration procedure for geographical indications ('GIs'). The GI Act will be administered by the Intellectual Property of New Zealand (**IPONZ**). In 2014, the government decided to bring the GI Act into force. Although regulations are required to implement the GI Act, no regulations were drafted at the time it was enacted.
6. In developing regulations for the GI Act there is effectively only one realistic option: base the regulations, as far as possible, on relevant provisions of regulations developed for legislation dealing with similar matters.
7. The registration system established by the GI Act is very similar to the trade mark registration system established by the Trade Marks Act 2002, which is also administered by IPONZ. Modelling the GI Act Regulations on the relevant provisions of the Trade Marks Regulations 2003 minimises the cost to IPONZ of administering the GI Act, as IPONZ can simply adapt existing procedures rather than develop new ones.
8. In addition, many of those who may interact with the registration system will have dealt with the trade mark registration system and so will be familiar with the procedures. Basing the GI Act regulations on the Trade Mark Regulations will minimise the costs involved in becoming familiar with the regulations.
9. In relation to fees, all of the costs of administering the GI registration system will be recovered from the fees paid by applicants for registration and by third parties who interact with the Registrar of Geographical Indications (**'the Registrar'**). One challenge involved with setting the fees is that the number of applications to register geographical indications is likely to be low.
10. It is estimated that 30 – 35 applications to register a GI will be filed in the first year after entry into force, five in the second year, five in the third year and two each year within the first two years after the GI Act enters into force, with 0-2 applications per year thereafter. By comparison, IPONZ receives around 20,000 trade mark applications per year.
11. This means that the costs of establishing and maintaining the registration process for GIs will have to be spread over a very small number of applications. The fees charged by IPONZ will be higher than those that are charged in connection with other registered intellectual property rights, such as trade marks.
12. One option is to set the fees for the procedures prescribed by the GI Act and regulations on the basis of the actual costs to IPONZ of carrying out each procedure ('the cost to serve per unit' approach). This approach would mean that users of ancillary procedures such as oppositions, removal, alteration and restoration relating to registered GIs would meet the entire costs incurred by IPONZ in administering these procedures.

13. These ancillary procedures contribute towards maintaining the integrity of the Register of Geographical Indications (**'the Register'**). If the fees charged are too high, this may discourage the use of these procedures. Applicants for registration also derive some benefit from maintenance of the integrity of the Register, so it seems reasonable that they make some contribution to the costs. As the 'cost to serve per unit' approach does not provide for this, the first option is not preferred.
14. A second option is to set fees on the basis that the total amount collected in fees must cover the total costs of administering the registrations (**'the cost to serve entire register'** approach). This is the preferred option. Under this approach some fees will be set at less than the 'cost to serve per unit', while others may be set above the this cost. This is the basis for setting fees for the other intellectual property rights registration systems administered by IPONZ (patents, trade marks, designs).
15. Using this approach, the application fee and initial renewal fee would be higher than under the 'cost to serve per unit' approach. This allows fees for ancillary services to be set at a lower level than for the first option. Effectively, some of the costs of the ancillary procedures are being met by fees paid by the applicant.
16. An exposure draft of the proposed regulations, together with a proposed fee schedule was released for public consultation in July 2016. Submitters generally agreed with the proposed approach to the regulations and fees. Some submitters identified areas of the regulations where clarification would be useful. These were mainly in areas specific to geographical indications, that were not catered for in the Trade Mark Regulations.

Background

What is a 'geographical indication'?

17. A GI 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. GIs have been used particularly in the EU for agricultural goods and foodstuffs that have qualities that are claimed to be influenced by unique local characteristics. Examples of GIs include Champagne and Scotch whisky. In the case of New Zealand wine, there could potentially be a number of GIs registered, such as 'Marlborough', 'Nelson', 'Hawke's Bay' or 'Central Otago'.
18. 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 geographical indications.
19. The World Trade Organisation (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (**'the TRIPS Agreement'**) requires New Zealand to provide protection for GIs for wines and spirits. Currently GIs in New Zealand are protected by a range of measures, including the tort of passing off, the Fair Trading Act 1986, the Trade Marks Act 2002, the Australia New Zealand Food Standards Code and the Wine (Specifications) Notice 2006.

The Geographical Indications (Wines and Spirits) Registration Act 2006

20. In 2006 the GI Act was passed. This Act, will, when in force, establish a regime for registering GIs in New Zealand. The registration regime will be administered by the Intellectual Property Office of New Zealand (**IPONZ**).
21. In December 2007 Cabinet agreed to delay implementation of the GI Act. At the time it was anticipated that negotiations with the EU for a bilateral wine agreement would soon begin. It was considered that implementing the GI Act and allowing EU wine producers to register their GIs in New Zealand would be premature ahead of concluding these negotiations.
22. Negotiations on the wine agreement were never started, and at the time the New Zealand wine industry did not support implementation of the GI Act. As a result, the GI Act was never brought into force. Consequently, no regulations were ever drafted.
23. More recently, the New Zealand wine industry has argued that the GI Act should be brought into force so that New Zealand GIs can be registered here. The industry is concerned about the possible misuse of New Zealand geographical indications in overseas markets, and wishes to protect their GIs in those markets. Some other countries will not register foreign GIs unless they are registered in their country of origin. In December 2014 the government decided to bring the GI Act into force.

Status Quo and Problem Definition

Regulations

24. 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 for registration 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 a GI, and to apply to remove or alter the registration of a GI.
25. The GI Act leaves the procedures associated with the registration process to Regulations. Regulations will therefore be needed to implement the GI Act. As mentioned above, no regulations were drafted at the time the GI Act was passed. The Regulations will deal with such matters as:
 - the information required to be filed with an application to register a GI;
 - the procedures to be followed during examination of the application;
 - procedures to be followed for renewing a registration, and for applications to alter or remove a registered GI;
 - opposition procedures;
 - the conduct of proceedings, such as hearings, before the Registrar of Geographical Indications.

Fees

26. There will be costs to IPONZ in administering the registration regime established by the GI Act. These costs will be recovered entirely from fees charged to persons applying to register GIs and others who interact with the Registrar of Geographical Indications ('the Registrar').

GI Act Regulations: Objectives and criteria for analysing the options

27. MBIE considers that the Regulations should:
- a. Allow IPONZ to implement the GI Act in an efficient and cost-effective manner;
 - b. Be clear and understandable for applicants for registration, registrants, third parties;
 - c. Appropriately balance the interests of applicants for registration, registrants, third parties and the public;
 - d. Be consistent to the extent practical with the other regimes for registered intellectual property rights administered by IPONZ.
28. The first objective is particularly important. It is estimated that there will be about 30-35 applications made to register GIs in the first year after the GI Act enters into force, five in the second year, five in the third year and two each year thereafter.
29. This means that the costs of establishing and maintaining the Register will have to be spread over a relatively small number of applications. If the fees charged to users of the GI registration system are to be kept to a level that does not discourage use of the system, implementation costs must be kept as low as possible.

GI Act Regulations: Options

30. There are no non-regulatory options. The requirements of the GI Act in relation to the registration process for geographical indications mean that regulations are necessary to ensure the smooth running of the registration system.
31. In developing the regulations, there are essentially three possible options:
- i. Draft a new set of regulations from scratch without reference to regulations developed for other legislation, including other legislation administered by IPONZ;
 - ii. Base the regulations, as far as possible, on relevant provisions of regulations developed for legislation dealing with similar matters and administered by IPONZ, in particular, the Trade Mark Regulations 2003 (preferred option).
 - iii. Base the regulations on those developed in foreign jurisdictions with similar geographical indications regimes, in particular, Australia.
32. In considering the options, it quickly became clear that options (i) and (iii) were not viable, and that option (ii) was the only option that was worth pursuing. While all three options would likely meet the last three objectives set out above, options (i) and (iii) would not

meet the first objective of allowing IPONZ to implement the GI Act in an efficient and cost-effective manner.

33. Option (i), drafting a new set of regulations from scratch is likely to impose significant costs on IPONZ if procedures under these regulations are significantly different from the procedures currently implemented by IPONZ. It would not be possible, under these circumstances, for IPONZ to adapt existing processes. As IPONZ operates an all-electronic system, this could lead to significant IT costs. There would also be additional costs in developing and maintaining staff training material.
34. Similar comments also apply to option (iii). Adapting regulations developed elsewhere is likely to result in regulations significantly different from other regulations administered by IPONZ.
35. In any case, as discussed below, the registration regime established by the GI Act has many similarities to the regime for registering trade marks under the Trade Marks Act 2003. In light of this, any regulations drafted from scratch would probably end up looking much like the Trade Marks Regulations.

Preferred Option – Base Regulations on the Trade Marks Regulations 2003

36. 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 must 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.
37. Using the Trade Marks Act and Regulations as a basis for the GI Act Regulations minimises the cost to IPONZ of administering the registration regime. Existing IPONZ processes, including IT processes can be adapted, rather than developing new ones. This will help keep the fees charged to users of the registration system lower than would otherwise be the case.
38. Many users of the geographical indications system are likely to be users of the trade mark registration system, and already be familiar with the provisions of the Trade Marks Act 2002 and the Trade Marks Act 2003. It will be easier and less costly for these users to become familiar with and comply with the GI Act regulations if they are similar to the Trade Mark Regulations.
39. The Trade Marks Regulations 2003 were intended to ensure that an appropriate balance was struck between the interests of trade mark owners, third parties, and the public. Since the regulations entered into force, amendments have been made where deficiencies have been identified. These amendments, where they are consistent with the GI Act registration regime, have been incorporated into the GI Act regulations.
40. In addition to the Trade Marks Act 2002 and the Trade Marks Regulations 2003, IPONZ also administers the Patents Act 2013 and regulations, and the Designs Act 1953 and regulations. Although there are significant differences between the regulations reflecting the different registration regimes involved, there are some procedures common to all of

these regimes. The common procedures mainly relate to proceedings, such as hearings or opposition procedures.

41. The GI Act also provides for proceedings, including hearings and opposition procedures. There are advantages, for both IPONZ, applicants for registration, registrants and third parties if the GI Act adopts the same approach to proceedings as the other registration regimes administered by IPONZ. This avoids the need to establish a separate system for geographical indications, and makes more efficient use of IPONZ resources, as they can be shared with the other registration regimes.
42. Under this option, the GI Act regulations will adopt essentially the same approach as that taken in the Trade Mark Regulations. Procedures for opposition, renewal, and removal or alteration of a registered geographical indication, and proceedings such as hearings will be essentially the same as the corresponding procedures in the Trade Mark Regulations.
43. The only significant departure from the approach taken in the Trade Mark regulations relates to the specific information required to be filed with an application to register a geographical indication. For example, applicants will need to provide evidence of the quality, or reputation, or other characteristic of the wine or spirit that is essentially attributable to the area to which the geographical indication relates. This sort of information is not required for trade mark applications.

GI Act Fees

44. It is intended that the costs of establishing and maintaining the Register will be met entirely from fees paid by applicants for registration and third parties who interact with the **Registrar**. That is, there will be no subsidy from the government, or from the fees collected in respect of the other registered intellectual property rights administered by IPONZ. This approach is in line with that taken for other registered intellectual property rights, such as patents, trade marks and designs.
45. Using this approach does present a challenge in setting fees. It is estimated that there will be about 30 – 35 applications to register a GI will be filed in the first year after entry into force of the GI Act, five in the second year, five in the third year, and 0-2 applications per year thereafter.
46. The projected low number of applications means that the initial fee that must be paid with an application to register a geographical indication will be significantly higher than the initial application fees for other registered intellectual property rights (patents, trade marks and designs) where application numbers are much higher. By comparison, the fee levied by IPONZ to make an application to register a trade mark is \$150.
47. The costs involved in establishing and administering the register have been estimated as approximately \$100,000 in the first year, \$55,000 in the second year, and \$35 – 40,000 in subsequent years.

48. The GI Act requires that GIs will be registered for an initial period of 5 years, renewable for further 10 year periods on payment of a renewal fee. The GI Act also provides that renewal fees may be used to recover some or all of the costs incurred by the Registrar in administering the registration system.

Risks

49. As noted above, there is significant uncertainty regarding application volumes. Much of the costs involved in establishing and administering the register are labour costs. If application volumes are less than estimated, costs will also be less than estimated. IPONZ also intends to review fee levels after three years. These factors will assist in mitigating risks if application volumes are lower than estimated.
50. In addition, the costs of establishing and administering the Register are much less than 1% of IPONZ's total revenue. IPONZ considers that any risk that revenue does not fully cover the costs is manageable, given that the absolute level of costs is such a small fraction of total IPONZ revenue, and that IPONZ intends to review fees three years after the GI Act enters into force.

Objectives and criteria for analysing the options

51. In considering the options, the following criteria have been used:
- **efficiency** considers the likely productive and allocative efficiency impacts as well as the cost effectiveness with which the collection processes could be expected to operate;
 - **equity** considers whether the option is equitable across different users and the amount of possible cross-subsidisation across IPONZ services i.e. fair allocation of costs; and
 - **effectiveness** considers how effective the option is in collecting the cost of operating the service and how accurately costs are recovered from users of these services

Options

52. As mentioned earlier, the revenue recovered from fees must fully recover the cost of establishing and maintaining the Register. Taking account of this, there are a number of ways in which the level of fees could be set:

- i. **cost** to serve per unit;
- ii. **cost** to serve entire Register (preferred option);
- iii. **consider** the fee regimes charged in similar foreign jurisdictions.

Analysis of Options

Summary Table of Options

53. In the table below, the symbols used have the following meanings:

- ✓ = positive.
- = neutral
- ✗ = negative.

	Efficiency	Equity	Effectiveness	Overall Rating
Cost to Serve per unit	-	✗	✓	-
Cost to Serve entire register	✓	✓	-	✓ ✓
Consider the fees charged by overseas offices	✗	-	✗	✗ ✗

Option 1: Cost to serve per unit

54. This involves setting individual fees to recover the actual cost of the action that the fee is intended to cover. This option offers a high level of transparency and meets the effectiveness objective. However, it does not meet the equity objective.

55. Under this option, users of ancillary procedures such as oppositions, removal, alterations and restorations relating to registered GIs would be required to bear the entire cost incurred by IPONZ in providing these procedures.

56. These ancillary procedures help to maintain the integrity of the Register. If the fees charged for these ancillary procedures are too high, this may discourage their use. Applicants derive some benefit from the maintenance of the integrity of the Register, so it seems reasonable that they should bear some of the costs of the ancillary procedures. Option 1 does not provide for this, so option 1 is not preferred.

57. Estimates of the fees, using a cost to serve per unit model, are set out in the table below:

	Application fee	Renewal fee (every five years)²	Opposition fee	Hearing fee	Application for removal or alteration
Estimated cost to serve per unit	\$4000	\$1450	\$8000	\$5700	\$2800

Option 2: Cost to serve entire register (preferred option)

58. Under this option, fees are set at a level so that the sum total of fees collected covers the cost of establishing and maintaining the register. Some fees, such as the fees for ancillary procedures, will be set at below the 'cost to serve per unit', while others, such as the application fee and renewal fees, are set at a higher level. This meets the effectiveness objective. The cost to serve entire register model is the model used for setting fees for other registered intellectual property rights administered by IPONZ – patents, trade marks and designs.

59. Compared with option 1, option 2 provides for a more equitable distribution of costs between applicants for registration and users of ancillary procedures. Effectively, applicants will bear some of the costs of the ancillary procedures.

60. This enables the fees for these procedures to be set at a level which is less likely to discourage users of ancillary procedures from participating in the registration process and maintain the integrity of the register. As applicants derive some benefit from maintenance of the integrity of the Register, it seems reasonable that they should bear some of the costs of the ancillary procedures. Option two provides for this, so it is preferred over option 1.

61. Estimated fee levels on the basis of cost to serve the entire register are set out below (fees are exclusive of GST)³:

	Application fee	Renewal fee	Opposition fee	Hearing fee	Application for removal or alteration
Estimated cost to serve entire register	\$5000	\$2000 payable after five years, \$500 every 10 years thereafter	\$700	\$1700	\$1000

² The estimates of fees set out in this table were developed before the current legislative provisions regarding the renewal period had been finalised.

³ IPONZ fees are quoted exclusive of GST, as fees paid by non-New Zealand residents are zero-rated for GST under section 11A(1)(n) of the Goods and Services Tax Act 1985.

Option 3: Consider the fees regimes in similar foreign jurisdictions

62. This option would involve setting fees after considering how fees are set in similar foreign jurisdictions. Currently, the only similar jurisdiction with a register of GIs is Australia, although some other jurisdictions are in the process of establishing a register.
63. The Australian regime for registering geographical indications is significantly different from the regime established by the GI Act. In Australia the initial application fee is AUD27,500, with other fees charged on a cost-recovery basis. There are no renewal fees. Given the difference in registration regimes, this approach provides little guidance in setting fee levels for New Zealand although it does provide a benchmark.

Conclusions and Recommendations

Regulations

64. MBIE's preferred option is to base the regulations on existing regulations, in particular relevant provisions of the Trade Marks Act 2002 and the Trade Marks Regulations 2003.
65. The use of regulations based on the Trade Marks Regulations will make it easier and less complex for IPONZ to implement the regulations as IPONZ can adapt or use existing processes. As the cost of the geographical indication registration system will be met from fees charged to applicants and third parties, this will mean that the fees are lower than might otherwise be the case.
66. This approach will also be easier and less complex for persons dealing with the Registrar.

Fees

67. The option preferred by MBIE is set the fees on a 'cost to serve entire register' basis. That is, fees are set so that the total amount of fees collected covers the cost of establishing and administering the geographical indications registration system. Fees for the other registered intellectual property rights are set on this basis.
68. Setting fees on this basis allows some fees, such as fees for ancillary procedures such as opposition, removal or alteration procedures to be set a level that is less than the actual cost of the procedure, while others, in particular renewal fees, are set at a level that is higher than actual cost. This allows the fees for ancillary procedures to be set at a level which does not discourage the use of these procedures and so assist in maintaining the integrity of the Register. Effectively, some of the cost of the ancillary procedures is borne by applicants. This is considered reasonable, as applicants benefit from maintenance of the integrity of the Register.

Consultation

69. In July 2016, the Ministry of Business, Innovation and Employment released a public discussion document seeking public submissions on the proposed regulations and fees. The consultation document included an exposure draft of the proposed regulations. This was because there was effectively only one viable option for the regulations. It was considered that going straight to an exposure draft was a better use of both MBIE and stakeholder resources than issuing a consultation document on the regulations, and following this up with an exposure draft.
70. Fourteen submissions were received, mostly from wine growers, including NZ Winegrowers, the umbrella organisation representing New Zealand wine producers. Patent attorney firms, the New Zealand Law Society, and Spirits New Zealand also provided submissions.
71. The submissions on the exposure draft of the regulations supported the approach of basing the regulations on the Trade Mark Regulations 2003. Submissions also identified some aspects of the regulations where they considered that amendment was required to simplify or clarify the regulations. These were mostly in the regulations relating to aspects of the geographical indication regime that differ from the trade mark registration regime, such as the specific information that must be filed with an application to register a GI. The exposure draft has been amended to take account of the points raised by submitters.

Fees

72. Submitters were generally supportive of the proposal to set fees on a 'cost to serve entire register basis'. They recognised the difficulties posed by the likely small number of applications, and the fact that most would be received shortly after entry into force of the GI Act.

Implementation plan

73. IPONZ is currently making preparations for the entry into force of the GI Act. This includes:
- i. Making appropriate changes to its IT systems to implement the GI Act;
 - ii. placing information on its website about GIs, and how the registration system will work once the GI Act is in force;
 - iii. developing, in consultation with stakeholders guidelines on how IPONZ will examine and grant applications to register geographical indications, and how IPONZ will deal with proceedings under the GI Act, such as oppositions, and applications to alter or remove a registered geographical indication;
 - iv. publicising the regulations once they are gazetted together with the date that the GI Act and regulations will formally enter into force.

Monitoring, evaluation and review

74. The operation of the GI Act and Regulations will be monitored as part of IPONZ's normal reporting processes. This will include seeking the views of major stakeholders the way that IPONZ is implementing the registration system. IPONZ will also review the GI Act fees three years after the GI Act enters into force.

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Annex 2: Draft Talking points for EGI

Purpose

- This paper is seeking approval:
 - for the Geographical Indications (Wine and Spirits) Registration Regulations 2017; and
 - to bring the GI Act into force.
- Cabinet decided in December 2014 to start the process for bringing the GI Act into force.
- The GI Act will establish a registration system for wine and spirit GIs in New Zealand.

Entry into force of the GI Act

Implementation of the GI Act will:

- Advance the trade strategies of the New Zealand wine industry, whose success in building the reputation of New Zealand wines as a premium product in export markets is based on the use of New Zealand GIs; and
- Enable the New Zealand wine industry to register its GIs in export markets to protect the reputation of our wines;

Geographical Indications (Wine and Spirits) Regulations 2017

- Regulations are required to implement the GI registration regime that will be established by the GI Act.
- No regulations were drafted when the GI Act was originally passed.
- GIs are very similar to trade marks, and the process for examining applications for registrations is also similar to the process for examining trade mark applications.
- The regulations are based on corresponding provisions in the Trade Marks Act 2002 and the Trade Marks Regulations 2003.

This will simplify administration of the Act by the Intellectual Property Office of New Zealand and for those applying to register geographical indications.

Fees

- The costs of administering the registration system will be recovered entirely from fees paid by applicants for registration and others who interact with the registration system.
- The setting of fees is a challenge due to the likely low number of applications. This means that the fees will be significantly higher than the fees charged for other registered intellectual property rights.
- The NZ wine industry, which will be the main user of the registration system, has indicated that it is comfortable with the proposed level of fees.

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