

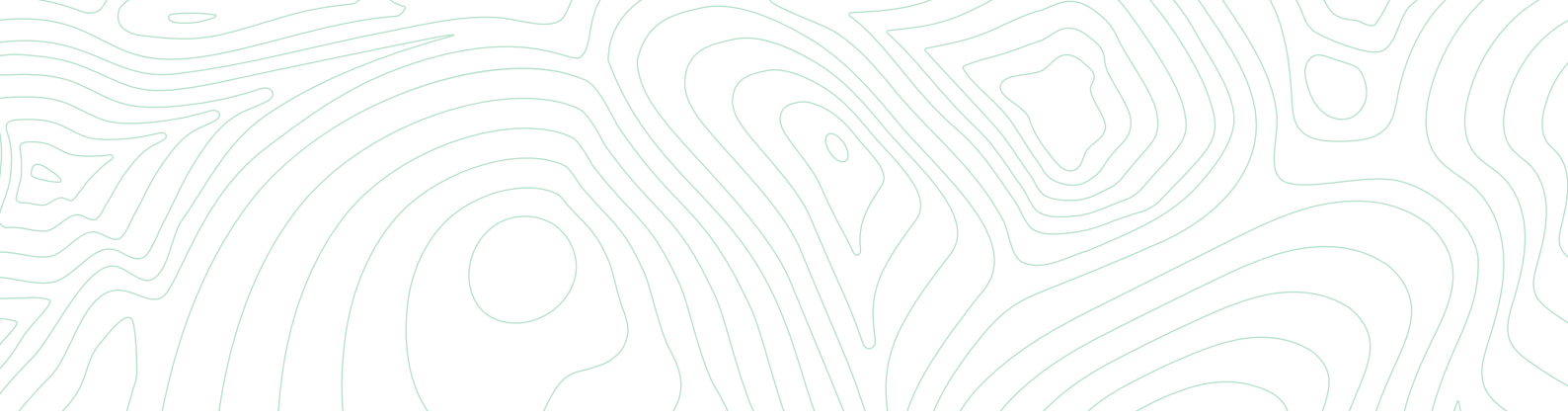


**Australian Government**

# **Australia-European Union Free Trade Agreement: Consultation on a Possible New Geographical Indications Right**

Frequently Asked Questions

Updated November 2020



Nothing in the consultation process means that the Australian Government has agreed, or will agree, to make any changes to its existing GI regulatory framework or policy.

## ABOUT GEOGRAPHICAL INDICATIONS

### **What is a geographical indication (GI)?**

A GI is an indication that identifies a good as originating in a territory, region, area or locality, where a given quality, reputation or other characteristic of the product is essentially attributable to its geographical origin.

Examples of GIs protected in Australia include 'Margaret River' and 'Champagne' for wine, 'Darjeeling' for tea, and 'Tequila' for spirits.

### **How are GIs currently protected in Australia?**

Australia currently protects GIs through certification trade marks (CTMs) and a bespoke system for wine GIs under the *Wine Australia Act 2013*, with further enforcement available for spirit GIs under the Australia-New Zealand Food Standards Code.



## ABOUT THE PROCESS

### **Why are we running a public consultation?**

Australia is currently negotiating a free trade agreement (FTA) with the European Union (EU). Consistent with the EU's approach toward other FTA partners, the EU has identified the protection of geographical indications (GIs) as one of its key goals.

In order to secure Australia's interests in the FTA, the Government is engaging the EU on its interests, including in relation to GIs.

Should Australia agree to protect specific EU GI terms through the FTA and change the way we currently protect GIs, we would need to amend our law. Were we to do so, the Government would amend the *Trade Marks Act 1995* to create a new GI right.

This consultation builds on our existing engagement by seeking views on core elements of a possible new Australian GI right we consider relevant and appropriate to our circumstances. Some of these elements have been raised by the EU in the negotiations, some have not.

We want to ensure that, if the Government decides to develop a new Australian GI right, it is developed in a way that best serves Australian interests and is informed by the views of Australian businesses and consumers.

**Running this consultation process does not mean the Australian Government has agreed, or will agree, to make any changes to its existing GI regulatory framework or policy.**

### **When does public consultation close?**

This consultation will be open until 30 November 2020.

### **Where can I provide comments or feedback as part of the public consultation?**

You can join the conversation and provide feedback on specific areas of interest to you by providing a written submission, filling out a survey, or through the webinar and virtual roundtables during the consultation period. More details are available on [IP Australia's website](#).

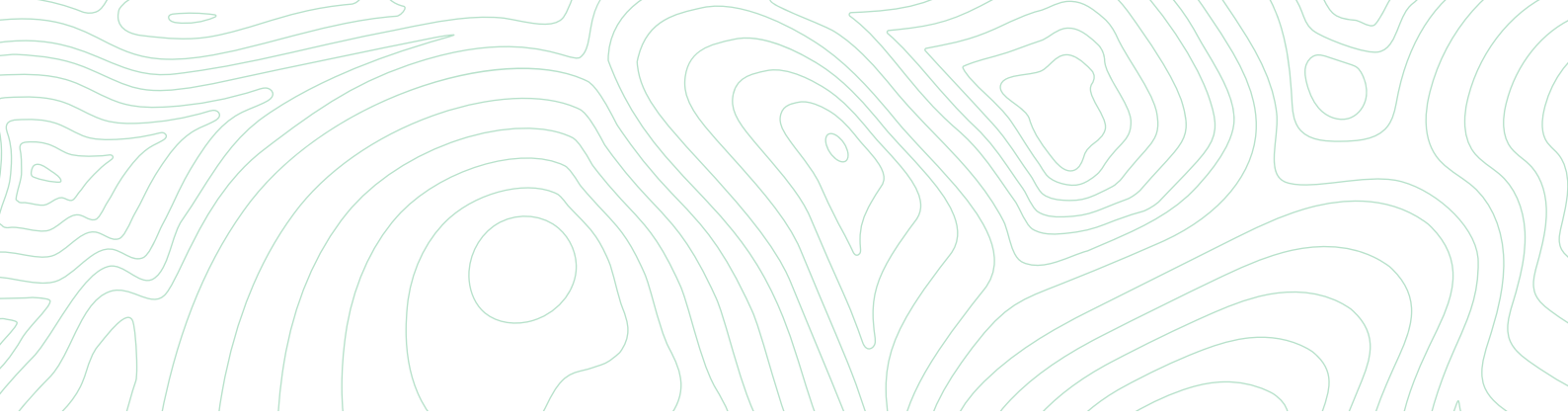
### **What if I have feedback that isn't specifically covered by the questions in the consultation paper?**

We welcome feedback on any aspect of a potential new GI right.

### **How will my submission be used? Do I need to identify where information is confidential or commercially sensitive?**

We will use information provided in your submission to inform the Australian Government's consideration of how any possible new GI right could best be developed. Stakeholder views may also be used in discussions with the EU in negotiations.

We ask that you identify if your information is commercially sensitive, or if there is information that you do not wish to be made public.



**If changes to the current ways Australia protects GIs are to be made, will there be an opportunity to comment on draft legislation?**

Consultations on the FTA, including GIs, will continue throughout the negotiations using existing FTA consultation mechanisms. Decisions on any additional dedicated consultations, such as this one, will be taken at a later date and will depend on decisions taken by the Government.

**Has the Government consulted with Aboriginal and Torres Strait Islander communities on the possible new Australian GI right? (UPDATED)**

We are committed to ongoing consultations with everyone with an interest in the outcomes of the FTA and a possible new GI right. We are particularly interested in hearing from Indigenous stakeholders and our Indigenous communities. To complement the current consultation process, we are holding specific virtual roundtables regarding GIs and Indigenous Knowledge.



# ABOUT THE AUSTRALIA-EU FREE TRADE AGREEMENT

## **What is the Australia-European Union Free Trade Agreement (A-EUFTA)?**

Australia is negotiating a free trade agreement (FTA) with the European Union (EU).

The EU comprises 27 Member States and is Australia's third largest trading partner. It is a large, stable market of almost half a billion people, offering significant opportunities for Australian businesses, producers, exporters and investors.

Australia has significant interests in the FTA, including securing new, commercially significant market access for our producers and exports, including our agricultural goods. We are engaging the EU on its GI interests to secure our interests. The Government has made clear that any decisions on GIs in the FTA negotiations will depend on the overall deal, including the market access outcomes for Australia.

## **What is the EU asking Australia to protect?**

Consistent with its approach toward other FTA partners, the EU has identified the protection of GIs as one of its key objectives in the negotiations. As part of the FTA, the EU has asked Australia to agree to protect 236 spirit names and 172 agricultural and other foodstuff names as GIs. It has also proposed ways in which it would like Australia to protect EU GIs.

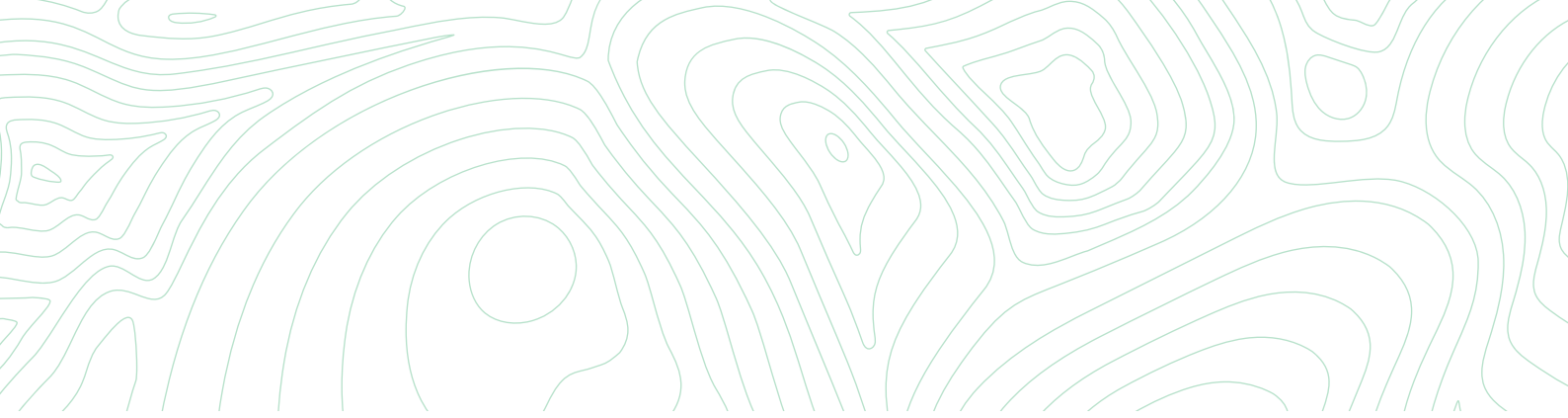
## **How is Australia engaging with the EU's requests?**

As part of the FTA negotiations, and to secure Australian interests in the FTA, we are engaging with the EU on its interests. However, we have made no commitment to protect specific EU GIs. We have also made clear that we would only consider doing so if the overall FTA deal is good enough, including by delivering on Australia's agricultural market access interests.

## **What about the previous public objections process on the EU GI terms?**

In 2019 the Australian Government conducted a public objections process on the list of GI terms the EU has asked Australia to protect as part of the FTA. The process provided Australian businesses and consumers with transparency on the EU requests and an opportunity for all Australians to lodge an objection to any of the EU GI terms. The objections the Government received through this process will continue to be discussed with the EU as part of the FTA negotiations.

If you wish to rely on a submission previously made through that process, there is no need to resubmit.



### **What support is going to be available for small communities through the process? (UPDATED)**

Our priority in the FTA is ensuring that we get the best possible deal for Australian farmers, businesses and investors that delivers opportunities across Australia, including our regional communities.

We are holding public consultations in order to ensure any framework for the protection of GIs, should one be developed, best serves Australian interests, and is informed by Australian businesses and consumers.

We welcome your input as we are interested to hear your views and understand how this would impact small communities.

### **Will any Australian GIs be protected through the FTA? (UPDATED)**

The decision on whether to propose a list of Australian GIs in FTA negotiations remains under consideration. (Note Australian wine GIs are already protected in the EU through our Wine Agreement with the EU.) If you are interested in having a GI protected in the EU under the FTA, please contact DFAT via [a-eufta@dfat.gov.au](mailto:a-eufta@dfat.gov.au)

### **Is it likely that Australia and New Zealand will have similar GI rights as an outcome of respective FTAs? (UPDATED)**

While Australia and New Zealand are both consulting on their domestic GI regimes and negotiating an FTA with the EU, each country has unique interests and are undergoing separate negotiation processes. We are aware of, and will take into consideration, crossover issues, for example that some industries use common branding across Australia and New Zealand.



## ABOUT A POSSIBLE NEW AUSTRALIAN GI RIGHT

### **If Australia was to agree to protect EU GI terms, how would this be done?**

If Australia agrees to protect specific EU GI terms through the FTA and change the way we currently protect GIs, we would need to amend our law. Were we to do so, the Government would amend the *Trade Marks Act 1995* to create a new GI right.

While a new GI right would need to accommodate potential FTA outcomes, we would continue to develop and implement any future right in a way that best met the current and future needs of Australian businesses, industries and consumers.

### **Why are we considering creating a new GI right instead of using or reforming existing GI protection systems?**

The EU has made it clear that, as with its other FTA partners, it expects Australia to agree to protect specific GI terms in a manner agreed as part of the FTA negotiations. Were we to agree to protect EU GIs, Australia's existing system for the protection of GIs would not enable us to protect GIs in the way in which the EU has asked us to. This would remain the case even if Australia did not agree to all the ways in which the EU has asked us to protect GIs.

Creating a new GI right as a new Part in the *Trade Marks Act 1995* would be the most efficient and effective way to accommodate any negotiated outcomes with the EU and serve Australia's broader interests, including creating opportunities for Australian businesses and industry to create their own GIs.

### **What could a possible new GI right mean for GIs currently protected in Australia?**

Australia's current CTM and wine GI systems could remain unchanged if a new GI right is established. Alternatively, if a new GI right was designed to enable wine GIs to be included, Australia could move towards a single GI system, which could have a range of benefits to stakeholders including streamlined processes and potential reduced costs and regulatory burden.

### **How would a possible new GI right affect existing trade mark rights that include EU GI terms?**

At this stage of the negotiations, the Australian Government has not agreed to protect any specific GI terms. Accordingly, the Government has not agreed to the relationship between EU GI terms and existing trade mark rights.

In implementing any new GI right, Australia would need to take into account existing prior trade mark rights to ensure those rights are not unduly affected. The relationship between GIs and trade marks would need to be clear.

We are specifically seeking views on this through the public consultation.



## **What is evocation? Is Australia considering meeting the EU's requests on evocation?**

Evocation is a unique EU concept that prohibits the use of terms or images that could evoke or bring to mind a protected GI, even in cases where consumers are unlikely to be confused or misled. As with every recent one of their FTAs, the EU has asked Australia to agree to preventing the use of evocation for agreed EU GIs.

We are aware that some Australian stakeholders have concerns regarding this particular EU proposal.

At this stage of the negotiations we have not agreed to protect any specific GI or EU proposal on how to protect GIs. We are aware that the EU has not been successful in negotiating protection of GIs against evocation in its other FTAs, including with Canada, Singapore, Japan, Mexico and MERCOSUR.

## **How much would a possible new GI right cost? Would taxpayers' money be used to enforce EU GIs?**

The question of how a possible new GI right would be funded is one of the issues the Australian Government would need to consider if it decides to introduce a new GI right.

As in its other FTAs, the EU expects the Australian Government to protect and enforce its list of GIs without charging any fees. This is not something the Government has agreed to at this point and is part of the negotiations.

## **How do GIs differ from Country of Origin Labelling? (UPDATED)**

Country of Origin Labelling (CoOL) provides consumers with country of origin information about the foods they buy. Under the current origin labelling requirements, most foods offered for retail sale in Australia must declare the country where they were grown, produced, made or packed.

GIs identify a product as originating in a specific region where a particular quality, reputation or other characteristic of the product is essentially attributable to that geographic origin. Once a GI is protected, it may only be used on products which meet the criteria for the GI.

## **How would a possible new Australian GI right accommodate a product that may fit under multiple registered GIs? (UPDATED)**

Australia's wine GI system offers an example of how this may work. There is a cascading tier of GIs that covers Australia as a GI, different states as a GI and more specific wine regions. A wine may fall under a number of those GIs and therefore all could be used in the labelling of the wine. The same could be possible for a new GI right, depending on how products are marketed.





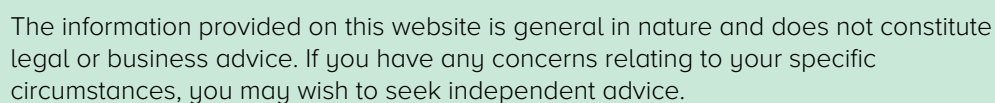
## **What might an application process for a possible new Australian GI right look like? (UPDATED)**

We are considering processes similar to those that exist for other registered IP rights. The applicant would need to have legal personality and could apply to IP Australia to establish the GI right. It would then be examined and, where applicable, be open to opposition processes before proceeding to registration.

We are also interested in your views on opposition processes and how these could operate.

## **How would a possible new Australian GI right interact with certification trade marks? (UPDATED)**

Australia's current certification trade mark (CTM) system would remain unchanged if a new GI right is established. The CTM system is used for many different reasons, including GI style protection. As there may be different advantages to registering CTMs or the possible new GI right, applicants may wish to secure one or both rights. We are interested in how we can minimise burden for applicants seeking the most appropriate protection for their product.



The information provided on this website is general in nature and does not constitute legal or business advice. If you have any concerns relating to your specific circumstances, you may wish to seek independent advice.