



Australian Government

Consultation on a Possible New Geographical Indications Right

Roundtable on Standard of Protection
13 October 2020



Introduction

We are seeking your views on the standard of protection for a possible new Australian GI right.

Presentation

- What is a standard of protection
- What standards could be included

Discussion

- Discussion questions and Q&A

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



What is ‘standard of protection’

Standard of protection refers to the kinds of actions a GI can prevent others from doing.

In Australia for example, a GI right can prevent use of the GI in a way that deceives or confuses consumers as to the true origin of the product.

Additional protections for wine and spirit GIs means that, for example:

- Only people who use grapes from the protected region to make their wine can use the name “Barossa” in the presentation or description of their wine.
- If someone uses the term where the grapes don’t come from the Barossa, the holders of the GI can seek to stop them.



What should a GI right be able to prevent others from doing?

- Australia prevents the use of GIs for any goods in ways that mislead the public as to the geographical origin of the good.
- There is additional protection for wine and spirit GIs to prevent any use on wine or spirit products not originating in the place indicated, even if the true origin is indicated, or the GI is used in translation, or is accompanied by an expression such as 'kind', 'type', 'style' or 'imitation'

For example: 'Champagne' is a protected wine GI in Australia, and this means a person cannot use the name 'Australian Champagne' or 'Australian style Champagne' on sparkling wine produced in Australia.

A possible new Australian GI right could apply the same standard for all goods.



Other types of rules

Some countries, for example the EU, provide more protection for GIs.

In the EU, GI holders can prevent use of their GIs and any translations against:

any direct or indirect
commercial use

any other false or
misleading indication

misuse, imitation or
evocation of a GI

The EU has asked that Australia provide the same standard as them as part of the Australia - European Union FTA.

Direct or indirect use

Prevents direct or indirect use of a GI for comparable products that do not comply with the product specification of the GI, including when the product is used as an ingredient.



Describing a wine as “Sherry style” or “Sherry type”

“Sherry & seafood paella” if the wine was not actual Sherry

Comparative advertising,
“our fortified wine is just as good as sherry”



Direct or indirect use

Prevents use against any false or misleading indication as to the origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin, including when those products are used as an ingredient

Translations



In Australia:

- translations need to be registered separately under the wine system
- owners can prevent use of a translation if it is seen to be misleading under the CTM system



The EU provide automatic protection of GIs in translation (in any language), transliteration and transcription.

EU GI = Vinagre de Jerez + Sherry Vinegar

EU GI= Μαστίχα Χίου + Masticha Chiou + Mastic Gum



Evocation

Evocation prevents the use of words or images that bring a GI to mind in consumers. It does not need to confuse or mislead.

We have heard the strong views of stakeholders on this and are aware the EU has not secured agreement to this in any of its other FTAs.

Product names

A producer has been prevented from selling whisky labelled “Glen Buchenbach” because ‘Glen’, meaning “valley” is a term used locally in Scotland and was found to evoke the GI Scotch Whisky.

Imagery

Cheese sold with packaging that included images of windmills, sheep and other images, typical of the La Mancha region in Spain was found to evoke “Queso Manchego”, a Spanish GI.



Discussion questions

1. Should a new Australian GI right reflect the same standard of protection as for wines and spirits? Why or why not?
2. Are there any other uses of a GI that should be protected? If so, what uses and what are the anticipated costs and benefits of providing that protection?
3. Is there a way for Australia to provide protection for GI translations and still provide certainty to as to what terms can and can't be used? If so, how?

Conclusion

- Consultation will be open until 30 November



Write to us



Take a five
minute survey



Join us for a
themed virtual
roundtable



Call us
02 6283 7911

- Details are available on our consultation hub:
<https://consultation.ipaustralia.gov.au/policy/geographical-indications/>