



14 March 2023

EU-NZ Free Trade Agreement: Reform of Geographical Indications Law in New Zealand
Ministry of Business, Innovation and Employment
Wellington
Via email: ip.policy@mbie.govt.nz

To whom it may concern,

Re: Submission on the European Union and New Zealand Free Trade Agreement: Reform of Geographical Indications Law in New Zealand Discussion Paper

Thank you for the opportunity to submit on the issues raised in the European Union and New Zealand Free Trade Agreement: Reform of Geographical Indications Law in New Zealand Discussion Paper (the discussion paper).

Apiculture New Zealand

Apiculture New Zealand (ApiNZ) is the national body representing the apiculture industry in New Zealand. It covers the full range of sectors, from hobbyist and commercial beekeepers to honey exporters, packers and suppliers. ApiNZ aims to support and deliver benefits to the New Zealand apiculture industry by supporting a thriving long-term future for New Zealand honeybee products and services, including having a strong bee health and biosecurity position.

The New Zealand apiculture industry has grown strongly over the past 20 years developing into a multi-million export sector, largely due to the growth and investment into mānuka honey. The sector currently has 9,795 registered beekeepers and 726,298 registered beehives.

In 2022, New Zealand produced 22,000 tonnes of honey and exported 11,320 tonnes of honey valued at \$455 million, with the majority of those exports being made up of mānuka honey. New Zealand's apiculture industry is valued at over \$7 billion based on both pollination for our agricultural and horticultural sectors, and honey and bee products.

Geographical Indications (Wines and Spirits) Registration Act 2006

The discussion paper comments that the obligations New Zealand has agreed to in the free trade agreement with the European Union (EU) (referred to in this document as EU-NZ FTA) has created a regulatory gap. The *Geographical Indications (Wines and Spirits) Registration Act 2006* does not enable these obligations to be met, so it needs to be amended. The discussion paper also asks for views on whether there are any problems with the GIs Act that should be addressed as part of implementing the EU-NZ FTA.

The GIs Act currently limits the registration of geographical indications (GIs) in New Zealand to wines and spirits. There are additional New Zealand products that are currently labelled with a name that indicates that the products have a characteristic that is essentially attributable to its geographic origin that would also benefit from protection under a GIs Act. Examples include mānuka honey and other lessor known honey types such as rewarewa honey and kamahi honey.

Extending protection to products such as mānuka honey in the GIs Act would also help consolidate the significant investment by industry, iwi and government to grow the mānuka honey sector. This investment has included research and resources to boost consumer confidence in the purchase of genuine mānuka honey from New Zealand.

New Zealand's position is further strengthened by the fact that we are the only country in the world that has a formal, scientific definition of mānuka honey, which is regulated by the Ministry for Primary Industries, and requires that all exported mānuka honey is tested, ensuring it is unadulterated and true to labelling.

We are also united in working with iwi, primarily through the Mānuka Charitable Trust, holding a shared view that it is not appropriate for honey producers in other countries to use the name mānuka honey when the plant the nectar came from did not grow in Aotearoa.

Our submission has been strongly guided by the Mānuka Charitable Trust. Like them, our view is that extending the scope of registration of geographical indications to include honeys like mānuka honey is a natural extension of the investment and commitment already made in protecting the term. As we note in Appendix One of our submission, mānuka honey has become established in the market, both in New Zealand and abroad, as a distinct product.

As only wines and spirits are able to be registered as GIs under New Zealand's current legislation, the only option available to protect New Zealand mānuka honey in overseas countries is to use trademark legislation which is a costly and lengthy exercise. Having a domestic GI for mānuka honey, and for other honeys made from our domestic flora, would mean we could apply for protection with more certainty in New Zealand and in other countries than we can under a trade mark regime.

We have included answers to the questions posed in the discussion paper in Appendix One.

Yours sincerely



Karin Kos
Chief Executive
Apiculture New Zealand

Appendix One: EU-NZ Free Trade Agreement: Reform of Geographical Indications Law in New Zealand – Discussion Paper

Your name and organisation

Name	Karin Kos, Chief Executive Officer
Organisation (if applicable)	Apiculture New Zealand
Contact details	P: +64 4 471 6254 M: +64 27 4379 307 Email: ceo@apinz.org.nz www.apinz.org.nz

[Double click on check boxes, then select 'checked' if you wish to select any of the following.]

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I would like to give my submissions in person or would like to meet to discuss my written submission.

If so, please provide contact details so that we can organise to meet in person.

Name	Karin Kos Chief Executive Officer
Organisation (if applicable)	Apiculture New Zealand
Contact details	Phone: 04 471 6254 Mobile: 027 4379 307 Email: CEO@apinz.org.nz

Please choose any of the following you are associated with:

- Iwi / Hapū
- Māori organisation
- Māori business
- Other

Please give any additional information you feel is relevant:

Our submission

Our submission includes answers to the specific questions asked in the consultation document as well as a covering letter with further background on our views.

Apiculture New Zealand

Apiculture New Zealand (ApiNZ) is the national body representing the apiculture industry in New Zealand. It covers the full range of sectors, from hobbyist and commercial beekeepers to honey exporters, packers and suppliers.

New Zealand's honey industry

The New Zealand apiculture industry has grown strongly over the past 20 years transforming into a multi-million export sector, largely due to the growth and investment into mānuka honey. The sector currently has 9,795 registered beekeepers and 726,298 registered beehives.

In 2022, New Zealand produced 22,000 tonnes of honey and exported 11,320 tonnes of honey valued at \$455 million, with the majority of those exports being made up of with the majority of those exports being made up of mānuka honey. New Zealand's apiculture industry is valued at over \$7 billion based on both pollination for our agricultural and horticultural sectors, and honey and bee products.

Mānuka Charitable Trust

Apiculture New Zealand’s views are closely aligned with those of the Mānuka Charitable Trust, and our responses in our submission reflect this.

Responses to questions

	Section	Question
1	<i>Registration of geographical indications</i>	Are there products other than wines and spirits being produced in New Zealand that are labelled with a name that indicates the products have a characteristic that is essentially attributable to its geographical origin? Are any of these products being exported and, if so, to where, and what export revenues do these products generate for New Zealand producers?
		Yes, there are products other than wines and spirits being produced in New Zealand that are labelled with a name that indicates the products have a characteristic that is essentially attributable to its geographical origin. Some well-known examples of products that are exported globally include but are not limited to Manuka Honey™, and other lesser known honey types derived from our native species, such as Rewarewa honey, Pohutakawa honey and Kamahi honey to name a few.
2	<i>Registration of geographical indications</i>	Is the inability to register these names under the GIs Act causing any problems and, if so, what?
		Yes, Manuka Honey is a product of New Zealand, but to get this product recognised overseas as a trade mark in Europe, for example, is difficult to achieve. This is because trade mark law in Europe requires there to be no association at all with a geographical indication. GI protection in other countries is usually not possible if you do not have a “home GI”.
3	<i>Registration of geographical indications</i>	What would be the advantages (or disadvantages) of extending the current registration regime to include GIs for food and beverages other than wine and spirits?

	Section	Question
		<p>The advantages are that it would encourage producers to consider options for protection other than simply a TM application. Sometimes the distinctiveness of a product and what it is called arises from its region of production. In some cases the significant characteristics are unique to product produced in NZ while other countries maintain wrongly that the same product produced internally has the same characteristics (Eg New Zealand Manuka vs Australian leptospermum honeys). With trade marks and geographical indications these intellectual property frameworks allow producers to protect whatever term they use to capture the origin of the source of these goods.</p> <p>The disadvantages in not expanding the GI protection framework is that the protection and growth of innovation in certain products may be restricted because of the lack of a suitable GI protection framework. Unlike European markets, New Zealand is a relatively young country in terms of understating and recognising innovation specific to geographic areas.</p> <p>Another disadvantage is that innovation specific to mātauranga Māori, taonga species and products derived from taonga species may not be protectable by any other IP framework.</p>
4	<i>Location of enforcement provisions</i>	Do you agree with our preferred option (Option iii) of providing provisions for the enforcement of GIs within the GIs Act? If not, where should these provisions be and why?
		We do agree with providing provisions for the enforcement of GIs within the GIs Act. It should be clear to those using a GI framework what enforcement provisions apply and how to bring an enforcement action. This is seen in all other New Zealand IP legislation, eg patents (see Part 4 of the Patents Act 2013), trade marks (see Part 4 of the Trade Marks Act 2002), plant variety rights (see Part 3 of the Plant Variety Rights Act 2022), copyright (see Parts 6/7 of the Copyright Act 1994), designs (see Section 13 of the Designs Act 1953). Furthermore, it is important that a wide range of remedies be available under the GI Act. At present the remedies available under the Fair Trading Act 1986 are limited.
5	<i>Civil enforcement</i>	Which option do you prefer for the court(s) to hear and determine the infringement of a registered GI, and why?
		Our preference would be that the High Court be the venue for hearing GI disputes. This is consistent with the venue for other registered IP rights. Through the process of GI registration the public is put on notice of the existence of the GI right. Accordingly, the venue to enforce the GI should be the High Court. It is important to note that Copyright rights are not a registerable right and as such a lower court may be more appropriate to enforce.

	Section	Question
6	<i>Civil enforcement</i>	Do you agree with our preferred option (Option iii) to limit persons who may initiate civil action for the enforcement of GIs to “interested persons”? If not, who do you think should be able to take legal action and why?
		Yes, we agree with “interested persons” being able to initiate civil enforcement action for GIs. This prevents “straw men” or other third parties bringing frivolous actions. However, “interested persons” should include entities including industry bodies, iwi groups, government appointed bodies, including the Commerce Commission, registered trusts etc.
7	<i>Civil enforcement</i>	What would be the advantages (or disadvantages) of providing the same remedies to address an infringement of GI as are provided under the Trade Marks Act for the infringement of a trade mark?
		The advantages of providing the same remedies for GIs as per the Trade Marks Act is again consistency between the IP regimes. There is no case law precedent in New Zealand for actions brought under the GI Act so guidance from the Trade Mark Act and Trade Mark case law would allow GI owners, practitioners and the courts to have some sense of the possible outcomes. A GI is very similar to a Certification Trade Mark or a Collective Trade Mark. The damage that can be caused to a NZ trader by infringement of its GI registration can be as harmful as that caused to a trade mark owner’s rights when infringement of a Registered Trade Mark occurs.
8	<i>Civil enforcement</i>	What other remedies (other than those provided under the Trade Marks Act) should be adopted for addressing the infringement of a GI and why?
		Perhaps if the offending was serious enough, criminal sanctions?
9	<i>Border protection measures</i>	Do you agree on basing the border protection measures for GIs on the Trade Marks Act? If not, what other measures should be adopted instead?
		Yes, we agree with basing the border protection mechanisms for GIs on the Trade Marks Act. The border protection mechanisms are easy to use and only require some indemnity protection from the party putting the notice in place. We would suggest that Customs be able to detain suspected infringing goods for a longer period of time. Given that GIs are collectively held rights, rather than the more traditional privately held trade mark rights, detaining the goods for longer would be beneficial to ensure the “interested person” best placed to bring an enforcement action is notified and has time to take action
10	<i>Border protection measures</i>	If the border protection measures based on the Trade Marks Act were to be adopted for GIs, what changes (if any) should be made to those measures and why?

	Section	Question
		Customs notices need to be able to be filed by “interested persons” as well. “Interested persons” should include entities including industry bodies, iwi groups, government appointed bodies, including the Commerce Commission, registered trusts etc.
11	<i>Border protection measures</i>	Do you agree with the preferred option of limiting persons who may lodge a notice with Customs to those persons who have an interest in the GI concerned? If not, who should be able to and why?
		We do not agree with the preferred option of limiting persons who may lodge a notice with Customs to those persons who have an interest in the GI concerned. Customs notices need to be able to be filed by “interested persons” as well. “Interested persons” should include entities including industry bodies, iwi groups, government appointed bodies, including the Commerce Commission, registered trusts etc.
12	<i>Administrative enforcement</i>	What would be the advantages (or disadvantages) of providing the same investigative powers currently available to the Commerce Commission under the Fair Trading Act to the agency responsible for providing administrative enforcement of GIs? Are there any other investigative powers that should be provided instead?
		We think there would be administrative advantages to have the Commerce Commission available to assist in the administrative enforcement of GIs. The Commerce Commission is already set up to do this type of work and has the appropriate investigative powers.
13	<i>Administrative enforcement</i>	What remedies should the courts be able to grant arising from administrative enforcement of GIs and why?
		The same remedies that are available under civil enforcement of other intellectual property rights. These include: <ul style="list-style-type: none"> • Injunctive relief including interlocutory relief • Account of profits • Damages/compensation, including punitive damages • Delivery up of infringing goods
14	<i>Other issues</i> Official GI logo	What would be the advantages (or disadvantages) for the GIs Act to provide for producers to use an official logo on their labels and packaging that verifies the GI has been registered?

	Section	Question
		<p>The advantages would be that consumers would be put on notice of the existence of a GI.</p> <p>The disadvantages are that an “official logo” would be required. Who would police the use of the logo? It opens up yet another avenue for counterfeit producers to “endorse” their product with an “official logo”.</p> <p>Should this “official logo” option be adopted, perhaps the GI legislation could include a clause making an invalid claim to GI registered status a breach of the Act with heavy penalties and enforceable by the Commerce Commission.</p>
15	<i>Other issues</i> Enduring GIs	Are any of the enduring GIs (ie ‘New Zealand’, ‘North Island’ and ‘South Island’) being used by New Zealand spirits producers? If so, who is using them? Please provide examples of use.
		Unsure
16	<i>Other issues</i> Enduring GIs	If the enduring GIs are not being used for spirits, what would be the advantages (or disadvantages) of repealing their protection under the GIs Act?
		<p>It would seem short-sighted to repeal any protection around possible GIs for spirits. While there may be no GIs registered for spirits at present that is not to say that in the next decade or so that there could be the need for GIs for spirits.</p> <p>Is it not a minimum WTO requirement that GI protection be afforded to spirits? Would it not be a breach of our WTO requirements under Article 23 of TRIPS to repeal GIs for spirits?</p>
17	<i>Other issues</i> Costs	How might the costs to administer the GIs Act be recovered and from whom?
		<p>The costs should be borne by those that use the GI system, ie application fees, renewal fees etc. Again, this is consistent with the other IP frameworks in place in New Zealand. It surprises us that 2,133 EU GIs must be afforded protection (and up to 30 additional GIs every three years) with no requirement for a registration fee and no requirement for a renewal fee. At a minimum, it is certainly hoped that the EU will offer the same rights in exchange for NZ GIs?</p>
18	<i>Other issues</i>	Are there any other problems with the current GIs Act or proposed new GIs registration regime? What changes, if any, should be considered?

	Section	Question
		<p>The current GI Act makes no reference to the Treaty of Waitangi and the Crown's obligations under the Treaty. This needs to be rectified. Furthermore consideration should be made to mātauranga Māori and tikanga principles under the proposed GI registration regime.</p>