

21 November 2019

Australia-European Union Free Trade Agreement
Office of Trade Negotiations
Department of Foreign Affairs and Trade
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BARTON ACT 0221

By email: a-eufta@dfat.gov.au

Dear Sir or Madam

**Proposed Australia-European Union Free Trade Agreement: Submission
Concerning Geographical Indications Issues**

The Intellectual Property Committee of the Business Law Section of the Law Council (the **Committee**) welcomes the opportunity to comment upon intellectual property law issues relating to the proposed Australia-European Union Free Trade Agreement (**A-EU FTA**).

This submission addresses issues relating to geographical indications (**GIs**) raised in Sub-Section 4 of the European Union's (**EU**) negotiating text for the intellectual property chapter of the proposed A-EU FTA. It also takes into account the EU's list of terms proposed to be protected as GIs (**the list**), which has been published for objection by the Australian Government.

The Committee has commented or will comment separately on other elements of the proposed A-EU FTA, which will be provided separately once they have been finalised.

1. Summary of the Committee's recommendations

The Committee suggests that Australia should not accept the proposed Sub-Section 4 of the EU's negotiating text. The Committee's view is that the current Australian laws protecting GIs are adequate, and that no justification has been provided by the EU for requiring the application of higher standard to GIs for goods other than wines and spirits. The Committee recommends that the proposed Article X.34 be redrafted in the manner outlined in section 3(c) below, with paragraph (1)(a) limited to wine and spirit GIs.

The Committee recognises that Australia might be minded to agree to the EU's demands that Australia increase its levels of protection for EU GIs other than for wines and spirits. If so, the Committee recommends that Australia should nevertheless:

- ensure that it does not provide a more extensive level of protection than that required under TRIPS Article 23, by rejecting the EU's demands to provide protection against, e.g., "*any direct or indirect commercial use*" of a GI for comparable products, or "*misuse, imitation or evocation*" of a GI (as explained in section 3(a)-(b) below); and

- ensure that adequate exceptions are created to allow Australian traders to commence using or continue to use listed EU GIs (as outlined in section 5 below).

Australia should also reject other proposed provisions inconsistent with the general "first in time first in right" principles in Australian law, such as the second section (1) of the EU's proposed Article X.34 and its proposed Article X.36(5)-(6) (as discussed in section 4 below). Finally, Australia should clarify what definition of a GI is being used to consider any or all of the indications on the list (as discussed in section 2 below).

2. Preliminary observations, and an outline of the Committee's concerns

The Committee's first observation relates to the scope of Sub-Section 4 and what is sought to be protected through the list. While the Committee makes no comment on any individual indication in the list, the Committee notes that these are being referred to as "GIs". It is not, however, entirely clear what definition of a GI is being used to consider any or all of the indications on the list, and the term "GI" is not defined in Sub-Section 4 of the EU's negotiating text.

At the moment, the only definition of a GI that Australia is bound by is that contained in Article 22(1) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (**TRIPS**), namely:

Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

The wording of that definition is also contained within the current agreement between Australia and the EU on trade in wine.¹

The Committee suggests that this issue should be clarified in the text of the A-EU FTA. If a different definition is now being used for the purposes of Sub-Section 4 and the list, it should be stated so that a clear and unambiguous distinction can be made between legal obligations being accepted by Australia in respect of this list and the A-EU FTA, which go beyond those under TRIPS, and those obligations imposed by TRIPS. If the TRIPS definition is being used, the Committee notes that no individual indication on the list necessarily meets the definition simply because the indication is a Protected Designation of Origin (**PDO**) under EU law.

Over and above that preliminary point, the Committee has very real concerns about the proposed scope of protection to be conferred through Sub-Section 4 and the potential implications for legitimate competitive conduct by Australian producers which is not misleading, deceptive or confusing.

For reasons set out below, the proposed scope of protection would have at least the following adverse and, in the Committee's view, inappropriate and unnecessary effects on Australia producers:

1. the use of some terms and imagery which are essentially unrelated to the actual indications on the list would be prohibited, even in circumstances where there is no misleading, deceptive or confusing conduct;

¹ *Agreement between Australia and the European Community on Trade in Wine*, signed 12 January 2008, [2010] ATS 19 (entered into force 9 January 2010) art 3(b).

2. comparative advertising in which an Australian producer compared its product in a manner that was not misleading with one labelled with a listed indication would be prohibited; and
3. some owners of Australian trade marks which were "first in time" would have their rights subordinated to a GI recognised much later than the first use or registration of those trade marks in Australia.

If the EU's demands are accepted, Australia would be conferring a scope of protection well beyond that required by TRIPS and which other countries have refused to confer in corresponding negotiations. The safeguards for Australian traders currently contained in Sub-Section 4 are insufficient to protect those traders' interests. The Committee suggests Australia should reject the EU's proposed text, and makes a number of suggestions for amendments to the text.

3. The level of protection sought by the EU in Article X.34

(a) Protection against "misuse, imitation or evocation" is excessive

Under TRIPS, Australia is required to apply two minimum standards of protection to GIs:

- For all goods, under Article 22(2) of TRIPS, the obligation is to prevent (in the designation or presentation of a product) any misleading indication or suggestion of the place of origin, or a use which constitutes unfair competition (the "misleading standard").
- For wines and spirits only, under Article 23(1) of TRIPS there is an additional obligation to prevent any use for relevant products not originating in the place indicated by the GI in question, 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" (the "correctness standard").

Currently, Australia meets these two standards, but does not apply the Article 23 standard to GIs for goods other than wines and spirits. The Committee considers that the current Australian laws protecting GIs are adequate, and that no justification has been provided by the EU for applying the Article 23 standard to GIs for goods other than wines and spirits.

The EU's proposal would require Australia to do more than apply the Article 23 standard to GIs for goods other than wines and spirits. It would require Australia to *exceed* the TRIPS Article 23 standard in all applicable sectors. Of particular concern is the specific wording used in the second paragraph (a) of the first sub-section (1) of Article X.34, which would require Australia to prohibit "*any misuse, imitation or evocation*", even if the true origin is indicated, or the GI is translated, transcribed, transliterated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation", "flavour", "like" or similar, including when those products are used as an ingredient.

The expression "*misuse, imitation or evocation*" is not contained in TRIPS, but is directly taken from EU legislation on protected designations of origin (**PDOS**).² Based on the case law of the Court of Justice of the EU (**CJEU**), this expression has a remarkably wide effect. For example:

² Regulation (EU) No 1151/2012 of the European Parliament and the Council on Quality Schemes for Agricultural Products and Foodstuffs [2012] OJ L 343/1, art 13(1)(b).

- *Parmigiano-Reggiano* is on the list and is a registered PDO in the EU for a cheese from the Reggio Emilia and neighbouring regions in Italy. In a 2008 case,³ the CJEU ruled that the word "*Parmesan*" evokes the PDO, and so can also only be used for a cheese that meets the specification for *Parmigiano-Reggiano*. This is despite the fact that "*Parmesan*" is only an arguably inexact translation of "*Parmigiano*" and Italy had confirmed that it had purposely not registered "*Parmigiano*" as a PDO.
- *Queso Manchego* is on the list and is a registered PDO in the EU for a cheese from the region of La Mancha in Spain. In a 2019 case,⁴ the CJEU ruled that the use of imagery that evoked either the PDO or the geographical area with which the PDO is associated in relation to a product that does not meet the specifications can constitute evocation of the PDO and so constitute infringement, even if the infringing producer is based in the same area and makes the product there. Applying this ruling, the Spanish court found that the use of an image of Don Quixote on packaging and other imagery like windmills that are typical of La Mancha, as well as calling the cheese "*Queso Rocinante*" ("Don Quixote's horse"), amounted to evocation of the PDO.

The EU's proposed wording would therefore confer on European producers significantly wider protection than for the listed term itself, and significantly wider than what is required under TRIPS Article 23 for wine and spirit GIs. The right holder would have a monopoly not just over the listed term but also for terms and imagery that "evoke" it or the geographical area indicated. The monopoly could well be held against honest and non-misleading usage of such terms and images.

Adopting language previously unused in Australia in IP-type legislation, namely the words "evoke" and "imitate", will lead to significant uncertainties and require the development of new bodies of case law before Australian producers could have any certainty about the width of the protection given to the newly protected EU GIs. In addition, it is unclear to the Committee what legitimate interest of GI right holders would require this level of protection.

Even if Australia agrees to the inclusion of the TRIPS Article 23 standard protection for food and agricultural goods, the Committee is opposed to the adoption of the "*misuse, imitation or evocation*" wording in the A-EU FTA. It would be preferable to use a form of words which is more consistent with existing Australian law (and which Australia has long said is our equivalent to Article 23 of TRIPS) such as "misleading or deceptive" or even "confusing" if one adopts language from the *Trade Marks Act 1995* (Cth). This approach would also be more consistent with other recent FTAs concluded by the EU, including the EU-Canada Comprehensive Economic and Trade Agreement (**CETA**), which is the only other example of a major common law country accepting EU demands for GI protection beyond that conferred by the general trade mark system. Excerpts of the equivalent provisions of recent FTAs concluded by the EU are set out in the Annex to this submission.

(b) Undue restrictions on comparative advertising

The Committee is also concerned that the EU's proposal would prevent legitimate comparative advertising by competing enterprises that would be permitted both under EU law and existing Australian law.

³ *Commission of the European Communities v Federal Republic of Germany* (C-132/05) [2008] I-957.

⁴ *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego v Industrial Quesera Cuquerella SL and Juan Ramón Cuquerella Montagud* (C-614/17), ECLI:EU:C:2019:344, 2 May 2019.

The first paragraph (a) of the first sub-section (1) of Article X.34 of the EU's proposal prohibits "*any direct or indirect commercial use*" of a GI for comparable products as well as any activity constituting "*misuse, imitation or evocation*". The words "*any direct or indirect commercial use*" are not contained in TRIPS, but are taken from EU legislation on PDOs.⁵ On its face, this wording would prohibit comparative advertising by a competitor that refers to the PDO, except that separate EU legislation⁶ overrides the prohibition and expressly allows non-misleading comparative advertising.⁷

Australia has a well-established system regulating comparative advertising through trade mark law, passing off and consumer law. Comparative advertising that uses registered trade marks (section 122(1)(d) of the *Trade Marks Act 1995* (Cth)) is protected, while passing off law and Australian consumer law ensures that such advertising cannot be misleading, consistent with international law standards. However, comparative advertising that refers to (that is, directly or indirectly uses) or evokes a GI would still be seen as a breach of Article X.34 if it is implemented in the form proposed by the EU. The EU's proposal does not leave room for Australia to implement new protections for comparative advertising in relation to GI infringement.

The prohibition of non-misleading comparative advertising that involves a direct or indirect commercial use of a GI, or evokes a GI, is inconsistent with the principles of Australian trade mark law and consumer law, and restricts legitimate competition. For example, competing enterprises should be able to reference or evoke a GI when honestly comparing the quality of a GI-protected product against a competing product, or when advertising that the competing product can be substituted for the GI-protected product. Again, the Committee is not aware of any legitimate interest of GI right holders that would be compromised by such comparative advertising.

The Committee is opposed to the EU's proposal to the extent it restricts comparative advertising and does not allow Australia to implement new protections for comparative advertising. The Committee suggests that a similar approach to that adopted in CETA is taken, by revising Article X.34 so that it does not use the expressions "*direct or indirect commercial use*" or "*misuse, imitation or evocation*" (see Annex for the relevant excerpt from CETA). The CETA wording allowed Canadian implementing legislation to specifically permit comparative advertising as an exception to GI protection.⁸

(c) Suggested wording for Article X.34(1)

If Australia is minded to apply the TRIPS Article 23 standard to the terms identified in the list generally, the Committee suggests the following alternative wording to replace Article X.34(1):

1. In respect of the geographical indications listed in Annex [XX]-C, including ones added in application of article X.33, each Party shall provide the legal means for interested parties to prevent:
 - a) the use of such geographical indication of the other Party for a product that falls within the product class specified in Annex [XX]-C for that geographical indication and that does not originate in the place of origin specified in Annex [XX]-C for that geographical indication;
 - b) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical

⁵ Regulation (EU) No 1151/2012 of the European Parliament and the Council on Quality Schemes for Agricultural Products and Foodstuffs [2012] OJ L 343/1, art 13(1)(a).

⁶ Directive 2006/114/EC of the European Parliament and of the Council on Misleading and Comparative Advertising [2006] OJ L 376/21.

⁷ *De Landtsheer Emmanuel SA v Comté Interprofessionnel du Vin de Champagne and Veuve Clicquot Ponsardin SA* (C-381/05) [2007] ECR I-3115.

⁸ *Trademarks Act*, RSC 1985, c T-13 (Canada) s 11.16(3).

- area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good; and
- c) any other use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention for the Protection of Industrial Property (1967) done at Stockholm on 14 July 1967.
2. The protection referred to in subparagraph 1(a) shall be provided even where the true origin of the product is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

This suggested wording is largely modelled on the corresponding wording in Article 20.19(2) and (3) of CETA. Paragraphs 1(b) and (c) of the suggested wording apply the TRIPS Article 22 standard, while paragraphs 1(a) and 2 apply the TRIPS Article 23 standard. As drafted, the Article 23 standard would apply to all GIs in the list. The Committee recommends that paragraph (1)(a) should, ideally, be limited to wine and spirit GIs.

The Committee's suggested drafting omits Article 20.19(2)(a)(ii) of CETA (in relation to goods that come from the geographical place but do not meet EU regulations on its production), because this paragraph goes beyond TRIPS Article 23 and imposes dynamic regulatory alignment with the EU. Australia should not be obliged to police products sold in Australia on the basis of rules that the EU is free to change without consulting Australia. If Australia is minded to accept a provision similar to Article 20.19(2)(a)(ii) of CETA, it should be limited only to the EU specifications for the indications on the list as they exist at the date of the A-EU FTA.

The suggested drafting includes Article 20.19(2)(c) of CETA, which requires the prevention of acts of unfair competition within the meaning of Article 10*bis* of the Paris Convention. Australia already has such obligations (under the Paris Convention and, more specifically, Article 22(2)(b) of TRIPS). However, given that different conceptions of unfair competition are used in different countries, it would be preferable for the A-EU FTA to clarify, for example as a footnote to paragraph 1(c) above, that existing Australian law (e.g. the torts of passing off and trade libel, and the Australian Consumer Law) satisfy this requirement.

4. Other ways in which the EU's proposal would require Australia to provide increased protection for GIs

The Committee suggests that two other aspects of the EU's proposed text should be rejected.

First, there is the fundamentally important issue under Article X.36(5) and (6), namely that the GI can be protected and used even where it would conflict (under Australian trade mark rules) with a prior Australian trade mark. The extended protection for GIs is inconsistent with the current parity between a GI which is protected as an Australian certification trade mark and another Australian trade mark. It is inconsistent with the general "first in time first in right" principles underlying Australian trade mark law and consumer law,⁹ and prejudices the interests of holders of Australian trade marks and other IP rights (including unregistered rights acquired through use).

Second, under second section (1) of Article X.34 in the EU proposal, none of the listed indications could become generic, thus locking in the extended protection. The Committee suggests that there is no justification for Australia to forgo the flexibility afforded to it under Article 24.6 of TRIPS (i.e., to deny protection where the "relevant indication is identical

⁹ The existing rules for wine GIs in Australia are consistent with these principles, as required by the Australia-US FTA.

with the term customary in common language as the common name for such goods or services in the territory of that Member").

5. The need for exceptions and disclaimers in relation to extended scope of protection

The current list disclaims protection for certain generic terms that form part of a listed term (e.g. "*Camembert de Normandie*", where protection for "*camember*" alone is disclaimed), and some terms that are likely to be considered generic in Australia (e.g. "*Feta*" and "*Kalamata*"). However, the list as presented does not include any other disclaimers and the EU draft text also does not include exceptions that are included in other FTAs concluded by the EU. The Committee acknowledges that the Australian Government is conducting an objection procedure in relation to the list.

The evidence received through the objection procedure will help to inform whether the situations below factually exist in relation to any proposed EU GI. Considering the breadth of protection and the static nature of the list in the EU proposal, the Committee suggests that the Australian Government give due consideration to the inclusion of disclaimers or exceptions to address situations where the proposed protection is overbroad as demonstrated by evidence through the objection procedure. Some examples of potential disclaimers or exceptions are set out below.

- *TRIPS Article 23 standard protection*: If Australia accepts a requirement to approximate the TRIPS Article 23 "correctness standard" for food and agricultural products, producers and traders will also be prohibited from using the indications on the list with terms such as "kind", "type", "style", "imitation" or the like, even where the true geographical origin is clearly indicated. The Committee suggests that the Australian Government should seek appropriate exceptions or disclaimers that do not apply the TRIPS Article 23 standard protection for certain listed GIs. Such exceptions or disclaimers should apply to GIs which have been customarily used (including with a suffix) in a non-geographical sense in Australia to the extent that the public regards the names or words as generic. By way of example, Article 20.21(1) of CETA provides that:

Notwithstanding Articles 20.19.2 and 20.19.3,^[10] Canada shall not be required to provide the legal means for interested parties to prevent the use of the terms listed in Part A of Annex 20-A and identified by one asterisk when the use of such terms is accompanied by expressions such as "kind", "type", "style", "imitation" or the like and is in combination with a legible and visible indication of the geographical origin of the product concerned.

(Terms that are identified with one asterisk in Annex 20-A of CETA include *Φέτα/Feta*, *Gorgonzola*, and other cheese GIs. The Committee is not, however, suggesting that an equivalent exception should apply to all or any of the specific GIs to which it applies in CETA.)

- *Related terms*: Under the TRIPS Article 23 standard, the GI must be afforded protection "even where the true origin of the goods is indicated or the geographical indications is used in translation or accompanied by expressions such as 'kind', 'type', 'style', 'imitation' or the like". The GI holder will have a monopoly also over translations, transcriptions and transliterations. If the EU's proposed wording is accepted, as noted above, it will further extend to terms that "evoke" the term or

¹⁰ Articles 20.19.2 and 20.19.3 set out the substantive standard of protection to be given to GIs.

the geographical region indicated. The Committee suggests that the Australian Government should consider seeking a disclaimer of any objectionable terms that would fall within the rights granted to a GI holder, even if the base GI is not objectionable. Such disclaimers are common in past FTAs concluded by the EU. The Committee in particular suggests that the Australian Government should seek to include a general exceptions clause where a related term is generic, even if the base GI is not. An example of such an exception from Article 20.21(7) of CETA is:

If a translation of a geographical indication is identical with or contains within it a term customary in common language as the common name for a product in the territory of a Party, or if a geographical indication is not identical with but contains within it such a term, the provisions of this Sub-section shall not prejudice the right of any person to use that term in association with that product in the territory of that Party.

Where appropriate, additional disclaimers can be made in relation to specific individual GIs that are particularly problematic. For example, the EU-Japan Economic Partnership Agreement (**EPA**) includes a footnote, against the listing of *Parmigiano Reggiano* in Annex 14-B, stating:

The provisions of Sub-Section 3 of Section B of Chapter 14¹¹ shall in no way prejudice the right of any person to use or to register in Japan a trademark containing or consisting of the term "parmesan" in respect of hard cheeses. This does not apply in respect of any use that would mislead the public as to the geographical origin of the good.

- **Downstream products:** Depending on the terms of a GI's specification, imported GI-protected products may not be able to be sold under the protected name after undergoing further processing. For example, the PDO specification for *Prosciutto di Parma* requires that it is sliced and packaged in Parma. As a result, based on CJEU case law, PDO-protected *Parma* ham cannot be sold in the EU as "*Parma* ham" if it is pre-sliced and re-packaged by a supermarket outside Parma.¹² The Committee suggests that the Australian government should consider seeking an exception for the use of a GI in Australia in relation to downstream products made from GI-protected products, at least in relation to any GI where such processing is an existing practice in Australia.
- **Existing producers:** Where Australia agrees to the recognition of a PDO as a GI, there may be producers and traders currently using the GI or a related term in respect of competing goods that do not meet the PDO specification, and who do not benefit from one of the specific exceptions or disclaimers (as suggested above). As a general rule, the Committee suggests that the Australian Government should seek exceptions that allow existing producers making genuine, generic use of GIs (and their successors and assignees), or use of the indication in some other manner such as a description of grape variety, to continue to use the GI or related term permanently or for a transitional period.¹³ See Articles 20.21(2)-(4) of CETA for examples of such exceptions.

¹¹ Sub-Section 3 of Section B of Chapter 14 of the EU-Japan EPA deals with GIs.

¹² *Consorzio del Prosciutto di Parma and Salumificio S Rita SpA v Asda Stores Ltd and Hygrade Foods Ltd* (C-108/01) [2003] ECR I-5121.

¹³ As an example, the phase-out period for *Champagne* and other wine GIs pursuant to the *Agreement between Australia and the European Community on Trade in Wine*, signed 26-31 January 1994, [1994] ATS 6 (entered into force 1 March 1994) ultimately lasted until 2011.

- *Use in jurisdictions other than Australia and the EU.* Without expressly commenting on any individual indication in the list, it is a reasonable assumption that some of these terms will not necessarily be recognised as GIs or given extensive protection in a number of jurisdictions other than Australia and the EU. In those circumstances, there might be good reason to permit an Australian producer to produce and label a product in Australia solely for the purpose of export to that other jurisdiction and not for sale in Australia. There is no obvious reason why Australian producers should be prohibited from using an indication on the list in that manner in order to compete in those other jurisdictions. If the Australian Government wishes to seek such an exemption, it should do so in a manner that does not impact on the scope and operation of section 228 of the *Trade Marks Act 1995* (Cth).

Should you require further information in the first instance please contact John Collins Chair of the Intellectual Property Committee on [jcollins@claytonutz.com](mailto:collins@claytonutz.com) or 02 9353 4119.

Yours sincerely,



Rebecca Maslen-Stannage
Chair, Business Law Section

ANNEX

Note: Footnotes omitted

EU-Canada CETA, Article 20.19:

- 1 Having examined the geographical indications of the other Party, each Party shall protect them according to the level of protection set out in this Sub-section.
- 2 Each Party shall provide the legal means for interested parties to prevent:
 - a) the use of a geographical indication of the other Party listed in Annex 20-A for a product that falls within the product class specified in Annex 20-A for that geographical indication and that either:
 - i) does not originate in the place of origin specified in Annex 20-A for that geographical indication; or
 - ii) does originate in the place of origin specified in Annex 20-A for that geographical indication but was not produced or manufactured in accordance with the laws and regulations of the other Party that would apply if the product were for consumption in the other Party;
 - b) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good; and
 - c) any other use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention for the Protection of Industrial Property (1967) done at Stockholm on 14 July 1967.
- 3 The protection referred to in subparagraph 2(a) shall be provided even where the true origin of the product is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

[...]

EU-Japan EPA, Article 14.25:

- 1 Subject to Article 14.29 each Party shall, in respect of geographical indications of the other Party listed in Annex 14-B, provide the legal means for interested parties to prevent in its territory:
 - a) the use of a geographical indication identifying a good for a like good not meeting the applicable requirement of specifications of the geographical indication even if:
 - i) the true origin of the good is indicated;
 - ii) the geographical indication is used¹ in translation or transliteration; or
 - iii) the geographical indication is accompanied by expressions such as "kind", "type", "style", "imitation", or the like;
 - b) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin or nature of the good; and
 - c) any other use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

[...]

EU-Singapore FTA, Article 10.19

- 1 Subject to Article 10.22 (General Rules), in respect of geographical indications for wines, spirits, agricultural products and foodstuffs listed in Annex 10-B that remain protected as geographical indications under its system as referred to in paragraph

- 2 of Article 10.17 (System of Protection of Geographical Indications), each Party shall provide the legal means for interested parties to prevent:
- a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than its true place of origin in a manner which misleads the public as to the geographical origin of the good; and
 - b) any other use which constitutes an act of unfair competition within the meaning of Article 10bis (Unfair Competition) of the Paris Convention.
- 2 Subject to Article 10.22 (General Rules), in respect of geographical indications for wines and spirits listed in Annex 10-B that remain protected as geographical indications under its system as referred to in paragraph 2 of Article 10.17 (System of Protection of Geographical Indications), each Party shall provide the legal means for interested parties to prevent the use of any such geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where:
- a) the true origin of the good is indicated;
 - b) the geographical indication is used in translation; or
 - c) the geographical indication is accompanied by expressions such as "kind", "type", "style", "imitation", or the like.
- 3 Subject to Article 10.22 (General Rules), in respect of geographical indications for agricultural products and foodstuffs listed in Annex 10-B that remain protected as geographical indications under the Party's system as referred to in paragraph 2 of Article 10.17 (System of Protection of Geographical Indications), each Party shall provide the legal means for interested parties to prevent the use of any such geographical indication identifying a good for a like good not originating in the place indicated by the geographical indication in question, even where:
- a) the true origin of the good is indicated;
 - b) the geographical indication is used in translation; or
 - c) the geographical indication is accompanied by expressions such as "kind", "type", "style", "imitation", or the like.

[...]

EU-Korea FTA, Article 10.21

- 1 Geographical indications referred to in Articles 10.18 and 10.19 shall be protected against:
- a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;
 - b) the use of a geographical indication identifying a good for a like good not originating in the place indicated by the geographical indication in question, even where the true origin of the good is indicated or the geographical indication is used in translation or transcription or accompanied by expressions such as 'kind', 'type', 'style', 'imitation' or the like; and
 - c) any other use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

[...]