Geographical Indications (Wine and Spirits) Registration Bill

Government Bill

As reported from the Foreign Affairs, Defence and Trade Committee

Commentary

Recommendation

The Foreign Affairs, Defence and Trade Committee has examined the Geographical Indications (Wine and Spirits) Registration Bill and recommends that it be passed with the amendments shown.

Introduction

The Geographical Indications (Wine and Spirits) Registration Bill provides a mechanism to register a geographical indication, a form of intellectual property that may be used to identify goods with a specific geographical origin and a particular quality, characteristic, or reputation attributable to that geographic origin. The best known example of a geographical indication would be the naming of wine produced in the Champagne region in France.

The bill is intended to ensure New Zealand continues to meet its obligation, under the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement), to provide a higher level of protection for wines and spirits, as required under Article 23 of the Agreement. The registration process would prevent any person from using a registered geographical indication on wines and spirits if they are not produced
in the geographical region indicated. Both New Zealand and overseas geographical indications may be registered. Protecting geographical indications will allow them to be used as marketing tools to establish and develop a geographical brand, while preventing the erosion of the brand by other producers using the indication on goods that were not produced in the specified region.

While geographical indications can be used for a wide variety of products, including cheeses, meats, and smallgoods, this bill applies solely to geographical indications as they relate to wines and spirits.

**Purpose**

We recommend amending clause 3 to specify that the purposes detailed in paragraphs (a) and (b) are to be facilitated in a manner consistent with New Zealand’s rights and obligations under the TRIPS Agreement. This is consistent with the original intent and simply clarifies the approach that should be taken when applying the bill. We also recommend consequential amendments to clause 4 to include definitions for the terms “TRIPS Agreement” and “WTO Agreement”, as well as amending the definition of the word “country”.

**Aligning wording with TRIPS Agreement**

We recommend amending a number of clauses to ensure that the provisions are more closely aligned with the wording used in the TRIPS Agreement.

We recommend changing the structure of clause 6(1). Currently, the definition of “geographical indication” is divided into two paragraphs, (a) and (b). However, Article 22.1 of the TRIPS Agreement presents the entire definition as a single clause. If the division of the subclause into paragraphs is removed, the definition should more closely reflect the structure of the TRIPS definition.

Clause 12 prevents the Registrar from registering a foreign geographical indication “unless it is protected in its country of origin”. We recommend that this provision should instead refer to a geographical indication “that is not, or has ceased to be, protected in its country of origin or that has fallen into disuse in that country”, to reflect the text of Article 24.9 of the Agreement.

Clause 23 protects the right of a person to use their own name, or the name of their predecessor, in the course of trade provided the person
had no intention to mislead or deceive. This was intended to incorporate the conditions of Article 24.8, but the article only allows the use of the name “except where such name is used in such a manner as to mislead the public”. The article includes no consideration of whether the person intends to mislead the public when using the name in the course of trade, and focuses on whether the use is misleading in effect. We therefore recommend that the clause be redrafted to omit the phrase “deceive”, and to ensure the provision focuses on the effect of the use of the name rather than the intent of the person using the name.

In addition, we also recommend that clause 23(a) be amended to reflect the intended effect of Article 24.8 of the TRIPS Agreement. As drafted, clause 23(a) refers simply to the use of “the name of a person” or their predecessor, and may allow the use of the name of a person unconnected with the business concerned. The Agreement allows a person to use only their own name, or the name of their predecessor, and we consider the clause should ensure this.

**Definition of “spirit”**

We recommend amending the definition of “spirit” in clause 4 to remove the word “tequila”. This definition currently includes references to whisky, brandy, rum, gin, vodka, and tequila, as examples of drinks that would be considered to be “spirits” under the definition.

Tequila is considered to be a geographical indication by Mexico, as it refers to the beverage primarily made in the region around the town of Tequila. We are therefore concerned that including a reference to tequila in the definition of “spirit” might be understood to suggest that the term is considered to be generic in New Zealand. This was not the intent, and we consider our recommended amendment will prevent this from occurring. Consideration of whether a term is a geographical indication or not would be an issue for the registration process to determine.

As the list of spirits in the definition is not represented as exhaustive, removing the direct reference to tequila from the definition should not prevent the drink from being considered a spirit under the bill.
Date of registration

Deemed date of application
We recommend including new clause 8A to provide that, on registration of a geographical indication, the date of registration be deemed to be the date of application for registration. This would mean that a successful registration would apply retrospectively to the date when the application to register the geographical indication was made. We note that this would offer particular protection in the instance where a geographical indication subject to a pending application is queried, as the trader would be able to point out that, if the application succeeds, the protection will extend back to the current date.

Registration timeframe
Clause 13(b) prevents the Registrar from registering a geographical indication where the owner of an identical trade mark in relation to an identical good has applied in good faith to register the trade mark. We note that, under the Trade Marks Act 2002, trade mark rights apply from the deemed date of registration. While this date will usually be the date of application in New Zealand, where a trade mark owner first makes a trade mark application in a convention country and then applies for a New Zealand trade mark within six months, the rights would extend back to the date of the first overseas application. We therefore consider it necessary that the bill allow for the situation where a person applies for a trade mark in a convention country then applies for a trade mark in New Zealand within six months, and recommend clause 8A prevent the Registrar from registering a geographical indication until six months after the date of application.

We consider it unlikely that requiring six months to pass before registration would result in significant delays to the approval of an application, as the registration process will involve a number of time-consuming stages, including examination, advertising of proposed geographical indications, and the lodgement of opposition, which would delay an application to a much more significant extent. Also, we note that the Trade Marks Act also prevents the Commissioner of Trade Marks from registering a trade mark until six months after the date of application to allow for this issue, and this amendment should be consistent with that provision.
Deceptive or confusing use of a geographical indication

Clause 14 prevents the Registrar from registering a geographical indication where its use is likely to deceive or confuse because the indication is similar or identical to a trade mark registered or used in good faith in New Zealand in respect of similar or identical goods. We note that this clause does not prevent the Registrar from registering a deceptive or confusing geographical indication where a similar or identical trade mark has been applied for, but has not yet been registered. This is inconsistent with clause 13, which does prevent a geographical indication from being registered if it is identical to a trade mark application that has been made in good faith. We therefore recommend amending clause 14(1), (2), and (3) to provide for trade marks where an application to register has been made in good faith, but has not yet been granted.

Foreign registered geographical indications for spirits

Clauses 19 and 21 restrict the use in New Zealand of a foreign registered geographical indication for wine or spirits to situations where the goods originated in the relevant geographical region, and where the use of the indication is in accordance with the scope of protection offered in the country of origin. We understand that both clauses 19(b) and 21(b) were intended to provide for the situation where the country of origin imposes conditions of use as part of the protection for a geographical indication, to ensure that those conditions are reflected in the use of the geographical indication in New Zealand. We do not, however, consider that the current drafting of this provision makes this point sufficiently clear. We therefore recommend amending clauses 19(b) and 21(b) to clarify that a geographical indication’s scope of protection in the country of origin may include conditions as to its use.

Wine packaging

Clause 25 provides that the restrictions on use of a geographical indication do not apply where a particular wine or spirit was bottled before the geographical indication was registered. We note the term “bottled” would exclude products packaged in wine casks or other packaging, and recommend clause 4 be amended to define “bottled” to capture different types of containers used for wine and spirits.
Pre-dating trade mark application

Clause 27 removes the restrictions on the use of a registered geographical indication where, in good faith, a trade mark was applied for or registered, or rights to the trade mark were acquired by use, pre-dating the protection of the geographical indication. We note that, while the concept of “good faith” is relevant to circumstances where a trade mark registration was applied for or where trade mark rights are acquired by use, it is not applicable where a trade mark was registered before the geographical indication. We therefore recommend amending clause 27 to ensure that references to “good faith” apply only to applications for trade mark registration or acquisition of rights through use. We note that this change also ensures greater consistency with clauses 13 and 14, which also apply a “good faith” requirement for applications or acquisition through use, but do not require it in cases of trade mark registration.

Registrar’s seal

Clause 32(2)(b) provides that documents bearing the imprint of the Registrar’s seal must be treated as having been signed or issued by the Registrar. We recommend clause 32(2)(b) be qualified, ensuring that this automatic assumption applies only where there is an absence of proof to the contrary. We note that the Geographical Indications Act 1994 contained a similar provision.

Interested person for foreign geographical indication

Clause 33(2) defines the type of person that may apply to register a foreign geographical indication as “the person recognised in the country of origin as having legal standing to make the application in New Zealand.” This subclause is intended to ensure that applications are accepted only from people who have an interest in the relevant geographical area as recognised in the country of origin. However, this may be easily achieved by using regulation to require applications to include a statement of the applicant’s interest, which could be assessed by the Registrar at the same time as the application is considered. We also consider it improbable that other countries will have any process for giving legal standing to any particular person to make an application in New Zealand or other countries, and we therefore doubt that the provision as currently drafted would work effectively. We therefore do not consider clause 33(2) is required or desirable, and recommend it be omitted.
Certificate of registration

We recommend that clause 39, which requires the Registrar to create a certificate of registration for each geographical indication and issue a copy to the applicant, be omitted. We see no reason for requiring the issuing of a certificate of registration and note that, as a registered geographical indication is a collective right that applies to all those who comply with the requirements of the registration, there is no reason for providing a copy of a certificate of registration to any particular individual, regardless of whether or not that person was the applicant.

Geographical indications committee

Clause 51 allows the Registrar to establish a committee to advise on issues relating to the boundaries and use of a place name in relation to an application to register, or alter a registered, geographical indication. We note that the clause as currently drafted would not apply where a geographical indication is being removed from the register, and consider this omission to be inconsistent with the intention of the clause. We therefore recommend clause 51(1) be amended to allow the Registrar to establish a committee to advise on issues regarding the removal of a geographical indication from the register.

Regulation-making power

Clause 55 provides for regulations to be made relating to a number of purposes, including the form of, and requirements relating to, an application to register a geographical indication (paragraph (a)) and applications under the bill (paragraph (i)). Noting that an application to register a geographical indication is one of the applications that may be made under the bill, it is therefore redundant to include both paragraph (a) and (i). We therefore recommend amending clause 55(a) to replicate the provisions in clause 55(i), which should then be omitted from the bill.

Existing protection for non-registered geographical indications

We note that a number of other mechanisms are also available to protect geographical indications. Where a geographical indication has not been registered for any reason, it is not intended that this bill should affect the application of these other protective mechanisms.
We consider that this should be specified in the bill, and recommend including new clause 55A stating that the bill will not affect a geographical indication that has not been registered.

Amendments to Trade Marks Act 2002
Clause 60 includes a number of consequential amendments to the Trade Marks Act 2002. New section 20 in clause 60(4) prevents the Commissioner of Trade Marks from registering a trade mark only where it includes a registered geographical indication. We consider the Commissioner should also be prevented from registering a trade mark where it includes a geographical indication for which registration has been sought, but not yet granted, and recommend amending new section 20 in clause 60(4) of the bill to provide for this contingency. We note that this amendment is also consistent with the “first in time, first in right” approach adopted in clauses 13 and 14, where the rights are granted to the person who first applies for registration, whether of a trade mark or a geographical indication.

Other minor and technical amendments
We recommend amending clauses 10 and 11(a) and (b), as well as the clause headings of clauses 9, 10, and 11, to remove the words “identical with” and replace them with “identical to”. The phrase “identical to” is used elsewhere in the bill, and we consider the amendment desirable to ensure the bill is internally consistent.
We recommend amending the clause headings of clauses 13 and 15 to describe their effect better.
We recommend the phrase “1 or more New Zealand registered geographical indications” in clause 18 be replaced with the phrase “a New Zealand registered geographical indication or indications”. This amendment will ensure greater consistency in the text of clauses 18 to 21.
We recommend amending clause 23(b), to omit the term “place” and replace it with the word “address”. This will ensure that the clause is consistent with the wording of the food identification requirements in Standard 1.2.2(3) of the Australia New Zealand Food Standards Code.
We recommend amending clause 26(1), to remove the phrase “continued or similar use”, and replace it with “continued and similar use”. This change will ensure the clause reflects the wording of
Article 24.4 of the TRIPS Agreement. The variation in the original drafting was unintentional.

We recommend minor amendments to clause 28(1) to clarify the intended effect of the provision.

We recommend amending clause 40(3)(b) to clarify that the foreign geographical indications referred to must be registered.

Minority view

With respect to clauses 51 and 52, National members have concerns about the structure of the committee and its procedures. Specifically, we wish to see mandatory representation from the Wine Institute of New Zealand, and the New Zealand Grape-Grower Council.

National members would have liked the select committee to consult further with the industry before reporting back to the House.
Appendix

Committee process
The Geographical Indications (Wine and Spirits) Registration Bill was referred to the committee on 13 December 2005. The closing date for submissions was 3 February 2006. We received and considered 10 submissions from interested groups and individuals. We heard 5 submissions. Hearing of evidence took 1 hour 35 minutes and consideration took 3 hours.
We received advice from the Ministry of Economic Development.

Committee membership
Dianne Yates (Chairperson)
Hon Georgina te Heuheu (Deputy Chairperson)
H V Ross Robertson
Hon Paul Swain
Jill Pettis
Hon Murray McCully
Tim Groser
John Hayes
Keith Locke
Geographical Indications (Wine and Spirits) Registration

**Key to symbols used in reprinted bill**

*As reported from a select committee*

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〈*Subject to this Act,〉  Words struck out by a majority
〈*Subject to this Act,〉  Words inserted by a majority
Hon Judith Tizard

Geographical Indications (Wine and Spirits) Registration Bill

Government Bill

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**The Parliament of New Zealand enacts as follows:**

1. **Title**
   This Act is the Geographical Indications (Wine and Spirits) Registration Act 2005.
2 Commencement
(1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.
(2) One or more Orders in Council may be made appointing different dates for the commencement of different provisions.

Part 1
Preliminary provisions

3 Purpose
The purposes of this Act are to—
(a) contribute to the development and continual growth of, and innovation in, the wine and spirits industries in New Zealand by providing a suitable legal framework for the registration of geographical indications; and
(b) provide a sound trading and marketing environment that facilitates, rather than creates barriers to, the trade in wine and spirits; and

(c) facilitate the purposes set out in paragraphs (a) and (b) in a manner consistent with New Zealand’s rights and obligations under the TRIPS Agreement.

4 Interpretation
In this Act, unless the context requires otherwise,—

bottled means placed or contained in a bottle or other container used for wine or spirits

committee means a geographical indications committee established under section 51

country includes a member of the World Trade Organization established by Article 1 of the〈WTO〉 Agreement〈Establishing the World Trade Organisation adopted at Marrakesh on 15 April 1994〉

Court means the High Court
foreign geographical indication has the meaning given to it in section 6(3)

foreign registered geographical indication has the meaning given to it in section 7(3)

geographical indication has the meaning given to it in section 6(1)

international agreement means any bilateral or multilateral treaty, convention, or agreement to which New Zealand is a party, and any arrangement between New Zealand and any other country, concerning the protection of geographical indications

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

New Zealand Geographic Board means the New Zealand Geographic Board established under section 3 of the New Zealand Geographic Board Act 1946

New Zealand geographical indication has the meaning given to it in section 6(2)

New Zealand registered geographical indication has the meaning given to it in section 7(2)

person includes the government of a country, a corporation sole, an incorporated or unincorporated body or person, and any association or combination of individual persons or incorporated or unincorporated persons

prescribed means prescribed by regulations made under section 55

register means the register of registered geographical indications established under section 40

registered geographical indication has the meaning given to it in section 7(1)

Registrar means the Registrar of Registered Geographical Indications appointed under section 31

spirit means a potable alcoholic distillate, including whisky, brandy, rum, gin, and vodka, produced by distillation of fermented liquor derived from food sources, so as to have the taste, aroma, and other characteristics generally attributable to that particular spirit
Geographical Indications (Wine and Spirits) Registration

**Surveyor-General** means the Surveyor-General appointed under section 5 of the Cadastral Survey Act 2002.

**trade** means any trade, business, industry, profession, occupation, activity of commerce, or undertaking relating to the supply or acquisition of goods.

**New (majority)**

**TRIPS Agreement** means the Agreement on Trade-Related Aspects of Intellectual Property set out in Annex 1C to the WTO Agreement.

**wine** has the same meaning as **grape wine** in section 4(1) of the Wine Act 2003.

**working day** means a day of the week other than—

(a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, and Labour Day; and

(b) the day observed in the appropriate area as the anniversary of the province of which the area forms part; and

(c) a day in the period beginning with 25 December in any year and,—

(i) except in **section 47**, ending with 2 January in the following year; or

(ii) in **section 47**, ending with 15 January in the following year.

**New (majority)**

**WTO Agreement** means the World Trade Organization Agreement adopted at Marrakesh on 15 April 1994, as revised or amended from time to time.

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5 **Act binds the Crown**

This Act binds the Crown.
Part 2
Registered geographical indications

Nature of registered geographical indication

6 What is geographical indication?

Struck out (majority)

(1) A geographical indication is an indication—
(a) that identifies a wine or spirit as originating in the territory of a country, or a region or locality in that territory; and
(b) where a given quality, or the reputation, or some other characteristic, of the wine or spirit is essentially attributable to its geographical origin.

New (majority)

(1) 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.

(2) A New Zealand geographical indication means a geographical indication that identifies a wine or spirit as originating in New Zealand.

(3) A foreign geographical indication means a geographical indication that identifies a wine or spirit as originating in a country other than New Zealand.

7 What is registered geographical indication?

(1) A registered geographical indication is a geographical indication that has been registered under section 8.

(2) A New Zealand registered geographical indication is a New Zealand geographical indication that has been registered under section 8.

(3) A foreign registered geographical indication is a foreign geographical indication that has been registered under section 8.
RegISTRATION

8 Registration
(1) The Registrar registers a geographical indication by entering it in the register.

(2) The Registrar may register a geographical indication except in the cases set out in sections 9 to 14.

New (majority)

8A Date of registration
(1) A registered geographical indication is deemed to be registered on and from the date of the application for registration.

(2) The Registrar must not register a geographical indication until 6 months after the date of the application for registration.

(3) The date of the application for registration is the date when the Registrar receives the application.

Restrictions on registration

9 Geographical indication identical with registered geographical indication
The Registrar must not register—
(a) a geographical indication for a wine that is identical to a registered geographical indication for a wine in respect of the same or a similar geographical origin:
(b) a geographical indication for a spirit that is identical to a registered geographical indication for a spirit in respect of the same or a similar geographical origin.

10 Geographical indication identical with customary name of grape variety
The Registrar must not register a geographical indication if it is identical with the customary name of a grape variety existing in New Zealand on 1 January 1995.
11 Geographical indication identical to common name for wine or spirit
The Registrar must not register—
(a) a geographical indication for a wine if it is identical to the term customary in common language as the common name of a wine in New Zealand;
(b) a geographical indication for a spirit if it is identical to the term customary in common language as the common name of a spirit in New Zealand.

12 Foreign geographical indication
The Registrar must not register a foreign geographical indication unless it is that is not, or has ceased to be, protected in its country of origin or that has fallen into disuse in that country.

13 Trade mark
The Registrar must not register a geographical indication for a wine or spirit if it is identical to a trade mark and—
(a) the trade mark is registered in New Zealand in relation to an identical good; or
(b) the owner of the trade mark has in good faith applied for its registration in New Zealand in relation to an identical good; or
(c) rights to the trade mark have been acquired through use in New Zealand in good faith in relation to an identical good.

14 Deceptive or confusing use in relation to trade mark
(1) The Registrar must not register a geographical indication if—

Struck out (majority)

(a) it is identical to a trade mark—
   (i) that is registered in New Zealand in respect of similar goods or services; or
   (ii) to which rights have been acquired by use in New Zealand in good faith in respect of similar goods or services; and
Geographical Indications (Wine and Spirits) Registration

New (majority)

(a) it is identical to a trade mark and—
   (i) the trade mark is registered in New Zealand in respect of similar goods or services; or
   (ii) the owner of the trade mark has in good faith applied for the registration in New Zealand of the trade mark; or
   (iii) rights to the trade mark have been acquired by use in New Zealand in good faith in respect of similar goods or services; and

(b) its use is likely to deceive or confuse.

(2) The Registrar must not register a geographical indication if—

Struck out (majority)

(a) it is similar to a trade mark—
   (i) that is registered in New Zealand in respect of identical goods; or
   (ii) to which rights have been acquired by use in New Zealand in good faith in respect of identical goods; and

New (majority)

(a) it is similar to a trade mark and—
   (i) the trade mark is registered in New Zealand in respect of identical goods; or
   (ii) the owner of the trade mark has in good faith applied for the registration in New Zealand of the trade mark; or
   (iii) rights to the trade mark have been acquired by use in New Zealand in good faith in respect of identical goods; and

(b) its use is likely to deceive or confuse.

(3) The Registrar must not register a geographical indication if—
(a) it is similar to a trade mark—
   (i) that is registered in New Zealand in respect of similar goods or services; or
   (ii) to which rights have been acquired by use in New Zealand in good faith in respect of similar goods or services; and

(b) its use is likely to deceive or confuse.

When restrictions on registration as geographical indication do not apply (in relation) to trade mark

(1) The restrictions in sections 13 and 14 do not apply, and the Registrar may register a geographical indication that is identical or confusingly similar to a trade mark, if—
   (a) the owner of the trade mark has consented to its registration as a geographical indication; or
   (b) the Registrar considers that the geographical indication may co-exist with the trade mark.

(2) In making a decision under subsection (1)(b), the Registrar must have regard to the following factors:
   (a) the geographical indication’s history of use in good faith in New Zealand:
   (b) recognition of the geographical indication in New Zealand as a geographical indication:
   (c) the legitimate interests of the owner of the trade mark and of third parties:
   (d) any other relevant factors.
Registration of homonymous geographical indication

16 Registrar may register homonymous geographical indication

(1) The Registrar may register a homonymous geographical indication under section 8.

(2) A homonymous geographical indication is—

(a) a geographical indication for a wine that has the same spelling as, or sounds the same as,—

(i) a registered geographical indication for a wine having a different geographical origin; or

(ii) a geographical indication for a wine having a different geographical origin for which an application for registration under section 33 has been made; or

(b) a geographical indication for a spirit that has the same spelling as, or sounds the same as,—

(i) a registered geographical indication for a spirit having a different geographical origin; or

(ii) a geographical indication for a spirit having a different geographical origin for which an application for registration under section 33 has been made.

17 Registrar may impose conditions when registering homonymous geographical indication

(1) For the purposes of section 16, the Registrar may register the homonymous geographical indication with conditions, or alter the register under sections 44 and 45 to include conditions for the use of the earlier registered geographical indication, or both.

(2) In deciding what conditions (if any) to impose under subsection (1), the Registrar must take into account—

(a) the need for the equitable treatment of the producers of the wines or spirits to which the geographical indications relate; and

(b) the need to ensure that consumers are not misled.
Restrictions on use of registered geographical indications

18 Restriction on use of 〈1 or more〉 New Zealand registered geographical 〈indications〉 〈indication〉 for wine
A person may use 〈1 or more〉 〈a〉 New Zealand registered geographical 〈indication or〉 indications in trade in New Zealand in relation to a wine only if—
(a) at least 85% of the wine is obtained from grapes harvested in the geographical origin or origins to which the New Zealand registered geographical indication or indications relate; and
(b) the New Zealand registered geographical indication or indications are used in accordance with their registration in New Zealand.

19 Restriction on use of foreign registered geographical indication for wine
A person may use a foreign registered geographical indication or indications in trade in New Zealand in relation to a wine only if—
(a) that wine originated in the geographical origin or origins to which the foreign registered geographical indication or indications relate; and
(b) the foreign registered geographical indication or indications are used in accordance with the scope of their protection in their country of origin, including any conditions as to the use of the foreign registered geographical indication or indications.

20 Restriction on use of New Zealand registered geographical indication for spirit
A person may use a New Zealand registered geographical indication or indications in trade in New Zealand in relation to a spirit only if—
(a) that spirit originated in the geographical origin to which the registered geographical indication or indications relate; and
(b) the New Zealand registered geographical indication or indications are used in accordance with their registration in New Zealand.
21 **Restriction on use of foreign registered geographical indication for spirit**
A person may use a foreign registered geographical indication or indications in trade in New Zealand in relation to a spirit only if—
(a) that spirit originated in the geographical origin or origins to which the foreign registered geographical indication or indications relate; and
(b) the foreign registered geographical indication or indications are used in accordance with the scope of their protection in their country of origin, including any conditions as to the use of the foreign registered geographical indication or indications.

22 **Additional rules relating to restrictions on use**
The restrictions in [sections 18 to 21](#) on the use of a registered geographical indication apply whether or not—
(a) the true origin of the wine or spirit is indicated; or
(b) the registered geographical indication is used in translation; or
(c) the use of the registered geographical indication is accompanied by any of the words “kind”, “type”, “style”, “imitation”, or any similar word or expression.

23 **Use of certain information not use of registered geographical indication**
For the purposes of [sections 18 to 22](#), the use of any or all of the following information, in the course of trade and without any intention to mislead or deceive, does not of itself constitute the use of a registered geographical indication in relation to a wine or spirit:
(a) the name of a person or that person’s predecessor in business:
(b) a statement indicating the place where the wine or spirit was produced or bottled.
When restrictions on use of registered geographical indication do not apply

24 Wine or spirit never in New Zealand or in transit only
The restrictions on the use of a registered geographical indication in sections 18 to 21 do not apply in respect of a wine or spirit that is—
(a) never in New Zealand; or
(b) in New Zealand only for the purpose of transit from 1 country to another, neither of which is New Zealand.

25 Bottling pre-dating registration of registered geographical indication
The restrictions on the use of a registered geographical indication in sections 18 to 21 do not apply in respect of a wine or spirit that was bottled or was being bottled before the registered geographical indication relating to the wine or spirit was registered under this Act.

26 Continuous use
(1) The restrictions on the use of a registered geographical indication in sections 18 to 21 do not apply in respect of the continued or similar use by any New Zealand person or entity (N) of a term that is a registered geographical indication if N has used the term in a continuous manner in trade in relation to a wine or spirit in New Zealand—
(a) in good faith since before 15 April 1994; or
(b) for at least 10 years before 15 April 1994.

(2) In subsection (1), New Zealand person or entity includes—
(a) the Government of New Zealand;
(b) a New Zealand citizen;
(c) in the case of a natural person, a person who is ordinarily resident or domiciled in New Zealand;
(d) a body corporate established by or under New Zealand law;
(e) an unincorporated association established in New Zealand;
(f) an association of any of the persons or entities in paragraphs (a) to (e).
27 Trade mark pre-dating registration of registered geographical indication

Struck out (majority)

(1) The restrictions on the use of a registered geographical indication in sections 18 to 21 do not apply in respect of the use of a trade mark if the trade mark has been applied for or registered in New Zealand, or rights to the trade mark have been acquired by use in New Zealand,—
(a) before the effective date; and
(b) in good faith.

New (majority)

(1) The restrictions on the use of a registered geographical indication in sections 18 to 21 do not apply in respect of the use of a trade mark if, before the effective date,—
(a) the trade mark has been registered in New Zealand; or
(b) registration of the trade mark in New Zealand has been applied for in good faith; or
(c) rights to the trade mark have been acquired by use in New Zealand in good faith.

(2) In subsection (1), effective date means the later of 1 January 1995 and the date on which protection of the geographical indication in its country of origin began.

28 Use of registered geographical indication in unregistered trade mark after 5 years after adverse use generally known

(1) The restrictions on the use of a registered geographical indication in sections 18 to 21 cease to apply to the use not in bad faith of a registered geographical indication in an unregistered trade mark only for after 5 years after its adverse use became generally known in New Zealand.

(2) In subsection (1), adverse use means use of a registered geographical indication in an unregistered trade mark in contravention of the restrictions contained in sections 18 to 21.
29 Unregistered geographical indication homonymous with registered geographical indication

(1) This section applies when a registered geographical indication and an unregistered geographical indication are homonymous.

(2) The restrictions on the use of a registered geographical indication in sections 18 to 21 do not apply to the use of an unregistered geographical indication for a wine or spirit that originates in the geographical origin to which the unregistered geographical indication relates.

Effect of breach of restriction

30 Breach of restriction on use of registered geographical indication is breach of Fair Trading Act 1986

A person who contravenes any of sections 18 to 21 contravenes section 9 of the Fair Trading Act 1986 and the provisions of that Act apply accordingly.

Registrar

31 Registrar

(1) There must be a Registrar of Registered Geographical Indications appointed under the State Sector Act 1988.

(2) The Registrar must be an officer or employee of the Ministry, and his or her appointment may be held either separately or in conjunction with any other office in the Ministry.

32 Registrar’s seal

(1) The Registrar must have and use a seal of office bearing the impression of the New Zealand Coat of Arms and having inscribed in the margin the words “Registrar of Registered Geographical Indications, New Zealand”.

(2) Every document bearing the imprint of the Registrar’s seal of office, and purporting to be signed or issued by the Registrar, or by a person employed to assist the Registrar in the exercise of the Registrar’s functions under this Act,—

(a) must be received in evidence; and

(b) in the absence of proof to the contrary, must be treated as having been signed or issued by or under the direction of the Registrar.
Process of registration

33 Interested person may apply for registration of geographical indication
An interested person may apply in the prescribed form and on payment of the prescribed fee for the registration of a geographical indication.

34 Registrar must deal with application according to prescribed procedure
(1) The Registrar must deal with the application according to the procedure prescribed by regulations made under section 55.
(2) Those regulations may include regulations for—
   (a) the acceptance or rejection of the application:
   (b) opposition, and determination of opposition, to an accepted application:
   (c) registration:
   (d) any other steps to be taken in dealing with the application.

35 Priority
(1) The first application for the registration of a geographical indication received by the Registrar has priority over any subsequent application for registration of an identical geographical indication—
   (a) in respect of the same good (that is, wine or spirit); and
   (b) having the same or a similar geographical origin.
(2) The Registrar must reject any subsequent application received before the Registrar has accepted or rejected the first application.
36  **Registrar may obtain advice and consult**

If the Registrar thinks it necessary, the Registrar may obtain advice on, and may consult about, any matter relating to—

(a) an application for the registration of a geographical indication, including opposition to an accepted application; or

(b) the registrability of a geographical indication; or

(c) alterations to a registered geographical indication.

37  **Hearing before exercise of Registrar’s discretion**

(1) The Registrar must not, without giving an interested person an opportunity of being heard, adversely exercise any discretionary or other power under this Act or regulations made under this Act 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.

(2) Regulations made under section 55 may prescribe the procedure for the opportunity to be heard.

38  **Conditions of use**

The Registrar may register a geographical indication with conditions as the Registrar thinks fit, including conditions on the use of the geographical indication.

**Struck out (majority)**

39  **Certificate of registration**

As soon as possible after registering a geographical indication, the Registrar must—

(a) create and retain a certificate of registration in respect of that registered geographical indication; and

(b) issue a copy of the certificate to the applicant for registration.

**Register of registered geographical indications**

40  **Register**

(1) The Registrar must establish and maintain a register of registered geographical indications.
(2) The register must contain 2 parts, as follows:
   (a) Part 1, for all registered geographical indications except those to which paragraph (b) refers:
   (b) Part 2, for geographical indications that have been registered in accordance with regulations made under section 55(k).

(3) The register must specify, in respect of each registered geographical indication,—
   (a) whether it relates to a wine or a spirit or to both; and
   (b) its boundaries, unless it is a foreign registered geographical indication (including a foreign registered geographical indication in Part 2 of the register); and
   (c) any conditions that relate to it; and
   (d) the date of registration.

(4) The register may be kept in any manner that the Registrar thinks fit, including, either wholly or partly, by means of a device or facility—
   (a) that records or stores information electronically or by other means; and
   (b) that permits the information so recorded or stored to be readily inspected or reproduced in usable form.

(5) The register is prima facie evidence of any matters required or authorised by or under this Act to be entered in it.

41 Public access to register
(1) The Registrar must allow access to the register during each working day, at the times determined by Registrar for inspection, by any person who pays the prescribed fee (if any).

(2) The Registrar must provide a copy, or a certified copy, of any particulars on the register to any person who applies for it and pays the prescribed fee (if any).

(3) A certified copy of particulars on the register signed by the Registrar and sealed with the Registrar’s seal is conclusive evidence for all purposes that the particulars on the certified copy have been duly registered.

42 Registrar may correct obvious errors or omissions
If satisfied that there is an obvious error in, or omission from, the register, the Registrar may correct it.
43 Removal from register
(1) The Registrar may remove a registered geographical indication from the register if satisfied that any of the following grounds exist:
   (a) in the case of a foreign geographical indication, it is not, or has ceased to be, protected in its country of origin;
   (b) it has fallen into disuse in its country of origin;
   (c) it should not have been registered because it did not meet the requirements of the definition of a geographical indication in section 6(1);
   (d) it should not have been registered because it fell under 1 or more of the restrictions in sections 9 to 14;
   (e) it has become a term customary in common language as the common name for a wine or spirit in New Zealand.
(2) The Registrar may remove a registered geographical indication under subsection (1) on his or her own initiative, or on the application of any interested person.
(3) The Registrar may refuse an application for removal that in the Registrar’s opinion is vexatious or frivolous.

44 Alteration of register
(1) If satisfied that the alteration is necessary, the Registrar may, on his or her own initiative or on the application of an interested person, alter a registered geographical indication, or the conditions or boundaries relating to it.
(2) The Registrar may refuse an application for alteration that in the Registrar’s opinion is vexatious or frivolous.

45 Procedure for removal or alteration
(1) Before removing a registered geographical indication from the register or altering the register, the Registrar must follow the procedure prescribed by regulations made under section 55.
(2) Those regulations may include regulations for—
   (a) advertising the removal or alteration;
   (b) opposition, and determination of opposition, to the removal or alteration;
   (c) any other steps to be taken in effecting the removal or alteration.
Appeals

46 Appeals in relation to Registrar’s decisions
A person who is aggrieved by a decision of the Registrar under this Act may appeal to the Court.

47 Notice of appeal
Notice of an appeal under section 46 must be filed in the Court and served on the Registrar within 20 working days after the date on which the decision appealed against was given.

48 Hearing of appeal
(1) On an appeal, the Court must hear the Registrar and the parties.

(2) An appeal must be heard only on the materials stated by the Registrar unless a party, either in the manner prescribed or by leave of the Court, brings forward further material for the consideration of the Court.

(3) In the case of an appeal against the acceptance of an application for registration of a geographical indication, or the registration of a geographical indication,—
   (a) no further grounds are permitted by the person opposing the application or registration, other than those stated by the person opposing, except with the permission of the Court; and
   (b) if further grounds of objection are permitted, the applicant for registration may, on giving notice as prescribed in regulations made under section 55, withdraw the application without paying the costs of the person opposing.

49 Determination of appeal
In determining an appeal, the Court may—
   (a) confirm, modify, or reverse the Registrar’s decision or any part of it:
   (b) exercise any of the powers that could have been exercised by the Registrar in relation to the matter to which the appeal relates.
50 Provisions pending determination of appeal
The decision to which an appeal under this Act relates remains in full force pending the determination of the appeal unless the Court orders otherwise.

Geographical indications committees

51 When Registrar may establish geographical indications committee

Struck out (majority)

(1) The Registrar may, if the Registrar thinks fit, establish a geographical indications committee in relation to an application for the registration of a geographical indication or for the alteration of a registered geographical indication.

New (majority)

(1) The Registrar may, if the Registrar thinks fit, establish a geographical indications committee in relation to an application for 1 or more of the following:
   (a) registration of a geographical indication:
   (b) alteration of a registered geographical indication:
   (c) removal of a registered geographical indication from the register.

(2) 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.

52 Membership of committee
(1) The Registrar may at any time appoint a member of the committee.

(2) Each committee must include the following members:
   (a) the Surveyor-General (or the Surveyor-General’s representative) acting in his or her capacity as Surveyor-General:
   (b) a member of the New Zealand Geographic Board, who is not the Surveyor-General, acting in his or her capacity as a member of that board.
(3) However, it is not necessary that a person referred to in subsection (2)(a) or subsection (2)(b) be a member of the committee if the matter on which the Registrar requires advice does not relate to boundaries or place names respectively.

(4) The Registrar may appoint as members of the committee any other persons who the Registrar considers appropriate, including a representative of the wine or spirits industry in New Zealand.

(5) A member of the committee may resign office by notice in writing to the Registrar.

53 Discharge of committee or removal of member

(1) The Registrar may at any time discharge the committee.

(2) The Registrar may at any time remove a member of the committee, except the Surveyor-General, and appoint another person in his or her place.

54 Proceedings of committee

(1) Meetings of a committee must be held at the times and places as the committee or the chairperson from time to time decides.

(2) The quorum for a meeting of a committee is 3 members.

(3) Every question before a committee must be determined by a majority of the votes of the members present at the meeting concerned.

(4) The chairperson of a committee has a deliberative vote and, in the case of an equality of votes, a casting vote.

(5) Except as provided in this section and in any regulations made under this Act, and subject to any direction given by the Registrar, the committee may regulate its own procedure.

Miscellaneous

55 Regulations

The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

(a) prescribing the form of, and the requirements relating to, an application for the registration of a geographical indication.  

Applications under this Act:
(b) prescribing the procedure for dealing with an application for registration of a geographical indication:

(c) prescribing any transitional arrangements for making or dealing with an application for registration of a geographical indication:

(d) prescribing the procedure relating to the removal of a registered geographical indication from the register:

(e) prescribing the procedure relating to the alteration of a geographical indication on the register:

(f) prescribing the procedure for any hearing under this Act:

(g) prescribing time and extensions of time in respect of any matters under this Act:

(h) specifying conditions relating to 1 or more registered geographical indications:

(i) prescribing the form of, and requirements relating to, applications under this Act:

(j) prescribing the matters in respect of which fees are payable under this Act, the amounts of the fees or the methods by which they are to be assessed, and the person to whom the fees are to be paid:

(k) giving effect, for the purposes of this Act, to the terms of any international agreement:

(l) providing for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect.

55A Act does not affect unregistered geographical indication

Nothing in this Act affects a geographical indication that is not a registered geographical indication.

56 Act does not affect Wine Act 2003

Nothing in this Act affects the operation of the Wine Act 2003.
57  Act does not affect New Zealand (Australia New Zealand Food Standards Code) Food Standards 2002
Nothing in this Act affects the operation of the New Zealand (Australia New Zealand Food Standards Code) Food Standards 2002.

58  Act does not limit Fair Trading Act 1986
Nothing in this Act limits the operation of the Fair Trading Act 1986.

59  Geographical Indications Act 1994 repealed
The Geographical Indications Act 1994 is repealed.

60  Trade Marks Act 2002 amended
(1) Section 5(1) of the Trade Marks Act 2002 is amended by repealing the definitions of geographical indication, protected geographical indication, and specified goods.
(2) Section 5(1) of the Trade Marks Act 2002 is amended by inserting the following definition after the definition of register:
``registered geographical indication has the same meaning as in section 7(1) of the Geographical Indications (Wine and Spirits) Registration Act 2005”.
(3) Section 11 of the Trade Marks Act 2002 is amended by inserting the following paragraph after paragraph (a):
“(ab) are subject to any rights arising out of a registered geographical indication; and”.
(4) The Trade Marks Act 2002 is amended by repealing section 20 and substituting the following section:
``20  Trade mark that contains registered geographical indication must not be registered
“(1) The Commissioner must not register a trade mark that—

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26
“(a) contains—
   “(i) a registered geographical indication for a wine; or
   “(ii) a geographical indication in respect of which registration has been applied for in good faith under the Geographical Indications (Wine and Spirits) Registration Act 2005; and

“(b) relates to a wine that does not originate from the geographical origin to which the registered geographical indication relates.

“(2) The Commissioner must not register a trade mark that—
   “(a) contains a registered geographical indication for a spirit; and
   “(b) relates to a spirit that does not originate from the geographical origin to which the registered geographical indication relates.

“(3) In this section,—
   “spirit" has the same meaning as in section 4 of the Geographical Indications (Wine and Spirits) Registration Act 2005
   “wine" has the same meaning as in section 4 of the Geographical Indications (Wine and Spirits) Registration Act 2005.

(5) Section 88 of the Trade Marks Act 2002 is amended by repealing paragraph (c) and substituting the following paragraph:
   “(c) rights under the Geographical Indications (Wine and Spirits) Registration Act 2005.”

(6) The Trade Marks Act 2002 is amended by inserting the following section after section 98:

“98A No infringement through use of registered geographical indication
   A registered trade mark is not infringed by the use of a registered geographical indication registered under the Geographical Indications (Wine and Spirits) Registration Act 2005.”
61 Other consequential amendments

(1) Section 8 of the New Zealand Geographic Board Act 1946 is amended by inserting the following subsection after subsection (1):

“(1A) The Board also has the functions given to it by the Geographical Indications (Wine and Spirits) Registration Act 2005.”

(2) Part 2 of Schedule 1 of the Ombudsmen Act 1975 is amended by inserting the following item in its appropriate alphabetical order:

“Geographical indications committees established under the Geographical Indications (Wine and Spirits) Registration Act 2005”.

(3) Schedule 1 of the Trans-Tasman Mutual Recognition Act 1997 is amended by omitting the item “Geographical Indications Act 1994” and substituting the item “Geographical Indications (Wine and Spirits) Registration Act 2005”.

Legislative history

21 June 2005 Introduction (Bill 278–1)
13 December 2005 First reading and referral to Foreign Affairs, Defence and Trade Committee