National Farmers Federation

Submission to the Department of Foreign Affairs and Trade detailing objections concerning terms proposed by the European Union for protection as geographical indications in Australia

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NFF Member Organisations

AGFORCE

ACGC

Australian Dairy Farmers

AUSTRALIAN FOREST PRODUCTS ASSOCIATION
afpa
TREES | WOOD | PAPER

Australian Livestock Exporters' Council
ALEC

ALPA

Australian Blueberry Growers' Association

Australian Organic

AUSTRALIAN Pork

AVA
AUSTRALIAN VETERINARY ASSOCIATION

PURE BEECHWORTH HONEY
100% Pure Australian Honey

CANEGROWERS

CATTLE COUNCIL OF AUSTRALIA

COTTON AUSTRALIA

driedfruits australia

FCA
FARMERS FOR CLIMATE ACTION

Goat Industry Council of Australia inc.

GrainCorp

Grain Growers

National Farmers' Federation
Horticulture Council

NEW SOUTH WALES IRRIGATORS' COUNCIL

nsw FARMERS

NORTHERN TERRITORY CATTLEMEN'S ASSOC. NTCA

The Pastoralists' Association of West Darling

VPET
PRIMARY EMPLOYERS TASMANIA

ppsa
PRIMARY PRODUCERS SA

AGRICULTURAL EXCELLENCE & SUSTAINABILITY
RICEGROWERS' ASSOCIATION OF AUSTRALIA INC

SHEEP PRODUCERS AUSTRALIA

SoilsForLife
AN OUTCOMES AUSTRALIA PROJECT

Summerfruit AUSTRALIA

Victorian Farmers Federation

WAFARMERS

WOOLPRODUCERS AUSTRALIA

National Farmers Federation

The National Farmers' Federation (NFF) is the voice of Australian farmers.

The NFF was established in 1979 as the national peak body representing farmers and more broadly, agriculture across Australia. The NFF's membership comprises all of Australia's major agricultural commodities across the breadth and the length of the supply chain.

Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF represents Australian agriculture on national and foreign policy issues including workplace relations, trade and natural resource management. Our members complement this work through the delivery of direct 'grass roots' member services as well as state-based policy and commodity-specific interests.

Key Points

- The National Farmers' Federation (NFF) is opposed to the Australian Government agreeing to extend protection for geographical indications (GIs) beyond our existing system as requested by the European Union (EU).
- The NFF proposes that Australia's existing certification trademark system be recognised in an Australia-EU FTA as meeting EU requests that Australia provide for the protection of EU GIs.
- The NFF is concerned that the framing of the objections process to conform to EU requirements has restricted the scope of objections presented and brings into question the legitimacy of this process.
- In order to ensure the impact of any changes to intellectual property laws are well understood by industry and the general public, the NFF requests the Australian Government initiate a Parliamentary inquiry into the EU's request to extend protection for geographical indications before negotiations are concluded.
- The NFF considers that agreeing to extend protection for EU GIs, as presented in the EU proposed text and list of GIs, will harm Australian consumers by:
    - Reducing consumer choice by reducing the availability of well-known products;
    - Reducing product competition and increasing the prices of products that use terms protected by GIs;
    - Creating consumer confusion regarding otherwise well-known products; and
    - Imposing costs on Australian taxpayers with the Australian Government responsible for establishing and maintaining a system that extends protection for EU GIs.
- The NFF considers that agreeing to establish a system to protect EU GIs as presented in the EU proposed text and list of GIs will also harm Australian producers by:
    - Causing producers to lose revenue by denying them the ability to market product under well-known product names;
    - Imposing new costs associated with the rebranding and marketing of products, consumer education, the registering of rebranded products, and securing health and other government certification both in Australia and in international markets;
    - Contributing to import substitution;
    - Reducing revenue from export markets when Australian exporters are no longer able to sell product under well-known names; and

- Reducing access to markets secured through tariff and quota arrangements tied to specific tariff line numbers under trade agreements.

- The NFF is of the strong view that extending protection for EU GIs in Australia will cost Australian businesses and that the Australian Government will be responsible for imposing commercial damage on Australian producers who use these terms should they agree to the EU's request.

- The NFF considers extension of protection for GIs as requested by the EU as poor policy that is not in the national interest. It will:

    - Create a system that will duplicate Australia's existing certification trademark system under which EU GIs have already secured protection;

    - Lock in protection for EU GIs with no scope for Australian authorities to review or remove terms from protection;

    - Impose strictures on product innovation and marketing;

    - Undermine existing trade mark law and devalue trademark rights;

    - Impose EU bureaucratic and legal disputes over GIs on Australia; and

    - Create a seat for EU officials at our legislative and regulatory table to ensure EU commercial interests are maintained at the expense of Australian commercial interest.

Introduction

The National Farmers' Federation (NFF) is opposed to the Australian Government agreeing to extend protection for geographical indications (GIs) beyond our existing system as requested by the European Union (EU) and as a condition of concluding negotiations for a free trade agreement (FTA).

The NFF's objections to extending protection for GIs as requested by the EU are grouped under three headings:

1. Harm to consumers
2. Harm to producers
3. Poor policy

The NFF is also concerned with the objections process and parameters which limit and bias stakeholder contributions. For this reason, our objections extend beyond the four criteria identified by the Department of Foreign Affairs and Trade (DFAT) and the parameters defined by the EU on which objections can be based (see Box 1).

The NFF considers that the framing of the objections process to conform to EU requirements will have restricted the scope of objections presented and brings into question the legitimacy of this process.

We are concerned that stakeholders have been asked to outline their objections to the protection of names as well as the protection of translations, transliterations and transcriptions of these names, but are not provided with translations, transliterations or transcriptions for which the EU is seeking protection. It is not reasonable to expect stakeholders to object to protection being granted to terms which are not listed.

Nor are stakeholders provided with guidance on what other indications or 'other practices' might be considered false or misleading in relation to the list of GI's the EU is asking Australia to protect. The objections raised through this process, as a result, can only be incomplete.

The NFF is also concerned that stakeholders only had three months in which to identify and raise their objections. The concept of GIs in not well known in Australia. Many processors and most Australian consumers are unaware of how changes to our intellectual property rules will impact on them. The low number of stakeholders attending information sessions on the objections process reflects the general lack of awareness of whether and how changes might impact on Australian consumers and producers. A more realistic timeframe for enabling an adequate airing of the impact of what the EU is asking of Australia is at least 12 months.

In order to ensure the impact of any changes to intellectual property laws are well understood by industry and the general public, the NFF requests the Australian Government initiate a Parliamentary inquiry into the EU's request to extend protection for geographical indications before negotiations are concluded.

The NFF proposes that Australia's existing certification trademark system be recognised in an Australia-EU FTA as meeting EU requests that Australia provide for the protection of EU GIs.

BOX 1.

On what basis can you object to an EU GI name?

You should base your objections on at least one of the following grounds:

- the name is used in Australia as the common name for the relevant good;
- the name is used in Australia as the name of a plant variety or an animal breed;
- the name is identical to, or likely to cause confusion with, a trade mark or GI that is registered or the subject of a pending application in Australia;
- the name is identical to, or likely to cause confusion with, an unregistered trade mark or GI that has acquired rights through use in Australia; or
- the name contains or consists of scandalous matter.

Level of GI protection requested by the EU

The EU has requested that EU GI names be protected against:
1. any direct or indirect commercial use of a GI name:
   a. for comparable products, or
   b. in so far as such use exploits the reputation of the GI, including when that product is used as an ingredient;
2. any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name 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;
3. any other false or misleading indication as to the origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin, including when those products are used as an ingredient;
4. any other practice liable to mislead the consumer as to the true origin of the product.

1. Harm to Consumers

The NFF considers that agreeing to extend protection for EU GIs, as presented in the EU proposed text and list of GIs, will harm Australian consumers.

A. Agreeing to the EU request would reduce consumer choice:

Restricting the use of common terms as proposed by the EU would reduce the availability of product using those terms. For example, fetta is a common cheese term in Australia. There are over 20 different varieties of fetta produced and sold in Australian supermarkets and other retail outlets. These include Danish, Persian, Bulgarian and Greek fetta, and a range of marinated fettas. Were Australian producers no longer able to use the term fetta to market their product, retail outlets would only have access to EU-labelled fetta to replace the multiple brands and varieties of fetta sold in Australia today. This would significantly restrict the choices of Australian consumers seeking to purchase this product.

A number of the terms listed for protection by the EU are, or are translations of, common, food, plant or animal names in Australia as detailed in submissions to this objections process. A number are also Codex standard terms or other internationally recognised common terms. These include: bacon, ham, pumpkin, seed, olive, oil, cheese, camembert, emmental, feta, stilton, gouda, scotch, bleu, queso, brie, rose, kalamata, beer, sausage, garlic, saffron, gruyere, paprika, peppers, wine, vinegar, butter, west, country, charolais, beef, duck, lentil, mustard, apple, pear, prune, thyme, mandarin, cabbage, lamb, danbo, edam, havarti, mozzarella, tilsit, grappa, cheddar, goat, provolone, pecorino, parmesan, buffalo, kiwi, honey, and salmon. In these instances, the limitations imposed on consumer choice by extending GI protection would be significant. The NFF contends, however, that even for those terms that are not well known in Australia, the impact of restricting use of those terms, by definition, will result in restricting consumer choice now and/or in the future.

While we note the EU has said it would not seek protection for parts of EU GI names, including some of the terms listed above, this commitment is qualified in that these terms cannot 'be used in a way that may deceive or mislead consumers as to the true origin or quality of the product'. Without legal clarity around what this qualification means and how it would be applied, Australian producers and consumers have no certainty that use of single terms will not be prosecuted by the Australian Government on behalf of EU GI rights-holders.

B. Agreeing to the EU request would increase prices:

By reducing the choice of products available to Australian consumers, agreeing to the EU request will further harm consumers by increasing the price of products using those protected terms.

The purpose of the EU's GI policy is to restrict the use of terms to a select group of European producers in order to enable them to maximise returns by restricting competition and enabling those European producers to charge oligopoly prices.

On 6 November 2019, at the conclusion of EU negotiations with China to conclude an agreement to protect European GIs, EU Agriculture and Rural Development Commissioner, Phil Hogan noted the importance of the agreement for its impact on price:

> "European Geographical Indication products are renowned across the world for their quality. **Consumers are willing to pay a higher price**, trusting the origin and authenticity of these products, while **further rewarding farmers**."

By restricting the use of common terms, the Australian Government would be reducing competition and enabling oligopoly pricing for a range of well-known Australian products.

C. Agreeing to the EU request would cause consumer confusion:

Were Australia to protect EU GIs as requested, implementation of the new arrangements would lead to an extended period of confusion for Australian consumers simply seeking to purchase well known products. For example, scotch fillet is a highly valued and well known product. Were Australia to agree to restrict use of the term 'Scotch beef' to product from Scotland only,

it is likely Australian consumers would no longer be able to find product listed as scotch fillet on store shelves.

The example of Scotch Beef highlights the further confusion that will be caused by the impact of Brexit and whether the EU will continue to seek protection for terms from the United Kingdom.

D. Agreeing to the EU request would impose significant costs on tax-payer funds:

The EU is asking the Australian Government to establish a new system to protect EU GIs. Specifically, the EU has asked that Australia set up a system that includes arrangements detailed in Box 2. In sum, the system must include:

- A register of protected terms;
- An administrative process for verifying that protected terms meet criteria regarding quality, reputation or other characteristic associated with a geographical location;
- A process for confirming products meet product 'specifications';
- A process for confirming process 'specifications';
- Enforcement processes by an administrative body;
- Legal provisions for establishing GI rights;
- Processes for registering GIs;
- Rules for allowing derogations from trademark rights;
- Rules that allow anyone to claim GI rights as long as they meet process and product specifications within the defined geographical area; and,
- A process that allows for objections to GI applications.

Establishing these arrangements as requested would require the Australian Parliament to agree to new legislation.

The cost of establishing this new system is difficult to predict. Based on the cost of legislating, establishing and maintaining the Geographical Indications Committee for protecting wine terms back in 1993, however, it is likely to cost Australian tax payers several million dollars.

The EU is also asking the Australian Government to fund enforcement of EU GIs (See point 5 in Box 2). This means where the EU or a European producer considers an Australian producer is using a GI in a way inconsistent with the terms of the arrangements established by the trade agreement, the Australian Government must take forward, and pay the costs for prosecuting, a case against the Australian producer.

> EU Proposed Text Article X.37: Enforcement of protection:
>
> *The Parties shall enforce the protection provided for in Articles X.32 (Procedures) to X.36 (Relationship to Trademarks) by appropriate administrative and judicial steps to prevent or stop the unlawful use of protected designations of origin and protected geographical indications. They shall also enforce such protection at the request of an interested party.*

On top of this, the EU is asking that the Australian Government not charge EU producers for registering a GI in Australia.

EU Proposed Text: Article X. 38 8. *The Parties agree that <u>there shall be no fees related to the protection of geographical indications under this Agreement</u>.*

Australia's current certification trademark system for protecting food brands requires producers to both pay to have their trademark registered and to enforce their private rights without calling on tax payer funds. Were Australia to agree to this request, the full cost of establishing and maintaining a system for protecting EU GIs would fall on the Australian tax payer.

BOX 2.

ELEMENTS FOR REGISTRATION AND CONTROL OF GEOGRAPHICAL INDICATIONS AS REFERRED TO IN PARAGRAPHS 1 AND 2 OF ARTICLE X.31 (PROCEDURES)

1. A register listing geographical indications protected in the territory;

2. An administrative process verifying that geographical indications identify a good as originating in a territory, region or locality of one of the Parties, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

3. A requirement that a registered name shall correspond to a specific product or products for which a product specification is laid down, which can only be amended by due administrative process;

4. Control provisions applying to production;

5. Enforcement of the protection of registered names by appropriate administrative action by the public authorities;

6. Legal provisions laying down that a registered name may be used by any operator marketing products conforming to the corresponding specification;

7. Provisions concerning the registration, which may include refusal of registration, of terms homonymous or partly homonymous with registered terms, terms customary in common language as the common name for goods, terms comprising or including the names of plant varieties and animal breeds. Such provisions shall take into account the legitimate interests of all parties concerned;

8. Rules concerning relation between geographical indications and trademarks providing for a limited exception to the rights conferred under trademark law to the effect that the existence of a prior trademark shall not be a reason to prevent the registration and use of a name as a registered geographical indication except where by reason of the trademark's renown and the length of time it has been used, consumers would be misled by the registration and use of the geographical indication on products not covered by the trademark;

9. A right for any producer established in the area who submits to the system of controls to produce the product labelled with the protected name provided he complies with the product specifications;

10. An opposition procedure that allows the legitimate interests of prior users of names, whether those names are protected as a form of intellectual property or not, to be taken into account.

2. Harm to producers

The NFF considers that agreeing to establish a system to protect EU GIs as presented in the EU proposed text and list of GIs will also harm Australian producers.

A. Agreeing to the EU request would reduce the income of Australian producers:

Restrictions on the ability of Australian food producers to market their products using well known terms would reduce returns otherwise achieved via sales of those products. This loss of revenue would reverberate through each industry group.

For dairy processors, those who will be most impacted by any moves to extend protection for EU GIs, the commercial damage done by lost revenue would come on top of significant commercial harm the industry is already managing as a result of an extended period of restructuring.

Further reduced profitability for dairy processors will undoubtedly impact on Australia's dairy farmers. Industry restructuring, drought, and the pricing policies of our major supermarkets have already driven many dairy farmers out of business. The damage to the short and long-term viability of dairying in Australia would be exacerbated were the Australian Government to agree to the EU request to protect EU diary GIs.

B. Agreeing to the EU request would impose additional costs on Australian producers;

In addition to the loss of revenue caused by losing access to product terms, Australian producers would have to bear the cost of transitioning to a new system. This includes the costs of new branding and marketing of products, the cost of consumer education to explain the new term for the same product, the costs of registering new products and securing health and other government certification to sell new products. These are not trivial costs.

Transitioning to a new system would also create significant uncertainty as to how rebranded product might sell which would further impact on future planning and investment decisions.

C. Agreeing to the EU request is likely to lead to import substitution:

Australian food producers are also likely to suffer from the inevitable import substitution that will occur when they are unable to market their products using well known terms. Australian consumers will continue to seek out foods labelled with common terms but will only have access to EU products using these terms. This will inevitably lead to Australians purchasing European food products in place of the Australian equivalent products they would normally have purchased.

D. Agreeing to the EU request will hurt Australian exports:

The Australian agriculture sector exports two-thirds of what it produces. Australia's relatively small domestic population, and constrained retail markets means the viability of Australian farming businesses relies on exports. Forcing exporters to change branding for products to protect EU GIs will impact on international sales as much as, if not more than, domestic sales. It will undo years of work developing export markets. This is particularly the case for dairy exports to Asian markets.

The costs of new branding and marketing of products, consumer education, registering new products and securing health and other government certification to sell new products that must be done in the Australian domestic market will also be required in existing export markets where Australian products that use these terms are sold. These processes are often more difficult and more costly in our export markets, than in Australia.

E. Agreeing to the EU request would remove market access under existing tariff schedules:

A number of tariff lines identify specific products by name, particularly dairy products. The access Australian exports have to a number of markets is determined by the tariff rates and quotas tied to those specific tariff lines. These access conditions are set out in a number of Australia's trade agreements, including that with the United States, and in the EU's WTO tariff schedules. Were the terms used to describe those products changed, Australian exporters would lose the access secured under those trade agreements.

Australia too would no longer be able to import products using terms protected by EU GIs requiring us to renegotiate relevant parts of existing trade agreements. Walking back from concessions made in trade agreements will come at a cost which is likely to fall on Australian exporters.

There should be no confusion on this point. Extending protection for EU GIs in Australia will cost Australian businesses. The quantum of the damage is reflected in some submissions to this objections process. Calculating the exact damage, however, is impossible without knowing exactly which terms, including their translations, transcriptions and transliterations, will be protected, and under what arrangements. It is

clear, however, that the Australian Government will be responsible for imposing commercial damage on Australian producers who use these terms should they agree to the EU's request.

3. Poor policy

The NFF considers extension of protection for GIs as requested by the EU as extremely poor policy that is not in the national interest. It would saddle Australia with an unnecessary, and administratively burdensome and costly bureaucratic process for protecting EU GIs. It would introduce to the Australian legal system the contestation and endless complications that daily plague implementation of the EU's GI system.

A. Agreeing to the EU request would lead to unnecessary administrative duplication:

Agreeing to the EU request to extend protection for GIs would duplicate Australia's existing system for protecting brands. European food exporters are already securing protection for their brands in Australia under our certification trademark system. Parma Ham, Pecorino Toscana, Gorgonzola, Aceto Balsamico di Modena, Taddichio Rosso di Treviso, Parmigiano Reggiano, Stilton, Grana Padano, Mozzarella di Buffalo Campagna and Roquefort are already protected in Australia under our trade mark system. There is no need to introduce and pay for the setting up and maintenance of a new system. This would be a clear case of 'bureaucracy gone mad'.

B. Australia's certification system supports product innovation and renewal:

Productivity growth and innovation are the main sources of prosperity across the economy. Agriculture is no exception whether that be on farm or in the downstream development and marketing of food and agricultural products. Competition is a key driver of innovation. In agriculture this driver is relentless. Mechanisms that enable the benefits of innovation to be captured are critical. Australia's intellectual property rights laws (patents and trademarks etc) give innovators the opportunity to capture the value arising from their creations, whether they are products or processes. The Australian government invests in R&D across the agricultural sector and the wider economy to encourage innovation and economic growth.

The EU's system of GI's is designed to create value for the GI. This value is 'economic rent'. It does not arise from innovation. The 'economic rent' exists because others are prevented from using a term linked to a geographic area that already exists. Linking a product or, more concerning, a production process, to a geographical area that already exits reduces competition and stifles innovation.

It is important that the obligations in any FTA agreed between Australia and the EU encourages innovation and competition, rather than restrict it. The terms of the FTA should also ensure that the interests of future firms and innovators, and their inventions, products and processes that may not yet exist are protected. If they do not yet exist, they cannot participate in the

current review or lodge objections. It is the role of government to look after their interests by creating a regulatory environment that encourages new firms and entrants and promotes innovation and productivity.

The GI system proposed by the EU would stifle future innovation by creating permanent protection for GIs. Australia's trademark system requires marks to be renewed every 10 years but there is no cap on how many times a trade mark can be renewed. This ensures trademarks that are no longer used can be made available for others to use in future. It facilitates product innovation and renewal.

Introducing the EU system for protecting GIs would lock in protection. The terms proposed by the EU removes the ability of Australian authorities to review and or remove GIs from protection.

> Proposed Text: Article X.38
>
> *6. The protection of geographical indications protected under this Agreement may only be cancelled by the Party in which the product originates.*
>
> *7. A product specification referred to in this Sub-Section shall be that approved, including any amendments also approved, by the authorities of the Party in the territory from which the product originates*.

The EU is not only asking Australia to stop using specific terms, it is also asking that we do not allow Australian producers from using interpretations of terms, translations, certain colours, labels, texts or flags that might evoke a GI. This could include a Greek flag on a cheese brand, or translations of French or Italian words. The scope of what the EU is asking goes far beyond just the terms listed. It has the potential to impose additional strictures on product marketing and innovation on a broad scale.

C. Agreeing to the EU request would be inconsistent with Australia's trademark law and undermine existing trademark rights:

The EU is asking Australia to allow GI protection to co-exist with trade mark protection. This means anyone holding a trademark that gives them exclusive use of the trademarked term would lose exclusive use where a European GI is protected under the terms of the A-EU FTA. The value of holding the trademark would be significantly diminished were this to happen, and impose commercial damage on holders of the relevant Australian trademarks.

> Proposed Text: Article X.36
>
> *5. Without prejudice to paragraph 5 of the present Article, the Parties shall protect geographical indications also where a prior trademark exists. A prior trademark shall mean a trademark the use of which contravenes paragraph 1 of Article X.34 (Protection of Geographical Indications) which has been applied for, registered or established by use, if that possibility is provided for by the legislation concerned, in good faith in the territory of one Party before the date on which the application for protection of the geographical indication is submitted by the other Party under this Agreement.*

6. Such trademark may continue to be used and renewed for that product notwithstanding the protection of the geographical indication, provided that no grounds for the trademark's invalidity or revocation exist in the legislation on trademarks of the Parties. In such cases, the use of the protected geographical indication shall be permitted as well as the use of the relevant trademarks.

In essence, what the EU is proposing is that the Australian Government implement GI laws that override and undermine Australian domestic trademark law in order to provide a commercial advantage to EU food producers.

D. Agreeing to the EU request would import the EU's GI problems to Australia:

GI policy in the EU is a source of constant disagreement between EU member states, regions, and producers. Hours of negotiation, academic discussion, legal proceedings, legislative and parliamentary debate have been spent on whether fetta is Danish or Greek, Gruyere is French or Swiss, whether milk from other regions disqualifies a product from protection, and whether a term is common. A quote from the **World Trademark Review** on 28 October 2019 throws some light on what Australia would be inheriting.

Last week, the European Commission entered the name 'Havarti' onto the register of protected designations of origin and protected geographical indications (PGI), the PGI related to a cheese produced in Denmark. The ensuing backlash serves as a microcosm of the emotive political discourse that surrounds this form of IP protection.

In reaching its decision to protect Havarti as a PGI, the Commission weighed up opposition from a number of countries and dairy associations. Among the complaints were the claims that 'Havarti' does not possess a specific quality, reputation or other characteristics that are attributable to the geographical origin, and that the registration mislead consumers as to the true identity of the product in the light of the reputation of an existing trademark. Additionally, it was argued registration would jeopardise the existence of identical name, trademarks and products that have been legally on the market for at least five years.

Millions of Euros are spent defending positions over years and in some cases decades. Specialist GI legal firms and advisory services are found across the EU. Agreeing to the EU's request to extend GI protection would saddle Australia with these problems. Australia has an effective system for protecting food terms. We do not need to import EU bureaucratic processes and endless disputes over GIs.

E. Agreeing to the EU request would provide no certainty for producers or consumers:

The history of EU adherence to the Agreement between Australia and the European Community on Trade in Wine demonstrates that even if we were to agree to protect some terms on the EU's proposed list of spirits and foodstuffs, the EU is likely to seek to add new terms, including by ignoring earlier agreements on the criteria for granting protection. EU attempts to

protect the grape variety 'prosecco' as an EU GI is an example of the EU continuing to push its commercial interests at the cost of Australian producers by ignoring earlier rulings and agreements on the status of prosecco both in Europe and Australia.

The NFF also notes the EU is currently reviewing its procedures for protecting GIs. According to the EU's proposed FTA text Article X.38 (7), Australia would have to agree to any new criteria the EU agrees on for providing protection for a GI.

Agreeing to the EU request to extend protection to spirits and foodstuffs would enable ongoing EU unilateral actions to prosecute their commercial interests.

F. The EU is seeking to dictate Australian policy and legislation:

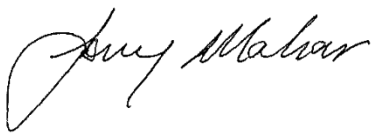
The EU's proposed GI text rests authority for amending or removing a GI from protection with the EU. This is detailed above in Article X.38 (6) and (7). It is also asking Australia to agree to establish a committee that would oversee Australia's implementation of our commitments to protect EU GIs. In effect, the EU is asking for a seat at our legislative and regulatory table to ensure EU commercial interests are maintained at the expense of Australian commercial interest.

As articulated above, the NFF objects to the Australian Government agreeing to introduce a system for protecting EU GIs as requested by the EU. We consider any such system will impose harm on Australian consumers, producers and saddle Australia with an unnecessary and burdensome system that exists to protect European commercial interests at the expense of Australian interests.

We call on the Government to initiate a Parliamentary inquiry into the impact of agreeing to what the EU is asking of Australia before negotiations conclude.

We look forward to continuing to discuss the issues raised in this submission with Australia's negotiators and Minister Birmingham in order to sensibly address EU demands and achieve an ambitious A-EU FTA.

Please do not hesitate to contact Pru Gordon, General Manager, Trade and Economics (pgordon@nff.org.au or 0404 670 434) should you have any questions.



TONY MAHAR
CEO

ANNEX 1: Text Proposal tabled by the European Union

Geographical Indications

Article X.31

Scope

[*Purpose of the Article: delimitation of scope for product category and origin*]

This Sub-Section applies to the recognition and protection of geographical indications originating in the territories of the Parties.

Geographical indications of a Party which are to be protected by the other Party shall only be subject to this Sub-Section if covered by the scope of the legislation referred to in Article X.32 (Procedures).

Article X.32

Procedures

[*Purpose of the Article: confirmation of compatibility of legislation with common scope of the Parties' legislation, registration of existing GIs after prior examination*]

1. Having examined the legislation of [Australia] listed in Section A of Annex [XX]-A, the European Union concludes that this legislation meets the elements laid down in Section B of Annex [XX]-A [those elements that are deemed compatible].

2. Having examined the European Union legislation listed in Section A of Annex [XX]-A, [Australia] concludes that this legislation meets the elements laid down in Section B of Annex [XX]-A.

3. Following the completion of an opposition procedure in accordance with the criteria set out in Annex [XX]-B and an examination of the geographical indications of the European Union listed in Annex [XX]-C, which have been registered by the European Union under the legislation referred to in paragraph 2, ... shall protect those geographical indications according to the level of protection laid down in this Sub-Section.

4. Following the completion of an opposition procedure in accordance with the criteria set out in Annex [XX]-B and an examination of the geographical indications of [Australia] listed in Annex [XX]-C, which have been registered by [Australia] under the legislation referred to in paragraph 1, the European Union shall protect those geographical indications according to the level of protection laid down in this Sub-Section.

Article X.33

Amendment of the list of Geographical Indications

[*Purpose of the Article: addition to each other's registers of new GIs after examination and objection*]

The Parties agree on the possibility to amend the list of geographical indications to be protected in Annex [XX]-C in accordance with the procedure set out in Article X.65 (Institutional Provisions).

New geographical indications shall be added following the completion of the opposition procedure and their examination as referred to in paragraphs 3 or 4 of Article X.32 (Procedures).

Article X.34

Protection of Geographical Indications

[*Purpose of the Article: setting of high protection level. Treatment of GIs that lost protection in country of origin and person's names*]

1. The geographical indications listed in Annex [XX]-C, including ones added in application of article X.33, shall be protected against:

(a) any direct or indirect commercial use of a protected name:

i) for comparable products not compliant with the product specification of the protected name, or

ii) in so far as such use exploits the reputation of a geographical indication, including when that product are used as an ingredient;

(a) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name 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;

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

(c) any other practice liable to mislead the consumer as to the true origin of the product.

1. Geographical indications listed in Annex [XX]-C, including ones added in application of article X.33, shall not become generic in the territories of the Parties.

2. Nothing in this Agreement shall oblige a Party to protect a geographical indication of the other Party which is not, or ceases to be protected in the territory of origin. Each Party shall notify the other Party if a geographical indication ceases to be protected in the territory of that Party of origin. Such notification shall take place in accordance with procedures laid down in Article X.65 (Institutional Provisions).

3. Nothing in this Agreement shall prejudice the right of any person to use, in the course of trade, that person's name of that person's predecessor in business, except where such name is used in such a manner to mislead the public.

Article X.35

Right of use of Geographical Indications

[*Purpose of the Article: free use of GIs by compliant users, avoidance of administrative burden*]

1. A name protected under this Agreement may be used by any operator marketing a product which conforms to the corresponding specification.

2. Once a geographical indication is protected under this Agreement, the use of such protected name shall not be subject to any registration of users or further charges.

Article X.36

Relationship to trademarks

1. The Parties shall, where a geographical indication is protected under this Sub-Section, refuse to register a trademark the use of which would contravene paragraph 1 of Article X.34 (Protection of Geographical Indications), provided an application to register the trademark is submitted after the date of submission of the application for protection of the geographical indication in the territory of the Party concerned.

2. Trademarks registered in breach of the first subparagraph shall be invalidated.

3. For geographical indications referred to in Article X.32 (Procedures), the date of submission of the application for protection referred to in paragraph 1 shall be the date of entry into force of this Agreement.

4. For geographical indications referred to in Article X.33 (Amendment of the List of Geographical Indications), the date of submission of the application for protection referred to in paragraph 1 shall be the date of the transmission of a request to the other Party to protect a geographical indication.

5. Without prejudice to paragraph 5 of the present Article, the Parties shall protect geographical indications also where a prior trademark exists. A prior trademark shall mean a trademark the use of which contravenes paragraph 1 of Article X.34 (Protection of Geographical Indications) which has been applied for, registered or established by use, if that possibility is provided for by the legislation concerned, in good faith in the territory of one Party before the date on which the application for protection of the geographical indication is submitted by the other Party under this Agreement.

6. Such trademark may continue to be used and renewed for that product notwithstanding the protection of the geographical indication, provided that no grounds for the trademark's invalidity or revocation exist in the legislation on trademarks of the Parties. In such cases, the use of the protected geographical indication shall be permitted as well as the use of the relevant trademarks.

7. A Party shall not be required to protect a name as a geographical indication under this Sub Section if, in light of a trademark's reputation and renown and the length of time it has been used, that name is liable to mislead the consumer as to the true identity of the product.

Article X.37

Enforcement of protection

[*Purpose of the Article: own initiative protection by authorities*]

The Parties shall enforce the protection provided for in Articles X.32 (Procedures) to X.36 (Relationship to Trademarks) by appropriate administrative and judicial steps to prevent or stop the unlawful use of protected designations of origin and protected geographical indications. They shall also enforce such protection at the request of an interested party.

Article X.38

General rules

1. This Agreement shall apply without prejudice to the rights and obligations of the Parties under the WTO Agreement.

2. A Party shall not be required to protect a name as a geographical indication under this Sub Section if that name conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product.

3. A homonymous name which misleads consumers into believing that a product comes from another territory shall not be protected even if the name is accurate as far as the actual territory, region or place of origin of the product in question is concerned. Without prejudice to Article 23 of the TRIPS Agreement, the Parties shall mutually decide the practical conditions of use under which wholly or partially homonymous geographical indications will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

4. When a Party, in the context of bilateral negotiations with a third party, proposes to protect a geographical indication of that third party which is wholly or partially homonymous with a geographical indication of the other Party protected under this Sub-Section, it shall inform the other Party thereof and give it an opportunity to comment before the third party's geographical indication becomes protected.

5. Any matter arising from product specifications of protected geographical indications shall be dealt with in the [joint working body defined by the Agreement] referred to in Article X.65 (Institutional Provisions).

6. The protection of geographical indications protected under this Agreement may only be cancelled by the Party in which the product originates.

7. A product specification referred to in this Sub-Section shall be that approved, including any amendments also approved, by the authorities of the Party in the territory from which the product originates.

8. The Parties agree that there shall be no fees related to the protection of geographical indications under this Agreement.

[*Without prejudice to the placement of the relevant provisions relating to Article X.65 (Institutional Provisions), responsibilities as regards geographical indications of the joint working body defined by the Agreement are as follows*:

X. The [joint working body defined by the Agreement] shall also see to the proper functioning of this Agreement and may consider any matter related to its implementation and operation. In particular, it shall be responsible for:

(a) amending Section A of Annex [XX]-A as regards the references to the law applicable in the Parties;

(b) amending Section B of Annex [XX]-A as regards the elements for registration and control of geographical indications;

(c) amending Annex [XX]-B as regards the criteria to be included in the objection procedure; and

Article X…

[Placeholder : Existing wine agreement

The negotiations should address the relationship between the Agreement and the existing EU Australia Wine Agreement]

ANNEX [XX]-A

SECTION A

LEGISLATION OF THE PARTIES

Legislation of ...…

(a) XX

(b) XX

Legislation of the EU:

(a) Regulation (EU) No 1151/20126 [OJ L 343, 14.12.2012, p. 1.] of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs and its implementing Acts;

(b) Regulation (EU) No 1308/20137 [OJ L 347, 20.12.2013, p.671.] of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), in particular Articles 92 to 111 on designations of origin and geographical indications, and its implementing Acts;

(c) Regulation (EC) No 110/20088 [OJ L 39, 13.2.2008, p. 16.] of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and protection of geographical indications of spirit drinks, and its implementing Acts;

(d) Regulation (EU) No 251/20149 [OJ L 84, 20.3.2014, p. 14.] of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, and its implementing Acts

SECTION B

ELEMENTS FOR REGISTRATION AND CONTROL OF GEOGRAPHICAL INDICATIONS AS REFERRED TO IN PARAGRAPHS 1 AND 2 OF ARTICLE X.31 (PROCEDURES)

1. A register listing geographical indications protected in the territory;

2. An administrative process verifying that geographical indications identify a good as originating in a territory, region or locality of one of the Parties, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

3. A requirement that a registered name shall correspond to a specific product or products for which a product specification is laid down, which can only be amended by due administrative process;

4. Control provisions applying to production;

5. Enforcement of the protection of registered names by appropriate administrative action by the public authorities;

6. Legal provisions laying down that a registered name may be used by any operator marketing products conforming to the corresponding specification;

7. Provisions concerning the registration, which may include refusal of registration, of terms homonymous or partly homonymous with registered terms, terms customary in common language as the common name for goods, terms comprising or including the names of plant varieties and animal breeds. Such provisions shall take into account the legitimate interests of all parties concerned;

8. Rules concerning relation between geographical indications and trademarks providing for a limited exception to the rights conferred under trademark law to the effect that the existence of a prior trademark shall not be a reason to prevent the registration and use of a name as a registered geographical indication except where by reason of the trademark's renown and the length of time it has been used, consumers would be misled by the registration and use of the geographical indication on products not covered by the trademark;

9. A right for any producer established in the area who submits to the system of controls to produce the product labelled with the protected name provided he complies with the product specifications;

10. An opposition procedure that allows the legitimate interests of prior users of names, whether those names are protected as a form of intellectual property or not, to be taken into account.

ANNEX [XX]-B

CRITERIA TO BE INCLUDED IN THE OPPOSITION PROCEDURE AS REFERRED TO IN PARAGRAPHS 3 AND 4 OF ARTICLE X.31 (PROCEDURES)

1. List of name(s) with the corresponding transcription into Latin or [script of the third country concerned] characters;

2. The product type;

3. An invitation:

(a) in the case of the European Union, to any natural or legal persons except those established or resident in ...,

(b) in the case of ..., to any natural or legal persons except those established or resident in a Member State of the European Union,

(c) having a legitimate interest, to submit objections to such protection by lodging a duly substantiated statement;

1. Statements of opposition must reach the European Commission or ... within 2 months from the date of the publication of the information notice;

2. Statements of opposition shall be admissible only if they are received within the time limit set out above and if they show that the protection of the name proposed would:

(a) conflict with the name of a plant variety, including a wine grape variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product;

(b) be a homonymous name which misleads the consumer into believing that products come from another territory;

(c) in the light of a trademark's reputation and renown and the length of time it has been used, be liable to mislead the consumer as to the true identity of the product;

(d) jeopardise the existence of an entirely or partly identical name or of a trademark or the existence of products which have been legally on the market for at least five years preceding the date of the publication of this notice;

(e) or if they can give details which indicate that the name, for which protection and registration is considered, is generic.

3. The criteria referred to above shall be evaluated in relation to the territory of (the European Union, which in the case of intellectual property rights refers only to the territory or territories where the said rights are protected) / (of ...).

ANNEX [XX]-C

GEOGRAPHICAL INDICATIONS FOR PRODUCTS AS REFERRED TO IN PARAGRAPHS 3 AND 4 OF ARTICLE X.31 (PROCEDURES)

SECTION A

GEOGRAPHICAL INDICATIONS FOR PRODUCTS OF THE EUROPEAN UNION TO BE PROTECTED IN ...

- XXX

- XXX

SECTION B

GEOGRAPHICAL INDICATIONS FOR PRODUCTS OF ... TO BE PROTECTED IN THE EUROPEAN UNION

- XXX

- XXX