National Farmers' Federation

Submission to the Government of New Zealand Regarding the Expansion of the Protection of Geographical Indications under the EU-NZ Free Trade Agreement

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NFF Member Organisations

AGFORCE

Australian Dairy Farmers

AUSTRALIAN FOREST PRODUCTS ASSOCIATION
afpa
TREES | WOOD | PAPER

Australian Livestock Exporters' Council ALEC

ALPA

AUSTRALIAN Pork

AVA
AUSTRALIAN VETERINARY ASSOCIATION

PURE BEECHWORTH HONEY
100% Pure Australian Honey

CANEGROWERS

CATTLE COUNCIL OF AUSTRALIA

COTTON AUSTRALIA

Egg Farmers of Australia

FCA
FARMERS FOR CLIMATE ACTION

Goat Industry Council of Australia inc.

GrainCorp

Australian Blueberry Growers' Association

National Farmers' Federation
Horticulture Council

NEW SOUTH WALES IRRIGATORS' COUNCIL

nsw FARMERS

Grain Growers

Australian Organic

The Pastoralists' Association of West Darling

VPET
PRIMARY EMPLOYERS TASMANIA

ppsa
PRIMARY PRODUCERS SA

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SHEEP PRODUCERS AUSTRALIA

SoilsForLife
AN OUTCOMES AUSTRALIA PROJECT

WAFARMERS

RICEGROWERS' ASSOCIATION OF AUSTRALIA INC

Victorian Farmers Federation

WOOLPRODUCERS AUSTRALIA

ACGC

Summerfruit AUSTRALIA

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.

The National Farmers' Federation thanks the New Zealand Government for the opportunity to provide a submission on the list of names the European Union has asked to be protected as geographical indications (GIs) in New Zealand.

This submission addresses four areas of concern regarding the proposal to extend New Zealand's system for protecting GIs and on which our objections to the extension of GI protection are based. These are:

1) The close economic and trade ties that bind Australia and New Zealand that make any changes to New Zealand's system for protecting GIs damaging to Australian exporters and consumers;
2) Concerns with the extension of GI protection generally;
3) Specific concerns with the list provided by the EU, and;
4) Objections to the use of specific terms.

1. New Zealand-Australia Economic Ties

New Zealand and Australia share a long history of close bonds across diverse fields. We have one of the closest economic relationships of any two sovereign countries, based on the Australia-New Zealand Common Economic Relationship Trade Agreement.

The Trans-Tasman Travel Arrangements enables citizens of both countries to live and work in either without restriction. Approximately 650,000 New Zealand citizens live in Australia and around 65,000 Australians live in New Zealand.

Australia is New Zealand's largest two-way trading partner and New Zealand is Australia's fifth largest two-way trading partner. Australia is New Zealand's largest investor, and New Zealander's invest more in Australia than any other foreign country.

New Zealand and Australia also share a number of regulatory arrangements. This includes *Food Standards Australia and New Zealand* that develops food standards for both countries.

While we have distinct cultural identities, our cultural and economic ties are very strong.

The NFF makes these points to highlight that the integration of our economies and consumer markets means extension of GI protection in New Zealand in a way that stops the use of well-known Australian and New Zealand terms will impact the sale of Australian food, spirit and wine products that are sold under these terms as much as it will impact on the sale of New Zealand products also sold under these terms. This impact is also highly likely to be felt by Australian consumers purchasing these New Zealand products in Australia.

2. General Concerns with the extension of Protection for GIs

The NFF has concerns with the extension of protection for GIs generally. With Australia also negotiating a Free Trade Agreement (FTA) with the EU, we have similarly been requested to extend protection to European GIs.

The NFF is opposed to the extension of GIs under the Australia-EU FTA. Our opposition is based on several concerns which we believe may be of equal concern in New Zealand that are elaborated on below.

New Zealand and Australia already have effective trademark systems that provide strong protection for food product names. These systems are well established in both countries with clear processes and standards for securing protection. These trademark systems provide equivalent protection for European food names to that which might be provided by a separate GI system. In addition, there would be no delay in providing protection that would necessarily accompany the establishment of a whole new system of GI protection for foods.

Relying on existing trademark protection would also obviate the need for the Australian and New Zealand Governments to expend considerable resources on establishing a duplicate system for protecting European food names. The NFF considers Australian government resources that would need to be found to set up a duplicate GI food protection system would be far better spent on other pressing public policy objectives.

With regard to the cost of establishing a new GI system for foods, the NFF also notes that the EU has proposed, in its draft text for the Australia-EU FTA, that neither Party should charge fees for protecting a GI. In essence, the entire cost of protecting European GIs in Australia, and we assume New Zealand, would be borne by Australian and New Zealand tax payers.

In addition to the resources needed to set up the system, the NFF is also concerned about the government's role in enforcing GI protection. Under the Australian and New Zealand trademark systems, the trademark owner is responsible for enforcing their rights through their respective legal systems. The draft text of the Australia-EU FTA requires the Australian Government to enforce the private rights bestowed through the granting of a GI. This means not only would Australian and New Zealand tax payers be required to carry the cost of setting up the system, they would also be required to continue to fund enforcement of GI protection.

The NFF is also concerned about the scope for the list to continue to expand. We note that Article X.33 of the draft text of the Australia-EU FTA requires that Parties must agree to add new GIs following an objections process. The possibility of significant additions to the list of EU GIs that New Zealand and Australia would be required to protect could impose a heavy and on-going administrative burden and again divert government resources away from more important needs.

The NFF is aware that a number of GIs are contested within the EU, for example Greek and Danish Feta. The NFF considers the adoption of the EU system for protecting food products in New Zealand or Australia is likely to see the repetition of those same disputes over GIs in the EU occurring in our own countries. We consider existing trademark systems, that are less subjective in their assessment of claims, are far better able to manage disputes. By subjective we refer to that part of the registration requirement for a GI that requires that 'a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.' The NFF would argue this requirement relies on a subjective assessment of what the 'quality, reputation or other characteristic' may be and increases the potential for disputes between domestic producers.

The scope for further confusion, and likelihood of contestation and dispute, is increased with proposed provisions relating to evocation. In the context of FTA negotiations, this could cover

products whose name, packaging or labelling are judged to evoke an image of a particular EU GI product in the mind of consumers, even if the product is clearly identified as being of non-EU origin.

Australia, and New Zealand, have extensive laws with regard to anti-competitive conduct. Section 45 of the Australia *Competition and Consumer Act, for example*, prohibits contracts, arrangements, understandings or concerted practices that have the purpose, effect or likely effect of substantially lessening competition in a market, even if that conduct does not meet the stricter definitions of other anti-competitive conduct such as cartels. The NFF would argue imposing additional limits on the use of well-known and widely used food terms is anti-competitive in that it reduces the number of suppliers of products that carry these well-known descriptors.

The NFF also has concerns with regard to the circumstances under which New Zealand and Australia are being asked to extend GI protection. For several decades, Australian and New Zealand farmers have suffered from EU agricultural production and export subsidies, high tariffs and small quotas. These measures have restricted access to the EU market for our products while Australia and New Zealand have opened their markets to EU agricultural, food and wine products. Today, the EU exports almost twice as much product to Australia as Australia exports to the EU despite Australia exporting two-thirds of its entire agricultural production. Unlike EU farmers, Australian and New Zealand farmers do not receive production or environmental payments. The NFF is concerned that FTA negotiations that could address the significant imbalance in agricultural trade between our respective countries are, rather, seeking to have New Zealand and Australia introduce a GI system that effectively extends the EU system of agricultural protection.

3. Specific concerns with the list provided by the EU

In addition to these general objections to the extension of GI protection, the NFF also objects to the extension of protection for specific terms as set out in the list provided by the EU.

The list and directions for submitting objections does not identify any parameters limiting the use of these terms. For example, there is no guidance on whether the terms will be used in their compound form only. Based on the further EU request that names be protected against translations of the original GI, if protection was secured for terms not in their compound form, New Zealand and Australia would need to prohibit the use of terms such as ‘ham’, ‘olive’, ‘oil’, ‘butter’, ‘apple’ and ‘pear’. Prohibiting the use of these generic food descriptions based on EU GI protection would, of course, be ridiculous. But without explicit guidance that only compound terms would be protected, we need to assume that protection of single currently generic food descriptors is a possibility.

For some products, the NFF is also concerned with the misappropriation of Codex Standards for foods. In particular, the NFF argues that the basic rules in regard to Evocation should be that the agreement must not provide mechanisms that would allow EU parties to challenge, or have labelling restrictions applied to the production of all Codex standard foods. As a matter of principle, all foods produced in Australia that have Codex standard status should be exempt from any coverage under GI protection.

In summary, a generic term that is, by definition, well-known in New Zealand and Australia should be excluded from protection.

4. Objections to the use of specific terms.

The NFF have reviewed the list provided by the EU to New Zealand and many names, and their translations, stand out as being generic in nature. Examples include, but are not limited to: bacon, ham, pumpkin, pumpkin seed, olive, oil, cheese, camembert, emmetal, feta, stilton, goudascotch, bleu, queso, brie, rose, kalamata, beer, sausage, garlic, saffron, paprika, peppers, wine, vinegar, butter, beef, duck, lentil, mustard, apple, pear, prune, thyme, mandarin, cabbage, lamb, cheese, cheddar, goat, provolone, pecorino, parmesan, buffalo, kiwi, honey, prosecco and salmon. Scotch is also a well-known descriptor of a cut of beef ('scotch fillet').

The NFF is of the strong view that generic terms should not be protected, nor should terms that simply add a descriptor to a generic term be protected.

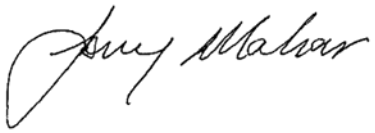
The list provided by the EU also includes a number of manufactured food products which are a combination of a number of primary food products. This includes confectionary, sausages and some processed meat, pate, and baked products. The NFF would argue that the manufacturing process involved with creating these products would make it difficult to attribute any quality, reputation or other characteristic to a geographic location. For this reason, they should not be eligible for protection as a GI.

The loss of access to these terms would have an immediate impact on sales of affected products in Australia and New Zealand. It would cause considerable confusion for consumers who would be unlikely to associate any new replacement terms for the same product previously sold under a newly protected GI. Extension of GI protection would lead to significant market dislocation and impose extensive financial loss on Australian producers of these products.

The NFF would encourage the EU, New Zealand and Australian trade officials to examine the scope for existing trademark systems to provide the level of protection for specialty products that the EU seeks. This would avoid New Zealand and Australia having to establish, at considerable ongoing expense, the institutional infrastructure needed to create a new GI system for the protection of food. It would also limit the commercial damage Australian producers would suffer as a result of the loss of the ability to continue to market products in New Zealand under well-known terms.

Please do not hesitate to contact Dr Prudence Gordon, General Manager, Trade and Economics (pgordon@nff.org.au, 0404670434), should you have any questions with regard to this submission.

Yours sincerely



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