



The Office of the
Committee for
Economic Development

CONSULTATION ON THE INTRODUCTION OF GEOGRAPHICAL INDICATION PROTECTION IN THE BAILIWICK

20 March 2017

Purpose and Type of Consultation

This consultation paper is being issued to seek feedback from business, stakeholders, consumers, industry associations, practitioners and any other interested parties on the introduction of Geographical Indication (“**GI**”) protection in the Bailiwick of Guernsey.

The intention is that responses will be considered by the Committee *for* Economic Development (the “**Committee**”), which will in turn produce recommendations in respect of the proposals.

Closing date: 10 April 2017.

The Committee:-

1. would like to invite comments from all interested stakeholders, intellectual property users of Guernsey’s intellectual property environment, customers and consumers about the proposals; and
2. aims to work closely with stakeholders and industry to ensure the Bailiwick adopts the most appropriate changes to protect and enhance its economy and intellectual property environment.

Please refer to section 4 ‘responding to this consultation’ for full details of how to respond to this consultation paper.

Consultees

This is a public consultation and responses are invited from all interested parties.

The consultation paper has been sent to:

The Intellectual Property Commercial Group

The Registry User Group

Individuals (including agents) currently filing with the intellectual property Office

Le Tricoteur

Guernsey Dairy

Guernsey Farmers Association

Guernsey Clematis

La Société Guernesiaise

National Trust of Guernsey

Chamber of Commerce

Confederation of Guernsey Industry

This consultation paper is also available on <http://ipo.guernseyregistry.com/>.

Executive Summary

A Geographical Indication is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to the origin. Offering protection for GIs is part of a modern intellectual property environment.

The Agreement on Trade Related Aspects of Intellectual Property Rights (“**TRIPS**” or the “**Agreement**”) is an international agreement administered by the World Trade Organisation (“**WTO**”). It sets down minimum standards for many forms of intellectual property regulation, as applied to nationals of other WTO members. Guernsey is not a WTO member, but its intellectual property legislation has been independently assessed to be TRIPS compliant.

TRIPS obliges members to provide protection for GIs, which are defined as *“indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin.”*

Although not a WTO member, it is considered beneficial to the Bailiwick to introduce GI protection to maintain the Bailiwick’s assessment of TRIPS compliance and to enhance the Island’s intellectual property offering.

1. Introduction

This paper sets out proposals for developing GI protection in the Bailiwick and seeks feedback from interested parties.

The issues for consultation are discussed in detail below.

2. Issues for consultation

2.1 What are GIs?

A GI is an indication used on goods, to identify them as possessing a particular quality, reputation or some other distinctive characteristic, which is essentially attributable to its geographical origin.

Many GIs consist of the name of the town, region or country where the goods originated from, for example “Champagne”, denoting a wine which originates from the Champagne region in France.

They are generally traditional products, produced by rural communities over generations that have gained a reputation on the markets for their specific qualities.

In order to function as a GI, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should

be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production.

2.1.1 What rights do GIs provide?

GIs create a right which enables product owners, who meet pre-defined sets of product specifications, to prevent their use by third parties whose product does not conform to the applicable standards. For example, in the jurisdictions in which the Darjeeling GI is protected, producers of Darjeeling tea can exclude use of the term “Darjeeling” for tea not grown in their tea gardens or not produced according to the standards set out in the code of practice for the GI.

2.1.2 What type of products can GIs be used for?

GIs are typically used for agricultural products, foodstuffs, wine and spirit drinks, handicrafts, and industrial products.

Some examples of GIs include:

- “Bordeaux”, used for wine originating from the region of Bordeaux in the south of France, where it has been produced since the eighth century.
- “Tequila”, used for liquor originating from the town of Tequila in the state of Jalisco, Mexico, where the liquor has been produced for over 200 years.

2.1.3 How long does protection last?

Most intellectual property rights have a limited duration. This is often because maintaining a monopoly right for long periods can be disadvantageous to society. This is not considered to be the case for GIs, due to the benefits of long term preservation of regional/local heritage, traditions and know-how. The majority of countries which have established a sui generis system for protection of GIs provide for indefinite periods of protection, without the need for renewals.

2.1.4 TRIPS provisions

One of the primary reasons for the Committee wishing to explore implementing protection of GIs in the Bailiwick is to maintain its assessment of compliance with TRIPS. The Agreement covers GI protection for both agricultural and non-agricultural products. The Agreement does not specify the legal means by which Members must implement their obligations to protect GIs. Instead, Members may decide how best to meet their obligations, in accordance with their social, economic and legal needs and traditions.

Proposals on implementation methods, and the preferred option of the Committee, are detailed below.

2.1.5 Potential uses of GIs in the Bailiwick

Protection for GIs could include for meat, dairy and fish products, honey, fruits and vegetables, beverages made from plant extracts, bread pasta, pastries, cakes, biscuits and confectionary.

GI protection may be particularly appropriate in Guernsey for areas such as the Dairy and representatives of the farming and dairy manufacture sector. For example Guernsey butter and associated dairy products.

2.2 The proposal

The proposal is to give effect to a regime enabling automatic protection and exploitation of GIs in the Bailiwick, within the area of horticulture, agriculture and arts and crafts. Proposals on the method and nature of protection are detailed below.

2.3 Policy issues

- i) By their nature, GIs are collectively held by thousands of small producers that do not necessarily have the resources to engage in expensive litigation and to register their names in all Member States of the WTO. This lack of funding and resourcing can however create a problem with enforcing GI protection.
- ii) Geographical names with commercial value may be exposed to misuse and counterfeiting through GI protection. Such abuse could limit access to certain markets and undermine consumer loyalty.
- iii) In accordance with WTO rules, GIs that have become generic in third countries or have been used in good faith ten years prior to the TRIPS Agreement do not need to be protected. In practice, this can discourage export and promotion efforts, where the reputation of a GI has been severely eroded.
- iv) GIs are a unique asset for producers in an increasingly liberalised world.

Consultation Questions

1. In principle, do you agree with the proposal to offer protection for GIs in the Bailiwick? Please provide reasons for your answer.
2. Do you agree with the proposal for GI protection to be offered within the areas of horticulture, agriculture and arts and crafts? Please provide reasons for your answer, and details of any alternative or additional areas which you think should be considered.
3. What application do you envisage there to be for GIs within the Bailiwick?
4. What do you consider to be the risks of introducing GI protection in the Bailiwick? Please provide details of how, if at all, you think that these risks may be overcome.
5. What do you consider to be the commercial, or other, benefits to introducing GI protection in the Bailiwick? Please provide details.

2.4 Methods of protection

Some countries have enacted specific *sui generis*¹ legislation to protect GIs, some countries afford protection under existing trademark legislation, and others use a combination of both.

Legislation could be developed in the Bailiwick either to implement a regime of automatic protection for GIs, or to create a registerable right. Consideration is given below to the different methods of protection available, and the Committee's recommendations in relation to each.

2.4.1 Extension of trade mark law

It would be possible to amend The Trade Marks (Bailiwick of Guernsey) Ordinance, 2006, to provide protection of GIs, through Collective or Certification marks.

Collective Marks

Collective Marks are owned collectively by a group of producers (e.g. an association), and may be used by more than one person, as long as the user is a member of the group and complies with the rules it has set out. Collective Marks are generally used as a sign of membership.

The owner of the Collective Mark is responsible for ensuring compliance with certain standards. Examples of Collective marks include:

- "CA" device used by the Institute of Chartered Accountants; and
- "CPA" used to indicate members of the Society of Certified Public Accountants.

Certification Marks

Certification Marks certify the nature or origin of the goods or services on or in connection with which it is used. They serve to distinguish goods or services that are certified by an undertaking from those that are not certified.

A Certification Mark is owned by a certifying legal entity, which checks that the mark is used according to certification standards. The certifier controls use of the mark and has the exclusive right to prevent unauthorised use. The certifier typically cannot make use of the mark itself, but use is open to anybody that meets the certification standards. The United States and Australia offer protection for GIs through the trademark system as Certification marks.

As is the case with ordinary trademarks, Certification Marks apply equally to goods and services. In that sense, they have broader commercial application than GIs, which, as defined by the TRIPS Agreement, relate only to goods.

¹ *Sui generis* protection is provided where a separate intellectual property right is created (i.e. with legislation which provides a definition of GIs, specific condition of protection and use).

Examples of Certification marks include:

- “Egyptian Cotton”, intended to certify that the product identified contains 100% Egyptian Barbados cotton; and
- “Parmigiano Reggiano”, intended to certify that the goods originate in the Parma-Reggio region of Italy.

(i) Policy issues

Whilst Collective and Certification Marks both provide some of the features of GIs protection, general trade mark law does not provide for any pre-defined standards, for example a link to a specific geographical area. This leaves the holder entirely free to define their own rules of use. Collective and Certification Marks therefore lack the core guarantee features of a GI scheme.

(ii) Committee’s recommendation

The Committee does not propose adopting this method of protection for GIs in the Bailiwick.

2.4.2 An independent system of registration

Most specific national rules that protect GIs require registration before protection is afforded. There are a wide variety of registration systems.

Legislation could be introduced in the Bailiwick to create a system similar to the EU Protected Foods Names Scheme². Examination could include either full examination by the IPO staff or formal examination by the IPO staff only, with a certificate of examination being produced by an approved professional.

(i) Policy issues

Depending on the method of examination, significant up-skilling of IP Office staff, and associated costs, may be required. The upfront costs to the IP Office would be high and as a result costs to applicants would be high.

(ii) Committee recommendation

The Committee is not proposing implementing a standalone registration system for protections of GIs.

2.4.3 Automatic protection without the need for registration

GIs can be protected without the need for registration. Systems that protect GIs without registration exist in Latvia and Switzerland (and previously in Singapore), where the law provides for specific measures and penalties to protect consumers from misleading use of non-registered GIs. Automatic protection is provided where

² See [EU protected food names: how to register food or drink products](#)

the criteria for protection is met. No formalities or registration process is required to be undertaken and the decision on validity/enforcement is left to the Court to determine.

(i) *Policy issues*

- A disadvantage of automatic registration can be that a producer of a particular product would not know whether it enjoyed protection as a GI product unless he brought the application in Court. This may make the system uncertain and expensive to enforce.
- The absence of a registration system would mean that there would be no public register which could be searched to identify pre-existing GI names and identify the relevant owners. This could lead to uncertainty about the existence or scope of the protection. This could also make it more difficult to enforce the protection granted.
- This method of implementation would be cost neutral. No additional resources or upskilling of staff would be required from the IPO.

(ii) *Committee recommendation*

The Committee proposes that this method of protecting GIs, by way of automatic protection, be adopted in the Bailiwick.

2.5 Drafting legislation

If industry is supportive of a regime of automatic protection being introduced into the Bailiwick, the next stage would be for appropriate legislation to be drafted. The Committee has considered legislation in other jurisdictions which may be suitable for the Bailiwick legislation to be modeled on.

The 1998 Singapore Geographical Indications Act (the “**Singapore Act**”) gave the owner of a GI automatic protection, similar to copyright protection. The Committee proposes that a system of automatic protection for GIs be developed, based on the Singapore 1998 system.

Consultation Questions

6. Do you agree with the proposal to enable a regime of automatic protection for GIs? Please provide reasons for your answer.
7. What commercial risks or disadvantages, if any, do you foresee with a system of automatic protection for GIs being introduced? Please provide details.
8. Do you agree with the proposal to adopt sui generis legislation modelled on Singapore’s legislation? Please provide reasons for your answers.
9. In the event that you favour another method of protection for GIs (as opposed to an automatic right) to be adopted please provide details and reasons for your preferences.

As with all IP rights protection of GIs is jurisdictional. If GI protection is implemented in the Bailiwick, one of the issues will be how to obtain protection in countries abroad. Details of the international framework for GIs are set out below.

(i) *International protection*

An international framework for the protection of GIs has evolved over time. The TRIPS Agreement, as detailed above, internationalised the protection of GIs. TRIPS promoted a standard definition of GIs and prescribed certain minimum standards by which they must be legally protected throughout WTO Member States. The objective was to promote agricultural trade.

A number of other treaties administered by WIPO also provide for the protection of GIs, including the:

- 1883 Paris Convention for the Protection of Industrial Property (Articles 1(2) and 10); and
- Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration.

(ii) *EU protection*

The EU Protected Foods Names Scheme provides three systems for the protection of GIs, for wines, spirit drinks and agricultural products and foodstuffs. Non-agricultural GIs are protected only at national/regional level, through various legal frameworks.³

The three protection marks that can be applied for are as follows:

- a) Protected Designation of Origin (PDO): this designation covers products that are produced, processed *and* prepared in a specific area, using a particular, usually traditional, method.
- b) Protected Geographical Indication (PGI): this designation covers products whose production, processing *or* preparation takes place in a specific area.
- c) Traditional Speciality Guaranteed (TSG): this designation covers products with a "traditional character" or "customary names", distinguishing them from similar products. Unlike PDO and PGI, these products do not need to be connected to a specific area or method of production. In order to be considered for TSG status, a product must demonstrate that the materials and methods used in its production had been consistent for a minimum of 30 years.

The European Commission has confirmed that if Guernsey were to implement a regime of automatic protection for GIs that protection could be extended through

³ The UK has no domestic legislation relating to GIs, but follows the EU Regulations which have the force of the law in the UK.

the European system, subject to application. Guernsey could qualify as a third country for applications, which would mean that applications could be made either through the Guernsey IP Office as administrator, or by the individual applicant.⁴

In accordance with the European Regulations, protection would be afforded to Guernsey applicants under the EU scheme, provided that the name was protected in Guernsey (as the originating jurisdiction), and the proposed registration met the specified criteria to qualify as a GI in the EU.

Consultation Questions

- 10.** How important do you consider it is to be able to obtain protection for Bailiwick GIs in countries abroad?

Consultation Questions

- 11.** Please provide any other comments on GI protection which you consider to be relevant to the Committee in further considering the proposals outlined in this consultation paper.

⁴ There is no requirement under the European system for the originating country to be a WTO member or TRIPS compliant.

3. Summary of consultation questions

- 1.** In principle, do you agree with the proposal to offer protection for GIs in the Bailiwick? Please provide reasons for your answer.
- 2.** Do you agree with the proposal for GI protection to be offered within the areas of horticulture, agriculture and arts and crafts? Please provide reasons for your answer, and details of any alternative or additional areas which you think should be considered.
- 3.** What application do you envisage there to be for GIs within the Bailiwick?
- 4.** What do you consider to be the risks of introducing GI protection in the Bailiwick? Please provide details of how, if at all, you think that these risks may be overcome.
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- 8.** Do you agree with the proposal to adopt sui generis legislation modelled on Singapore's legislation? Please provide reasons for your answers.
- 9.** In the event that you favour another method of protection for GIs (as opposed to an automatic right) be adopted please provide details and reasons for your preferences.
- 10.** How important do you consider it is to be able to obtain protection for Bailiwick GIs in countries abroad?
- 11.** Please provide any other comments on GI protection which you consider to be relevant to the Committee in further considering the proposals outlined in this consultation paper.

4. Responding to the Consultation

Please provide your comments by 10 April 2017, in writing and preferably in a format that can be read by Microsoft Word. The Committee prefers responses to be made by email to the following address:

Email: liz.decarteret@gov.gg

Consultation on the introduction of Geographical Indication protection

Attention: Liz de Carteret

Guernsey Registry, PO Box 451, Fountain Street, St Peter Port, GY1 3GX

The consultation closes on 10 April 2017.

1. When submitting your views please indicate whether you are responding on behalf of an organisation.
2. The Committee is also interested in receiving general comments and feedback on the Proposals. Please feel free to respond to all, or some, of the questions.
3. Additional copies of the consultation document can be obtained from the Committee C/o (address as above).
4. Unless **specifically requested otherwise**, any responses received may be published either in part or in their entirety. Please mark your response clearly if you wish your response and name to be kept confidential. Confidential responses will be included in any statistical summary and numbers of comments received.
5. The purpose of the consultation is to gather information, views and evidence which will allow an informed decision to be made regarding the Proposals. As in any consultation exercise the responses received do not guarantee changes will be made to what has been proposed and any views indicative of an approach the Committee may take, are not its final policy position nor do they constitute any formal proposal.