

Geographical Indications (Wine and Spirits) Registration Act 2006

Agency Disclosure Statement

This RIS has been prepared by the Ministry of Business, Innovation and Employment (MBIE), in consultation with the Ministry of Foreign Affairs and Trade (MFAT).

[Paragraph withheld under sections 6(a), 9(2)(d) and 9(2)(g)(i) of the Official Information Act 1982.]

There is a lack of evidence that there is a significant problem involving misuse of GIs. MBIE considers that there is no significant misuse of GIs in the domestic market. However, it is more difficult to gauge whether there is a problem in export markets. Given that we have only received very limited evidence of misuse of New Zealand's wine GIs in export markets, we have assumed that the threshold for finding a problem with the status quo in respect of misuse of New Zealand wine GIs internationally has been met but that the problem is very small.

MBIE has assumed that obtaining *sui generis* protection alone will have an impact on misuse of those GIs in export markets. As we are not sure whether this assumption is correct, we have assumed that any effect would be small.

MBIE has assumed that:

- if a *sui generis* registration regime were implemented there would be around 30 domestic applications and 10 foreign applications
- a reasonable number of winegrowing regions would apply for, and be able satisfy, the prerequisites for *sui generis* protection in export markets like the EU and China

If the assumption about the domestic registrations is wrong, and there were fewer applications, there is a risk that the government would not be able to recover the cost of implementing and administering the regime.

If the assumption about the number of successful overseas applications is wrong, the benefits related to protecting product reputation and protecting consumers from false and misleading practices set out in the analysis of option B would not accrue.

We have assumed that there will be around 3 boundary disputes in registering GIs, and that resolving them will cost the industry \$300,000.

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Status Quo

1. A geographical indication (GI) is an indication (usually a regional name) used to identify the geographical origin of goods that have a given quality, reputation or other characteristic essentially attributable to their geographical origin. GIs have traditionally been used for agricultural goods and foodstuffs that have qualities influenced by unique local characteristics like climate and soil. Well-known products claimed as GIs include Champagne, Scotch Whisky and Prosciutto de Parma (Parma Ham).
2. The use of GIs by New Zealand producers is largely confined to the wine industry (foreign GIs also operate in the industry). In the spirits industry, only foreign distillers claim GIs over their products. For example, foreign producers claim that terms like “bourbon”, “tequila” and “grappa” are GIs and may not be used by potential New Zealand competitors. Some New Zealand companies own the rights to distribute products bearing foreign GIs in NZ, including various brands of “bourbon”, “cognac”, “scotch whisky” and “tequila”.
3. GIs are protected in New Zealand by range of measures, including the tort of passing off, the Fair Trading Act 1986 and the Trade Marks Act 2002 (as either collective marks or certification marks). Spirits GIs receive additional protection under standard 2.7.5 of the Australia New Zealand Food Standards Code. Wine GIs receive additional protection under the Wine (Specification) Notice 2006 (issued under the Wine Act 2003). This Notice requires that at least 85% of the wine must be made from grapes grown in an area before a wine label can state that the wine is from that area (the **85% rule**).
4. GIs are protected overseas through a similar array of measures. In addition to these measures, some countries have also created a *sui generis* regime for protecting GIs. An important difference between New Zealand’s regulatory regime and some overseas regimes is therefore that some countries have a *sui generis* regime for the protection of GIs whereas New Zealand does not.
5. A *sui generis* GI regime is a regulatory regime that provides specifically for GIs, rather than providing for them within trade mark law or laws prohibiting false and misleading conduct in trade more generally. *Sui generis* GI regimes usually involve parties registering their GIs, although there can be other mechanisms too, including securing protection directly through trade agreements. In this RIS “*sui generis* protection” refers to both registration and non-registration GI regimes.

Geographical Indications (Wine and Spirits) Registration Act 2006

6. In 2006 Parliament enacted the Geographical Indications (Wine and Spirits) Registration Act 2006 (the **Act**). It has never been brought into force. The Act replaced the earlier Geographical Indications Act 1994 covering all products with a new GI registration regime specifically limited to wine and spirit GIs. The 1994 Act was never brought into force either, largely because of a lack of interest from New Zealand producers.
7. The Act would impose one main restriction in respect of New Zealand wine GIs. A person would only be able to use a registered wine GI if at least 85% of the wine was obtained from grapes harvested within the GI’s registered boundary. This largely duplicates the 85% rule currently imposed by the Wines (Specifications) Notice 2006 (see paragraph 3). A person who contravened this requirement would be deemed to have contravened section 9 of the Fair Trading Act 1986, which prohibits misleading or deceptive conduct in trade. The provisions of the Fair Trading Act would then be available to remedy the misuse of the GI.

8. The Act was originally created to address a substantial risk to the wine industry in 2004 that the European Union (**EU**) would block entry of New Zealand wine for not having “officially recognised” GIs on its labels. Under the EU regulations at that time, the use of GIs on wine labels were necessary for other essential information, like vintage and grape variety, to be able to be used in the marketing of wine. The ban would have had a catastrophic impact on the industry. In 2004 around 46% of wine exports’ total value was going to the EU, returning over \$140 million in export earnings for 2003/2004.
9. *[Heading and portion of paragraph 9 withheld under section 6(a), 6(e)(vi) and 9(2)(j) of the Official Information Act 1982.]* The EU wine regulations were amended in 2008. The amendments removed the risk that the EU would block entry of New Zealand wine for not having “officially recognised” GIs on its labels under current EU law.
10. Wine exports to the EU have now grown to over \$408 million per annum but their relative importance has fallen from around 46% of total wine exports in 2004 to around 32% in 2014. Total export earnings have increased from around \$303 million in 2004 to \$1.3 billion during the same period.

Wine industry’s issues with the status quo

11. New Zealand Wine (**NZWine**) has conveyed to the government that *[withheld under sections 9(2)(b)(ii) and 9(2)(ba) of the Official Information Act 1982.]* it does not see implementation of the Act as “a silver bullet”. But it argues that its implementation would constitute a “coming of age” and the next stage in the evolution of the New Zealand wine industry. It considers that implementing the Act would put New Zealand wine industry on the same footing as other wine producers in export markets, where wine GIs are able to be protected under *sui generis* national regimes.
12. NZWine has raised a number of issues with the status quo, both in terms of domestic and export markets. These include:
 - a) The success of the New Zealand wine industry in premium wine markets and the reputation many of their wines have developed worldwide means that New Zealand wine GIs are becoming more vulnerable to misuse¹.
 - b) The absence of a *sui generis* GI regime impedes the development and protection of regional reputations.
 - c) *[withheld under sections 9(2)(b)(ii) and 9(2)(ba) of the Official Information Act 1982.]*
 - d) *[withheld under sections 9(2)(b)(ii) and 9(2)(ba) of the Official Information Act 1982.]*
 - e) *[withheld under sections 9(2)(b)(ii) and 9(2)(ba) of the Official Information Act 1982.]*
13. *[paragraph 13 withheld under sections 9(2)(b)(ii) and 9(2)(ba) of the Official Information Act 1982.]*

MBIE does not consider that all of these issues constitute substantial problems

14. MBIE’s view on the first three issues raised by the wine industry are as follows:
 - a) Misuse: We do not consider that there is strong evidence of a problem in the domestic market. We have not been able to find evidence of any significant

¹ ‘Misuse’ in this context means a third party either putting a GI on wine that is not from that place or seeking rights over a GI (e.g., registration of a trade mark that incorporates the GI).

misuse of GIs within either the wine or spirits industries. There are four regimes for each industry that protect or can be used to protect against the misuse of GIs in New Zealand (see paragraph 3 for more details). There is no reason to believe that these measures are inadequate to address instances of misuse when they occur.

- b) Regional reputations: We do not consider there is strong evidence that the status quo impedes the wine and spirits industries from developing regional stories and building consumer recognition of regional brands. Most New Zealand wine is already being marketed and sold with reference to the region it originates from. In fact, the New Zealand wine industry has been particularly successful at it. This has played no small part in pushing the industry's total export earnings from around \$303m in 2004 to \$1.3 billion in 2014.
- c) Accessing overseas regimes: The absence of a *sui generis* regime in New Zealand does not prohibit the wine exporters from accessing the *sui generis* regimes of all export markets. Wine exporters have access to the *sui generis* regimes of Australia and the United States, which comprise over 50% of our wine exports by both volume and value. Although New Zealand GIs are protected under the United States' regime, wine exporters to Australia have not registered any New Zealand GIs under Australia's regime. There is no legal impediment to them doing so.

Problem Definition

- 15. We consider that the issues with the status quo raised by the wine industry boil down to two risks.

Risk 1

- 16. There is a risk that the reputation of New Zealand wines could be adversely affected in certain export markets [*withheld under section 6(a) of the Official Information Act 1982.*] by people misusing New Zealand GIs. This could be done by wine being passed off as coming either from a specific New Zealand winery or from a New Zealand region more generally. This could harm the wine industry in at least two ways:
 - a) it could lower the number of sales in the relevant market (consumers seeking New Zealand wine buy third party wine rather than wine from New Zealand)
 - b) poor quality third party wine could damage the reputation of New Zealand wine in the relevant market, causing a loss in future sales and a potential reduction in the price the industry could demand.
- 17. This problem is expressed as a risk because we have not seen evidence of significant misuse of New Zealand wines in export markets. Although the wine industry could seek to make better use of the measures currently available to combat misuse if it did begin to rise, taking action in export markets is difficult and costly. We therefore assume that misuse of GIs has a greater potential to cause damage in export markets than domestic markets, given that it would be more difficult to combat.

Risk 2

- 18. [*paragraph 18 withheld under sections 6(a),9(2)(d) and 9(2)(g)(i) of the Official Information Act 1982.*]
- 19. [*paragraph 19 withheld under sections 6(a),9(2)(d) and 9(2)(g)(i) of the Official Information Act 1982.*]

20. [paragraph 20 withheld under sections 9(2)(b)(ii) and 9(2)(ba) of the Official Information Act 1982.]
21. [paragraph 21 withheld under sections 6(a),9(2)(d) and 9(2)(g)(i) of the Official Information Act 1982.]
22. [paragraph 22 withheld under sections 6(a),9(2)(d) and 9(2)(g)(i) of the Official Information Act 1982.]
23. [paragraph 23 withheld under sections 6(a),9(2)(d) and 9(2)(g)(i) of the Official Information Act 1982.]
24. [paragraph 24 withheld under sections 6(a),9(2)(d) and 9(2)(g)(i) of the Official Information Act 1982.]

Objectives

25. Provide a regulatory environment for the protection of GIs in the New Zealand wine and spirits industries that:
 - a) Enables wine and spirits exporters to maintain and facilitate access to export markets
 - b) Ensures the industries can protect the reputation of their products in export markets
 - c) Is cost-effective and accessible.

Options

26. The options considered in this RIS are:
 - A. Leave the Act enacted but not in force (*status quo*)
 - B. Bring the Act into force
 - C. Seek diplomatic solutions.
27. We have discarded repealing the Act as an option. Repealing the Act is the same as the status quo from a regulatory perspective. It is clearly, however, a less attractive option. Repealing the Act would remove the government's ability under the status quo to quickly implement a *sui generis* regime in New Zealand if the need arose.

Regulatory Impact Analysis

Option A: Leave the Act enacted but not in force

Benefits of option A

Protecting reputation of products

28. The wine and spirits industries have access to an array of legal mechanisms in export markets. In addition to the normal laws against misleading practices in trade and consumer rights legislation (see paragraph 3) the two most common methods of protecting GIs in overseas markets are through trade marks and *sui generis* GI regimes.

Cost-effectiveness and accessibility

29. This option provides a cost-effective and accessible way of protecting GIs. With trade mark regimes, there is a high degree of harmonisation around the world. The Madrid Protocol provides an international system that enables cost-effective trade mark protection to be sought in multiple jurisdictions (including the EU and China) through one registration. Obtaining registered trade marks in export markets is therefore accessible, cheap and efficient.
30. As stated above, some countries have also created a *sui generis* regime for protecting GIs. New Zealand has access to the *sui generis* regimes of Australia and the United States, which comprise over 50% of our wine exports by both volume and value. New Zealand wine exporters have chosen not to register their GIs in Australia, even though there is no legal impediment to do so and instances of misuse have arisen in that market.

Costs of option A

Access to export markets

31. *[paragraph 31 withheld under sections 6(a), 9(2)(d) and 9(2)(g)(i) of the Official Information Act 1982.]*
32. *[paragraph 32 withheld under sections 6(a), 9(2)(d) and 9(2)(g)(i) of the Official Information Act 1982.]*
33. *[paragraph 33 withheld under sections 6(a), 9(2)(d) and 9(2)(g)(i) of the Official Information Act 1982.]*
34. *[paragraph 34 withheld under sections 6(a), 9(2)(d) and 9(2)(g)(i) of the Official Information Act 1982.]*
35. *[paragraph 35 withheld under sections 6(a), 9(2)(d) and 9(2)(g)(i) of the Official Information Act 1982.]*
36. *[paragraph 36 withheld under sections 6(a), 9(2)(d) and 9(2)(g)(i) of the Official Information Act 1982.]*

Protecting reputation of products

37. The wine industry considers that the current legal measures available to them in overseas markets are inadequate. The consumer protection/unfair competition laws come with a degree of uncertainty. They claim that most regional names like “Marlborough” cannot be registered as a trade mark as a bare name.
38. Although a regional name like “Marlborough” cannot be trade marked as a bare name, it could be registered if it were incorporated into a distinctive logo. Two New Zealand regional associations use trade marks to protect their GIs, as do a number of foreign wine and spirits producers. There seems to be a preference in the New Zealand wine industry, however, not to have to incorporate GIs into logos.

Cost-effectiveness and accessibility

39. As noted in the benefits, trade marks are cheap, quick and easy to register in multiple jurisdictions. However, they may not be very easy to enforce when they are infringed. The wine industry has stated that a lack of understanding of foreign regulatory systems and language difficulties means that monitoring misuse and preventing misuse of their GIs in export markets through anti-competitive business practises and consumer law can be extremely problematic or not viable. Similar comments have been made about enforcing trade marks in export markets. However, these appear to be largely generic

problems with taking legal action in foreign jurisdictions rather than one specifically tied to either GIs or trade marks.

40. *Sui generis* GI protection is not accessible for New Zealand wine exporters in the EU and China. The costs and benefits of obtaining *sui generis* protection in those markets are discussed in option B.

Summary of costs and benefits of option A

41. Below is a summary of the costs and benefits of option A.

Group	Costs	Benefits
New Zealand wine and spirits industries	<p><i>[withheld under sections 6(a),9(2)(d) and 9(2)(g)(i) of the Official Information Act 1982.]</i></p> <p>Trade mark law provides an inconvenience by requiring GIs to be incorporated into a logo before they can be registered</p> <p>Wine exporters must incur costs in monitoring misuse of GIs in foreign markets</p> <p>High enforcement costs to prevent misuse in foreign markets</p>	<p>Many legal measures to protect GIs</p> <p>Low domestic and foreign trade mark registration costs</p> <p>Internationally harmonised trade mark regime (including registration procedures)</p> <p>Access to foreign <i>sui generis</i> GI regimes in over 50% of total exports by value and volume</p>
Government		Maintenance of GI regulatory regime low cost

Option B: Bring the Act into force

42. This option would impose a new regulatory regime on the wine and spirits industries. As mentioned in paragraph 7, the main restriction it would impose in respect of New Zealand wine GIs is that a registered wine GI would only be able to be used if at least 85% of the wine was obtained from grapes harvested within the GI's registered boundary. The main restriction the Act would impose in respect of spirits is that a registered spirit GI would only be able to be used if the spirit originated within the GI's registered boundary. Registered GIs would only be able to be used in accordance with their registration, including any conditions the Registrar imposed restricting the way in which the relevant GI could be used on labels.
43. A person who contravened one of these requirements would be deemed to have contravened section 9 of the Fair Trading Act 1986, which prohibits misleading or deceptive conduct in trade. The provisions of that Fair Trading Act would then be available industry to remedy the misuse of the registered GI.

44. This option would also enable wine exporters wanting *sui generis* protection in the EU and China to satisfy one of the prerequisites for applying for *sui generis* protection in those markets.

Benefits of option B additional to the status quo

Access to export markets

45. This option would provide no additional benefits under scenarios A. It would provide a minor benefit under scenario B by giving the wine industry an opportunity to apply for official recognition of their GIs [Remainder of paragraph 45 withheld under sections 6(a), 9(2)(d) and 9(2)(g)(i) of the Official Information Act 1982.].
46. [Paragraph 46 withheld under sections 6(a), 6(e)(vi) and 9(2)(j) of the Official Information Act 1982.]
47. It is also possible that implementing the Act would provide benefits in emerging export markets. The Covec report² estimated the likely benefits under this category to be between \$1-4m.

Protecting reputation of products

48. MBIE considers that this option would not provide any additional benefits to New Zealand wine and spirits producers in the domestic market. There is no evidence of significant misuse of GIs and the Act largely duplicates existing domestic regulation. It would however provide some benefits to foreign producers, and to importers of those products into New Zealand. The size of this benefit would depend on the extent to which they could secure registration under the Act for terms like “port”, “sherry” “bourbon” and “tequila” (which could be considered generic names and therefore ineligible for registration). Registration would enable importers of those products – or the foreign producers themselves – to take action to prevent local producers from using those terms. It would also allow them to prevent people from importing products with those names from places outside the registered boundary.
49. Because of the territorial scope of the Act, its implementation will not provide protection for New Zealand GIs – and therefore no direct benefit – in export markets. However, the principal benefit of this option is expected to accrue in export markets. This is because the Act would enable wine exporters to satisfy a prerequisite for obtaining *sui generis* protection in the EU and China. Before an application to register foreign GIs can be made in those markets the GIs must be officially protected in their country of origin. Implementing the Act and registering New Zealand GIs under it would be a way of establishing official recognition, paving the way for wine exporters to seek protection for them in the EU and China.
50. Assuming New Zealand wine exporters were successful in registering their GIs under the domestic regime, and that they were able to satisfy the EU’s and China’s other prerequisites, their GIs would be granted *sui generis* protection in those markets. It is likely that this alone would provide some deterrent to people misusing New Zealand wine GIs in those markets, although this potential benefit is difficult to quantify. Misuse of New Zealand GIs does not appear to be widespread. We therefore assume that it would provide only a small benefit in the form of a reduction of misuse in those

² MBIE commissioned economic consulting firm Covec to analyse the costs and benefits of implementing the Act. Covec concluded that the costs and benefits of implementing the Act are finely balanced, and the costs and benefits would be likely to be small (\$1-4 million each, compared to the total export earnings of the New Zealand wine and spirits industries of around \$1.3 billion). While Covec could not identify any benefits in the domestic market from implementing the Act, it did identify potential future benefits in relation to export markets but these were uncertain and difficult to model).

markets. There would also be a small benefit to both wine exporters and consumers in those markets as a result of the reduction.

51. Assuming that wine exporters would be able to secure *sui generis* protection, they would have an additional “tool in the toolbox” compared to the status quo. They could then use the enforcement provisions of the foreign *sui generis* regime to take action to prevent misuse of their GIs in that market.
52. If few or no wine exporters apply for (or obtain) *sui generis* protection in foreign markets that require GIs to be first officially protected in their country of origin, there will be little (if any) benefits in implementing the Act for the wine industry under this heading.

Cost-effectiveness and accessibility

53. The wine industry would face the same problems they identified with the status quo with respect to the difficulties of taking legal action in foreign countries due to different regulatory systems and languages. However, we assume that having an extra regulatory option would provide a benefit. Enforcing GIs under a *sui generis* system of a particular export market might be a cheaper or more effective option, for example, than other measures. For example, MBIE understands that if wine exporters were able to secure *sui generis* protection in China, this would open up the possibility that the Chinese government would enforce New Zealand’s wine GIs on behalf of New Zealand wine exporters. This could provide a benefit in terms of the wine exporters’ ability to access China’s legal processes. It could also provide benefits in respect of the cost-effectiveness of enforcement. Given that misuse of New Zealand GIs does not appear to be widespread in China, we again assume this benefit would be small.
54. It is difficult to gauge the likelihood of New Zealand wine exporters securing *sui generis* protection in China. The experience of other countries’ wine exporters suggests that it might be a lengthy, costly process. To date only four foreign GIs have been granted *sui generis* protection in China: “Scotch Whisky”, “Champagne”, “Bordeaux” and “Napa Valley” (which took nearly 14 years to gain protection). The EU has opted for a GI agreement with China to secure protection for 10 of its GIs after efforts to secure protection for other GIs under China’s *sui generis* regime failed. The experience of the Americans, Australians and Europeans to date suggests that although *sui generis* protection could provide a cost-effective means of enforcement, actually obtaining this protection in the first place might not be particularly cost-effective and may require government assistance to obtain protection.
55. [Withheld under section 6(a) of the Official Information Act 1982].

Costs of option B additional to the status quo

Cost-effectiveness and accessibility

56. This option would be more costly than the status quo.
57. The costs to government would include:
 - a) one-off costs for IPONZ to develop and implement the register of GIs, including upgrading its electronic case management system, train staff, upgrade its

website, develop guidelines and undertake publicity about implementation of the Act. We estimate these costs to be around \$250,000³

- b) on-going costs for IPONZ to maintain the regime (including overheads and software licensing fees). These costs cannot be established with certainty until the register and registration processes have been designed.
58. These costs would be incurred under this option regardless of whether any domestic applications for GIs were made or the market access risk materialised.
59. The costs to the wine industry include:
- a) one-off costs to set geographical boundaries and prepare domestic GI registration applications. Covec estimated these costs to be around \$180,000 (based on an assumption that there will be around 30 applications from New Zealand wine industry)
 - b) possible costs for the wine industry to resolve disputes arising around the registration of GIs. The Covec report estimated these cost to be around \$300,000, assuming around three disputes would arise.
60. Although these costs would be voluntary (so would only be incurred if exporters saw a commercial benefit in applying for foreign protection), the benefits outlined above would also only be realised if these costs were incurred. We therefore include these costs in our analysis. However, the costs to wine exporters of monitoring misuse of their GIs and taking enforcement action when necessary would be likely to be broadly the same regardless of whether they had the ability to enforce against the misuse of GIs under the options provided by the status quo or under a *sui generis* regime. Accordingly, we do not consider that the costs of monitoring and enforcement of GIs under this option would be significantly more than under the status quo. Costs of enforcement could be slightly less, given that wine exporters might have an extra option about which regime to enforce under. Costs of enforcement could be significantly less if the Chinese government enforced on wine exporters' behalf [*Remainder of paragraph 60 withheld under section 6(a) of the Official Information Act 1982.*]
61. To deter misuse of GIs in foreign markets, it is reasonable to assume that wine exporters would need to monitor misuse and take the relevant enforcement actions when necessary (and be seen to be monitoring and enforcing). We think this assumption holds for both the EU (where private parties must enforce against the misuse of GIs) and in China (where the Chinese government could enforce on behalf of GI holders).
62. There would be costs to New Zealand wine and spirits producers opposing applications to register generic terms under the Act. There would also be costs associated with being precluded from using generic terms if they were registered. These costs correspond to the benefits mentioned in paragraph 48.
63. The benefits for importers of foreign products noted in paragraph 48 would be off set to a certain extent by the costs to local producers who were prevented from using the relevant terms as a descriptor for their products. As there are currently few local producers, this impact is likely to be low. It could however impede the potential development of this market.

³ This estimate differs from that in the Covec report (\$400,000). The change reflects that we have changed some assumptions about how the register and registration procedures would be designed for handle a small number (30-40) of registrations.

64. In relation to the potential additional costs for consumers, the Covec report considered that because most spirits are already being sold at a premium in New Zealand, it is “very unlikely that implementation will lead to increased domestic prices, or reduced quality, or material changes in the variety of wine and spirit products available”. MBIE has no reason to question this assessment.

Market access

65. To qualify for registration under the Act, regional names must establish that there is a quality, reputation or other characteristic associated with the name. There is a risk under this option that some New Zealand winegrowing regions would not qualify for registration of their regional names under the Act or under the EU’s *sui generis* regime. If this happened, the consequences of scenario C occurring would not have been nullified in respect of those regional names claimed as GIs. Moreover, it would put those GIs in a considerably worse position under scenario B. New Zealand would have confirmed that those regional names were not officially recognised as GIs in New Zealand. It might not be a viable option at that stage to amend the Act to deem any regional names that had failed the test under the Act to be registered anyway. However, we consider it unlikely that any of the major winegrowing regions would be unsuccessful in registering their GIs.

Summary of costs and benefits of option B

66. Below is a summary of the costs and benefits that option B provides that are additional to the anticipated costs and benefits of the status quo.

Group	Costs	Benefits
New Zealand wine and spirits industries	<p>Costs to secure registration in NZ, excluding application fee (estimated at \$180,000)</p> <p>Obtaining foreign registration for wine GIs likely to involve considerable cost for each application</p> <p>A risk that no benefits will be realised because wine exporters do not apply for foreign GIs or their applications are rejected</p> <p>A risk that there could be boundary disputes, estimated at \$300,000</p> <p>A risk that not all NZ winegrowing regions will successfully register in NZ or the EU, [withheld under sections 6(a), 9(2)(d) and 9(2)(g)(i) of the Official Information Act 1982]</p>	<p>Provides opportunity for wine exporters to nullify consequences of scenario C</p> <p>Could provide slightly lower costs of enforcement action, if a number of assumptions are made</p> <p>Small benefits related to reducing risk of misuse of NZ wine GIs in export markets, if a number of assumptions are made</p> <p>Importers of foreign-sourced wine and spirits could prevent local wine and spirits producers from using certain terms in marketing their products</p>

	Local wine and spirits producers could be prevented from using certain terms in marketing their products	
Government	Costs to implement Act (\$250,000 one-off costs) Potential costs to government to support wine exporters' foreign market applications Costs to maintain regime (no estimate)	

Option C: Seek diplomatic solutions

67. This option would involve New Zealand seeking to remedy the risks to New Zealand wine GIs [withheld under sections 6(a),6(e)(vi) and 9(2)(j) of the Official Information Act 1982] through diplomatic means. This could involve directly negotiating protection for New Zealand wine GIs in export markets through negotiating international agreements such as free trade or wine agreements. [Remainder of paragraph 67 withheld under sections 6(a),6(e)(vi) and 9(2)(j) of the Official Information Act 1982.].
68. This option assumes that New Zealand would be required to provide *sui generis* protection to foreign GIs following the agreement.

Benefits of option C additional to the status quo

69. [Paragraph 69 withheld under sections 6(a),6(e)(vi) and 9(2)(j) of the Official Information Act 1982.]
70. [Paragraph 70 withheld under sections 6(a),6(e)(vi) and 9(2)(j) of the Official Information Act 1982.]
71. [Paragraph 71 withheld under sections 6(a),6(e)(vi) and 9(2)(j) of the Official Information Act 1982.]
72. [Paragraph 72 withheld under sections 6(a),6(e)(vi) and 9(2)(j) of the Official Information Act 1982.]

Costs of option C additional to the status quo

73. [Paragraph 73 withheld under sections 6(a),6(e)(vi) and 9(2)(j) of the Official Information Act 1982.]
74. [Paragraph 74 withheld under sections 6(a),6(e)(vi) and 9(2)(j) of the Official Information Act 1982.]
75. [Paragraph 75 withheld under sections 6(a),6(e)(vi) and 9(2)(j) of the Official Information Act 1982.]

76. [Paragraph 76 withheld under sections 6(a),6(e)(vi) and 9(2)(j) of the Official Information Act 1982.]

Summary of costs and benefits of option C

77. [Paragraph 77 withheld under sections 6(a),6(e)(vi) and 9(2)(j) of the Official Information Act 1982.]

Summary of options

Objective	Leave the Act unimplemented	Implement the Act	Diplomatic solutions
Access to export markets	[withheld under sections 6(a),6(e)(vi) and 9(2)(j) of the Official Information Act 1982.]	✓ [withheld under sections 6(a),6(e)(vi) and 9(2)(j) of the Official Information Act 1982.]	✓ [withheld under sections 6(a),6(e)(vi) and 9(2)(j) of the Official Information Act 1982.]
Enable industries to protect reputation of products	Meets objective There is, however, a risk that the wine industry's reputation could be adversely affected in export markets through misuse of GIs	✓ A small improvement to the ability to protect reputations if a number of assumptions are made and additional costs incurred	✓ Similar improvement as option B but based on fewer regulatory requirements and fewer assumptions Assumes negotiations successfully concluded
Cost-effective and accessible	This is the most cost-effective option for protection GIs, both domestically and in export markets	X This option imposes several new costs into the system. There could be some accessibility gains, if a number of assumptions are made	X Similar improvement as option B but based on fewer regulatory requirements and fewer assumptions Assumes negotiations successfully concluded

Key (changes to status quo):

- ✓ = positive
- X = negative
- = neutral

Consultation

78. NZWine has been consulted throughout this process. It has also conveyed its views on implementation of the Act to a number of Ministers. MBIE and MFAT officials discussed implementation of the Act with regional associations and sub-associations in the wine industry in late August 2014.

79. [Withheld under sections 9(2)(b)(ii) and 9(2)(ba) of the Official Information Act 1982] There appears to be clear industry support for implementation in the industry, including

among the regional associations. There appears to be some confusion however about what implementation will achieve. A common misconception in the wider wine industry appears to be that GI registration in New Zealand will provide worldwide protection for those GIs. Registration under the Act will provide no protection outside of New Zealand. It might not therefore be widely anticipated in the industry that significant resources will need to be expended to convert New Zealand protection into off shore protection. Off shore benefits appear to be where the industry anticipates the main benefits will accrue.

80. NZWine has said they will pay the New Zealand application fees to register 29 priority New Zealand regional names as GIs. MBIE understands they have not yet determined who will organise and fund the efforts to secure *sui generis* protection in foreign markets or how use of GIs will be monitored and enforced in those jurisdictions.
81. NZWine was invited to provide MBIE with comments on the Covec report. Its comments were that the report:
 - a) did not provide any reasons not to implement the Act
 - b) *[withheld under sections 6(a),6(e)(vi) and 9(2)(j) of the Official Information Act 1982.]*
 - c) assumed away the value of most risks to their exports and did not consider valuable other benefits like providing equivalence to other major wine exporting countries, *[withheld under sections 6(a),6(e)(vi) and 9(2)(j) of the Official Information Act 1982.]* and reassuring international investors that their investment can be protected.
82. MBIE has discussed its implementation work with the Distilled Spirits Association of New Zealand (**DSANZ**). DSANZ has confirmed that it maintains its support for the Act's implementation.

Conclusions and Recommendations

83. *[Paragraph 83 withheld under sections 6(a), 6(e)(vi) and 9(2)(j) and 9(2)(g)(i) of the Official Information Act 1982.]*
84. *[Paragraph 84 withheld under sections 6(a), 6(e)(vi) and 9(2)(j) and 9(2)(g)(i) of the Official Information Act 1982.]*
85. *[Paragraph 85 withheld under sections 6(a), 6(e)(vi) and 9(2)(j) and 9(2)(g)(i) of the Official Information Act 1982.]*
86. *[Paragraph 86 withheld under sections 6(a), 6(e)(vi) and 9(2)(j) and 9(2)(g)(i) of the Official Information Act 1982.]*
87. We make no recommendation on the preferred option. The risk of scenario C occurring under the status quo is very small but the potential consequences are very large. This suggests that implementing the Act is a valid option to mitigate this risk.
88. We do however recommend that, if a decision is made to implement, the government take a “no frills” approach to designing the register and registration processes, given that the likely benefits under most scenarios is very small.
89. *[Paragraph 89 withheld under sections 6(a),6(e)(vi) and 9(2)(j) of the Official Information Act 1982.]*

Implementation

90. Retention of the status quo would not require any action to implement.
91. Option B would require the Act to be amended, brought into force and regulations promulgated.
92. There are a number of deficiencies with the drafting of the current Act that will require amendment before the Act can be implemented:
 - a) The Act is no longer consistent with New Zealand's international obligations, and in particular does not meet our commitments under the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation.
 - b) The Act does not provide any sustainable source of funding for IPONZ to operate and maintain the register of GIs.
 - c) There are also a range of desirable amendments that could be made to the Act to improve its overall workability.
93. One of the central reasons for implementing the Act is to enable wine exporters to apply for sui generis protection in export markets. Since this was not the original purpose of the Act, a review of the Act would be desirable to ensure that it would actually facilitate this.
94. Before the Act can be brought into force regulations setting out the procedures for registering GIs under the Act need to be promulgated. Officials estimate that development of these regulations is likely to take around six to nine months to complete once the Act is amended. This estimate is based on a business-as-usual timeframe rather than under urgency to remedy the market access issue.
95. IPONZ would need to develop and implement the register of GIs, including upgrading its electronic case management system, train staff, upgrade its website, develop guidelines and undertake publicity about implementation of the Act.

Monitoring, Evaluation and Review

96. If option B is chosen, MFAT will monitor the effect of the new regime in export markets. MFAT will report to Cabinet within five years of the Act being implemented on whether implementation has provided the benefits anticipated in the Cabinet paper to which this RIS is attached.
97. MBIE will supplement MFAT's report to Cabinet with information on the domestic costs and benefits of the Act.