

SUB-SECTION 4 - GEOGRAPHICAL INDICATIONS

ARTICLE 17.38 - Scope and procedures

1. This Sub-section applies to the protection of geographical indications originating in the territory of a Party. A Party shall protect the geographical indications of the other Party listed in Annex 17 (Lists of geographical indications) according to the level of protection provided in this Agreement.
2. For the purposes of this Sub-section:
 - (a) "geographical indications" means indications which identify a good as originating in the territory of a Party, or a region or locality in that Party's territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin; and
 - (b) "product specification" means, in relation to the relevant product for a geographical indication, the approved requirements for the use of that geographical indication in marketing that product.
3. Geographical indications of a Party, which are to be protected by the other Party, shall only be subject to this Sub-section:
 - (a) if they are protected as geographical indications in accordance with the system referred to in Article 17.39 (System of registration and protection of geographical indications) in the territory of the Party of origin;
 - (b) if the associated goods for those geographical indications fall within the scope of the relevant laws or regulations of the Party in which protection is sought; and
 - (c) following the completion of an objection procedure and an examination by the Party in which protection is sought.

ARTICLE 17.39 - System of registration and protection of geographical indications

1. Each Party recognises that geographical indications may be protected through a trademark or sui generis system or other legal means.
2. Each Party shall maintain a system for the registration and protection, at least at the level of protection provided for in Article 17.41(1) (Protection of geographical indications), of geographical indications in its territory. The system shall include at least the following elements:

- (a) accepting requests for the protection of geographical indications without requiring intercession by a Party on behalf of its nationals;
- (b) publishing registered geographical indications in the territory of a Party;
- (c) processing requests for the protection of geographical indications without requiring compliance with unreasonable procedures or formalities;
- (d) ensuring that its laws and regulations governing the protection of geographical indications are readily available to the public and clearly set out procedures relating to their protection, including procedures for the filing of requests;
- (e) making available sufficient information to allow any person to ascertain the status of specific requests for protection;
- (f) ensuring that all requests for protection of geographical indications are published for objection;
- (g) providing procedures for objecting to the protection of a geographical indication which shall allow the legitimate interests of third parties to be taken into account and include an opportunity and a reasonable period of time to object before the geographical indication is protected such objections shall be accepted without requiring intercession by a Party on behalf of its nationals. In assessing objections for protection, each Party shall base those assessments on the situation existing in that Party's territory; and
- (h) providing for the cancellation of the protection of a geographical indication.

ARTICLE 17.40 - Amendment of the lists of geographical indications

1. Pursuant to point (g) of Article 22.3(1) (Amendments by the Trade Committee), the Trade Committee may amend the lists of protected geographical indications in Annex 17 (Lists of geographical indications) in accordance with the procedure set out in point (c) of Article 17.69 (2) (Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property Rights, including Geographical Indications). Amendments may include the addition of geographical indications or the removal of geographical indications which have ceased to be protected in their place of origin.
2. Without prejudice to paragraph 1, after the date of entry into force of this Agreement, up to four amendments may take place, in accordance with paragraph 1, based on the transmission by Australia of a request to add a cumulative total of 40 geographical indications to Annex 17 (Lists of geographical indications). These shall be processed and protected in the Union in accordance with Article 17.38(3) (Scope and procedures).
3. The Parties recognise the value, for Australia, of geographical indications that protect,

preserve or promote the indigenous knowledge of Australian First Nations peoples, and shall give such geographical indications due consideration when considering amendments to Annex 17 (Lists of geographical indications).

ARTICLE 17.41 - Protection of geographical indications

1. Each Party shall, in respect of geographical indications of the other Party listed in Annex 17 (Lists of geographical indications), provide the legal means for interested parties to prevent in its territory:
 - (a) the commercial use of a geographical indication identifying a good for a like good not meeting the applicable product specifications of the geographical indication even if:
 - (i) the true origin of the good is indicated;
 - (ii) the geographical indication is used in translation or transliteration; or
 - (iii) the geographical indication is accompanied by expressions such as "kind", "type", "style", "imitation", or the like;
 - (b) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin or nature of the good; and
 - (c) any other use of a geographical indication which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention, which may include when the good is used as an ingredient.
2. If a Party, in the context of bilateral negotiations with a third country, proposes to protect a geographical indication of that third country which is wholly or partially homonymous with a geographical indication of the other Party listed in Annex 17 (Lists of geographical indications), it shall inform the other Party thereof and give it an opportunity to comment before the third country's geographical indication becomes protected.
3. Without prejudice to Article 23(3) of the TRIPS Agreement, the Parties shall agree on the practical conditions of use under which wholly or partially homonymous geographical indications listed in Annex 17 (Lists of 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. A Party may only cancel the protection of a geographical indication of the other Party listed in Annex 17 (Lists of geographical indications) if that geographical indication has been cancelled, or its protection revoked or otherwise ceased, in the Party of origin.

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

ARTICLE 17.42 - Exceptions

1. Nothing in this Sub-section shall oblige a Party to protect a geographical indication of the other Party listed in Annex 17 (Lists of geographical indications) which is not, or ceases to be protected, or has fallen into disuse in the territory of origin. Each Party shall promptly notify the other Party if a geographical indication listed in Annex 17 (Lists of geographical indications) ceases to be protected in the territory of that Party and request cancellation of protection for that geographical indication in accordance with point (c) of Article 17.69(2) (Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property Rights, including Geographical Indications).
2. Nothing in this Sub-section shall prejudice the right of any person to use, in the course of trade, that person's name, address, or the name of that person's predecessor in business, except where such name is used in relation to a geographical indication of the other Party listed in Annex 17 (Lists of geographical indications) in such a manner to mislead the public.
3. Nothing in this Sub-section shall prevent the use in the territory of a Party, with respect to any good, of a customary name of a plant variety, or an animal breed, existing in the territory of that Party, including where such names are individual components of a multi-component term that is protected as a geographical indication of the other Party listed in Annex 17 (Lists of geographical indications).
4. Nothing in this Sub-section shall require a Party to apply the provisions of this Sub-Section in respect of any word, translation or transliteration of any word, contained in a geographical indication of the other Party where that word, translation or transliteration is a common English word such as "mountain", "alps" or "river".
5. Nothing in this Sub-section shall require a Party to apply the provisions of this Sub-Section in respect of an individual component of a multi-component term that is protected as a geographical indication of the other Party listed in Annex 17 (Lists of geographical indications) which is identical with the term customary in common language as the common name for the associated good in the territory of that Party.
6. If a translation or a transliteration of a geographical indication of the other Party listed in Annex 17 (Lists of geographical indications) is identical with or contains within it a term customary in common language as the common name for a good in the territory of a Party, this Sub-section shall not prejudice the right of any person to use that term in association with that good in the territory of that Party.
7. Goods which, at the date of entry into force of this Agreement, the date of entry into force of any amendment to the list of geographical indications pursuant to Article 17.40 (Amendment of the lists of geographical indications), or at the end of any relevant transitional periods provided for in

Annex 17 (Lists of geographical indications), have been legally described and presented in a manner prohibited by this Agreement, may be marketed under the following conditions:

- (a) for wholesale, for a period of five years; and
- (b) for retail, until stocks are exhausted.

ARTICLE 17.43 - Use of geographical indications

1. Any person is eligible to use a geographical indication listed in Annex 17 (Lists of geographical indications) where their product conforms to the corresponding specification.
2. Once a geographical indication listed in Annex 17 (Lists of geographical indications) is protected under this Agreement, the use of such protected name shall not be subject to any registration of users or further charges.

ARTICLE 17.44 - Relationship to trademarks

1. The registration of a trademark which is identical or similar to a geographical indication of the other Party listed in Annex 17 (Lists of geographical indications) with respect to the associated good of that geographical indication, shall be refused or invalidated, ex officio or on request of an interested party if a Party's laws or regulations so permit, where that good does not meet the applicable product specification for that geographical indication, provided that the 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. For geographical indications listed in Annex 17 (Lists of geographical indications) at the date of entry into force of this Agreement, 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.
3. For geographical indications added to the list in Annex 17 (Lists of geographical indications), as referred to in Article 17.40 (Amendment of the lists of geographical indications), the date of submission of the application for protection referred to in paragraph 1 shall be the date on which the competent authority of a Party receives from the other Party a request to protect a geographical indication under this Agreement.
4. If a trademark has been applied for or registered in good faith, or if rights to a trademark have been acquired through use in good faith, in a Party before the date of submission of the application for protection of a geographical indication listed in Annex 17 (Lists of geographical indications), measures adopted to implement this Sub-section in that Party shall not prejudice the eligibility for or the validity of the registration of the trademark, or the right to use the trademark, on the basis that the trademark is identical or similar to a geographical indication. Such trademark may continue to be used and renewed, notwithstanding the protection of the geographical indication, provided that no grounds for the trademark's invalidity or revocation exist in the Party's law.

5. As regards geographical indications listed in Annex 17 (Lists of geographical indications) on the date of entry into force of this Agreement, an interested person may, in support of its claim that a trademark was applied for in bad faith, provide information to Australia's competent authorities that:

- (a) the trademark was applied for in Australia between the date of publication for objection and the date of entry into force of this Agreement; and
- (b) relates to a situation referred to in paragraph 1.

The competent authority shall consider such information, if admissible as evidence, with regard to the circumstances referred to in Article 17.32 (Bad faith applications).

ARTICLE 17.45 - Enforcement of protection

Each Party shall provide for enforcement of the protection of geographical indications listed in Annex 17 (Lists of geographical indications), ex officio or on request of an interested party, in accordance with its laws and regulations by appropriate administrative and judicial steps.