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POLICY

Voluntary Public

Date: 8/26/2014

GAIN Report Number:

South Africa - Republic of

Post: Pretoria

Proposed protection of Geographical Indications in South Africa

Report Categories:

Trade Policy Monitoring

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Report Highlights:

As part of the negotiating process of the Economic Partnership Agreement (EPA) between the European Union (EU) and South Africa, the EU requested that names of certain products be protected on the basis of their geographical indications (GIs). The South African government issued a notice to this effect on February, 4, 2014. The final list of product names and rules of their protection has not been published, however, post believes that if passed, such protection would be prohibitive to trade and could affect United States exports. Reports are that the GI restriction will affect only imported and not domestically produced products which is discriminatory and unfair.

Background

On February, 4, 2014, as part of the negotiating process of the Economic Partnership Agreement (EPA) between South Africa and the European Union (EU), the South African Department of Trade and Industry (DTI) issued a government notice, listing the names of certain products that the European Union requested to be protected on the basis of their geographical indications (GIs). This Government Notice (No. 66 of 2014) can be found on the following link:

http://www.thedti.gov.za/business_regulation/docs/EU_GIS.pdf. The descriptions of the products as well as the rules of use applicable were also published on the following link:

http://www.thedti.gov.za/business_regulation/SA_EU.jsp. The protection of the proposed geographical indications was made in terms of the Merchandise Marks Act (Act 17 of 1941). The deadline for public comments closed on March, 7, 2014.

The EPA between the SADC EPA Group (Botswana, Lesotho, Mozambique, Namibia, Swaziland and South Africa) and the EU was 'initialed' by the Chief Negotiators on July, 15, 2014. The initialing of the EPA signals that the negotiations are concluded, and if signed by all EU member states and the SADC EPA Group then the prohibition of the listed GIs is anticipated to become effective eight months after being signed by all parties.

South African government's position on the proposed GI protection

The South African DTI published statements on their website that the signed EPA preserves SACU's functional coherence mainly by maintaining the common external tariff. Although other members of the SADC EPA Group will continue to have better access to the EU market, South Africa has achieved improved EU market access for 32 agricultural products, mainly for wine (110 million liters duty free), sugar (150,000 tons duty free) and ethanol (80,000 tons duty free), flowers, some dairy, fruit and fruit products.

The DTI also stated that South Africa agreed to negotiate a protocol on GIs in the interest of protecting names of South African wines exported to the EU, and specialized South African agricultural products such as rooibos and honeybush. However, South Africa only requested three names of agricultural products/food stuffs to be protected (rooibos, honeybush and Karoo lamb), compared to 105 GIs for agricultural products/food stuffs requested by the EU. The proposed GIs could also result in the protection of 102 South African wine names and 120 EU wine names.

Post was advised by a government source that the notice (No. 66 of 2014) issued on February, 4, 2014, merely contains the partial "GI request list" from the EU, and that no decision had been made on the extent of the protection of the requested names. Specifics of the protection will be published once the process is complete. Post was informed that 'prior rights' acquired in respect of the requested names will not be affected and that the outcome of the GI negotiations will not affect the product names currently being used by South Africa producers. This will be discriminatory and unfair. Post was also advised that the negotiation had also dealt with the issue of genericness and of allowing co-existence of names subject to the avoidance of any confusion to consumers.

A final notice has not been published, post has been advised that if the GI protection is granted, it would apply to the exact names as listed in the final notice still to be published.

South Africa's regulations pertaining to Geographical Indications

Questions have been raised on why the South African DTI gave notice of its intention to prohibit the use of certain words through the Merchandise Marks Act. South Africa does not have specific legislation regarding the use of GIs. The protection of GIs is achieved through four main regulations in South Africa, namely, the Trade Marks Act of 1993, Liquor Products Act 60 of 1989, Merchandise Marks Act (Act 17 of 1941) and to a lesser extent the Protection of Traditional Knowledge legislation.

The South African Trade Marks Act allows for the registration of both “Certification Marks” and “Collective Marks”. The certification mark is used to indicate that the goods are of a certain quality or geographic origin, and a collective mark is used to indicate that the producer belongs to the certifying organization. The wine industry has applied the Liquor Products Act 60 of 1989 to protect wines based on historical geographic origin. The “wine of origin” concept is controlled and enforced by the Wines and Spirits Board which gives certification to producers according to the region from which their product originates. This could explain why liquor product names proposed for GI protection in the EPA were not included in the Merchandise Marks Act notice. The Traditional Knowledge legislation makes reference that GIs can be registered as certification marks or collective marks under the Trade Marks Act.

The overall objective of the Merchandise Marks Act is to make provision concerning the marking of merchandise and of coverings in or with which merchandise is sold and the use of certain words and emblems in connection with business. Section 15 of the Merchandise Marks Act states that the Minister of Trade and Industry can prohibit either absolutely or conditionally, the use of any mark or word in connection with any trade or business. Thus, the use of the Merchandise Marks Act to prohibit the use of GIs is not peculiar in South Africa. Some of the proposed GIs will probably be registered under the Liquor Products Act 60 of 1989, or the Trade Marks Act of 1993, but government would still need to prohibit the use of some of the product names under section 15 of the Merchandise Marks Act. This is an inherent complex nature of South African food laws, where several regulations and Ministries have overlapping responsibilities.

Potential impact to United States Exports

The granting of GI protection to the proposed product names could prohibit producers located outside of the EU from selling these products to South Africa, using the protected names. The affected producers would have to develop new brand names to continue exporting to South Africa. Although, post was advised by a government source that the prohibition will not affect the rights of producers already using any of the names, or names which are similar, there are uncertainties, if this protection will be extended to United States producers or if the use of a prohibited name followed by a word like “style” or “type” would be allowed. Post anticipates that the following GIs if protected, will affect United States exports to South Africa:

Table 1: List of proposed GI protected names that could affect United States exports

Geographical indications proposed for	Description of product	Product and Geographic Area
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protection		
Cítricos Valencianos / Cítricos Valencians	Fruit of the orange (<i>Citrus sinensis</i> , L.), mandarin (<i>Citrus reticulata</i> Blanco) and lemon (<i>Citrus limon</i> L.) trees.	Citrus fruit <u>Geographic Area</u> Cítricos Valencianos' are produced in the following districts in the provinces of Castellón, Valencia and Alicante.
Φέτα / Feta	A white table cheese which is stored in brine and produced, using traditional methods, exclusively from sheep's milk, or from a mixture of sheep's milk and goat's milk with the latter not exceeding 30% of the milk net weight.	Cheeses <u>Geographic Area</u> Macedonia, Thrace, Epirus, Thessaly, Central Mainland Greece, the Péloponnèse, Lesbos prefecture, Greece
Gorgonzola	A soft, fat, raw paste cheese made exclusively from whole cows' milk	Cheeses <u>Geographic Area</u> — Bergamo, Biella, Brescia, Como, Cremona, Cuneo, Lecco, Lodi, Milan, Monza, Novara, Pavia, Varese, Verbano Cusio-Ossola and Vercelli. — Alessandria: solely the municipalities of Casale Monferrato, Villanova Monferrato, Balzola, Morano Po, Coniolo, Pontestura, Serralunga di Crea, Cereseto, Treville, Ozzano Monferrato, San Giorgio Monferrato, Sala Monferrato, Cellamonte, Rosignano Monferrato, Terruggia, Ottiglio, Frassmello Monferrato, Olivóla, Vignale, Camagna, Conzano, Occimiano, Mirabello Monferrato, Giarole, Valenza, Pomaro Monferrato, Bozzole, Valmacca, Ticmeto, Borgo San Martino and Frassineto Po.
Roquefort	Blue-veined cheese made from raw, whole sheep's milk. Cylindrical in shape with a moist rind, 8,5 to 11,5 cm in height and weighing 2,5 to 3 kg. The dry matter content must not be less than 55 g per 100 g of ripened cheese. Before it is pressed, the raw cheese is cultured with spores of <i>Penidllium roqueforti</i> . The cheese is smooth and compact, with even blue veins, a very distinctive aroma, slight scent of mould and a fine, robust taste.	Cheeses <u>Geographic Area</u> <i>The vast area south of the Massif Central and the area called Rayon covering Aveyron, Aude, Lozère, Gard, Hérault and Tarn:</i>
Asiago	The protected designation of origin 'Asiago' may be awarded only to semi-cooked cheese, produced only with cow's milk, in compliance with the specification, and existing in two versions: pressed 'Asiago' and ripened 'Asiago'.	Cheeses <u>Geographic Area</u> The provinces of Vicenza, Trento, Padua and Treviso.
Fontina		Cheeses <u>Geographic Area</u> The entire territory of Valle d'Aosta.

Source: Government Gazette Notice (No. 66 of 2014)

Industry response to the proposed protection of GIs

The media in South Africa has been silent on the industry's reaction to the proposed protection of the GIs. However, post managed to obtain comments from some industry contacts.

The SA Milk Processors' Organization (SAMPRO) indicated that the process of negotiating the protection of the proposed GI's was an open transparent process as evidenced by the published government notice (No. 66 of 2014) which invited all interested parties to comment. SAMPRO commented that as per their mandate, their first priority was to protect South African producers and manufactures by ensuring that they would continue to make use of the common food product names proposed for GI protection. This was achieved as the outcome of the GIs protection negotiations will not affect the product names currently being used by producers in South Africa. This response probably confirms why there has not been much media coverage of the industry's reaction to the proposed GI protection as it will not affect the South African producers.

An industry contact indicated that they are aware that the United States government differs strongly from the EU on the extent of GI protection, and that the correct view could be ascertained though a dispute under the Dispute Settlement Understanding (DSU) of the World Trade Organisation (WTO) as there will be an opportunity to raise objections to the lawfulness of the GI protection when the SADC EPA is notified under Art XXIV GATT. The industry contact also commented that Free Trade Agreements (FTAs) are presently being negotiated in many 'platforms' because the Doha Round is unlikely to produce a comprehensive trade deal. This development is putting pressure to the multilateral trade system, and inevitably debates on GI protection are increasing. The contact raised questions on whether the United States government has considered the possibility of concluding its own FTA with SACU, as this could provide opportunities to address specific United States concerns, alternatively, the protection of GIs could be dealt with under the current Trans-Atlantic FTA negotiations with the EU.

Post has been made aware that several countries such as New Zealand will be filing WTO notices on the proposed protection of GIs by South Africa. Post will continue to provide feedback accordingly.

Other Related Links

Internet Link	Title
Click here	Merchandise Marks Act (Act 17 of 1941)
Click here	Trade Marks Act of 1993
Click here	Liquor Products Act 60 of 1989