

Gis in SA – Overview of the Landscape

20 November 2017



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Outline

- Introduction:
 - Definition
 - Examples
 - Why protect?
 - *Old World - New World v North - South*
- TRIPS:
 - Basic principles
 - TRIPS Negotiations
- SA Protocol 3



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Introduction

- Definition:

“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 geographical origin”

-Art 22.1 TRIPS



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Introduction

- Examples :



shutterstock



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Why protect?

- Deter free-riding
- Prevent misappropriation through registration of the GIs as a trademark – e.g. Rooibos in the US
- Limit the risk of the GI becoming a generic term – e.g., Camembert or Cheddar
- Value addition



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Old World - New World v North - South

- Most international IP issues entail North - South divide
- In GIs the major divide is “old world - new world”
- Southern countries have seen advantage in protecting GIs



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Old World - New World v North - South

Examples of protected southern GIs:



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

TRIPS Basic Principles

- General protection (Art 22):
 - misleading use and unfair competition
- Enhanced protection (Art 23):
 - even if misuse would not cause the public to be misled



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Key TRIPS Exceptions

- Generic terms (Art 24.6)
- Prior TM rights (Art 24.5)
- Prior use of the GI (Art 24.4)
- Not protected in country of origin or fallen into dis-use (Art 24.9)



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

TRIPS Negotiations

- Multilateral register for wines and spirits:
 - Art 23.4 and Doha Declaration
 - 3 proposals on the table
- Extension:
 - No progress



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Protocol 3

- Background
- Negotiating conditions
- Covered GIs
- Regime for protection
- State of Play and way forward



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Background

- EU-ACP negotiations post EC-Bananas
- SA preferred TDCA
- Later joined
- 2012 – EU requests GI inclusion
- SA agrees to negotiate Protocol 3



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Negotiating conditions

- SA producers to retain prior IPRs
- 5 year transitional period to phase in Ag GI protection under APS



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Covered GIs

- EU request list totals 252 GIs including wines, spirits and agricultural products
- SA request list =105 GIs including 102 wines and 3 agricultural products
- Asymmetry but access for further 38 wines, 3 new agricultural products, and better AMA in general



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Regime for protection

- Liquor Products Act :
 - Basis for W&S GIs
 - W&S Board to administer
 - Effective October 2016 (Notice 722 of 2016)
- Merchandise Marks Act:
 - Interim protection for Ag GIs - Notice 1303
 - Migration to APS in due course



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

State of Play and way forward

- SADC – EU EPA EU concluded June 2016 in Kasane, Botswana
- October 2016 notifications
- Improved market access effective 1 November 2016
- Special committee on GIs



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Thank you for your attention!

Marumo Nkomo

Director: Legal International Trade & Investment

International Trade & Economic Development Division

Department of Trade & Industry

South Africa

Direct: [+27 12 394 3156](tel:+27123943156)

Mobile: [+27 79 401 5635](tel:+27794015635)



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA