

European Union-Singapore Free Trade Agreement: A New Chapter for Geographical Indications in Singapore

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1 INTRODUCTION

As a signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS),¹ Singapore is obliged to confer protection to geographical indications (GIs). For the past fifteen years, the relevant legislation in Singapore has been the Geographical Indications Act (GI Act 1999),² which came into force on 15 January 1999. However, with the successful conclusion of negotiations of the European Union (EU) and Singapore Free Trade Agreement (EU-Singapore FTA)³ in 2013, the law on GIs in Singapore is set to change. One key takeaway from the EU-Singapore FTA Intellectual Property Chapter is that the EU and Singapore reached an agreement and Singapore will enhance its existing regime for the protection of GIs. Consequently, a new Geographical Indications Act (GI Act 2014) for Singapore has been passed by Parliament on 14 April 2014.⁴ The new GI Act 2014 will replace the current GI Act 1999 once it is brought into force (as at the date of this writing and as of February 2017, just before this book goes to press, the GI Act 2014 has still not been brought into force in Singapore). Under the

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¹ See Agreement on Trade-Related Aspects of Intellectual Property Rights, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Legal Instrument – Result of the Uruguay Rounds Vol. 31, 33 I.L.M. 83, 1869 UNTS 299 (1994) [hereinafter TRIPS].

² Geographical Indications Act (Cap 117B, 1999 Rev. Ed.) (Sing.) [hereinafter GI Act 1999].

³ See EU-Singapore Free Trade Agreement, EU-Sing., June 29, 2015 [hereinafter EU-Singapore FTA], <http://trade.ec.europa.eu/doclib/press/index.cfm?id=961>.

⁴ Geographical Indications Act (No. 19 of 2014) (Sing.) [hereinafter GI Act 2014].

GI Act 2014, Singapore will strengthen its current protection by establishing an ad hoc register for GIs,⁵ and a new chapter will begin for the protection of GIs.

In particular, the new GI Act 2014 heralds an enhanced protection regime for GIs in Singapore, and the provisions of the new Act will come into operation in several stages in tandem with the general ratification process of the EU-Singapore FTA. The first stage of implementation of the FTA will involve the establishment of the GI Registry.⁶ However, the Registry will be established only when the EU ratifies the EU-Singapore FTA.⁷ Likewise, the enhanced regime under the GI Act 2014 will be applicable only when the EU-Singapore FTA is implemented in the EU and Singapore. Furthermore, as part of this process, amendments related to the protection of GIs will have to be made to the current provisions of the Trade Marks Act 1998.⁸ The final stage of implementation is supposed to take place within three years of entry into force of the EU-Singapore FTA. The same time frame will apply to the implementation of improved border enforcement measures with respect to registered GIs, as these measures will need to be adopted as part of Singapore's obligations in the FTA. The staged approach adopted by the Singapore Parliament aims at ensuring that companies and government organizations will have sufficient time to adjust to the impact of the new GI protection regime in Singapore.

As Singapore moves into the next phase of legislative development on GIs with the enactment of GI Act 2014, this chapter examines and assesses the protection accorded to GIs in Singapore, but with a specific interest in the provisions of the new GI Act 2014. The chapter begins with a broad overview of the protection of GIs in Singapore under the GI Act 1999. It then addresses the adoption of the GI Act 2014. Next, the chapter focuses on the relevant provisions of the newly adopted (but not yet entered into force at the time of this writing) GI Act 2014 and discusses the legal issues as well as business implications that may be raised by the new GI provisions.

⁵ See GI Act 2014 pt. IV, §§ 17–37. ⁶ See *id.*

⁷ EU-Singapore FTA, art. 11.17 ('(2) The systems referred to in paragraph 1 shall contain elements such as ... (a) a domestic register.') The Intellectual Property Chapter of the EU-Singapore FTA is available at http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151761.pdf.

⁸ Singapore Trade Marks Act (Cap 332, 2005 Rev Ed) [hereinafter Trade Marks Act 1998].

2 LEGAL PROTECTION OF GEOGRAPHICAL INDICATIONS IN SINGAPORE

2.1 *The Law Prior to the Geographical Indications Act of 1999*

Once upon a time, under the old Trade Marks Act 1938,⁹ it was difficult to register and protect a word which, according to its ordinary signification, is a geographical name, as it was not considered to be distinctive or adapted to distinguish the proprietor's goods from the goods of any other trader.¹⁰

During those times, marks which were geographical names were protected in Singapore under the common-law action for passing off, provided that the three elements of goodwill, misrepresentation and likelihood of damage are satisfied. Accordingly, owners of (generally foreign) GIs could take action in passing off against unauthorized use of their GIs by third parties in Singapore. However, the challenge remained, and still remains under a passing-off action in Singapore, that a GI which is protected in another country may not enjoy goodwill in Singapore because it is possible that the public in Singapore does not associate goods bearing the GI with the special qualities and characteristics attributable to the geographical region indicated in the GI. Another difficulty pertains to the second element of misrepresentation, which requires proof of a likelihood of confusion amongst the public. If the public in Singapore, on seeing a GI, understands that the goods do not originate from the geographical region as indicated in the GI (for example, if the GI, when applied, is accompanied with words such as 'kind', 'type', 'style', 'limitation' or 'the like'¹¹), there is no confusion and passing off is not established, which may add to the chagrin of GI owners, as they would not be able to protect their GIs.

Starting in 1999, with the repeal of the Trade Marks Act 1938 and the enactment of the Trade Marks Act 1998 on 15 January 1999,¹² the owners of GIs that are used to identify products are permitted to register their GIs as a trademark under the Trade Marks Act 1998 if the GIs fall within the ambit of the statutory requirements for trademark registration.¹³ It should be noted that trademark laws in Singapore do not prohibit the registration of GIs per se.

⁹ Singapore Trade Marks Act (Cap 332, 1992 Rev Ed) [hereinafter Trade Marks Act 1938]. For more than half a century since 1 February 1939, the Trade Marks Act 1938 was the operative statute and cornerstone of trademark protection in Singapore. After Singapore became a signatory to TRIPS on 15 April 1994, the Trade Marks Act 1938 was repealed and the Trade Marks Act 1998 came into force on 15 January 1999.

¹⁰ Trade Marks Act 1938 at § 10(1)(d). ¹¹ TRIPS, arts. 22–24.

¹² See Trade Marks Act 1998.

¹³ See Trade Marks Act 1998 §§ 7–9, which cover the grounds of refusal of registration of trademarks.

Nevertheless, GI owners can prevent registration of a GI as a trademark which is not authorized by them. For example, Section 7(4)(b) of the Trade Marks Act 1998 provides that ‘a trade mark shall not be registered if it is . . . of such a nature as to deceive the public for instance as to the nature, quality or *geographical origin* of the goods or service’.¹⁴ Furthermore, Section 7(7) of the Trade Marks Act 1998 stipulates that a ‘trade mark shall not be registered if it contains or consists of a GI in respect of a wine or spirit and the trade mark is used or intended to be used in relation to a wine or spirit not originating from the place indicated in the GI’.¹⁵ The prohibition against registration remains

whether or not the trade mark has, or is accompanied by, an indication of the true geographical origin of the wine or spirit, as the case may be, or an expression such as ‘kind’, ‘type’, ‘style’, ‘imitation’ or the like, and irrespective of the language of the geographical indication is expressed in that trade mark.¹⁶

Under the Trade Marks Act 1998, GIs may also be registered as collective or certification marks.¹⁷ However, a GI which is a generic term to the public in Singapore cannot be registered as a collective or certification mark.¹⁸ Beyond trademark laws, the use or application of a false trade description on goods including their place of origin is prohibited and constitutes an offence under the consumer protection legislation.¹⁹

As a whole, it may be said that legal protection for GIs at that stage of Singapore’s IP infrastructure developments did not meet Singapore’s obligations under TRIPS,²⁰ and a change in the law was hence considered necessary.

2.2 *The Law Post–Geographical Indications Act 1999*

To meet Singapore’s international obligations to provide protection for GIs as stipulated in TRIPS, the Singapore Parliament enacted the GI Act 1999,²¹ which came into force on 15 January 1999. Thus, for the past fifteen years, the GI Act 1999 has been the relevant legislation which laid down the basic

¹⁴ *See id.* § 7(4)(b) ((4) A trade mark shall not be registered if it is: . . . (b) of such a nature as to deceive the public (for instance as to the nature, quality or geographical origin of the goods or service.’)).

¹⁵ *See id.* § 7(7) (‘A trade mark shall not be registered if it contains or consists of a GI in respect of a wine or spirit and the trade mark is used or intended to be used in relation to a wine or spirit not originating from the place indicated in the geographical indication’).

¹⁶ *Id.* § 7(8). ¹⁷ *See id.* pt. VIII, §§ 60–61. ¹⁸ *See* Trade Marks Act 1998, scheds. 1–2.

¹⁹ Consumer Protection (Trade Description and Safety Requirements) Act (Cap 53, 1985 Rev Ed).

²⁰ *See* TRIPS, arts. 22–24. ²¹ GI Act 1999.

framework for GI protection in Singapore. The GI Act 1999 is a short Act with only twelve sections.²²

Under GI Act 1999, a GI is defined as

any indication used in trade to identify goods as originating from a place, provided that -

- (a) the place is a qualifying country or region or locality in the qualifying country; and
- (b) a given quality, reputation or other characteristics of the goods is essentially attributable to that place[.]²³

According to this definition, not all GIs are protected in Singapore. Indeed, only GIs of a country which is a member of the World Trade Organization (WTO),²⁴ a party to the Paris Convention for the Protection of Industrial Property (Paris Convention)²⁵ or a country designated by the Singapore government as a qualifying country can be protected.²⁶

Furthermore, the GI Act 1999 does not provide a registration system for GIs in Singapore. Instead, protection for GIs is granted automatically if the criteria set forth in the GI Act 1999 are met.²⁷ A producer or trader of goods identified by GIs could institute civil proceedings against a person for committing an act prohibited under the GI Act 1999 if he is able to prove that he is entitled to protection for the GI in question.

The following uses are prohibited under the GI Act 1999:²⁸

1. Use of the GI on goods which do not originate in the place indicated in the GI, in a manner *which misleads the public as to the geographical origin of the goods*
2. Use of the GI which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention²⁹
3. For wines and spirits, there is an additional level of protection³⁰ – its use on wines or spirits not originating from the place indicated in the GI is prohibited whether or not
 - (i) the true geographical origin of the second-mentioned wine is used together with the GI;
 - (ii) the GI is used in translation; or
 - (iii) the GI is accompanied by any of the words ‘kind’, ‘type’, ‘style’, ‘imitation’, or any similar word or expression.

²² See *id.* §§ 1–12. ²³ See *id.* § 2. ²⁴ See TRIPS, art. 22(2).

²⁵ Paris Convention for the Protection of Industrial Property, 20 March 1883, 21 U.S.T. 1583, 828 U.N.T.S. 305 (revised 1967) [hereinafter Paris Convention].

²⁶ Compare GI Act 1999 § 2 with GI Act 1999 § 11. ²⁷ See *id.* §§ 2–3. ²⁸ See *id.* § 3(2).

²⁹ See Paris Convention, art. 10bis. ³⁰ See GI Act 1999 § 3(2)(c).

Essentially, the GI Act 1999 has adopted a two-tier approach in granting protection to GIs, which is consistent with TRIPS.³¹ At a more basic level, the GI Act 1999 provides a general protection for GIs based on wrongful use resulting in misrepresentation or unfair competition. An enhanced level of protection is accorded to wines and spirits in that the protection approximates that of a dilution-type remedy, which is not premised on a likelihood of confusion on the part of the public.³²

Singapore did not, and still does not, have a list of GIs or her own GIs for which protection is sought. Thus, the legal framework provided under the GI Act 1999 was initially considered to be adequate as far as GI protection in Singapore was concerned, at least as the first step after the implementation of TRIPS in Singapore.³³ In this respect, it may be said that the main inadequacy of the GI Act 1999 lies in the fact that it does not provide for the establishment of a registration system. As a result, filing a claim in the Singapore courts for infringement of a GI under the GI Act 1999 requires that the GI owners first establish that they are entitled to protection for the GI in question.³⁴ Essentially, in practice, this means that GI owners are required to go before a court to prove conclusively that their GIs are entitled to be protected in Singapore. This would be considered as unsatisfactory and inadequate protection to most GI owners in general, in particular those who enjoy comprehensive protection in a *sui generis* system such as the EU.³⁵

The successful conclusion of the EU-Singapore FTA in 2013 has provided the impetus for change in the law of GIs,³⁶ and it is to the substantive provisions in the GI Act 2014 that we shall now turn.

3 THE NEW LAW TO BE IN SINGAPORE: SALIENT FEATURES OF THE GEOGRAPHICAL INDICATIONS ACT 2014

The GI Act 2014 will repeal and re-enact with amendments the old GI Act 1999. Compared to the GI Act 1999, the number of provisions in the GI Act

³¹ TRIPS, art. 23. ³² See, e.g., TRIPS, arts. 22–24.

³³ The language used in TRIPS for prescribing the standard of protection for GIs is fairly wide and it is clear that TRIPS does not make protection of GIs contingent on registration. See TRIPS, art. 22(2)(a)–(b).

³⁴ See GI Act 1999 § 3(1).

³⁵ The European Union protects GIs through an extensive Register which encompasses over 1,400 food and agricultural products and over 3,000 wines and spirits. See ‘E-bacchus’, a database consisting of the Register, which is available at <http://ec.europa.eu/agriculture/markets/wine/e-bacchus/>. See also the DOOR Databases for foodstuff and agricultural GIs, which is available at <http://ec.europa.eu/agriculture/quality/door/list.html>.

³⁶ See EU-Singapore FTA, art. 11.17(1)–(2).

2014 has significantly expanded from twelve to ninety.³⁷ In broad terms, the GI Act 2014 is significant in three areas: (a) the establishment of a GI Registry;³⁸ (b) the conferment of enhanced protection of GIs in Singapore;³⁹ and (c) the provision of improved border enforcement measures for GIs.⁴⁰

3.1 *The Establishment of a Geographical Indications Registry in Singapore*

Part IV of the GI Act 2014⁴¹ establishes a system of registration for GIs in Singapore. This new GI Registry will reside within the Intellectual Property Office of Singapore (IPOS). Once established, the GI Registry will examine applications for GI registration in respect of wines, spirits, selected categories of foodstuffs and agricultural products such as cheese, meat and seafood.⁴² The registration process of GIs mirrors that of the trademark registration system in Singapore,⁴³ which essentially comprises three main stages: (a) application;⁴⁴ (b) examination;⁴⁵ and (c) publication and opposition.⁴⁶

Only certain categories of persons are entitled to file an application for registration of a GI.⁴⁷ They include 'persons who are carrying on an activity as a producer in the geographical area specified in the application with respect to the goods specified in the application'⁴⁸ and 'an association of such persons',⁴⁹ as well as competent authorities having responsibility for the geographical indication for which registrations are sought.⁵⁰

Section 39 of the GI Act 2014⁵¹ provides that an application for registration of a GI must be done in the prescribed manner and shall specify details such as the name, address and nationality of the applicant; the capacity in which the applicant is applying for registration; the GI for which registration is sought; the goods to which the GI applies; the geographical area to which the GI applies; and the quality, reputation or other characteristics of the goods and how they are attributable to the geographical origin. Registration of a GI may only be made in respect of prescribed categories of goods as set out in the Schedule of the GI Act 2014.⁵²

³⁷ See GI Act 2014. ³⁸ See *id.* pt. IV, §§ 17–37. ³⁹ See *id.* pt. II.

⁴⁰ See GI Act 2014 pt. VI. ⁴¹ See *id.* pt. IV, §§ 17–37.

⁴² See GI Act 2014, sched. (listing wines, spirits, beers, cheese, meat and meat products, seafood, edible oils, non-edible oils, fruits, vegetables, spices and condiments, confectionery and baked goods, flowers and parts of flowers, and natural gum).

⁴³ See Trade Marks Act 1998 pt. II. ⁴⁴ *Id.* §§ 5–6A. ⁴⁵ *Id.* § 12. ⁴⁶ *Id.* § 13.

⁴⁷ GI Act 2014 § 38. ⁴⁸ *Id.* § 38(a). ⁴⁹ *Id.* § 38(b). ⁵⁰ *Id.* § 38(c). ⁵¹ *Id.* § 39(1).

⁵² See *id.*, sched.

The GI Act 2014 implements a system of substantive examination of the application for registration of a GI in Singapore. In particular, the GI Act 2014 establishes that, after the submission of an application to register a GI, the Registrar will conduct an examination of the application⁵³ to determine whether the application for registration of a GI satisfies all the requirements of the GI Act 2014. To do so, the Registrar may (and likely will) carry out a search of earlier trademarks⁵⁴ and earlier GIs.⁵⁵ The Registrar may refuse to register a GI based on any of the grounds set out in Section 41 of the GI Act 2014.⁵⁶ These grounds of refusal of registration of a GI fall broadly into two categories. The first category pertains to objections associated with the innate attributes or qualities of the GI under consideration for registration such as:⁵⁷

- (a) If the indication does not fall within the meaning of ‘geographical indication’⁵⁸ as defined in Section 2 of the GI Act 2014
- (b) If the GI identifies goods which do not fall within any of the categories of goods set out in the Schedule of the GI Act 2014
- (c) If the GI is contrary to public policy or morality
- (d) If the GI is not or has ceased to be protected in its country or territory of origin
- (e) If the GI is identical to the common name of any goods in Singapore, where registration of the GI is sought in relation to those goods
- (f) If the GI contains the name of a plant variety or an animal breed and is likely to mislead the consumer as to the true origin of the product.

This set of grounds for refusal for registration of a GI in Section 41(1) of the GI Act 2014 resembles the absolute grounds for refusal of registration of

⁵³ *Id.* § 43.

⁵⁴ *See id.* § 43(7) (‘An “earlier trademark” means (a) a registered trademark or an international trademark (Singapore), the application for registration of which was made earlier than the application for registration of the geographical indication in general, taking into account (where appropriate) the priorities claimed in respect of the trademark under the Trade Marks Act 1998; or (b) a trademark which, at the date of application for registration of the geographical indication in question, was a well-known trademark’).

⁵⁵ *See id.* § 2(1) (‘An “earlier geographical indication,” ... means a geographical indication (a) which has been registered under section 48; or (b) an application for registration of which has been made under section 39, before the date of application in question’).

⁵⁶ *See id.* § 41. ⁵⁷ *Id.* § 41(1)(a)–(f).

⁵⁸ The definition of a ‘geographical indication’ in the GI Act 2014 is the same as that in GI Act 1999. Section 2(1) of the GI Act 2014 defines a ‘geographical indication’ to mean ‘any indication used in trade to identify goods as originating from a place, provided that (a) the place is a qualifying country or a region or locality in a qualifying country; and (b) a given quality, reputation or other characteristic of the goods is essentially attributable to that place’. GI Act 2014 § 2(1).

a trademark under Section 7 of the Trade Marks Act 1998. In particular, these grounds for refusal include the lack of distinctiveness⁵⁹ and/or other obstacles such as bad faith⁶⁰ or being against public policy.⁶¹ Both sets of grounds of refusal for registration of a GI and a trademark focus on the innate ability of the GI or the trademark to distinguish goods or services in the marketplace. In the case of a GI, the inquiry is whether GIs distinguish the goods that originate from the particular geographical location from goods that do not; in the case of a trademark, the inquiry is whether the trademarks distinguish goods that are associated with one trader from those of other traders. It is anticipated that given the close relationship between a GI and a trademark, the principles developed in trademark law, in particular those used to determine whether a sign or indication has ‘become customary in current language or bona fide and established practices of trade’,⁶² would certainly help inform the calibration of whether a GI may be considered ‘identical to the common name of any goods in Singapore’⁶³ under Section 41(1)(e) of the GI Act 2014 and consequently must be refused registration. It should be noted that in this regard Section 41(2) of the GI Act 2014 provides that in determining whether a GI is ‘identical to the common name of any goods in Singapore’ under Section 41(1)(e), any marketing material in Singapore which uses a GI shall be relevant evidence to show that the GI is *not* the common name of any goods in Singapore, if the marketing material suggests in a misleading manner that the goods to which the marketing material relates originate in the geographical origin of the GI, when in fact those goods originate elsewhere.⁶⁴ This may be done through using either words or pictures.

The other set of grounds for refusal of registration of a GI may be referred to as the relative grounds for refusal of registration because the objections lie essentially in that if the proposed GI is registered, its use will conflict with an ‘earlier GI’⁶⁵ or an ‘earlier trademark’.⁶⁶ These relative grounds for refusal of registration of a GI under Sections 41(3) to (6) may be summarized as follows:

- (a) A GI shall not be registered if there exists a likelihood of confusion on the part of the public because the GI is identical with or similar to, and has the same geographical origin as, an earlier GI.⁶⁷ An exception to this

⁵⁹ Trade Marks Act 1998 § 7(1)(b). ⁶⁰ *Id.* § 7(6). ⁶¹ *Id.* § 7(4)(a).

⁶² *See id.* § 7(1)(d). *See also* Wing Joo Loong Ginseng (S) Ltd v. Qinghai Xinyuan Foreign Trade Co Ltd [2009] 2 SLR 814, in which the SGCA suggested that trademarks which are generic descriptions of the goods in question are caught by section 7(1)(d) of the Trade Marks Act 1998. Both Trade Marks Act 1998 § 7(1)(d) and GI Act 2014 § 41(1)(e) are targeted at generic terms.

⁶³ GI Act 2014 § 41(1)(e). ⁶⁴ *Id.* § 41(2). ⁶⁵ *Id.* § 41(3). ⁶⁶ *Id.* § 41(4)–(5).

⁶⁷ *Id.* § 41(3).

ground for refusal of registration is the registration of homonymous GIs under Section 42 of the GI Act 2014.⁶⁸ A homonymous GI refers to a GI 'that, in part or in whole, has the same spelling as, or sounds the same as, a GI for any goods having a different geographical origin'.⁶⁹ The Registrar may register homonymous GIs subject to the imposition of practical conditions so as to differentiate the homonymous GIs from the earlier GI.⁷⁰ In doing so, the Registrar shall have regard to factors such as (i) the need to ensure equitable treatment of all the interested parties concerned; (ii) the need to ensure that consumers are not misled; and (iii) the views and submissions of the applicant for registration of the homonymous GI and of the applicant for registration or registrant of the earlier GI.⁷¹

- (b) A GI shall not be registered if there exists a likelihood of confusion on the part of the public because (i) the GI is identical with or similar to a trademark;⁷² and (ii) the trademark is a *registered trademark* – the application or registration for which was before the date of application for the GI in Singapore and the application or registration of the said trademark was in good faith – or that the trademark has been *used* in good faith in Singapore in the course of trade before the date of application for registration of the GI in Singapore.⁷³
- (c) A GI shall not be registered if it is identical with or similar to a trademark that is, before the date of application for registration of the GI in Singapore, a well-known trademark in Singapore and registration of the GI is liable to mislead consumers as to the true identity of the goods identified by that GI.⁷⁴

If there are no objections from the Registrar or if the objections have been successfully overcome, the application will be accepted and the Registrar shall cause the application to be published in the prescribed manner.⁷⁵ Thereafter, any person may within the prescribed time commence opposition proceedings against the registration of the GI.⁷⁶ If the opposition is successful, the application for registration of the GI will be refused. On the other hand, if the opposition is unsuccessful or if there is no opposition, the GI will be registered and a certificate of registration will be issued to the applicant.⁷⁷ The GI will be registered for a period of ten years from the date of registration,⁷⁸ and may be renewed for further periods of ten years in respect of each renewal.⁷⁹

⁶⁸ *Id.* § 42. ⁶⁹ *Id.* § 2. ⁷⁰ *Id.* § 42(2).

⁷¹ *Id.* § 42(3); see also TRIPS, art. 23(2), covering the refusal of registration of trademarks for wines containing homonymous indications.

⁷² GI Act 2014 § 41(4). ⁷³ *Id.* § 41(5). ⁷⁴ *Id.* § 41(6). ⁷⁵ *Id.* § 45(1). ⁷⁶ *Id.* § 45(2).

⁷⁷ *Id.* § 48. ⁷⁸ *Id.* § 50. ⁷⁹ *Id.* §§ 50–51.

Post-registration, a registered GI may be cancelled by either the Registrar upon an application by the registrant or by the court or Registrar upon an application by any other person on any of the grounds stipulated in Section 52(2) of the GI Act 2014.⁸⁰ These grounds include:⁸¹

- (a) that the GI was registered in breach of Section 41⁸² of the GI Act 2014;
- (b) that the registration was obtained fraudulently or by misrepresentation;
- (c) that the GI has ceased to be protected in its country or territory of origin;
- (d) that there has been a failure to maintain, in Singapore, any commercial activity or interest in relation to the GI, including commercialization, promotion or market monitoring;
- (e) that, in consequence of a lack of any activity by any interested party of goods identified by a registered GI, the GI has become the common name of those goods in Singapore.

If the GI is cancelled upon application of the registrant, the rights conferred by the registration on any interested party of goods identified by the GI shall cease to exist with effect from the date of cancellation of the registration.⁸³

In the event that a GI is cancelled based on the grounds that it has been registered in breach of Section 41 of the GI Act 2014⁸⁴ or that the registration was obtained fraudulently or by misrepresentation, the GI shall be deemed never to have been registered.⁸⁵

If the GI is cancelled based on any of the other grounds, it shall cease to exist with effect from the date of application for cancellation or if the Registrar or the court is satisfied that the ground existed at an earlier date.⁸⁶

3.2 *Enhanced Protection of Geographical Indications in Singapore*

The new GI Act 2014, when brought into force, will establish a *sui generis* system of protection for GI in Singapore. Both unregistered and registered GIs are set to be protected under the GI Act 2014.

In respect of unregistered GIs, the protection is the same as that provided under the GI Act 1999.⁸⁷ Essentially, this means a trader or an association of producers or traders may bring action against any person for the use of an unregistered GI in relation to any goods which did not originate in the place indicated by the GI, in a manner which misleads the public as to the

⁸⁰ *Id.* § 52(1)–(2). ⁸¹ *Id.* § 52(2)(a)–(e).

⁸² *Id.* § 41 (stating the grounds for refusal of registration). ⁸³ *Id.* § 52(5). ⁸⁴ *See id.* § 41.

⁸⁵ *Id.* § 52(6). ⁸⁶ *Id.* § 52(7). ⁸⁷ GI Act 1999 §§ 2, 3(2).

geographical origin of the goods or if the use of the unregistered GI constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.⁸⁸

The protection accorded to GIs which identify wines and spirits as conferred under the GI Act 1999 remains unchanged under the GI Act 2014. The use of GIs on wines or spirits not originating from the place indicated in the GI is prohibited whether or not

- (i) the true geographical origin of the second-mentioned wine is used together with the GI;
- (ii) the GI is used in translation; or
- (iii) the GI is accompanied by any of the words ‘kind’, ‘type’, ‘style’, ‘imitation’ or any similar word or expression.⁸⁹

This enhanced level of protection formerly accorded only to wines and spirits under the repealed GI Act 1999 is now extended to registered GIs for selected categories of agricultural products and foodstuff as stated in the Schedule of the GI Act 2014.⁹⁰ Protection is conferred on GIs of these selected agricultural products and foodstuff even if consumers are not misled as to the products’ true geographical origin.⁹¹

3.3 *Improved Border Enforcement Measures for Geographical Indications*

Under Part VI of the GI Act 2014,⁹² owners of a registered GI will have access to a suite of improved border enforcement measures. One such improved border enforcement measure is that an interested party of goods identified by a registered GI may request the customs authorities in Singapore to detain suspected infringing goods and restrict the importation or exportation of such goods.⁹³

These improved border enforcement measures will only be implemented within three years after the EU-Singapore FTA comes into force.⁹⁴ Substantial resources will have to be allocated to enhance the capabilities of Singapore customs authorities so as to undertake effective GI enforcement actions.

⁸⁸ Compare GI Act 2014 §4(2)(a)–(b) with Paris Convention, art. 10*bis*.

⁸⁹ GI Act 2014 § 4(2)(c)–(d). ⁹⁰ See *id.*, sched. ⁹¹ *Id.* § 4(6).

⁹² See *id.* pt. VI, §§ 55–74. ⁹³ *Id.* § 56.

⁹⁴ Sing. Parl. Deb., Official Rep. (14 April 2014) vol. 91 (Indranee Rajah, Senior Minister of State for Education and Law).

4 ISSUES AND IMPLICATIONS OF THE NEW GEOGRAPHICAL INDICATIONS REGIME IN SINGAPORE

4.1 *Establishing a Registration System for Geographical Indications in Singapore*

The new GI Registry⁹⁵ to be established under the GI Act 2014⁹⁶ will commence receiving applications for registration of GIs after the EU-Singapore FTA is ratified by the European Parliament. The examination of applications for registration of GIs is a major undertaking of the new GI Registry and it will require the establishment of substantial institutional capabilities and resources to facilitate and support it.

Under Article 11.17 of the EU-Singapore FTA,⁹⁷ both the EU and Singapore have agreed to subject the names listed under Annex 11-A of the EU-Singapore FTA⁹⁸ to their respective domestic registration processes to determine the registrability of these names as GIs.⁹⁹ Thereafter, both parties to the EU-Singapore FTA will convene to adopt a decision in the Trade Committee regarding the list of names that are to be protected as GIs in Singapore and the EU.¹⁰⁰ Yet, it is noteworthy that under the EU-Singapore FTA, Singapore did not accept to grant automatic recognition and protection to a limited list of key GIs from the EU. There are altogether 196 names from the EU to be examined and to be verified by the Registrar that they identify goods originating in territories of the EU or a region or locality in the EU, where a given quality, reputation or other characteristic of the goods is essentially attributable to their geographical origin.¹⁰¹ In contrast, Singapore has no list of its own GIs for which it wants protection in the EU. The Singapore position is noteworthy because several other countries that have concluded FTAs with the EU have accepted to protect the same or a similar list of EU GIs automatically (i.e. without a substantive examination), even though some exceptions have been carved for certain names in some of these countries.¹⁰²

⁹⁵ See GI Act 2014 §§ 17–20. ⁹⁶ See *id.* pt. IV, §§ 17–37.

⁹⁷ EU-Singapore FTA art. 11.17. ⁹⁸ See EU-Singapore FTA, Annex 11-A.

⁹⁹ Article 11.17(3), EU-Singapore FTA. ¹⁰⁰ *Id.* ¹⁰¹ GI Act 2014, Annex 11-A.

¹⁰² See, e.g., EU-South Korea Free Trade Agreement, EU-S. Kor., 16 September 2010, 2011 O.J. (L 127) 47, art. 10.21, [http://eur-lex.europa.eu/legal-content/EN/TEXT/PDF/?uri=CELEX:22011A0514\(01\)&rid=8](http://eur-lex.europa.eu/legal-content/EN/TEXT/PDF/?uri=CELEX:22011A0514(01)&rid=8); see also EU-Vietnam Free Trade Agreement, EU-Viet., 5 August 2015, http://trade.ec.europa.eu/doclib/docs/2015/august/tradoc_153674.pdf; Comprehensive Trade and Economic Agreement, Can.-EU, Consolidated CETA Text, ch. 22, Intellectual Property, 26 September 2014, http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf.

Nevertheless, in order to expedite the processing of a list of priority EU GIs,¹⁰³ the Singapore government has agreed to take fully into account the fact that the GIs have been evaluated and registered in the EU when carrying out the examination of EU GIs. This includes the possibility of rationalizing the volume of information to be submitted, based on the fact that the EU legislation has been examined and on the principle of recognition of GI systems. Nevertheless, given the volume of examination of names to be registered as GIs that must be undertaken in Singapore by a relatively new and inexperienced Registry, the learning curve for those in charge of the Registry is expected to be steep.¹⁰⁴

Further delays may be expected as a result of third-party opposition proceedings,¹⁰⁵ in particular if there are objections raised that the EU-recognized GIs should be refused registration on the basis that they have become generic names in Singapore, or conflict with prior registered trademarks in Singapore.¹⁰⁶ In opposition proceedings based on the generic nature of the products, only evidence of genericness within Singapore will be relevant.¹⁰⁷

As Singapore has few local agricultural, foodstuff or wine producers,¹⁰⁸ it is anticipated that opposition to registration of GIs in Singapore is likely to be mainly initiated by producers in other major agricultural export countries such as the United States, Canada, Australia, New Zealand, India, China and Japan, just to name a few, whose produce is marketed and sold in the Singapore market. In this regard, it is noteworthy that to secure stronger protection for its GIs through bilateral trade agreements, affected industries in the United States have come together to establish the Consortium for Common Food Names.¹⁰⁹ The Consortium is an international initiative based in Washington, DC, and it seeks to foster the adoption of an appropriate

¹⁰³ See letter from Mr Lim Hng Kiang, Singapore Minister for Trade and Industry, addressed to Mr Karel De Gucht, Member of the European Commission (21 January 2013), http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151779.pdf. However, it is unclear from the Minister's letter whether priority is to be given to *all* 196 GIs from the EU in the list, or just some of them.

¹⁰⁴ See *id.* ¹⁰⁵ GI Act 2014 §§ 45, 48.

¹⁰⁶ See Trans-Pacific Partnership (TPP), arts. 18.20, 18.32, <https://ustr.gov/sites/default/files/TPP-Final-Text-Intellectual-Property.pdf>. These provisions in the TPP uphold the principle that prior use and existing rights of a trademark could prevent the registration of a GI.

¹⁰⁷ See GI Act 2014 § 41(1)(e).

¹⁰⁸ Central Intelligence Agency, *Singapore*, THE WORLD FACTBOOK (5 May 2016), www.cia.gov/library/publications/the-world-factbook/geos/sn.html.

¹⁰⁹ The Consortium for Common Food Names is an international initiative to preserve the right to use generic food names; see CONSORTIUM FOR COMMON FOOD NAMES, www.commonfoodnames.com/ (last visited 12 May 2016).

model for protecting both legitimate geographical indications and generic food names.¹¹⁰

Be that as it may, Singapore is a small market of approximately 5.4 million people,¹¹¹ and it remains to be seen whether there will be a large number of opposition proceedings against the registration of EU-recognized GIs in Singapore from affected third-party producers.

4.2 *Interrelationships between Owners of Registered Geographical Indications and Other Existing Right Holders*

With the new GI protection regime coming into force in Singapore, one area of concern is the interrelationships between registered GI owners and existing GI holders, registered trademark owners as well as users of signs identical with or similar to the registered GIs. The government is mindful of the impact that the new GI registration system will have on the rights of existing GI holders and trademark owners. In the Second Reading speech on the Geographical Indications Bill on April 14, 2014,¹¹² Senior Minister of State for Law Indranee Rajah SC explained the relationship between the existing GI protection regime and the new Bill:

When the new GI protection regime comes into force, it will *not* over-ride or undermine any rights which GI holders already have under the existing regime. These rights will co-exist with those under the new regime.¹¹³

¹¹⁰ The Consortium for Common Food Names has a set of guidelines which it hopes will be adopted by national governments and international organizations in their efforts to establish a fair model for the protection of both common names and legitimate food-related geographical indications. The guidelines include the following: (a) requiring that a geographical indication include the name of the region or sub-region where the product is produced, and a second term that describes the product (e.g. ‘Camembert de Normandie’, ‘Idaho Potatoes’, etc.); (b) maintaining a strong tie to the full original geographical indication by protecting the term only in its original language and in transliteration (e.g. ‘Parmigiano Reggiano’); (c) establishing reference points for identifying common names, such as existence of a Codex standard or other international standards; use of the term in dictionaries, newspapers, product descriptions in tariff schedules or in explanatory notes; levels and diffusion of global production; international trade; etc.; (d) providing the opportunity for stakeholders around the world to comment on geographical indication applications to ensure that officials have fully considered the request and its impact on other farmers and food producers. See CONSORTIUM FOR COMMON FOOD NAMES, www.commonfoodnames.com/the-issue/our-mission/ (last visited May 12, 2016).

¹¹¹ Department of Statistics Singapore, Singapore in Figures (2015), www.singstat.gov.sg/docs/default-source/default-document-library/publications/publications_and_papers/reference/si_f2015.pdf.

¹¹² Sing. Parl. Deb., Official Rep. (14 April 2014) vol. 91 (Indranee Rajah, Senior Minister of State for Education and Law).

¹¹³ *Id.* (emphasis added).

Thus, the legislative framework in the GI Act 2014 preserves the ‘first-in-time, first-in-right’ principle in managing the conflicting interests of various stakeholders in the protection and enforcement of GIs in Singapore. Essentially, this means that ‘a new application for a GI registration may not invalidate a prior conflicting GI or trademark which already exists’.¹¹⁴

4.2.1 Registered or Protected Geographical Indications Owners under Geographical Indications Act 2014 and Existing Geographical Indications Holders

Section 12(1) of GI Act 2014¹¹⁵ makes provisions for a prior user (who is a qualified person¹¹⁶) of a GI, being a GI identifying a wine or spirit in relation to any goods or services if he or his predecessors in title have continuously used in Singapore that GI in relation to those goods or services or related goods or services either (a) for at least ten years preceding 15 April 1994¹¹⁷ or (b) in good faith preceding that date.¹¹⁸

By this provision, the law recognizes that for reasons of business efficacy, there is a need to allow the co-existence of a GI (whether registered or unregistered) used in relation to a wine or spirit with another GI used in relation to any goods or services in the marketplace when the duration of such use meets the requisite length (ten years) or that its use precedes the said wine or spirit GI in good faith. To avail himself of this exception, the prior user of a GI must also show to the satisfaction of the courts that he has ‘continuously used’ the earlier GI.¹¹⁹ It should be noted that the concept of ‘continuous use’ is also found in Section 28(2) of Trade Marks Act 1998,¹²⁰ which provides for a similar prior use defence to a defendant sued for trademark infringement. It is submitted that principles developed in trademark law in relation to the concept of ‘continuous use’ are relevant and may be applied in interpreting the phrase ‘continuously used’ in Section 12(1) of the GI Act 2014. Thus, concepts such as ‘genuine commercial use’ developed by the courts in trademark cases¹²¹ under the old law¹²² would also be relevant. Hence, the prior use exception under Section 12(1) of GI Act 2014¹²³ should not be available

¹¹⁴ *Id.* ¹¹⁵ See GI Act 2014 § 12(1).

¹¹⁶ A ‘qualified person’ means (a) a citizen of Singapore or an individual resident in Singapore; (b) a body corporate incorporated under any written law in Singapore; or (c) any other person who has a real and effective industrial or commercial establishment in Singapore. See *id.* § 12(3).

¹¹⁷ *Id.* § 12(1)(a). ¹¹⁸ *Id.* GI Act 2014 § 12(1)(b). ¹¹⁹ *Id.* § 12(1)–(2).

¹²⁰ See Trade Mark Act 1998 § 28(2).

¹²¹ See *Electrolux Ltd v. Electrix Ltd* [1954] 71 RPC 23 (CA); *Imperial Group Ltd v. Philip Morris & Co Ltd* [1982] FSR 72 (CA).

¹²² See Trade Marks Act 1938. ¹²³ See GI Act 2014 § 12(1).

where it is clear that the use demonstrated was made merely for the purpose of securing the exception with no intent for genuine use of the earlier GI in Singapore.

4.2.2 Registered or Protected Geographical Indications Owners under Geographical Indications Act 2014 and Existing Registered Trademark Owners

GIs and trademarks are similar in that both are badges of origin and they convey important information to the ultimate consumers about the products to which they are attached. Trademarks are source indicators of commercial origins in that they inform the consumers about the manufacturers or producers of the goods or services. GIs, on the other hand, do not identify a specific manufacturer or producer but make reference to a geographical location and the special attribute or reputation which is associated with that product by virtue of that geographical location. GIs and trademarks are, however, very different in the following aspects:

- (i) Trademarks are personal property and are owned by individual commercial enterprises.¹²⁴ They may be assigned, licenced and pledged as collaterals to raise funds. In contrast, GIs are collectively owned by the producers in a demarcated geographical location who have the right to use them in relation to their products.¹²⁵ Thus, GIs are not personal property and cannot be dealt with in the same manner as trademarks.
- (ii) Trademarks co-exist with the business enterprises that own them. If the business ceases, the trademarks are unlikely to be renewed. Furthermore, trademarks may be revoked if they fall into non-use.¹²⁶ On the other hand, GIs continue to exist for as long as the geographical locations to which the products owe their special qualities and reputation also exist.

The relationship between trademarks and GIs is an interesting one. Traditionally, trademark laws disallow signs denoting geographical locations to be registered on the grounds of public interest to ensure that such signs may be freely used by all and to prevent traders seeking to monopolize terms which are already common names in the public domain.¹²⁷ In the same vein, trademark laws provide as a defence to infringement the use of a sign 'to indicate the kind, quality, quantity, intended purpose, value, geographical origin or other

¹²⁴ See Trade Marks Act 1998 § 4.

¹²⁵ See NG-LOY WEE LOON, *LAW OF INTELLECTUAL PROPERTY OF SINGAPORE* [28.o.3] (2nd edn. 2014).

¹²⁶ Trade Marks Act 1998 § 22(1). ¹²⁷ Trade Marks Act 1938 § 10(1)(d).

characteristic of goods or services, the time of production of goods or of the rendering of services, subject to the condition that the use must be in accordance with honest practices in industrial or commercial matters'.¹²⁸ Recent exceptions to these trademark rules are collective marks,¹²⁹ certification marks¹³⁰ and GIs.

When the GI Act 2014 comes into force in Singapore, the interplay between the GI registration system and the trademark registration system may be summarized as follows:

1. Cumulative protection for a GI under the GI Act 2014 and the Trade Marks Act 1998 is possible. Thus, producers and associations with GIs will have an option as to whether to register their GIs under the GI Registry or as certification or collective marks under the Trade Marks Act 1998.
2. The registration of a GI may be refused if it is identical with or similar to (i) a *registered* trademark which was applied for or registered in good faith, or (ii) a trademark which was used in good faith in Singapore in the course of trade before the date of application for registration of the GI, where there exists a likelihood of confusion on the part of the public.¹³¹
3. The registration of a GI may also be refused if it is identical or similar to a trademark and the trademark is, before the date of application for registration of the GI in Singapore, a well-known trademark in Singapore and registration of the GI is liable to mislead consumers as to the true identity of the goods identified by that GI.¹³²
4. In general, a mark which consists of an indication of a geographical origin of the goods or services should not be the monopoly of any particular trader, and by virtue of Section 7(1)(c) of the Trade Marks Act 1998,¹³³ such a mark is not registrable unless it has in fact acquired a distinctive character as a result of the use made of it. However, when the new GI registration system comes into force, the Trade Marks Act 1998 will be amended to include a new Section 7(10A) that precludes a trademark

¹²⁸ Trade Marks Act 1998 § 7(1)(c).

¹²⁹ A collective mark is a sign used, or intended to be used, in relation to goods or service dealt with or provided in the course of trade by members of an association to distinguish those goods or services from goods or services so dealt with or provided by persons who are not members of the association. *See id.* § 60(1).

¹³⁰ A certification mark is a sign used, or intended to be used, to distinguish goods or services (a) dealt with or provided in the course of trade; and (b) certified by the proprietor of the certification mark in relation to origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics, from other goods or services dealt with or provided in the course of trade but not so certified. *See id.* § 61(1).

¹³¹ *See* GI Act 2014 § 41(4)–(5). ¹³² *See id.* § 41(6). ¹³³ Trade Marks Act 1998 § 7(1)(c).

- which has acquired a distinctive character as a result of the use made of it before the date of application for registration from being registered if (a) it contains or consists of a GI which is registered or in respect of which an application has been made before the date of application of the trademark; and (b) the goods for which the trademark is sought to be registered are identical or similar to that for which the GI is registered or sought to be registered, and do not originate in the place indicated by the GI.¹³⁴
5. A mark which consists of an indication of geographical origin of the goods or services may be registered as a collective mark under Section 60 of the Trade Marks Act 1998.¹³⁵ Registrability of a collective mark is subject to the same absolute and relative grounds for refusal in Sections 7 and 8 of the Trade Marks Act 1998 as for 'ordinary' trademarks.¹³⁶ However, the proprietor of such a mark is not entitled to prohibit the use of the signs or indications in accordance with honest practices in industrial or commercial matters, in particular by a person who is entitled to use a geographical name.¹³⁷
 6. Registrability of certification marks is also subject to the same absolute and relative grounds for refusal in Sections 7 and 8 of the Trade Marks Act 1998 for 'ordinary' trademarks.¹³⁸ An exception to Section 7(1)(c) of the Trade Marks Act 1998 has been created in the case of a certification mark,¹³⁹ just like that of collective marks, such that even if the certification mark may consist of an indication of a geographical origin of the goods or services, it may nevertheless be so registered. However, the registration does not entitle the proprietor of a certification mark to prohibit the use of the sign by a third party in accordance with honest practices in industrial or commercial matters.¹⁴⁰

4.2.3 Registered or Protected Geographical Indications Owners under Geographical Indications Act 2014 and Users of Signs Identical with or Similar to These Geographical Indications

Under Section 4 of the GI Act 2014, the use of a registered GI or a GI protected under the Act such as one which identifies a wine or spirit is prohibited, and any interested party may take legal action against such unauthorized use. The remedies for infringement of a registered GI or a GI protected under the GI Act 2014 include injunctions and damages or an account of profits.¹⁴¹

¹³⁴ See GI Act 2014 § 90(c). ¹³⁵ Trade Marks Act 1998 § 60.

¹³⁶ *Id.*, §§ 7–8 which cover grounds of refusal of registration. ¹³⁷ See *id.* sched. 1, para. 3(2).

¹³⁸ *Id.* § 60. ¹³⁹ See *id.* sched. 2, § 3(1). ¹⁴⁰ See sched. 2, § 3(2). ¹⁴¹ GI Act 2014 § 5.

The use of a GI includes the use of a trademark which contains or consists of the GI in question.¹⁴²

However, an exception is created in the case of a prior user of a trademark which is identical or similar to a GI if the prior user has continuously used that trademark in good faith before 15 January 1999 or before the GI in question is protected in its country or territory of origin.¹⁴³

5 CONCLUSION

Undoubtedly, Singapore's ratification of several significant international IP treaties and conventions is an important driving force in the rapid development of Singapore's IP legal infrastructure. At the same time, free trade agreements to which Singapore is a signatory have also played a significant role in shaping Singapore's IP legal landscape in recent years. We have seen the impact of free trade agreements on IP laws since the conclusion of the US-Singapore Free Trade Agreement in 2003 (US-Singapore FTA).¹⁴⁴ As a result of the US-Singapore FTA, the regulatory framework for IP protection in Singapore has undergone substantial reforms in 2004,¹⁴⁵ spanning across areas of copyrights and trademarks. Pursuant to her obligations under the US-Singapore FTA, Singapore has basically subscribed to a framework of protection of GIs which allows registration of signs including words associated with GIs as trademarks (subject to certain restrictions),¹⁴⁶ and the person who registers the trademark associated with the GI first in time and who has successfully overcome opposition proceedings, if any, shall have the right to be protected.

A decade later in 2013, when Singapore concluded the negotiations on the EU-Singapore FTA, the stage was set once again for changes in IP laws with the most significant changes taking place in the area of GIs. The EU protects GIs with a specialized and extensive registration system that offers an enhanced protection. In the free trade agreements which the EU has previously entered into with South Korea and Canada, detailed provisions on the establishment of a registration system and various aspects of enhanced protection to be accorded to wines, spirits and other agricultural products can be found in the intellectual

¹⁴² See GI Act 2014 § 4(4). ¹⁴³ See GI Act 2014 § 12(2).

¹⁴⁴ United State-Singapore Free Trade Agreement, U.S.-Sing., May 6, 2003, [hereinafter US-Singapore FTA], https://ustr.gov/sites/default/files/uploads/agreements/fta/singapore/asset_upload_file708_4036.pdf.

¹⁴⁵ For example, the Trade Marks (Amendment) Act 2004 introduced several important changes to the Trade Marks Act 1998, including the concept of trademark dilution in the case of trademarks well known to the public at large in Singapore.

¹⁴⁶ See US-Singapore FTA, art. 16.2.

property chapters. The EU-Singapore FTA is no exception and Singapore has agreed to establish a Registry for GIs even though Singapore does not have any GIs of her own for which protection is sought.¹⁴⁷ Before the adoption of the GI Act 2014, protection for GIs in Singapore was comparable to the level set out in TRIPS even in the absence of a registration system. Once the GI Act 2014 is brought into force, protection for GIs in Singapore will be significantly enhanced with the establishment of a dedicated GI Registry.

Admittedly, the registration of GIs in Singapore, in particular the automatic recognition and protection to a list of key EU GIs if accepted, would have a far-reaching impact on existing GI users and trademark owners. However, to minimize the impact of the change brought forth by the new law on GI protection, the Singapore government negotiated the EU-Singapore FTA and secured the agreement from the EU that there will be no automatic recognition and protection to a list of key EU GIs but that Singapore will be allowed to develop its own GI registration system. The list of key EU GIs will be subject to examination by the new GI Registry, and third parties who object to their registrations on the grounds of genericness would be given the opportunity to do so under the law. This may be seen as a significant break-through in trade negotiations on GIs, and may offer a 'middle way' in the resolution of divergent attitudes towards GI protection amongst countries. The Singapore government should be commended for her attempts to create a fair model of protection which, it is hoped, will better balance the interests of GI owners and legitimate GI users in general. Be that as it may, it should also be noted that the Singapore model is, however, the exception rather than the norm and that the arrangements of the EU-Singapore FTA for GIs 'reflect the fact that Singapore's legislation does not permit direct protection of geographical indications via the Agreement, and underlines that this does not constitute a *precedent*'.¹⁴⁸

The implementation of the changes brought forth by the GI Act 2014 is unfortunately delayed as the EU-Singapore FTA is still awaiting ratification by the EU Parliament.¹⁴⁹ In a recent report in July 2015,¹⁵⁰ Prime Minister Lee

¹⁴⁷ See *supra* note 103.

¹⁴⁸ See *id.* (emphasis added) (explicitly stating the EU's stance on this matter).

¹⁴⁹ Although the EU and Singapore concluded the FTA in October 2014, there is uncertainty as to how the legal agreement should be classified. More importantly, an opinion of the Court of Justice of the European Union (CJEU) needs to clarify whether it is an agreement which the EU has exclusive competence to sign and to ratify or whether it is a 'mixed agreement' which requires the approval of every single parliament in every single Member State before the agreement can be ratified. The EU Commission has since made a request for a CJEU legal opinion on the precise legal status of the EU-Singapore FTA. See Council Directive C332/45, 2015 O.J. C 332 45–46. The CJEU's opinion will be awaited with interest.

¹⁵⁰ Jamie Lee, *Ratification of EU-Singapore FTA Would Encourage EU-ASEAN Trade Deal*: PM Lee, BUSINESS TIMES (29 July 2015 3:48 PM), www.businesstimes.com.sg/government-economy/ratification-of-eu-singapore-fta-would-encourage-eu-asean-trade-deal-pm-lee.

Hsien Loong was of the view that a ratification of the EU-Singapore FTA would encourage an ASEAN-EU FTA deal, and he was quoted to say 'Singapore is the *bellwether*. If you can do one with Singapore, I think that will encourage other deals to come in, including the ASEAN-EU deal.'¹⁵¹ Of course, it remains to be seen whether the Singapore model on the protection of GIs will be accepted by the EU through the ratification of the EU-Singapore FTA and whether it will pave the way for a middle-ground approach where countries of differing views on GI protection may agree to meet each other half way.

¹⁵¹ *Transcript of Prime Minister Lee Hsien Loong's Remarks at the Joint Press Conference with UK Prime Minister David Cameron on 29 July 2015*, PRIME MINISTER'S OFFICE, www.pmo.gov.sg/mediacentre/transcript-prime-minister-lee-hsien-loongs-remarks-joint-press-conference-uk-prime (last visited 9 October 2015).