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GAIN Report

Global Agricultural Information Network

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Japan to Implement GI system on June 1_2015

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Report Highlights:

The “Act for Protection of Designated Agricultural, Forestry and Fishery Products and Foodstuffs” is scheduled to be implemented on June 1, 2015. In an effort to familiarize stakeholders in Japan, the Ministry of Agriculture, Forestry and Fisheries is currently in the process of disseminating information about the new system among farmers and regional agricultural co-operatives.

Key word: JA5008, GI

General Information:

Background

The Government of Japan (GOJ) will implement a geographical indications (GI) system for agricultural products and foodstuffs in June 2015. The purpose of the new system is to develop and to sustain the growth of economic activity in local regions by creating added value in traditional products. It is based on the idea that GIs should be protected and developed as a common property in the regions of Japan.

The Ministry of Agriculture, Forestry and Fisheries (MAFF) has been working to establish a GI system since March 2012. The first year began in fits and starts as sources indicated that the Cabinet Legislation Bureau and the Japan Patent Office (JPO) initially objected to the creation of such a system. Those objections stemmed from the fact that, since 2006, the JPO has had its own similar system - the Collective Trade Mark system - which allowed legal entities to register a trademark for the name of a commodity where the name is a combination of a place name and the name of a product. Following internal GOJ consultations to address the JPO concerns, and under pressure from the engagement with the European Union in EPA negotiations, MAFF again began preparations for the establishment of a GI system. In December 2013, the GOJ notified the World Trade Organization (WTO) of its plan to create such a GI system.

“The Act for Protection of Designated Agricultural, Forestry and Fishery Products and Foodstuffs” (the GI Act) was passed by the Diet and enacted into law on June 25, 2014. MAFF subsequently opened a domestic public comment from September to November 2014. During that same time period, it also held explanatory meetings in ten cities – from Hokkaido to Okinawa. In addition to those meetings it also carried out numerous consultations with affected industry organizations. See Appendix 1 for a copy of MAFF’s provisional translation of the GI Act.

MAFF opened a second domestic public comment period from February 2, 2015 to March 3, 2015. Information can be found at the following website (only in Japanese): <http://search.e-gov.go.jp/servlet/Public?CLASSNAME=PCMMSTDETAIL&id=550002073&Mode=0>

Included on the website are the following documents:

- 1) Public comment procedures;
- 2) Draft of the order for enforcement of the GI Act (Cabinet order);
- 3) Draft of the ordinance for enforcement of the GI Act (Ministerial ordinance);
- 4) Draft of the appended forms for registration of Agricultural, Forestry and Fishery Products and Foodstuffs;
- 5) Draft of the announcement on product categories regulated by paragraph 2 of Article 3 of the GI Act;
- 6) Draft of the examination procedure of Agricultural, Forestry and Fishery Products and Foodstuffs;
- 7) Draft of the appended forms of examination procedures;
- 8) Draft of the examination procedure and format correction guidelines.

On January 14, 2015, the GOJ submitted an addendum to its notification to the WTO, opening a 60-day

comment period. (See Appendix 2.) The WTO notification includes the essential points of documents #2 (the order for enforcement) and #3 (the ordinance for enforcement) noted above.

MAFF has requested a budget of 105 million yen (approximately USD 900,000) for Japanese Fiscal Year 2015 (April 2015 – March 2016) to establish a consultation desk to provide information for the promotion of the new GI system and to educate the public about how to apply for registration.

MAFF is planning to conduct additional explanatory meetings throughout the country in April and May 2015 to promote the new system.

The New GI System

The basic concepts of the new system are as follows:

- 1) In order to register a GI, a GI name (generally a combination of a place name and a product name) and a quality control standard (developed by the producer group) are required;
- 2) The GOJ will be responsible for investigating cases of misuse/counterfeiting;
- 3) Anyone who is a member of the group that registered the product can use the GI.

The purpose of the GI Act is to promote the branding of products by protecting as intellectual property the name of products traditionally produced in a particular region.

According to the “Draft of the announcement on product categories regulated by paragraph 2 of Article 3 of the GI Act” (#4 of the documents listed above), for a GI to be registered, it must fall under one of 42 large classifications (and 229 sub-classifications) of products. The large classifications include such categories as grains, vegetables, fruits, meat, milk, eggs, fish, and shellfish. Sub-classifications include such items as rice, wheat, coarse grains, and pulses (in this case, under the “grains” classification). MAFF took into consideration the opinions from the previous public comment period, which was conducted from September to November 2014, in the development of these categories. Alcoholic beverages, drugs, and cosmetics are exempted from the GI Act. Non-food products included for enforcement are listed in Appendix 2.

Generally, the GI name must be a combination of the name of the location where the product is produced and the product name. A place name need not be the current administrative area, but can be an old district name (e.g., the historical name of Choshu, instead of the current name of Yamaguchi prefecture).

Possible examples include:

- Choshu Kuro Kashiwa (black chicken from Yamaguchi prefecture);
- Ichida Kaki (dried persimmon from Nagano prefecture);
- Kagoshima Tubotsukuri Kurozu (crock-fermented black vinegar from Kagoshima prefecture);
- Ise Hon Kabuse Cha (real sun blocked tea from Mie prefecture); and
- Tottori Sakyu Rakkyo (sand dune scallions from Tottori prefecture).

However, a name that does not include a place name may be registered as a GI if it is widely understood to be tied to a particular region. Possible examples include Kiritanpo (mashed rice formed into cylinders around skewers, from Akita Prefecture) and Funazushi (fermented fish and rice, from Shiga Prefecture).

Article 13 (4) (a) and Article 22 (5) of the GI Act state that the MAFF Minister shall refuse an application if the name has traditionally been considered to be a generic term, or if it has become a generic term. For example, Komatsu-na is a leafy vegetable that was developed in Komatsugawa (in Tokyo), but now it is widely grown in Kanagawa, Chiba, Saitama and other prefectures. As a result, Komatsu-na is considered to have become a generic name and would not be eligible to be registered as a GI. MAFF will review applications on a case-by-case basis to determine if a product name is generic or not.

The GI Act also requires that a product be “traditional” – with approximately 25 years or more of production history in a particular region – for the product to be registered. In order to protect the name of a product with a shorter production history, the producer group must instead register under the JPO’s Collective Trademark system. As currently written, the new GI Act would allow such a trademarked “traditional” product to apply for GI status after the passage of some 25 years.

Since August 2014, the JPO has allowed regional business cooperatives, chambers of commerce, and non-profit organizations (NPOs) to apply for regional collective trademarks. Previously, only cooperative associations – such as cooperative business associations, agricultural cooperatives or fisheries cooperatives – were eligible to apply. Notwithstanding that the JPO has eased the eligibility requirements for regional collective trademarks, the requirements for applicants to apply for a GI are even less restrictive, because the GI Act allows any person or organization, regardless of legal status, to apply for a GI.

The table below shows the major distinctions between MAFF’s GI system and the JPO’s Collective Trademark system.

	MAFF’s GI System	JPO’s Collective
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		Trademark System
Applicant	Producer Groups, Processor Groups or local branding association. Formal legal status is not required.	Cooperative associations, NPOs or commerce and industry associations.
Name	A product name with a place name, or without a place name if consumers generally understand the product to be tied to a particular region.	Pairing a place name and product name is required.
Familiarity	N/A	A name must be well-known as a trademark among consumers.
Quality standard	A quality standard must be established and announced officially.	N/A
Quality control	A registered producer group must practice quality control based on production process control operating rules.	N/A
Enforcing Entity (against unauthorized display, etc)	MAFF	Proprietor of the trademark
Production History	Must be “traditional” (approximately 25 years)	N/A
Length of protection	Indefinite	Ten years (renewable)

Appendix 1:

Non-Paper

(Provisional Translation)

Bill for Protection of Names of Designated Agricultural, Forestry and Fishery Products and Foodstuffs

Chapter 1: General Provisions

Article 1: Purpose

The purpose of this Act is, through protecting the use of names of designated agricultural, forestry and fishery products and foodstuffs, to secure the interests of producers of those products, and thereby to contribute to the sound development of the agricultural, forestry and fishery industries as well as to ensure the interests of consumers.

Article 2: Definitions

1. The term “agricultural, forestry and fishery products and foodstuffs” means the products which fall under any of the following items, with the exception of alcoholic beverages, drugs, and cosmetics:
 - (1) agricultural, forestry and fishery products (limited to those served for human consumption);
 - (2) food and beverages; and
 - (3) other agricultural, forestry and fishery products as well as products manufactured or processed using such products as materials or ingredients (limited to those specified by Cabinet Order).
2. The term “designated agricultural, forestry and fishery products and foodstuffs” means the agricultural, forestry and fishery products and foodstuffs which fall under all of the following:
 - (1) originating in a specific place, region or country; and
 - (2) whose given quality, reputation or other characteristics is essentially attributable to its geographical origin
3. The term “Geographical Indication (GI)” is a name of designated agricultural, forestry and fishery products and foodstuffs which can identify the specificity listed in the items (1) and (2) of paragraph 2.
4. The term “group of producers” means a group comprised of producers as its direct or indirect members with a rule which stipulates that the group shall not reject application of participation by any legitimate candidate, or require any unfair conditions upon participation compared with those applied to current members.
5. The term “production process management” means such business as developing or amending specifications as well as providing necessary guidance and inspection onto production process of producers, conducted by the group of producers.

Chapter 2: Protection of Registered GIs and Their Symbols

Article 3: Protection of Registered GIs

1. Any member of the group of producers which is registered pursuant to Article 6 can make use of registered GIs to designated agricultural, forestry and fishery products and foodstuffs of his/her production.
2. Other than the case stipulated in paragraph 1, any person shall not use the registered GIs or similar names for the agricultural, forestry and fishery products and foodstuffs of the same kinds as such GIs, except for the following cases:
 - (1) where a person labels GIs on goods (including packages) which are manufactured or processed using products pertaining to the said GIs as materials or ingredients;
 - (2) where the holder of prior trademark right, which was applied for registration before the date of registration of a registered GI, uses the trademark identical to the registered GI on goods or services pertaining to the said trademark; and
 - (3) where a person having been using the name identical or similar to a GI on goods or their packages since before the date of registration of the said GI without wrongful purpose, uses such name.

In addition to securing the level of protection as high as Article 22 of TRIPS Agreement by prohibiting the use of the registered GIs where the product does not originate in the true origin of registered GIs, the level of protection similar to Article 23 of TRIPS Agreement will also be stipulated in the Ministerial Ordinance to implement this Bill pursuant to

Article 27.

Article 4: Symbols of Registered GIs

1. Symbols designed to publicize protected GI, as stipulated in Ministerial Ordinance, shall appear on the labelling.
2. Other than the case stipulated in paragraph 1, any person shall not use symbols which are identical or similar to the symbols stipulated in paragraph 1.

Article 5: Administrative Actions against unlawful use of GIs

Minister of Agriculture, Forestry and Fisheries (hereinafter referred to as “Minister”) may issue an administrative order to correct the unlawful use of GIs.

Chapter 3: Registration

Article 6-7: Application for Registration

A group of producers may submit an application for registration of a GI to Minister. Application for registration will include the names, domiciles of groups of producers, and names of representatives as well as a product specification that describes geographical origin of its agricultural, forestry and fishery products and foodstuffs, its characteristics, and the method of its production etc. The rule concerning the production process management shall be attached to the application.

Article 8-10: Publication and Opposition Procedure

Minister shall, upon the receipt of the application, publicize the application for registration for the period of two months from the date of publication. Any natural and juridical person may submit a notice of opposition to Minister within three month from the date of the publication.

Article 11: Consultation with Persons with Specialized Knowledge and Experience

Minister shall, upon refusing or registering GIs, consult with persons with specialized knowledge and experience.

Article 12: Decision on Registration

After finalizing the opposition procedure for a third party as well as consultation procedure pursuant to Article 11, Minister shall register the name and product specification as well as names, domiciles, and representatives of groups of producers by entering them in the Registry, except in the case of refusal pursuant to Article 13.

Article 13: Decision of Refusal

Minister shall refuse the application if:

- (1) the application is made by a group of producers whose registration has been cancelled pursuant to Article 22 where two years have yet to elapse since the date of such cancellation;
- (2) the method of production process management does not conform to criteria necessary to ensure that producers comply with the production method stipulated in the specification or a group of producers lacks in financial or technical ability to conduct production process management;
- (3) the product does not meet the definition of designated agricultural, forestry and fishery products and foodstuffs; or
- (4) a name is considered to be any of the following:
 - (a) generic term; or
 - (b) the name that is identical or similar to the registered trademarks, except those submitted by owner of the registered trademark or authorized user.

Article 14: Public Access to the Registry

Minister shall make the Registry of designated agricultural, forestry and fishery products and foodstuffs accessible to the public.

Article 15-19: Amendment to Registration

A Group of producers shall notify Minister when the group makes amendment to the content of registration.

Article 20: Loss of Effect of Registration

In cases where a registered group of producers has dissolved or abolished the rule concerning the production process management, the registration concerning the group of produces shall cease to be effective. Minister shall delete and rescind the said registration from the Registry.

Article 21: Administrative Order to Comply with Obligations of Groups of Producers

Minister may order the registered group of producers to take appropriate action such as amendment of the specification or the rule concerning production process management in the following cases:

- (1) when a member producer violated provisions of Article 3.2 or Article 4, or an order under the provision of Article 5;
- (2) when the items in the specification does not meet what is described concerning the origin and characteristics of the product in the application form; or
- (3) when a group of producers no longer meet criteria stipulated in Article 13(2).

Article 22: Cancellation of Registered GIs

Minister may, ex officio, cancel the registration of a registered GI in the following cases:

- (1) when a group of producers no longer meets the definition stipulated in Article 2.4;
- (2) when a group of producers violated orders under the provision of Article 21;
- (3) when a group of producers was registered pursuant to Article 6 (including amendment of registration) by any unlawful means;
- (4) when designated agricultural, forestry and fisheries products and foodstuffs no longer meets the definition stipulated in Article 2.2; or
- (5) when registered name of designated agricultural, forestry and fisheries products and foodstuffs has become generic term.

Chapter 4: Miscellaneous Provisions

Article 23: Means for Publication

Public notice under the provisions of this Act shall be performed through the appropriate means such as internet.

Article 24: On-site Inspection

To the extent necessary for enforcing this Act, Minister may authorize staff members to enter the business office, factory or any other facilities to inspect documents and other objects or to question relevant persons.

Article 25: Request to Minister to Have Administrative Actions

Any natural or juridical person may request Minister to initiate necessary administrative actions where he/she finds unlawful use of registered GIs.

Article 26: Delegation to Regional Branches

The authority of Minister provided for in this act may, as stipulated in Ministerial Ordinance, delegate to a head of a regional branch.

Article 27: Delegation to Ministerial Ordinance

Besides what is stipulated in this Act, necessary procedures and other measures for enforcement of this Act shall be stipulated by Ministerial Ordinance.

Chapter 5: Penal Provisions

Article 28-32: Penal Provisions

1. A person who violates an order under the provisions of Article 5 shall be punished by imprisonment with work of not more than five years or a fine of not more than five million yen, or a combination of these two.
2. When the representative of a corporation or the agent, employee or other operative of a corporation or a person commits the violation in paragraph 1, with regard to the business of said juridical person or individual, not only the offender shall be punished but also such juridical person shall be punished by a fine not more than three hundred million yen, and such individual shall be punished by the fine prescribed in paragraph 1.

Supplementary Provisions

Article 1: Effective Date

This act shall come into effect as of the date specified by Cabinet Order within a period not exceeding one year from the date of promulgation.

Article 2: Review

The government shall, within ten years from the enforcement of this act, conduct a review concerning the state of enforcement of this act, and when recognizing it necessary, shall devise requisite measures based on the result thereof.

Article 4: Amendment of Trademark Act

Following paragraph shall be added to Article 26 (Limitations of Trademark Right) of Trademark Act (Act No.127 of 1959)

Article 26.3A Trademark right shall have no effect on any of the following actions.

- (1) labelling a GI on goods or their packages;
- (2) assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing goods affixed with a GI on goods or their packages; and
- (3) displaying an invoice affixed with a GI.

Appendix 2

G/TBT/N/JPN/448/Add.1

(15-0247)

Committee on Technical Barriers to Trade Original: English

14 January 2015

Page: 1/4

NOTIFICATION

Addendum

The following communication, dated 13 January 2015, is being circulated at the request of the delegation of

Japan.

Draft of Cabinet Order and Ministerial Ordinance to implement the Act for Protection of Designated Agricultural, Forestry and Fishery Products and Foodstuffs

Background: The Government of Japan notified the outline of Act for Protection of Designated Agricultural, Forestry and Fishery Products and Foodstuffs (hereinafter referred to as "the Act") in document G/TBT/N/JPN/448 (dated 16 December 2013). The purpose of the Act is, through protecting the use of names of designated agricultural, forestry and fishery products and foodstuffs, to secure the interests of producers of those products, and thereby to contribute to the sound development of the agricultural, forestry and fishery industries as well as to ensure the interests of consumers. The Act was published on 25 June 2014. The main points of the Act are as follows:

1. The Government certifies characteristics of agricultural, forestry and fishery products and foodstuffs and register their names as Geographical Indications (GIs).

Note: The Act covers agricultural, forestry and fishery products and foodstuffs, which means the products which fall under any of the following items, with the exception of alcoholic beverages, drugs, and cosmetics:

- (1) Agricultural, forestry and fishery products (limited to those served for human consumption);
- (2) Food and beverages;
- (3) Agricultural, forestry and fishery products (excluding those served for human consumption) designated by the Cabinet Order; and
- (4) The products manufactured or processed using agricultural, forestry and fishery products as materials or ingredients (excluding those served for human consumption) designated by the Cabinet Order

2. The Government prevents freeriding and imitations by injunction against illicit use of registered GIs.

3. Any producer located in the designated region may use a GI (as long as the products meet the specifications).

In addition to G/TBT/N/JPN/448, the Government of Japan hereby notifies the draft of Cabinet Order and Ministerial Ordinance which will specify details to implement the Act. The Contents will be as follows and enter into force on 1 June 2015:

A. DRAFT CABINET ORDER

The Cabinet Order will specify the individual products as described in 1. (3) and (4) above.

G/TBT/N/JPN/448/Add.1

- 2 -

1. "Agricultural, forestry and fishery products (excluding those served for human consumption)" designated by the Cabinet Order as the products which are covered by the Act are as follows:

- (1) Flowers and ornamental plants
- (2) Industrial crops (excluding those served for human consumption)
- (3) Raw silk
- (4) Timber
- (5) Bamboo material
- (6) Charcoal
- (7) Japanese lacquer
- (8) Ornamental fish

(9) Pearl

2. "The products manufactured or processed using agricultural, forestry and fishery products as materials or ingredients (excluding those served for human consumption)" designated by the Cabinet Order as the products which are covered by the Act are as follows:

- (1) Tatami facing
- (2) Essential oil
- (3) Feed

B. DRAFT MINISTERIAL ORDINANCE

1. For the purpose of the Act, "Group of producers" means the group which falls under any of the following:

- (1) The group is comprised of producers of agricultural, forestry and fishery products and foodstuffs (Such group shall have provisions on freedom to participate in such group in law or by law. If the group is not a juridical person, its bylaw shall have provisions on representative person or administrator);
- (2) If the group is a foreign entity, it shall comply with the injunction by Minister of Agriculture, Forestry and Fisheries (hereinafter referred to as "Minister").

2. To "use similar names for the agricultural, forestry and fishery products and foodstuffs of the same kinds as registered GIs", which is prohibited by the Act, shall include the following cases:

- (1) Where the true origin of the goods is indicated or registered GIs are accompanied by expressions such as "kind", "type", "style", "imitation" or the like;
- (2) Where registered GIs are used in translation.

3. Restriction to use registered GI name based upon the Act shall not be applied in the following cases:

- (1) Where a person having been using the name identical with or similar to a GI on products manufactured or processed using agricultural, forestry and fishery products and foodstuffs or their packages since before the date of registration of the said GI, without wrongful purpose, uses such name;
- (2) Where a person, without wrongful purpose, uses one's own name, famous pseudonym, professional name, pen name or famous abbreviation thereof;
- (3) Where a registered GI name contains the name of a product which is considered to be generic and a person uses such generic part of the said GI name.

4. Application for registration shall be written in Japanese. However, the name and address of group of producers, the name of representative, and the name of agricultural, forestry and fishery products and foodstuffs may be acceptable even if they are written in foreign languages. Also, if groups of producers intend to submit a power of attorney and other documents written in original languages, they must attach the translated version thereof.

5. Standards for the method of production process management are as follows:

- (1) A group of producers shall amend the product specification when they had the registration of amendment to their GI;

G/TBT/N/JPN/448/Add.1

- 3 -

(2) A group of producers shall check each member producer is compliance with the product specification, and if the group finds a producer who fails to conform to the product specification, they shall provide appropriate guidance for him/her;

(3) A group of producers shall check whether each member producer uses GIs and GI mark pursuant to the Act, and if the group finds a producer who does not comply with the Act, they shall provide appropriate guidance for him/her;

(4) A group of producers shall make performance reports on production process management, and they shall submit those reports and related documents to Minister at least once a year;

(5) A group of producers shall preserve the performance reports on production process management and related documents for five years.

6. "The name of agricultural, forestry and fishery products and foodstuffs that does not meet the requirements of designated agricultural, forestry and fishery products and foodstuffs" includes the name which falls under any of the following:

- (1) The name that is identical with a name of a plant variety or an animal breed and is likely to mislead the consumers as to the origin of the product;
- (2) The name that is identical or similar to another person's indication of goods or business that is well-known among consumers, and may create confusion with such goods or business;
- (3) The name that is identical or similar to another person's famous indication of goods or business.

This addendum concerns a:

- Modification of final date for comments
- Notification of adoption, publication or entry into force of regulation
- Modification of content and/or scope of previously notified draft regulation
- Withdrawal of proposed regulation
- Change in proposed date of adoption, publication or date of entry into force
- Other: Notification of draft implementing regulations newly added to previous notified draft regulation

Comment period: (If the addendum extends the scope of the previously notified measure in terms of products and/or potentially affected Members, a new deadline for receipt of comments should be provided, normally of at least 60 calendar days. Under other circumstances, such as extension of originally announced final date for comments, the comment period provided in the addendum may vary.)

Sixty days from the date of circulation of the addendum to the notification and/or (dd/mm/yy):

Agency or authority designated to handle comments: National Notification Authority, National Enquiry Point. Address, fax number and e-mail address (if available) of other body:

Japan Enquiry Point
International Trade Division
Economic Affairs Bureau
Ministry of Foreign Affairs
Fax: (+813) 5501 8343
E-mail: enquiry@mofa.go.jp

G/TBT/N/JPN/448/Add.1

- 4 -

Text available from: National Notification Authority, National Enquiry Point. Address, fax number and e-mail address (if available) of other body:

Japan Enquiry Point
International Trade Division
Economic Affairs Bureau
Ministry of Foreign Affairs
Fax: (+813) 5501 8343
E-mail: enquiry@mofa.go.jp

