

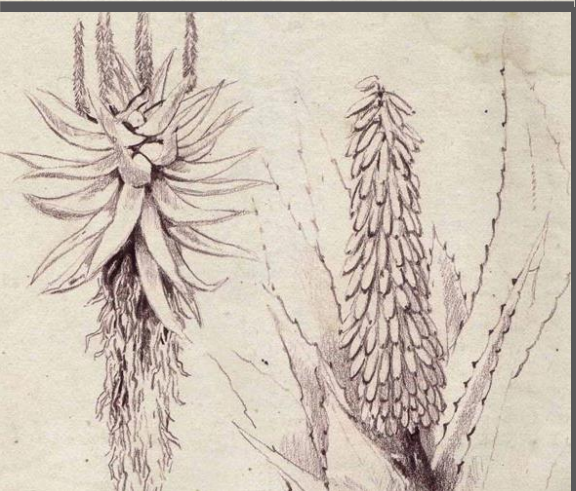
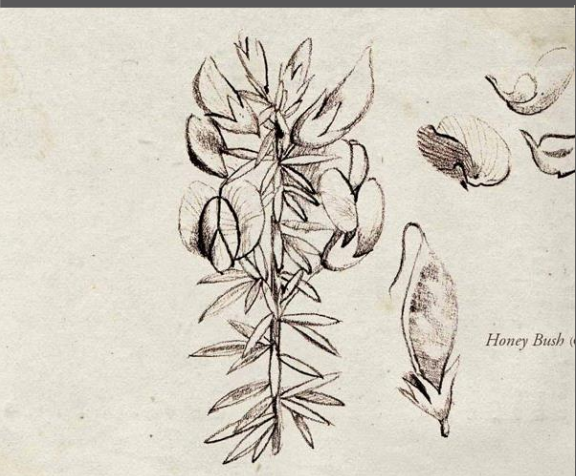
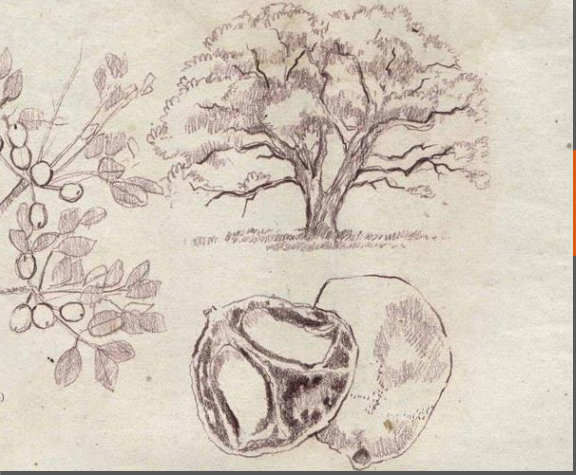


# The Journey to New GI initiatives

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## Opportunity and process

Kruger, Swart Associates | 17 August 2021



# Outline

1. Background
2. Overview of regulatory environment
3. Strategic Opportunity for GIs
4. Practical opportunities for GIs
5. Collective approach for SA products
6. Process of registering a GI
7. Key considerations



# Background



- ▶ Recent Rooibos GI on EU Register
- ▶ Geographic Indication identified as an opportunity for some South African species and products
- ▶ Regulatory environment that enables the registration of national and international Geographic Indications



# National and international mechanisms

Agricultural Products Standards Act (APS)

Merchandise Marks Act (MMA)

Economic Partnership Agreement (EPA)

# Merchandise Marks Act 17 of 1941

The Merchandise Marks Act 17 of 1941 intends: **to make provision concerning the marking of merchandise and of coverings in or with which merchandise is sold and the use of certain words and emblems** in connection with business

# Agricultural Product Standards Act 110 of 1990

The Agricultural Product Standards Act 119 of 1990 intends:

to provide for **control over the sale and export of certain agricultural products** and other related products; and

In March 2019, SA published regulation under the APS Act for **local protection of GI**



# Economic Partnership Agreement (EPA)

- ▶ Economic Partnership Agreements (EPAs) are trade and development agreements negotiated between the EU and African, Caribbean and Pacific (ACP) countries and regions
- ▶ SA Part of the SACU EPA group
- ▶ Implemented on 1 November 2016
- ▶ GI is an addendum to the Agreement (only SA – others may follow)
  - ▶ Provide for the in-principle mutual protection of GI



# Economic Partnership Agreement (EPA)

- ▶ Exchange of lists has taken place.
  - ▶ EU list published in Government Gazette of 4 February 2014 for comment
    - ▶ Wine, Olives, Cheeses
  - ▶ SA list published in EU Official Journal of 22 February 2014.
    - ▶ Mostly wine (102), also Rooibos and Honeybush, “Karoo Certified Meat of Origin”
- ▶ List open for additional products (30)



# Strategic Opportunity

- Protect indigenous South African and Southern African products
- Create additional economic value for the products, producers and communities
- Create awareness of South African products and Biodiversity
- Build on momentum created by the registration of the Rooibos GI





## Product focus

- *Aloe ferox*
- Buchu
- Honeybush
- Karoo pomegranate
- Marula (Southern Africa)





## SA regulation

Honeybush is protected for export under the EPA, and has domestic protection through the MMA

Aloe Ferox, marula, pomegranates and buchu are not protected under the MMA, APS or internationally

Aloe Ferox, pomegranates and buchu will have to develop a product standard for local market and first be included under the APS prior to GI registration under the APS

Marula will need an extensive feasibility study within the SADC region



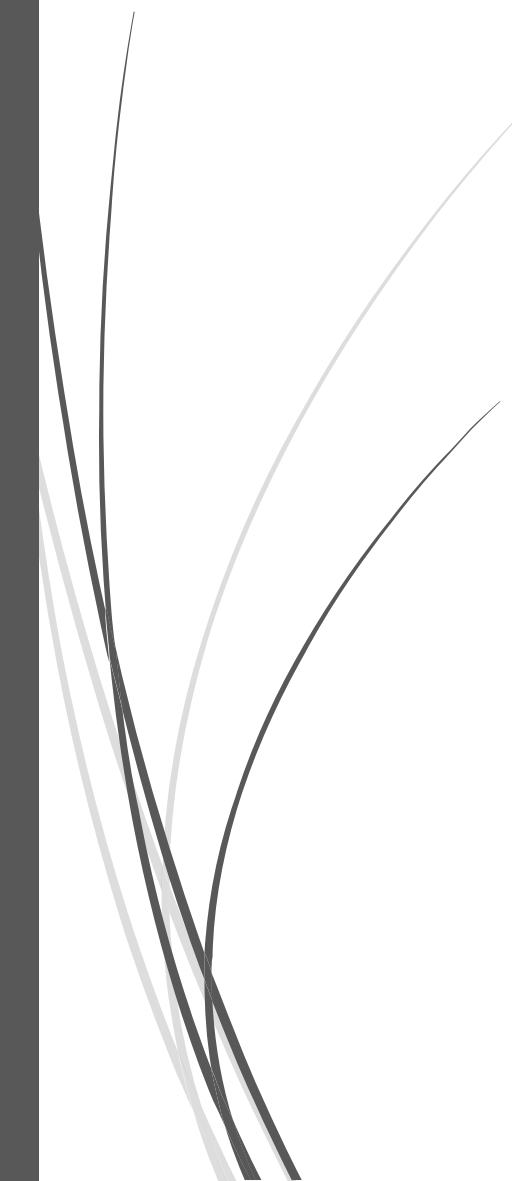
# Practical opportunity



- ▶ Expertise within Western Cape Department of Agriculture to support industries
- ▶ Known methodology for GI registration
- ▶ Established relationships with EU counterparts
- ▶ Funding opportunity through GI Support Fund



# CIRAD and AFD GI Support Fund

- ▶ Objective 1: Development of a legal and institutional framework to help develop GIs
  - ▶ Objective 2: Capacity building of GI value chains stakeholders and GI support networks
  - ▶ Objective 3: Registration of pilot GIs and development of the relevant GI value chains
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# Collective approach

- Group of producer organizations working together
- Different approach for endemic and regional species (marula)
- Opportunity to explore feasibility of regional GI, or other IP protection



Industry  
organizations  
- committed

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Buchu Association

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Honeybush Producers Association of  
South Africa (HPASA)

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Cape Aloe Movement

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South African Essential Oil Producers  
Association (SAEOPA) - Marula Alliance

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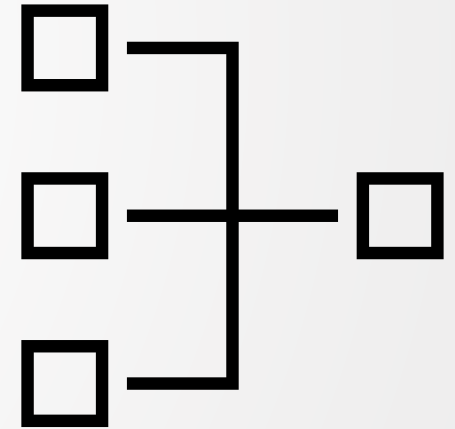
Karoo Pomegranates

# Process to be followed (I)

Industry/area need to take a decision whether they want to pursue this opportunity.

If they want to, domestic protection is required.

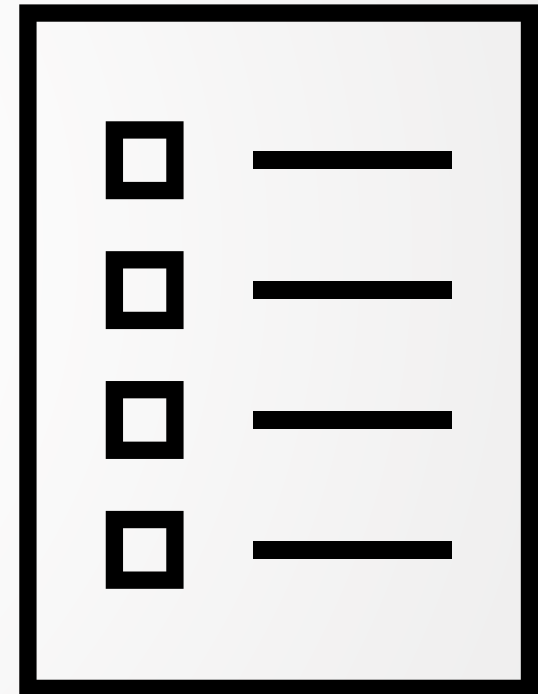
- Wine: Liquor Products Act (60 of 1989)
- Agricultural: Agricultural Product Standards Act (Act 119 of 1990)
- Other: Merchandise Marks Act (17 of 1941)





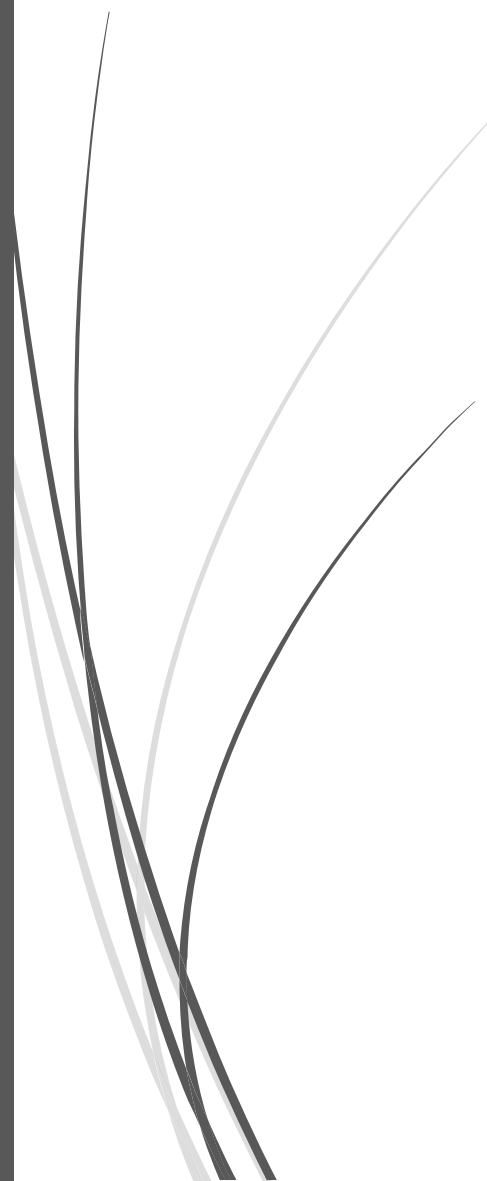
## Process to be followed (II)

- ▶ Elements of protection needs to be documented
  - ▶ a product description needs to be developed.
- ▶ Done by Industry, but the WCDOA is prepared to support industries
- ▶ After product description, request DARDLR for protection.
  - ▶ Publication in Government Gazette, etc.





# The elements of a Product Description

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- ▶ Applicant
  - ▶ Name
  - ▶ Geographical area
  - ▶ Characteristics of the Product (what to protect)
  - ▶ Production process
  - ▶ Product specifications
  - ▶ History and traceability
  - ▶ Link with the geographical area.
  - ▶ Packaging / specific mark
  - ▶ Protecting the integrity of the product (Audit process and key points of control)



# Process to be followed (III)

If EU GI Registration is to be explored:

- ▶ Industry to write a letter to DTIC and request inclusion in EPA.
- ▶ DTIC inform their counterparts in EU and Published in Journal of EU
- ▶ 2 Months period for comments and EU evaluate comments.
- ▶ If approved, DTIC request inclusion in EPA Protocol
  - ▶ Protected as GI in EU
- ▶ Option to apply for inclusion in GI Register
  - ▶ Easier to pick up in a GI search
  - ▶ Use of EU seal for product

## Steps in the process: APS

1. Introduction of the process to the sector and consideration of factors
2. Commitment/intention to proceed at special meeting or AGM
3. **Sector consultation** on the product description
4. 1<sup>st</sup> Draft product description
5. Presentation and **sector consultation** on first draft of document
6. 2<sup>nd</sup> Draft product description

## Steps in the process

7. **Sector adoption** at special meeting or AGM
8. Product description finalized
9. Submission to DALRRD under APS
10. Publication for public comment
11. Public comment integrated into product description
12. Revisions made to documents and **presented to sector**

# EU Register

- Development of Product Specification
- Development of Single Document
- Submission to EU Geographic Indication Unit
- Process facilitated by the DTIC – Legal-International Trade and Investment
- Review and comment by the EU member states
- Finalization of application >> submission





# Key considerations

- ▶ Industry support - must be representative of the majority of the harvested product in the sector and must be accepted by the sector
- ▶ Sector buy-in and cohesion
- ▶ Knowledge and understanding of the process
- ▶ Dedicated resources e.g. association secretary, paid person

**Opportunity, but not quick and easy  
and requires industry collaboration and commitment**