



[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

18th December, 2003.

ANTIGUA AND BARBUDA

No. 21 of 2003

AN ACT to provide for the protection and registration of geographical indications and related matters.

[*31st December, 2003*]

ENACTED by the Parliament of Antigua and Barbuda as follows —

PART I

PRELIMINARY

1. This Act may be cited as the Geographical Indications Act, 2002 and shall come into force on a day appointed by the Minister by notice published in the *Gazette*. Short title and commencement.

2. In this Act, Interpretation.

"Court" means the High Court;

"geographical indication" means an indication which identifies a good as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

"good" means **any** natural or agricultural product or **any** product of handicraft or industry;

"**Minister**" means the Minister to whom responsibility for intellectual property has been assigned;

"Paris Convention" means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as last revised;

"producer" means —

- (i) any producer of agricultural products or any other person exploiting natural products;
- (ii) any manufacturer of products of handicraft, or industry; and
- (iii) any trader dealing in the said products;

"Register" means the Register of Geographical Indications;

"Registrar" means the Registrar of Intellectual Property appointed under the Registrar of Intellectual Property Office Act, 2003.

PART II

PROTECTION OF GEOGRAPHICAL INDICATIONS

Civil proceedings. 3. (1) Any interested person and any interested group of producers or consumers may institute proceedings in the Court to prevent, in respect of geographical indication —

- (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;
- (b) any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention; or

- (c) use of a geographical indication identifying wines ~~for wines~~ not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the **goods** is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

(2) In proceedings under this section, the **Court** may, in addition to issuing an injunction, award damages and **grant** any other remedy or relief as it may deem fit.

4. Protection under this Act shall be available —

- (a) regardless of whether a geographical indication has **been** registered; but registration of a geographical indication under Part **III** of this Act shall, in any proceedings under this Act, raise a presumption that such indication is a geographical indication within the meaning of section 2; and
- (b) against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

Availability of protection regardless of registration, and presumption.

5. (1) In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to paragraph (b) of section 4.

Homonymous geographical indications for wines.

(2) The Registrar, in cases of permitted concurrent use of such indications, shall determine the practical conditions under which the homonymous indications in question will be differentiated **from** each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

6. The following shall not be protected as geographical indications —

Exclusion from protection.

- (a) indications which do not correspond to the definition in section 2;

- (b) indications which are, contrary to public order or **morality**;
- (c) geographical indications which are not or cease to be protected in their **country** of origin, or which have fallen into disuse in that country.

Offences.

7. Any person who knowingly and with intent to deceive performs any of the acts referred to in Section 3 commits an offence and is liable on summary conviction to a **fine** not exceeding fifty thousand dollars or to a term of imprisonment not exceeding three years.

PART III

REGISTRATION OF GEOGRAPHICAL INDICATIONS

Application for registration; right to file application and representation.

8. (1) **An** application for the registration of a geographical indication shall be filed with the Registrar.

(2) The following shall have the right to file an application:

- (a) natural persons or legal entities carrying on an activity as a producer in the geographical area specified in the application, with respect to the goods specified in **the** application, as well as groups of such persons; and
- (b) any competent authority.

(3) Where an applicant's ordinary residence or principal place of business is outside Antigua and Barbuda, he shall be represented by a registered agent resident and practising in Antigua and Barbuda, before the Registrar of the Intellectual Property Office. The procedure for the registration of an agent shall be prescribed in the regulations.

Contents of application.

9. An application for the registration of a geographical indication shall specify —

- (a) the name, address and nationality of the natural person or legal entity filing the application, and the capacity in which the applicant is applying for registration;
- (b) the geographical indication for which registration is sought;

- (c) the geographical areas to which the **geographical** indication applies;
- (d) the goods for which the geographical indication applies;
- (e) the quality, reputation or other characteristic of the goods for which the geographical indication is used,

and shall be subject to the payment of the prescribed fee.

10. (1) The Registrar shall examine the application to **ascertain** whether it complies with the requirements of sections **6(b)**, **8(2)** and **9** and **the Regulations**.

**Examination,
opposition,
registration.**

(2) Where the Registrar finds that the conditions referred to in subsection (1) are fulfilled, he shall cause the application, as accepted, to be published in the prescribed manner.

(3) Any interested person or competent authority may, within the prescribed period and in the prescribed manner, give notice to the Registrar of opposition to the registration of the geographical indication on the grounds that one or more of the requirements of sections **6**, **8(2)** and **9** are not fulfilled.

(4) The Registrar shall send a copy of such a notice to the applicant, and, within the prescribed period and in the prescribed manner, the applicant shall send to the Registrar a **counter-statement** of the grounds on which he relies for his application; if he does not do so, he shall be deemed to have abandoned the application.

(5) If the applicant sends a counter-statement, the Registrar shall furnish a copy thereof to the person giving notice of opposition and, after hearing the parties, if either or both wish to be heard, and considering the merits of the case, shall decide whether the geographical indication should be registered.

(6) Where the Registrar **finds** that the conditions referred to in subsection (1) are fulfilled, and either —

- (a) the registration of the geographical indication has not been opposed within the prescribed time limit; or

- (b) the registration of the geographical indication has been opposed and the opposition has been decided in the applicant's favour,

he shall register the geographical indication, publish a reference to the registration and issue to the applicant a certificate of registration. Otherwise, he shall refuse the application.

Right of use:

11. Only producers carrying on their activity in the geographical area specified in the Register shall have the right to use a registered geographical indication, in the course of trade, with respect to the products specified in the Register, provided that such products possess the quality, reputation or other characteristic specified in the Register.

Cancellation and
rectification of
registration and
publication.

12. (1) Any interested person or any competent authority may apply to the Court for —

- (a) the cancellation of the registration of a geographical indication on the ground that it does not qualify for protection as such having regard to section 6; or
- (b) the rectification of the registration of a geographical indication on the ground that the geographical area specified in the registration does not correspond to the geographical indication, or that the indication of the products for which the geographical indication is used or the indication of the quality, reputation or other characteristic of such products is missing or unsatisfactory.

(2) In any proceedings under this section, notice of request for cancellation of rectification —

- (a) shall be served on the person who filed the application for registration of the geographical indication or his successor in title; and
- (b) shall, by a publication in the prescribed manner, be given to all persons having the right to use the geographical indication under section 11.

(3) The persons referred to in subsection (2) and any other interested person may, within a period which shall be specified by the Court in the said notice and publication, apply to join in the proceedings.

(4) The Registrar of the Court shall notify the Registrar of the decision of the **Court** or the decision on any appeal **therefrom** and the Registrar shall record it and publish a reference thereto as soon as possible.

13. (1) (a) The Registrar shall maintain a Register in which he shall record all matters required by this Act to be recorded. **Register.**
- (b) The Register may be consulted by any person, and any person may obtain extracts therefrom, **under** the conditions prescribed in the Regulations.

(2) The Registrar shall publish in the Gazette or in an intellectual property journal published under the authority of the Registrar, or in both, all the publications provided for in this Act.

14. (i) The Registrar may, subject to Regulations made under this Act, correct any error of translation or transcription, clerical error or mistake in any application or document filed with the Registrar or **in** any matter recorded pursuant to this Act or the Regulations. **Correction of errors and extension of time.**

(2) If the Registrar is satisfied that the circumstances justify it, he **may**, upon receiving a written request, extend the time for doing any act or taking any proceeding under this Act and the Regulations, upon notice to parties concerned and upon such terms as he may direct; and notwithstanding that the time for doing the act or taking the proceeding has expired, the Registrar may grant an extension of time.

15. The Registrar shall, before exercising any discretionary power vested in him by this Act adversely to any party to a proceeding before **him** give that party an opportunity to be heard. **Exercise of discretionary powers.**

16. (1) The Court shall have jurisdiction in cases of dispute relating to **the** application of this Act **and** in matters which under **this Act are** to be referred **to the** Court. **Competence of Court and appeals.**

(2) Any decision **taken by the** Registrar under this Act may be **the** subject of **an** appeal **by any interested party** before **the Court** and **such appeal** shall be filed within two **months of the** date of **the decision.**

PART IV

SPECIAL PROVISIONS CONCERNING MARKS;
EXCEPTIONS

Misleading marks.

17. The Registrar shall, on his own motion or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in Antigua and Barbuda is of such a nature as to mislead the public as to the true place of origin.

Marks conflicting with a geographical indication for wines and spirits.

18. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or of a trademark for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated by the Registrar on his own motion or at the request of an interested party, with respect to such wines or spirits not having this origin.

Exceptions regarding prior users.

19. (1) Nothing in this Act shall prevent continued and similar use in Antigua and Barbuda of a particular geographical indication of another country identifying wines or spirits in connection with goods or services by any national or domiciliaries of Antigua and Barbuda who have used that geographical indication in a continuous manner with regard to the same or related goods or services in Antigua and Barbuda either —

- (a) for at least ten years preceding April 15, 1994; or
- (b) in good faith preceding that date.

(2) Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either —

- (a) before the date of entry into force of this Act; or
- (b) before the geographical indication is protected in its country of origin,

this Act shall not prejudice the registrability of or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

(3) Nothing in this Act shall apply in respect of

- (a) a geographical indication of any country with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in Antigua and Barbuda; or
- (b) a geographical indication of any other country with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in Antigua and Barbuda as of **January 1, 1995**.

(4) Any request for relief made under Part II of this Act in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in Antigua and Barbuda or after the date of registration of the trademark in Antigua and Barbuda, provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in Antigua and Barbuda and provided that the geographical indication is not used or registered in bad faith.

(5) This Act shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

PART V

REGULATIONS

20. The Minister ~~may~~ make Regulations prescribing all **matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.**

Regulations.

ANTIGUA 10
AND
BARBUDA

*The Geographical Indications
Act 2003.*

No. 21 of 2003.

Passed the House of Representatives
this 8th day of September, 2003.

Passed the Senate this 25th day
of September, 2003.

B. Harris,
Speaker.

M. Percival,
President.

S. Walker,
Clerk to the House of Representatives.

S. Walker,
Clerk to the Senate.

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