

No. 21 of 2003.

*The Geographical Indications  
Act 2003.* 1

ANTIGUA  
AND  
BARBUDA



[ 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.

