

GEOGRAPHICAL INDICATIONS MODEL LAW

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Legal basis taken into account for the model Law:

- TRIPS Agreement
- EPA
- Geneva Act of the Lisbon Agreement
- Draft Intra-CARIFORUM GI Agreement
- Some provisions of GI legal frameworks (CARIFORUM countries, EU, ASEAN countries)

GEOGRAPHICAL INDICATIONS MODEL LAW

OBJECTS AND REASONS

Purpose of the Act

The purpose of this Act is to protect (option to include here the word: 'consumers and') the intellectual property rights of producers, processors and traders, in addition to fostering creativity, innovation and competitiveness, facilitating sustainable development, preserving and strengthening traditional know-how and reducing poverty.

Objective

The objective of this Act is to provide for the registration and protection of geographical indications in COUNTRY.

PART I PRELIMINARY

Short Title

1. This Act may be cited as the *Geographical Indication Act, 20xx*.

Definition/Interpretation

2. In this Act:

“Act of unfair competition” means any act of competition contrary to honest business practices in industrial or commercial matters as defined in Article 10bis of the Paris Convention;

“Appeal” refers to an appeal against the decision of the Competent Authority in relation to geographical indications;

“Competent authority” refers to the REGISTRAR/ CONTROLLER / DIRECTOR GENERAL OF INTELLECTUAL PROPERTY which is entitled to register and protect geographical indications;

“Control Body” refers to any designated entity such as public institution or private organization issuing a certificate of compliance with the geographical indication specifications;

“Controls” refer to the verification of the compliance of the goods with the specifications by any designated authorities;

“Counterstatement” refers to a submission of any arguments of one party against another party’s statement;

“Court” means the COUNTRY COMPETENT Court;

“Generic” refers to a name for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that COUNTRY;

“Geographical Indication” means :
OPTION 1 (based on the TRIPS agreement) an indication/ a name that identifies goods 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 goods is essentially attributable to its geographical origin;

OPTION 2: (based on the Geneva Act) any indication protected in the **COUNTRY** consisting of or containing the name of a geographical area, or another indication known as referring to such area, which identifies a good as originating in that geographical area, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

“Geographical indications applicant”: means any natural or legal person, identified by the competent authority to act as applicant of a geographical indications registration to exercise legal rights representing the interests of producers or manufacturers of eligible goods and who are desirous of registering a geographical indication in relation to such goods;

“Geographical indications owner”: means the geographical indications applicant once the geographical indications is registered by the competent authority;

“Goods” means any agricultural or non-agricultural good, unprocessed or processed, including any goods of handicraft or industry;

“Hearing” refers to the procedure before taking decision on any opposition/objection by opponent/objector;

“Homonymous geographical indication” means indications that are spelt and pronounced alike but (which are different in meaning and) which are used to designate the geographical origin of goods stemming from different places or countries;

“Interested party or person” means a person, whether natural or legal, that can affect, be affected by, or perceives to be affected by, a decision or activity taken in relation to geographical indications designating a good;

“Trade Mark” or “Mark” is any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark”;

“Paris Convention” means the Convention for the Protection of Industrial Property signed at Paris on 20 March 1883;

“Producer” means :

OPTION 1

- (a) any producer of agricultural good or natural goods;
- (b) any processor of natural or agricultural or agri-food goods;
- (c) any industry or manufacturer of goods of handicraft; and
- (d) any trader dealing in the goods mentioned in paragraphs a) b) and c);

OPTION 2

any person who produces, processes, exploits, makes or manufactures goods;

“Remedies” means the remedies that a judicial or quasi-judicial body can impose under the applicable domestic law, as a result of an action for the infringement of a right or an act of unfair competition, as the case may be;

“Official Gazette” refers to the Official Gazette of the competent authority;

“Objection” or “Opposition” refers to an objection/opposition against the registration of a geographical indication by any interested party or person;

“Specifications” refers

OPTION 1:

to documents and information as required by section 15 of this Act, which is compiled by the applicant;

OPTION 2:

to technical details of the geographical indication that must be provided with the geographical indication application, specifying the production geographical area, production conditions and the quality control process of geographical indication goods, which is compiled by the applicant;

“Use of geographical indication” refers to offer for sale, production, sale, export or import of geographical indication goods as well as any promotion and communication material in relation to the geographical indication goods.

PART II COMPETENT AUTHORITY

Duties of the competent authority

3. The competent authority shall be entrusted with duties in relation to the administration, maintenance and registration of geographical indications in **COUNTRY**, including:

- (a) receiving and examining applications;
- (b) examining the specifications;
- (c) receiving oppositions and counter-statements;
- (d) registering geographical indications and dealing with the amendment, invalidation and cancellation of geographical indications;
- (e) conducting hearings in relation to geographical indication applications or registrations **[OPTIONAL]**;
- (f) publishing the registered Geographical indications in Official Gazette;
- (g) providing control oversight **[OPTIONAL]**;
- (h) performing any other instruction in relation to geographical indications matters received by the competent Minister/Ministry **[OPTIONAL]**.

Establishment of the Geographical Indication Board (OPTIONAL)

4. (1) There is established a Geographical Indications Board for the purpose of examining applications for geographical indications, promoting the geographical indications system in **COUNTRY**.

(2) The regulations have effect as to the constitution of the Board and otherwise in relation to the Board.

PART III PROTECTION OF GEOGRAPHICAL INDICATIONS

Protection granted to geographical indications

5. (1)

OPTION 1:

Geographical indications that are registered, are protected under this Act.

OPTION 2:

Geographical indications are protected under this Act whether or not they are registered.

(2) Notwithstanding subsection (1), geographical indications which falsely represent to the public that the goods originate in another territory are not protected by this Act.

(3) For the purposes of this section, registration of a geographical indication under this Act raises the presumption that the geographical indication is a geographical indication within the meaning of Section 2.

(4) Geographical indications registered under this Act cannot become generic terms.

Homonymy/Homonymous geographical indications

6.(1) In the case of homonymous or partly-homonymous geographical indications for goods, protection shall be accorded to each indication.

(2) The competent authority shall, in cases of permitted concurrent use of homonymous or partly-homonymous geographical indications, determine the practical conditions under which such indications will be differentiated from each other.

(3) For the purposes of subsection (2), the competent authority shall have regard to the need:

- (a) to ensure equitable treatment of the producers concerned;
- (b) to ensure that consumers are not misled; and
- (c) if there is a sufficient distinction made in practice between the geographical indication that was first protected, and the homonym subsequently protected.

Exclusion from geographical indication protection

7. The following shall not be protected as geographical indications:

- (a) indications that do not correspond to the definition of "geographical indication" in Section 2;
- (b) indications that are contrary to laws and regulations, public morality, religion, good custom or public order in the territory of the country concerned;
- (c) geographical indications that are not or cease to be protected in their country of origin, or that have fallen into disuse in that country;
- (d) indications that conflict with names of a plant variety or an animal breed in the territory of the country concerned and are likely to mislead the consumer as to the true origin of the good;
- (e) geographical indications that are generic terms in the territory of the country concerned.

Prohibition against improper use of geographical indications

8. (1) No person shall:

- (a) in the designation or presentation of goods, by any means, indicate or suggest that the goods originate in a geographical area other than the true place of origin in a manner that misleads the public as to the geographical origin of the goods;
- (b) use a registered geographical indication, directly or indirectly, in the course of the trade in respect of goods that are identical or comparable to those of the registered geographical indication where the misuse benefited or would benefit from the reputation of the geographical indication;
- (c) use a registered geographical indication, directly or indirectly, in the course of the trade in respect of goods that are non-identical to those of the registered geographical indication where the unlawful use benefited or would benefit from the reputation of the geographical indication;
- (d) use a registered geographical indication identifying goods not complying with the specifications or 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", "method" or the like, including imitation, evocation or translation of the registered geographical indication;
- (e) engage in conduct which constitutes an act of unfair competition, being an act of competition contrary to honest practices in industrial or commercial matters, including:
 - (i) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;
 - (ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;

(iii) indications or allegations, the use of which in the course of trade, is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$XXXXXX or to imprisonment for XXXX years or to both such fine and imprisonment.

Specific provisions concerning the implementation of such offences shall be determined by prescribed regulations.

(3) Subsection (1) applies to:

- (a) the uses of the geographical indication as an ingredient;
- (b) the uses of the geographical indication on the Internet, including uses in domain names.

Civil remedies

9. (1) An interested person may institute proceedings in the competent Court to prevent, in respect of geographical indications, any act referred to in Section 8.

(2) The Court may, in proceedings under subsection (1), in addition to granting an injunction, award damages and grant any other remedy or relief the Court thinks fit.

Administrative protection

10. The NAME OF THE COMPETENT AUTHORITY FOR ADMINISTRATIVE PROTECTION shall take appropriate administrative and judicial steps to prevent or stop the unlawful use of protected geographical indications that are produced or marketed in COUNTRY.

Detention and Confiscation

11. (1) The competent courts shall have the authority to order the detention of goods if there is suspicion that the goods are infringing the rights of the geographical indication.

(2) Subsection (1) applies to the materials and core equipment where there is suspicion they are used in the production of goods to infringe the rights of the geographical indication.

(3) The infringing goods which are imported, exported, sold or offered for sale shall be confiscated by the competent authorities through the courts' decision whether or not anyone has been convicted of the offence (OPTIONAL).

PART IV REGISTRATION OF GEOGRAPHICAL INDICATIONS

Geographical indication applicant

12. (1) The following may make an application to the competent authority for the registration of a geographical indication:

- (a) a person or a group of persons carrying on an activity as producers in the geographical area specified in the application, with respect to the goods specified in the application. In the case of a single person or single entity, the use of the geographical indication shall be opened to any new producer(s) able to comply with the specifications;
- (b) any organization or competent body gathering producers of goods specified in the application.

(2) An applicant under subsection (1) shall become the owner of the geographical indication after registration.

(3) When the geographical indication is registered by the competent authority, the geographical indication applicant becomes the geographical indication owner.

Geographical indication group

13. (1) The Membership of a geographical indication group shall be open to any producer located in the geographical area and complying with the specifications.

(2) The group shall ensure that its members comply with the specifications and other obligations designated by laws and regulations.

(3) (OPTIONAL) When the applicant is a group of persons/producers as mentioned in Section 12 subsection (1), it shall discharge their statutory responsibility to administer and function, on a non-profit basis.

Filing Applications

14. (1) The application for geographical indication registration shall be filed with the competent authority either at the competent authority office, by mail or by electronic means accompanied with the relevant documents.

(2) Applicants are entitled to file the geographical application either directly or through the representation of an agent/attorney-at-law.

Content of geographical indications' application

15. (1) An application for the registration of a geographical indication shall specify:

- (a) the name, address and nationality of the person making the application, and the capacity in which the applicant is applying for registration;
- (b) name of the representative of the applicant if any;
- (c) specifications, including the following particulars:

OPTION 1 (based on CARIFORUM countries Acts)

- i. the geographical indication (name) for which registration is sought;
- ii. the goods to which the geographical indication applies;
- iii. the geographical areas to which the geographical indication applies;
- iv. the process of production;
- v. the quality, reputation or other characteristic of the goods in respect of which the geographical indication is used;
- vi. the quality, reputation or other characteristic of the goods and how that quality, reputation or other characteristic (as the case may be) is essentially attributable to the place from which the goods originate,
- vii. where the geographical indication for which registration is sought relates to a country other than **COUNTRY**, evidence that the geographical indication has obtained recognition or registration as a geographical indication in the qualifying country or countries of origin, where applicable,
- viii. the reference to the control body;
- ix. the labelling rules; and

OPTION 2 (rewording of each part):

- i. the geographical indication (name) for which the registration is sought;
- ii. the goods to which the geographical indication applies;
- iii. a description of the characteristics of the goods in respect of which the geographical indication is applied;
- iv. the geographical area to which the geographical indication applies;
- v. a description of the method of obtaining the goods;
- vi. evidence that the good originates from the defined geographical area;
- vii. description of details establishing the link between a given quality, the reputation or other characteristic of the good and its geographical origin;
- viii. where the geographical indication for which registration is sought relates to a country other than **COUNTRY**, evidence that the geographical indication has obtained recognition or registration as a geographical indication in the qualifying country of origin, where applicable;
- ix. the name and address of the authorities or, if available, the name and address of bodies verifying compliance with the provisions of the good specification;
- x. the labelling rules; and

- (d) such other particulars as may be prescribed.

(2) A person willing to file an application under subsection (1) shall apply in the prescribed form and pay the prescribed fee.

(3) Where an applicant's ordinary residence or principal place of business is outside **COUNTRY**, he shall be represented by an attorney-at-law who is resident and practicing as an attorney-at-law in **COUNTRY**.

Examination and publication of the application

16. (1) The competent authority shall examine every application to ascertain whether it complies with the requirements of [sections 2, 7, 12 & 15 of] the present Act and the regulations.

(2) The competent authority shall notify applicants whether the geographical indication will be registered.

(3) When the application duly complies with the requirements, the competent authority shall officially issue an acknowledgement of application and publish

OPTION 1 : the application in the prescribed manner.

OPTION 2 : a summary of the application in the prescribed manner.

(4) Where the application does not fulfill the requirements, the competent authority shall issue a letter to the applicant specifying the deficiencies to be addressed.

(5) The applicant may amend an application referred to in subsection (4).

(6) The application shall be deemed to have been abandoned if no amended application is submitted to the competent authority within the **DEFINED** period unless the applicant provides a justified explanation .

(7) The competent authority may seek advice from experts in related fields and if needed take this advice into consideration when making its decision.

(8) Specific provisions concerning the procedure for the examination of geographical indications shall be determined by prescribed regulations .

Objection/Opposition to registration

17. (1) An interested party or person may, within the prescribed period and in the prescribed manner from the date of publication, give notice to the competent authority of an objection to the registration of the geographical indication referred to in section 16, on the grounds specified in paragraph (2).

(2) The grounds for objection to the geographical indication registration are:

(a) failure to satisfy the definitions relating to geographical indication within section 3 of this Act.

(b) that the applied geographical indication cannot be registered as a geographical indication as stated in sections 7, 8, 13, 14 & 15 of this Act and regulations.

(c) that the geographical indication infringes an existing use of the name or similar name or evocation of the name;

(d) that the geographical indication infringes prior trademark(s) registered in good faith;

(e) that the geographical indication is homonym with another geographical indication and that no differentiation can be made between the two indications.

(3) **OPTION 1**: The competent authority shall send a copy of the notice referred to in subsection (1) to the geographical indication applicant.

OPTION 2 : The opponent shall send a copy of the notice referred to in subsection (1) to the geographical indications applicant.

(4) Upon receipt of the copy of the notice referred to in subsection (3), the applicant shall, within the prescribed period and in the prescribed manner, send to the competent authority and to the opponent/objector a counter-statement of the grounds on which the applicant relies for the application; and if he does not do so, he shall be deemed to have abandoned the application.

(5) Where the applicant sends a counter-statement and after hearing the parties, if either or both wish to be heard, and considering the merits of the case, the competent authority shall decide whether the geographical indication should be registered.

(6) Parties are entitled to work out proposed rules of coexistence, if needed.

(7) Parties are entitled to work out a phase out period in case of prior geographical indication use as ground of opposition, if needed.

Transitional periods for use of protected geographical indications

18. The producers who were using the name of the geographical indication on their goods marketed prior to the registration of the geographical indication, may only continue to use it for a period no longer than **six months/one year/two years**, otherwise they will be subject to prosecutions.

Geographical indication registration

19. (1) Where the competent authority is satisfied that the requirements referred to in section 15 have been complied with in respect of an application and

(a) there has been no objection/opposition to the registration of the geographical indication within the prescribed period; or

(b) there has been an objection/opposition to the registration of the geographical indication and the objection has been decided in the applicant's favour,

the competent authority shall register the geographical indication, issue to the applicant a certificate of registration in the prescribed form and publish a notice of the registration.

(2) The competent authority may grant a phase-in period [not exceeding one year] to allow producers holding stocks of goods not complying with the geographical indication registration to market their existing stocks without having to re-label them.

(3) Where, as the result of an objection made under this section or for any other reason, the competent authority is satisfied that the application for registration of a geographical indication does not comply with the requirements of this Act or the regulations the competent authority shall refuse the application.

(4) The effective date of registration is deemed to be the date of the geographical indication application.

Geographical indication register

20. (1) The competent authority shall maintain a Register in which he shall record

- (a) all geographical indications registered under this Act; and
- (b) all matters required by this Act to be recorded.

(2) The Register shall be open for inspection by the public during normal working hours, and any person may obtain extracts therefrom or make copies of such extracts in the manner and under the conditions prescribed.

(3) Specific content of the Register shall be determined by prescribed regulations.

Cancellation or rectification/amendment of geographical indication registration

21. (1) A geographical indication owner or any interested party or person with sufficient interest may apply either to the competent authority or to the Court/competent jurisdiction for:

(a) the cancellation of the registration of a geographical indication on the grounds that:

(i) it does not comply with sections 2, 7, 12, 13 & 15 of the present Act or the regulations;

(ii) the owner of the registered geographical indication has requested cancellation;

(iii) the goods of registered geographical indication have lost their special characteristic as geographical indication goods;

(iv) they are foreign geographical indications which are not or have ceased to be protected in their country of origin or have fallen into disuse in that country.

(b) the rectification /amendment of the registration of a geographical indication on the grounds:

(i) that the geographical area specified in the registration does not correspond to the geographical indication; and/or

(ii) that the specifications shall be amended, particularly the elements related to the development of technologies and sciences and the delimitation of the geographical

area. The amendment of the specifications shall be made if it does not vitally affect the decision of geographical indication registration.

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

(a) shall be served on the person, owner who filed the application for registration of the geographical indication; 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 30.

(3) The persons referred to in subsection (2) and any other interested person may, within such period as the competent authority or the Court/competent jurisdiction specifies in the notice and publication referred to in that subsection, apply to be joined in the proceedings.

(4) The Court/competent jurisdiction shall notify the competent authority of the decision of the Court/competent jurisdiction or the decision on any appeal therefrom and the competent authority shall record it and publish a notice of the decision as soon as possible.

OPTION THAT INTEGRATES REGISTRAR COMPETENCY:

The Registrar shall notify the interested parties of the decision or the decision on any appeal therefrom. The Registrar shall record it and publish a notice of the decision as soon as possible. This decision may be subject of appeal.

(5) The cancellation of geographical indication registration shall be deemed to have been effective from the date of the notice of decision.

Correction of errors

22. The competent authority may, subject to the regulations, correct any error of translation or transcription, clerical error or mistake in any application or document filed with the competent authority or in any matter recorded pursuant to this Act or the regulations.

Extension of time

23. Where the competent authority is satisfied that the circumstances justify it, upon receiving a written request, extend the time for doing any act or taking any proceedings under this Act or the regulations, upon notice to parties concerned and upon such terms as he may direct notwithstanding that the time for doing the Act or taking the proceedings has expired.

Discretionary power

24. The competent authority shall, before exercising any discretionary power vested in him by this Act in a manner that is likely to adversely affect any party to proceedings before him, give that party an opportunity to be heard.

Publication

25. The competent authority shall publish in the *Official Gazette/ IP Journal / in a newspaper published daily in COUNTRY* everything required to be published under this Act.

Jurisdiction of Court (OPTIONAL)

26. (1) The Court has jurisdiction in cases of disputes relating to the application of this Act and in matters which, under this Act, are to be referred to the Court/competent jurisdiction.

(2) Any party aggrieved by a decision of the competent authority may, within **TIME TO BE DEFINED** after the date of the decision, appeal against the decision to a Court/competent jurisdiction.

National Logo for Certifying Geographical Indication Goods

27. (1) The competent authority/ministry shall constitute a National Logo to certify all registered geographical indication goods in **COUNTRY**.

(2) The modalities of the national logo are provided by regulations.

PART V REGISTRATION OF FOREIGN GEOGRAPHICAL INDICATIONS

Requirements of Foreign Geographical Indication Registration

28.(1) A foreign Geographical Indication shall be registered through the submission of the application to the competent authority in accordance with the provisions of the Act and regulations.

(2) A foreign Geographical Indication shall be eligible for registration as long as the foreign Geographical Indication is protected in accordance with the applicable laws in its country of origin and is not in conflict with the provisions of the Act and regulations.

(3) The competent authority shall not allow the registration of a foreign Geographical Indication which has ceased to be protected in its country of origin or has fallen into disuse in that country.

Procedure for Foreign Geographical Indication Registration

29. (1) The application for a foreign geographical indication registration shall be filed with the competent authority.

(2) Terms defined in Part IV of this Act shall be applied *mutatis mutandis* to the foreign geographical indication registration procedure.

PART VI EFFECTS OF GEOGRAPHICAL INDICATIONS REGISTRATION

Rights Conferred

30. (1) When a geographical indication is registered at the competent authority, in accordance with the provisions of this Act and regulations, only producers handling goods possessing the quality, reputation or other characteristic specified in the Register who are carrying on their activity in the geographical area specified in the Register, who are complying with the good's specifications of the concerned geographical indication, have the right to use the registered geographical indication in the course of trade, with respect to such goods.

(2) The right referred to in subsection (1) shall not be transferable.

(3) The geographical indication owner shall have the right to institute a complaint to the competent courts either against any person who used its geographical indication without authorization or against any member of geographical indication group who infringed a geographical indication as provided for in section 8 of this Act.

(4) A list of geographical indications users is established and maintained by the [competent authority/ the geographical indication owner/ both]. All producers handling the good in accordance with the specification have the right to use the geographical indication.

Duration of Protection

31. (1) The protection of geographical indications shall be :

OPTION 1 :of indefinite duration.

OPTION 2: granted for 10 years and renewable for further periods of 10 years.

(2) The registration of geographical indication shall be valid from the date of the filing of the application provided that its registration is not cancelled or invalidated according to this Act.

Renewal of protection (ONLY in case of limited duration of protection e.g. 10 years)

The geographical indications applicant/owner may, within the prescribed period before the registration of geographical indication expires, make a request in the prescribed form to the Registrar for the renewal of the registration. Failing this, the request for renewal may be made within up to six months after the expiry.

Transfer of geographical indications (OPTIONAL)

The owner of a geographical indication shall not transfer to any other person, any right to a registered geographical indications under this Act.

Provided that, such rights shall be devolved on the successor of such owner and that such new owner complies with the conditions defined in section 12.

Acknowledgment of Registration

32. All geographical indications duly registered by the competent authority prior to the coming into force of this Act shall be valid.

PART VII CONTROL COMPLIANCE OF GEOGRAPHICAL INDICATION SPECIFICATIONS

Geographical indication compliance control

33. (1) Geographical indications are subject of control compliance that can cover the following systems:

- The applicant may choose a collective internal control system by groups or association, subject to competent authority validation and audits;

And/or

- The applicant may select a control body which is authorized to deliver relevant controls in **COUNTRY**. The control body is a competent and impartial public or private certification body both accredited according to the International Standard Organization or any organization recognized by the competent authority of **COUNTRY** which has reliable control system.

(2) To verify the effective compliance after registration, the competent authority/competent Ministry may invite the owner or interested person to provide additional explanation or evidence. The competent authority may request advice from experts in related fields in order to consider and reach a decision if needed.

(3) The control body shall ensure the verification of the compliance of goods with the specifications. The control body shall send an annual report to the competent authority every year including a list of geographical indication controlled producers, users, goods, quantities and measures taken if any. The competent authority shall determine the date of the report based on the harvest season or the end of the calendar year.

(4) In the case of non-compliance with the specifications by any producers or users, the control body shall notify the competent authority of appropriate measures and sanctions as follows:

- (a)- Remarks and advice;
- (b)- Warning;
- (c)- Disqualification of the goods or producer ;
- (d)- Temporary revocation of the rights of the producer in relation to the use of the geographical indication;
- (e)- Permanent revocation of the rights of the producer in relation to the use of the geographical indication.

(5) The owner or producer of the geographical Indication shall report to the competent authority on the implementation of the measures, once a year.

Efficiency of the control body

34. (1) The competent authority shall verify the competence and efficiency of the control body.

(2) The competent authority is authorized to withdraw the authorization of the control body on the grounds of inefficiency by outlining the evidence in writing and may order the applicant to select a new certification body or control body.

(3) If necessary, the competent authority shall define additional regulations for controls after registration of the geographical indication registration.

PART VIII GEOGRAPHICAL INDICATION AND RECOGNITION OR REJECTION OF MARK

Geographical Indication and Marks

35. (1) Where a geographical indication is registered in accordance with this Act, the application for registration of a mark corresponding to one of the situations defined in sections 8 (1) and 30 and relating to the same type of goods shall be refused.

(2) The competent authority shall refuse any application for registration of a mark which is identical with or confusingly similar to, or otherwise corresponds to one of the situations defined in sections 8 (1) and 30 a geographical indication applied before the filing date of application for mark registration and the geographical indication is subsequently protected.

(3) Any mark registered in breach of the subsections (1) and (2) shall be invalidated by the Court at the request of any interested party or at the request of competent authority (if possible).

Misleading marks

36. On the motion of the competent authority or of an interested party, the competent authority shall refuse or invalidate the registration of a mark that contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the mark for such goods in COUNTRY is of such a nature as to mislead the public as to the true place of origin or otherwise corresponds to one of the situations defined in sections 8 (1) and 30.

Exceptions regarding prior users

37. (1) Nothing in this Act shall prevent continued and similar use in **COUNTRY** of a particular geographical indication of another country in connection with goods or services by citizens, permanent residents or immigrants of **COUNTRY** who have used that geographical indication in a continuous manner with regard to the same or related goods or services in **COUNTRY**:

(a) for a period of at least 10 years immediately preceding 15th April, 1994; or

(b) in good faith prior to 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

(a) before date of application of WTO obligations; or

(b) before the geographical indication is protected in its country of origin,

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

(3) Nothing in this Act shall apply in respect of a geographical indication of any country with respect to goods or services for which the relevant indication is identical with the term customarily used in common language as the common name for such goods or services in **COUNTRY**.

(4) A request for relief made under Part III of this Act in connection with the use or registration of a trademark must be presented within 5 years after the adverse use of the protected geographical indication has become generally known in **COUNTRY** or after the date of registration of the trademark in **COUNTRY**.

(5) Subsection (4) applies only where the trademark has been published by the date of registration of the trademark in **COUNTRY**, where that date is earlier than the date on which the adverse use became generally known in **COUNTRY** and provided that the geographical indication is not used or registered in bad faith.

(6) This Act does not affect 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 a manner that is likely to mislead the public.

Marks having a reputation or renown

38. A name proposed for registration as a geographical indication shall not be registered or shall be invalidated at the request of any interested party where, in light of a mark's reputation and renown and the length of time it has been used, registration of the name proposed as the geographical indication would be liable to mislead the consumer as to the true identity of the good.

Coexistence between mark and geographical indication

39. The competent authority shall ensure that, subject to the provisions of section 37 to 39, a mark, the use of which corresponds to one of the situations referred to in section 8 (1), and which has been applied for, registered or established by use, in good faith within COUNTRY, before the date of application of the WTO obligations in COUNTRY, or before the date of application for protection of the geographical indication in COUNTRY, may continue to be used notwithstanding the registration of the geographical indication, provided that no grounds for the invalidity or revocation of the trade mark exist as specified by laws. In such a cases, the use of the Geographical Indication shall be permitted as well as the use of the relevant mark and the Geographical Indication and the trade mark shall not be used in a manner which may mislead the public as to the identities of the respective goods

PART IX MISCELLANEOUS

Saving

40. Nothing in this Act, nor any provision of the specifications referred to in Section 15(c), shall affect the implementation of rules relating to:

- (a) safety and hygiene.
- (b) rules relating to the placing of good on the market, competition rules, anti-fraud and consumer deception, other than specific provisions set out in this Act.

Application of International Treaties and Interpretation

41. The provisions of any international treaties in respect of the geographical indications, to which COUNTRY is a party, shall apply to matters dealt with by this Act. In case of conflict with provisions of this Act, the provisions of any international treaties shall be considered as principal provisions.

Regulations

42. The Minister may make regulations prescribing anything that is required under this Act to be prescribed, and generally, for the effective operation of this Act.

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