

A BILL

for

AN ACT TO MAKE PROVISION FOR THE PROTECTION OF GEOGRAPHICAL INDICATIONS

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

PART 1 - PRELIMINARY

Short Title and
Commencement

1. (1) This Act may be cited as the Protection of Geographical Indications Act 2001.
- (2) This Act shall come into operation on a date to be proclaimed by His Majesty in Council.

Act binds the Crown

2. This Act binds the Crown.

Interpretation

3. In this Act, unless the context otherwise requires,

"Court" means the Supreme Court of Tonga.

"geographical area" means the territory of the country or region or locality in that territory as the case may be which constitutes the geographical origin of the goods.

"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 of Labour, Commerce and Industries;

"producer" means:

(a) any producer of agricultural products or any other person exploiting natural products,

(b) any manufacturer of products of handicraft, or industry, and

(c) any trader dealing in the said products;

"register" means the Register of Geographical

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 7, 9(2) and 10 are not fulfilled.

(c) 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.

(d) 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.

(3) 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 outcome 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

12. 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

- 13.** (1) Any interested person may request the Court to order:
- (a) the cancellation of a registration of a geographical indication on the ground that it does not qualify for protection as such having regard to Section 7;
 - (b) the rectification of a registration of an geographical indication on the ground that the geographical area specified in the registration does

Corrections of mistakes
and extension of time

15.

(1) The Registrar may, subject to any provision in the regulations, correct any mistake in any application or document filed with his Office or in any recording effected pursuant to this Act, or the regulations.

(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. The extension may be granted though the time for doing the act

PART IV: SPECIAL PROVISIONS CONCERNING MARKS; EXCEPTIONS

Misleading
a trademarks

- 19.** The Registrar **shall refuse** or invalidate the registration of trademark which contains or consists of a geographical indication with respect to goods not originating in the geographical area indicated, if use of the indication in the

(b) before the geographical indication is protected in its country of origin, this Act shall not prejudice the registration 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 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 Tonga or in respect of 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 Tonga 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 Tonga or after the date of registration of the trademark in Tonga, 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 Tonga 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.

Passed in the Legislative Assembly thisday of2001