
**Council for Trade-Related Aspects of
Intellectual Property Rights**

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**MAIN DEDICATED INTELLECTUAL PROPERTY
LAWS AND REGULATIONS NOTIFIED UNDER
ARTICLE 63.2 OF THE AGREEMENT**

MAURITIUS

The present document reproduces the text¹ of the Geographical Indications Bill of 2000, as notified by Mauritius under Article 63.2 of the Agreement (see document IP/N/1/MUS/1).

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET RÉGLEMENTATIONS CONSACRÉES À LA
PROPRIÉTÉ INTELLECTUELLE NOTIFIÉES AU TITRE
DE L'ARTICLE 63:2 DE L'ACCORD**

MAURICE

Le présent document contient le texte¹ du projet de loi de 2000 sur les indications géographiques, notifié par Maurice au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/MUS/1).

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA
PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

MAURICIO

En el presente documento se reproduce el texto¹ del proyecto de Ley de Indicaciones Geográficas, de 2000, que Mauricio notificó de conformidad con lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/MUS/1).

¹ In English only./En anglais seulement./En inglés solamente.

25.10.2000 – 2.30 p.m.

THE GEOGRAPHICAL INDICATIONS BILL
(No of 2000)

Explanatory Memorandum

The object of this Bill is to provide for a system of protection of geographical indications that is uncomplicated and which will meet Mauritius international obligations in the field of intellectual property. The Bill is divided into five parts each dealing with an aspect of the scheme designed to offer protection to geographical indications.

Part I "Preliminary", would consist of 2 clauses. Clause 1 of the Bill provides the Short Title while clause 2 of the Bill provides for the meaning of words and expressions used therein.

Part II "Protection of Geographical Indications", consists of clauses 3 to 7. Clause 3 of the Bill provides for the institution of civil proceedings to prevent the unlawful use of geographical indications and outlines the power and jurisdiction of the court in those proceedings

Clause 4 of the Bill provides for the availability of the protection offered by the Act and establishes that the protection is not dependent upon registration, although the registration of a geographical indication does raise a presumption that it is a geographical indication within the meaning of the Act.

Clause 5 of the Bill provides for the concurrent use of homonymous indications for wines and spirits.

Clause 6 of the Bill provides for the categories of geographical indications which are to be excluded from the protection of the Act. Namely, those which do not correspond to the definition of a geographical indication contained in the Act, those which are contrary to public order and morality and those which have fallen into disuse in their country of origin.

Clause 7 of the Bill imposes criminal sanctions upon persons who perform any of the acts which by clause 3 may form the basis of civil proceedings.

Part III "Registration of Geographical Indications", consists of clauses 8 to 16. Clause 8 of the Bill provides that an application for the registration of a geographical indication is to be made to the Controller of Industrial Property (hereinafter referred to as "the Controller") and enumerates the categories of persons entitled to apply for such registration, and clause 9 of the Bill provides for the particulars which must be contained in an application for registration under the Act.

Clause 10 of the Bill provides for the examination of an application for registration and the procedure for opposition. This clause of the Bill provides that once the Controller is satisfied that the application complies with the requirements of the Act he will publish it and in the absence of opposition will, in due course, issue a certificate of registration. This clause also provides for the grounds on which the issue of a certificate of registration may be opposed.

Clause 11 of the Bill provides for the right of use of a registered geographical indication. Once the indication is registered the issue as to who may legally use it arises. The registration of an indication does not create rights which are exclusive to the applicant, rather it authorizes persons who fulfill

prescribed conditions to use the indication. This clause prescribes those conditions. The bill provides that only those producers carrying on activity in the geographical area specified in the registration in respect of the products specified in the registration which possess the quality, reputation or other characteristics specified in the registration may use the indication.

Clause 12 of the Bill provides for the circumstances in which an interested person may apply to the Court for the cancellation of a certificate of registration - where the indication in issue is expressly excluded by clause 6 from the protection of the Act. This clause also provides for the rectification of a geographical indication where the geographical area specified in the registration does not correspond with the geographical indication, or where the indication of the product for which the geographical indication is used or the indication of the quality, reputation or other characteristic of that product is missing or unsatisfactory.

Clause 13 of the Bill imposes an obligation on the Controller to maintain a Register of geographical indications, and clause 14 of the Bill empowers the Controller to correct errors of translation or transcription, clerical errors and mistakes contained in documents filed with his office and in his records. Clause 15 of the Bill provides for the manner in which the Controller is to exercise any discretionary power conferred by the Act.

Clause 16 of the Bill establishes the general jurisdiction of the Court to deal with matters arising under the Act and provides for appeals from the decisions of the Controller.

Part IV "Special Provisions concerning Marks; Exceptions" consists of clauses 17 to 19 and deals with issues arising from the overlap with trademarks.

Clause 17 of the Bill empowers the Controller to 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, where the use of the indication in the trademark would be misleading as to the place of origin. Clause 18 would confer similar powers on the Controller but deals specifically with wines and spirits.

Clause 19 of the Bill provides for exceptions to clauses 17 and 18 to safeguard the rights of prior users of a geographical indication of another country.

Part V "Regulations", consists of two clauses, clause 20 which would authorize the Minister to make regulations for matters required or permitted to be prescribed or necessary or convenient for carrying out or giving effect to the Act and clause 21 which provides for Commencement.

..... 2000

J.K. Cuttaree
Minister of Industry, Commerce
and International Trade

THE GEOGRAPHICAL INDICATIONS BILL
(No. of 2000)

ARRANGEMENT OF CLAUSES

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A BILL

**To provide for the protection of geographical
indications and related matters**

ENACTED by the Parliament of Mauritius, as follows -

PART I - PRELIMINARY

1. Short title

This Act may be cited as the Geographical Indications Act, 2000.

2. Interpretation

In this Act -

"Controller" means the Controller of Industrial Property appointed under section 36 of the Patents, Industrial Designs and Trademarks Act 2000 and any reference to the Controller shall be construed as including a reference to any officer discharging the functions of the Controller;

"Court" means the Supreme Court;

"geographical indication" means an indication which identifies a product 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 product is essentially attributable to its geographical origin;

"legal practitioner" has the same meaning as in the Law Practitioners Act;

"Minister" means the Minister responsible for the subject of Industrial Property;

"Paris Convention" means the Paris Convention for the Protection of Industrial Property of March 20.1883, as last revised;

"producer" means -

- (a) any producer of agricultural products or any other person exploiting natural products;
- (b) any manufacturer of products of handicraft, or industry; or
- (c) any trader dealing in the said products;

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

"Register" means the Register of Geographical Indications.

“Review Committee” means the Industrial Property Review Committee as established under section 40 of the Patents Industrial Designs and Trademarks Act.

PART II - PROTECTION OF GEOGRAPHICAL INDICATIONS

3. Civil proceedings

(1) Any interested person and any interested group of producers or consumers may institute proceedings in the Court to prevent, in respect of geographical indications -

- (a) the use of any means in the designation or presentation of a product that indicates or suggests that the product 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 product;
- (b) any use which constitutes an act of unfair competition within the meaning of the Unfair Competition Practices Act;
- (c) use of a geographical indication -
 - (i) identifying wines for wines not originating in the place indicated by the geographical indication in question, or
 - (ii) identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the products 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 subsection (1), the Court may, in addition to issuing an injunction, award damages and grant any other remedy or relief as it may deem fit.

4. Availability of protection

The protection afforded under this Act shall be available -

- (a) regardless of whether a geographical indication has been registered; however 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;
- (b) Against a geographical indication which, although literally true as to the territory, region or locality in which the products originate, falsely represents to the public that the products originate in another territory.

5. Homonymous geographical indications for wines

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

(2) The Controller, 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. Exclusion from protection

The following shall not be protected as geographical indications -

- (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.

7. Offences

Any person who knowingly and with intent to deceive performs any of the acts referred to in section 3 shall commit an offence and shall on conviction, be liable to a fine of not more than Rs 250,000 and to imprisonment for a term of not more than 5 years.

PART III - REGISTRATION OF GEOGRAPHICAL INDICATIONS

8. Application for registration

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

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

- (a) a person carrying on an activity as a producer in the geographical area specified in the application, with respect to the product specified in the application, as well as a group of such persons;
- (b) any competent authority.

(3) Where an applicant's ordinary residence or principal place of business is outside Mauritius, he shall be represented by a legal practitioner resident and practising in Mauritius.

9. Contents of application

An application for the registration of a geographical indication shall specify -

- (a) the name, address and nationality of the person 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 products for which the geographical indication applies;
- (e) the quality, reputation or other characteristic of the products for which the geographical indication is used,

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

10. Examination, opposition, registration

(1) The Controller shall examine the application to ascertain whether it complies with the requirements of sections 6 (b), 8 and 9 and the regulations pertaining thereto.

(2) Where the Controller finds that the conditions referred to in subsection (i) 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 Controller of opposition to the registration of the geographical indication on the grounds that one or more of the requirements of sections 6, 8 and 9 are not fulfilled.

(4) The Controller shall send a copy of such a notice to the applicant, within the prescribed period and in the prescribed manner, the applicant shall send to the Controller 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 Controller 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 Controller 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.

11. Right of use

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.

12. Cancellation and rectification of registration, publication

(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 the request for cancellation or 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 Master & Registrar of the Court shall notify the Controller of the decision of the Court or the decision on any appeal therefrom and the Controller shall record it and publish a reference thereto as soon as possible.

13. Register, publication

(1) The Controller shall maintain a Register in which he shall record all matters required by this Act to be recorded.

(2) The Register may be consulted by any person, and any person may obtain extracts therefrom, on payment of the prescribed fee.

(3) The Controller shall publish in the prescribed manner all the publications provided for in this Act.

14. Correction of errors, extension of time

(1) The Controller may, subject to regulations made under this Act, correct any error of translation or transcription, clerical error and mistake in any application or document filed with the Controller or in any matter recorded pursuant to this Act or the regulations.

(2) If the Controller 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.

(3) Notwithstanding that the time for doing the act or taking the proceeding has expired, the Controller may grant an extension of time.

15. Exercise of discretionary powers

The Controller 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.

16. Competence of courts, appeals

(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.

(2) No person who is aggrieved by the decision of the Controller shall appeal to the Court except within 28 days after the matter in dispute has been reviewed by the committee under section 40 of the Patents, Industrial Designs and Trademarks Act and the Committee has given its findings.

PART IV - SPECIAL PROVISIONS CONCERNING MARKS, EXCEPTIONS

17. Misleading marks

The Controller 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 products not originating in the territory indicated, if use of the indication in the trademark for such products in Mauritius is of such a nature as to mislead the public as to the true place of origin.

18. Marks conflicting with a geographical indication for wines and spirits

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 Controller on his own motion or at the request of an interested party, with respect to such wines or spirits not having this origin.

19. Exceptions regarding prior users

(1) Nothing in this Act shall prevent continued and similar use of a particular geographical indication of another country identifying wines or spirits in connection with products or services by any nationals or domiciliaries of Mauritius who have used that geographical indication in a continuous manner with regard to the same or related products or services in the territory of Mauritius 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 geographical indication of any country with respect to products or services for which the relevant indication is identical with the term customary in common language as the common name for such products or services in Mauritius 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 Mauritius as at 1 January, 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 Mauritius or after the date of registration of the trademark in Mauritius, 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 Mauritius 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. Regulations

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.

PART VI - COMMENCEMENT

21. Commencement

This Act shall come into force on a date to be fixed by Proclamation.
