



ANALYSIS

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1994, No. 125

An Act to provide for the registration and protection of geographical indications in relation to goods

[9 December 1994]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Geographical Indications Act 1994.

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council; and one or more orders may be made bringing different provisions into force on different dates.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Board” and “New Zealand Geographic Board” mean the New Zealand Geographic Board established under section 3 of the New Zealand Geographic Board Act 1946:

- “Committee” means a geographical indications committee appointed under section 14 of this Act:
- “Geographical indication”, in relation to goods, means a description or presentation used to indicate the geographical origin of the goods:
- “Geographical origin” means a country, region, locality, or linear feature:
- “Goods” means all kinds of movable property:
- “International agreement” means any bilateral or multilateral treaty, convention, or agreement to which New Zealand is a party, and any arrangement between New Zealand and any other country, concerning the protection of geographical indications:
- “Linear feature” means a road, river, or other similar geographical feature:
- “Locality”, in relation to New Zealand, means an identifiable area within a region:
- “Ministry” means the Ministry or Department of State for which the Minister responsible for the administration of this Act is responsible:
- “Person” includes a corporation sole, an incorporated or unincorporated body of persons, and any association or combination of individual persons or incorporated or unincorporated bodies:
- “Prescribed” means prescribed by regulations made under section 20 of this Act:
- “Protected geographical indication” means a geographical indication that is entered on the Register:
- “Region”, in relation to New Zealand, has the same meaning as in the Local Government Act 1974:
- “Register” means the Register of Protected Geographical Indications established under section 8 of this Act:
- “Registrar” means the Registrar of Protected Geographical Indications referred to in section 7 of this Act:
- “Registration” means entry on the Register in accordance with this Act:
- “Specified goods” has the meaning set out in section 3 of this Act:
- “Surveyor-General” means the Surveyor-General appointed in accordance with section 7 of the Survey Act 1986:
- “Trade” means any trade, business, industry, profession, occupation, activity of commerce, or undertaking relating to the supply or acquisition of goods:

“Use” means use in any way, including without limitation, use as part of, or in connection with,—

- (a) Any transaction, including a purchase, sale, gift, or exchange; or
- (b) Any importing or exporting; or
- (c) Any advertisement; or
- (d) Any other activity:

“Working day” means a day of the week other than—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Labour Day, and Waitangi Day; and
- (b) A day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year; and
- (c) If the 1st day of January in any year falls on a Friday, the following Monday; and
- (d) If the 1st day of January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

(2) In this Act, a reference to the description or presentation of goods includes a reference to any name, address, place, sign, design, trade mark, or other matter used in relation to the goods, whether or not it appears—

- (a) On any container, wrapping, or label, or on the goods themselves; or
- (b) On any document relating to the use, or any transaction involving the transport, of the goods; or
- (c) In any advertisement relating to the goods.

(3) A geographical indication may be entered on the Register under this Act even though it relates to a geographical origin, or part of a geographical origin, to which another protected geographical indication relates.

3. Meaning of “specified goods”—In this Act, the term “specified goods” means goods of a class declared, by regulations made under this Act, to be a class of goods for the purposes of this Act.

Restrictions on Use of Protected Geographical Indications

4. Restrictions relating to protected geographical indications—(1) If a person, in trade, uses, in relation to any specified goods, a protected geographical indication and the goods did not originate in the geographical origin to which the protected geographical indication relates, the person shall be deemed, for the purposes of the Fair Trading Act 1986, to have

contravened section 9 of that Act, and the provisions of that Act shall apply accordingly.

(2) Subsection (1) of this section shall apply in regard to the use of a protected geographical indication whether or not—

- (a) The true geographical origin of the goods is used together with the protected geographical indication; or
- (b) The protected geographical indication is used in translation; or
- (c) The use of the protected geographical indication is accompanied by any of the words “kind”, “type”, “style”, “imitation”, or any similar word or expression.

5. Exemptions from restrictions—(1) For the purposes of section 4 of this Act, the use of any or all of the following information, without any intention to mislead or deceive, does not of itself constitute the use of a protected geographical indication in relation to specified goods:

- (a) The name of any person who produced, or entered into any transaction in relation to, the goods:
- (b) If such a person lawfully carries on business under the name of another person who previously carried on the business, the name of that other person:
- (c) The address of the place at which the goods were produced.

(2) Section 4 of this Act does not apply in respect of—

- (a) Any protected geographical indication to the extent that any conditions relating to registration of that geographical indication so provide; or
- (b) Any goods that are never in New Zealand, or are in New Zealand only for the purpose of transit from one country to another (neither of which is New Zealand); or
- (c) The use, in relation to specified goods, of a trade mark applied for or registered under the Trade Marks Act 1953, if the trade mark was applied for, registered, or used in New Zealand in good faith in relation to goods of the same class before goods of that class were declared to be specified goods.

(3) Section 4 of this Act does not apply in respect of the use of a protected geographical indication in relation to any specified goods if the goods were produced or being produced before—

- (a) The registration of the protected geographical indication;
- or

(b) The goods were declared to be specified goods.

6. Liability under general law not affected—Nothing in sections 4 and 5 of this Act limits section 9 of the Fair Trading Act 1986 or any other enactment or rule of law.

Registration of Geographical Indications

7. Registrar—(1) There shall be a Registrar of Protected Geographical Indications appointed under the State Sector Act 1988.

(2) The person referred to in subsection (1) of this section shall be an officer or employee of the Ministry, and any such appointment may be held either separately or in conjunction with any other office in the Ministry.

(3) The Registrar shall have and use a seal of office bearing the impression of the New Zealand Coat of Arms and having inscribed in the margin the words “Registrar of Protected Geographical Indications, New Zealand”.

(4) Every document bearing the imprint of the Registrar’s seal of office, and purporting to be signed or issued by the Registrar, or by a person employed to assist the Registrar in the exercise of the Registrar’s functions under this Act, shall be received in evidence, and shall, in the absence of proof to the contrary, be deemed to be signed or issued by or under the direction of the Registrar.

8. Register of Protected Geographical Indications—

(1) The Registrar shall establish and maintain a Register of Protected Geographical Indications.

(2) The Register shall contain 3 parts, being—

(a) A part containing geographical indications submitted by the Surveyor-General under section 9 (1) of this Act; and

(b) A part containing geographical indications submitted under that section in accordance with a multilateral international agreement and with regulations made under this Act; and

(c) A part containing geographical indications submitted under that section in accordance with a bilateral international agreement and with regulations made under this Act.

(3) The Register shall specify, in respect of each protected geographical indication,—

(a) The conditions, if any, relating to the geographical indication; and

(b) In the case of a geographical indication submitted by the Surveyor-General, the boundaries relating to the geographical indication.

(4) The Register shall be kept in such form as the Registrar considers appropriate, and may be kept in the form of information stored by means of an electronic device.

9. Registration—(1) Submission of a geographical indication for registration on the Register—

(a) May be made only—

(i) By the Surveyor-General under section 19 of this Act, in respect of a geographical indication relating to a geographical origin in New Zealand; or

(ii) In accordance with regulations made under this Act, in respect of a geographical indication relating to a geographical origin outside New Zealand; and

(b) Shall be made in the prescribed form, and be accompanied by payment of the prescribed fee.

(2) The Registrar shall enter on the appropriate part of the Register those geographical indications which are submitted for registration in accordance with subsection (1) of this section.

10. Automatic registration—(1) This section applies to the following geographical origins:

(a) New Zealand, being the North Island, the South Island, and the Chatham Islands:

(b) Every region of New Zealand from time to time.

(2) Subject to subsection (3) of this section, the name of each geographical origin to which this section applies shall be deemed to be a geographical indication that has been submitted by the Surveyor-General in accordance with section 9 (1) of this Act and that—

(a) Is subject to such conditions (if any) as are specified from time to time by regulations made under this Act in regard to that name; and

(b) Has the boundaries that the geographical origin has from time to time;—

and the Registrar shall enter on the appropriate part of the Register, as soon as practicable after the commencement of this Act, every such geographical indication.

(3) Any protected geographical indication registered under this section or the conditions or boundaries relating to such a protected geographical indication, may be altered, or removed from the Register, in accordance with section 11 of this Act.

11. Alteration or removal of registration—

(1) Notification of an alteration or removal of a protected geographical indication on or from the Register—

(a) May be made only—

(i) By the Surveyor-General under section 19 of this Act, in respect of a geographical indication relating to a geographical origin in New Zealand; or

(ii) In accordance with regulations made under this Act, in respect of a geographical indication relating to a geographical origin outside New Zealand; and

(b) Shall be made in the prescribed form and be accompanied by payment of the prescribed fee.

(2) The Registrar shall—

(a) Alter the Register in relation to any protected geographical indication whose alteration is notified in accordance with subsection (1) of this section; and

(b) Remove from the Register any protected geographical indication whose removal is notified in accordance with subsection (1) of this section.

(3) The Registrar may correct any obvious errors in, or omissions from, the Register.

12. Search and copies of Register—(1) Any person may, on payment of the prescribed fee, have access to the Register for the purpose of inspection during each working day at such times as the Registrar shall determine.

(2) The Registrar shall, on application and payment of the prescribed fee, furnish to any person a copy, or a certified copy, of any particulars on the Register.

(3) A certified copy of particulars on the Register signed by the Registrar and sealed with the Registrar's seal shall be received in evidence for all purposes as conclusive evidence that the particulars shown on the certified copy have been duly registered.

New Zealand Geographical Indications

13. Application to determine geographical indication—(1) Any person may make an application to the Surveyor-General for the determination of—

(a) One or more geographical indications relating to one or more geographical origins in New Zealand, and the conditions (if any) and the boundaries relating to the geographical indication or indications; or

(b) An alteration of one or more protected geographical indications relating to one or more geographical

origins in New Zealand or of the conditions, or boundaries, relating to any such protected geographical indication or indications; or

- (c) The removal from the Register of one or more protected geographical indications relating to one or more geographical origins in New Zealand.

(2) Every application under subsection (1) of this section shall be in the prescribed form and shall be accompanied by payment of the prescribed fee.

14. Geographical indications committee—(1) Where the Surveyor-General receives an application made in accordance with section 13 of this Act, the Surveyor-General shall, within 20 working days of receiving the application,—

- (a) Appoint a geographical indications committee to make a determination in respect of the application in accordance with this Act; and

(b) Refer a copy of the application to the committee.

(2) Every committee shall consist of not fewer than 3 persons.

(3) The Surveyor-General shall appoint a member of the Board as both a member and the chairperson of a committee.

(4) At least one member of a committee (other than the chairperson) shall be either a member of the Board or a person nominated by the chairperson of the Board for appointment to the committee.

(5) At least one member of a committee shall be appointed as a representative of producers of the specified goods.

(6) A member of a committee may resign his or her membership of the committee by notice in writing to the Surveyor-General.

(7) The Surveyor-General may revoke the appointment of a member of a committee for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Surveyor-General.

(8) Where a member of a committee dies or resigns or the appointment of the member is revoked, the Surveyor-General may appoint another member in his or her place.

(9) Where a member of a committee resigns from membership of the committee, that person shall continue as a member of the committee until a successor is appointed.

15. Proceedings of committee—(1) In carrying out its functions and duties under this Act, every committee shall observe the rules of natural justice.

(2) Meetings of a committee shall be held at such times and places as the committee or the chairperson from time to time determines.

(3) At every meeting of a committee 3 members shall form a quorum.

(4) Every question before a committee shall be determined by a majority of the votes of the members present at the meeting concerned.

(5) The chairperson of a committee shall have a deliberative vote, and in the case of an equality of votes, shall also have a casting vote.

(6) Except as otherwise provided in this Act or in regulations made under this Act, a committee may regulate its procedure in such manner as it thinks fit.

16. Notice of application—(1) Within 10 working days after being appointed, a committee shall, unless it considers that the application is frivolous or vexatious, cause—

(a) A copy of the application referred to it under section 14 (1) (b) of this Act; and

(b) A statement of the matters that the committee is required to determine; and

(c) A statement inviting written submissions in accordance with subsection (2) of this section—

to be published in the prescribed manner.

(2) Any person may make written submissions to a committee on an application or any matters published by it under subsection (1) of this section at any time within 2 months from the date of publication.

17. Making and notice of determination—(1) As soon as practicable after the expiry of the period referred to in section 16 (2) of this Act, a committee shall consider all submissions received by it and make a determination on the matters that it is required to determine.

(2) In determining one or more geographical indications in relation to one or more geographical origins, a committee must have regard to those matters prescribed by regulations made under this Act.

(3) Within 10 working days after making a determination under subsection (1) of this section, a committee shall—

(a) Deliver a copy of its determination to the Surveyor-General; and

(b) Cause notice of its determination to be published in the prescribed manner.

(4) Subject to section 18 of this Act, a committee's determination under this section shall be final.

18. Review of determination—(1) Any person who is dissatisfied with a determination may, at any time within 15 working days after the date of publication of a notice in accordance with section 17 (3) (b) of this Act, apply to the Board to review the determination referred to in the notice.

(2) Every application under subsection (1) of this section shall be in the prescribed form and shall be accompanied by payment of the prescribed fee.

(3) As soon as practicable after receiving an application under subsection (1) of this section, the Board shall review the determination concerned and may reverse, alter, or confirm it.

(4) Within 10 working days after making a decision under subsection (3) of this section, the Board shall—

- (a) Deliver a copy of its decision to the Surveyor-General; and
- (b) Cause notice of the decision to be published in the prescribed manner.

(5) For the purposes of any review under subsection (3) of this section, the persons comprising the Board must not include any persons who were members of the committee whose determination is the subject of review.

(6) For the purposes of any review under subsection (3) of this section, the Board shall observe the rules of natural justice.

19. Application for registration—(1) Where, in relation to a determination of a committee, no application has been made to the Board under section 18 (1) of this Act, the Surveyor-General shall, within 15 working days after the expiry of the period referred to in that subsection, submit the determination to the Registrar for registration under this Act.

(2) Where, in relation to a determination of a committee, an application has been made to the Board under section 18 (1) of this Act and the Board has not reversed the determination, the Surveyor-General shall, within 15 working days after the completion of the Board's review of the determination, submit the determination, as altered or confirmed by the Board, to the Registrar for registration under this Act.

(3) Where—

- (a) A committee has, on an application under section 13 (1) (c) of this Act, determined that a protected geographical indication not be removed from the Register; and

(b) On an application made to the Board under section 18 (1) of this Act in respect of that determination, the Board has reversed that determination,—
the Surveyor-General shall, within 15 working days after the completion of the Board's review of the determination, submit the determination, as so reversed, to the Registrar for registration under this Act.

Miscellaneous Provisions

20. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Declaring any class of goods to be a class of goods for the purposes of this Act:
- (b) Regulating the form, content, or use of any or all protected geographical indications in relation to all or any specified goods:
- (c) Prescribing the form of, and requirements relating to, submissions of geographical indications for registration on the Register, and in relation to alterations or removals of such registrations:
- (d) Specifying conditions relating to any one or more protected geographical indications:
- (e) Prescribing the form of, and requirements relating to, applications under this Act:
- (f) Prescribing the manner in which persons are to be appointed to committees, the terms of appointment, and the remuneration payable to those persons:
- (g) Regulating the procedure of committees:
- (h) Prescribing the criteria to which committees must have regard in determining the issues before them:
- (i) Prescribing the records that must be kept, or regulating the keeping of records, by persons who use a protected geographical indication in relation to any specified goods:
- (j) Authorising and regulating the inspection of records kept pursuant to regulations made under paragraph (i) of this section:
- (k) Prescribing the matters in respect of which fees are payable under this Act, the amounts of the fees or the methods by which they are to be assessed, and the person to whom the fees are to be paid:
- (l) Prescribing the manner of publication required under sections 16, 17, and 18 of this Act:

- (m) Giving effect, for the purposes of this Act, to the terms of any international agreement:
- (n) Prescribing offences in respect of the contravention of regulations made under this section and prescribing the fines, not exceeding \$3,000, that may be imposed in respect of any such offence:
- (o) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

21. Amendment to New Zealand Geographic Board Act 1946—Section 8 of the New Zealand Geographic Board Act 1946 is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) The Board shall also:

“(a) Have the functions given to it by the Geographical Indications Act 1994:

“(b) Provide maps or other documents that show the boundaries relating to geographical indications determined under the Geographical Indications Act 1994.”

22. Amendment to Ombudsmen Act 1975—Part II of the First Schedule to the Ombudsmen Act 1975 is hereby amended by inserting, in its appropriate alphabetical order, the following item:

“Geographical indications committees established under the Geographical Indications Act 1994.”

This Act is administered in the Ministry of Commerce.
