

AGRICULTURAL AND FOOD PRODUCTS

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Law No. 25.380

Legal regime for indications of source and appellations of origin of agricultural and food products. General provisions. Preliminary application to adopt an appellation of origin. Councils for appellation of origin. Registration of indications of source and appellations of origin. Scope of legal protection. Modification and/or expiry of registrations. Implementing authority. Infringements and penalties. Supplementary provisions.

Enacted: November 30, 2000

De facto promulgation: January 9, 2001

The Senate and Chamber of Deputies of Argentina, assembled in Congress, etc., have enacted with force of law:

LEGAL REGIME FOR INDICATIONS OF SOURCE AND APPELLATIONS OF ORIGIN OF AGRICULTURAL AND FOOD PRODUCTS

CHAPTER I

GENERAL PROVISIONS

ARTICLE 1 – Indications of source and appellations of origin used for the marketing of products of agricultural origin and food products, in their natural state, conditioned or processed, shall be governed by the present Law. Wines and wine-based spirits, which are governed by a special regime, shall be excluded.

ARTICLE 2 – For the purposes of this Law:

(a) "Indication of source" means the geographical name of a country or of a region, province, department, locality or area of the country's territory that is known as a centre of harvesting, production or manufacture of an agricultural or food product;

(b) "Appellation of origin" means the name of a region, province, department, district, locality or area of the national territory, duly registered, that is used to designate a product originating therein, and the qualities or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.

ARTICLE 3 – Any natural or legal person engaged in the harvesting, production or manufacture of agricultural and food products may request the implementing authority to

determine and register the indications of source of such products. The requirements and procedure for determining the production area and controlling products belonging to this category shall be established by the decree regulating the present Law.

ARTICLE 4 – For the purposes of Article 2, subparagraph (b), the following shall be considered agricultural and/or food products that may be covered by an appellation of origin: products originating from a region, province, department, locality, area or zone of recognized character and individuality which, because they are produced in a specific geographical environment, develop particular qualities that give them a character different from other products of the same origin, even those produced in similar environmental conditions and using similar technologies, through the influence of the natural environment and human labor.

CHAPTER II

PRELIMINARY APPLICATION TO ADOPT AN APPELLATION OF ORIGIN

ARTICLE 5 - A proposal to adopt an appellation of origin shall be made at the individual or collective initiative of producers, provided that they carry out their activities within the area corresponding to the future appellation of origin.

ARTICLE 6 – Producers who seek the recognition of an appellation of origin may first establish a Promotion Council for the purpose of drafting rules of procedure for the appellation and carrying out technical studies and reports covering the following:

- (a) the region's historical background and the production area's geographical boundaries;
- (b) the region's general characteristics, climatic factors, relief and nature and the uniformity of production factors;
- (c) the products for which the appellation of origin is to be used and the factors and/or elements which guarantee that the product originates from the area indicated;
- (d) a detailed description of the production process for the product (raw material, production methods, conditioning or processing techniques, production phase);
- (e) identification of the producer or producers applying for recognition of the appellation of origin;
- (f) the proposed name of the appellation of origin.

ARTICLE 7 – The background information and other required material specified in the previous article shall be submitted, together with the relevant application, to the implementing authority.

ARTICLE 8 – Within sixty (60) days of filing of the preliminary application, the implementing authority shall accept or reject it, seek clarifications or suggest any modifications it deems necessary.

Within the first twenty (20) days, the application shall also be referred to the National Institute of Industrial Property so that the Institute may give its opinion with regard to Articles 25 (b) and 46 of the present Law.

Once the preliminary application has been approved, the producers shall meet the other legal and regulatory requirements established in this Law and its supplementary rules, establish the relevant council for appellation of origin, collectively draft and approve its rules of procedure and obtain legal personality within a period of ONE HUNDRED AND EIGHTY (180) days.

CHAPTER III

COUNCILS FOR APPELLATION OF ORIGIN OF AGRICULTURAL AND FOOD PRODUCTS

ARTICLE 9 - Each appellation of origin shall have a single council for appellation of origin.

ARTICLE 10 – Councils for appellation of origin shall consist exclusively of persons engaged in the harvesting, production, conditioning, processing or marketing of products covered by the appellation of origin who or which carry out their activities within the area in question.

ARTICLE 11 – Councils for appellation of origin shall be legally organized in the form of open, non-profit-making civil associations legally domiciled in the area in question.

ARTICLE 12 – Any natural or legal person who or which has been refused admission to the council for appellation of origin may appeal within thirty (30) working days of notification of the decision to refuse admission, in accordance with the terms established by the regulatory decree.

ARTICLE 13 – Councils for appellations of origin of agricultural and food products shall have the following functions:

- (a) to approve their rules of procedure;
- (b) to arrange and secure the inclusion of the appellation of origin in the Register of Appellations of Origin of Agricultural and Food Products;
- (c) to grant licences for use to their partners on request, provided that they meet all the necessary requirements;

- (d) to record each of these licenses in the relevant register;
- (e) to guide, monitor and control the production, processing and quality of products covered by the appellation of origin;
- (f) to promote the system and protect the prestige of the appellation of origin;
- (g) to choose the emblems, logos, distinguishing marks or abbreviations that shall identify the council and/or the appellation of origin;
- (h) to issue certificates of use, numbered stamps, where appropriate, and other control tools specified in the regulatory decree;
- (i) to receive fees, contributions, fines and other appropriate funds;
- (j) to determine penalties and impose them on partners who infringe the rules of procedure of the council for appellation of origin;
- (k) to report infringements of the regime established by the present Law to the implementing authority and/or take any appropriate action to preserve their appellation of origin.

ARTICLE 14 – Councils for appellation of origin shall operate using the following resources:

- (a) fees paid for certificates, numbered stamps and other control tools;
- (b) contributions from partners, bequests or gifts;
- (c) fines or surcharges received;
- (d) any other resources specified in their statutes.

ARTICLE 15 – Decisions of the councils for appellation of origin shall be appealable before the implementing authority.

CHAPTER IV

REGISTER OF INDICATIONS OF SOURCE AND APPELLATIONS OF ORIGIN

ARTICLE 16 – The implementing authority, using the Register established for the purpose, shall register indications of source and/or appellations of origin of agricultural and food products.

The procedure and steps to be taken for the registration of indications of source shall be established by the regulatory decree.

ARTICLE 17 – Applications for registration of an appellation of origin shall indicate:

- (a) the link between the natural and/or human factors determining the characteristics of the product and the geographical environment;
- (b) the name of the appellation whose registration is sought;
- (c) the demarcation of the geographical area to which the appellation shall be applied: historical background, the region's general characteristics, climatic factors, relief and nature, the uniformity of production factors and any other information of interest;
- (d) the products for which the appellation of origin is to be used;
- (e) a detailed description of the production process for the product (raw material, production methods, conditioning or processing techniques, production phase);
- (f) accreditation of the legal personality of the council for appellation of origin, with identification of the producer or producers belonging to it;
- (g) other steps established by the regulations.

ARTICLE 18 – The council for appellation of origin shall file the registration application in accordance with the terms established by the regulatory decree. If the relevant legal requirements are met, the content of the application shall be published for one (1) day in the Official Gazette and in a newspaper that is widely circulated in the geographical area in question at the applicant's expense.

The application shall also be referred for thirty (30) days to the National Institute of Industrial Property so that it may give its opinion with regard to the requirements of Articles 25(b), and 48 of the present Law.

ARTICLE 19 - Any natural or legal person claiming a legitimate interest who or which considers that one of the established requirements has not been duly met may oppose the registration in a written notice stating the grounds for opposition, within the thirty (30) days following the date of the most recent publication under the previous article.

ARTICLE 20 - The applicant shall be informed of the objections raised and shall be given thirty (30) days from the time of notification to respond to them, limit the scope of the application or withdraw it. When the applicant responds or if the deadline expires without the applicant having responded, a decision shall be taken on the objection raised.

ARTICLE 21 – On official orders or at the request of a party, if one of the requirements indicated in the application is considered not to have been duly met, the applicant shall be notified so that he or she may rectify the irregularities within thirty (30) days. If the applicant does not respond by the deadline or does not meet the requirements, registration

shall be refused. If the irregularities are rectified, the procedure shall continue in accordance with the provisions of the previous articles.

ARTICLE 22 - When the registration of an appellation of origin is granted, the decision shall be published in the Official Gazette for one (1) day and shall be communicated to the National Institute of Industrial Property and any other national and/or international organization that so requires.

ARTICLE 23 – Foreign appellations of origin of agricultural and food products may be registered where Argentina has concluded reciprocal agreements with the countries in question, which shall establish the conditions for registration.

ARTICLE 24 – Appellations of origin protected under the present Law shall be registered through the MINISTRY OF FOREIGN AFFAIRS, INTERNATIONAL TRADE AND WORSHIP, with a view to securing their recognition by international organizations or foreign countries in accordance with relevant international treaties.

ARTICLE 25 - The following may not be registered as indications of source and/or appellations of origin:

- (a) generic names of agricultural or food products, meaning those names which, through their use, have become the common names of the products with which the general public identifies them in the country of origin;
- (b) registered trademarks that are in force;
- (c) names similar to others already registered as an appellation of origin of agricultural or food products, or in respect of which a registration process has already begun;
- (d) names the use of which could mislead as to the qualities or characteristics of the product in question;
- (e) the use of any term which, in the description or presentation of the product, indicates or suggests that the product comes from a geographical region other than the real place of origin and which may mislead the public as to its geographical origin.

CHAPTER V

SCOPE OF LEGAL PROTECTION

ARTICLE 26 - The State, through the implementing authority of this Law, shall confer on users of indications of source and/or appellations of origin the following rights:

- (a) the right to use the indication of source;

(b) the exclusive right to use the appellation of origin and the name identifying it for agricultural and food products, including the right to use emblems, distinguishing marks, abbreviations, logos, tags, etc. licensed by the competent authority;

(c) Control and guarantee of specified quality in the appellation of origin registered by the competent authority.

ARTICLE 27 - The use of an indication of source and/or appellation of origin shall be prohibited in the following cases:

(a) for agricultural or food products that do not originate from the geographical areas specified or designated but are of the same type or, if not of the same type, do not conform to the terms under which the indication of source or appellation of origin was registered;

(b) as a trade name for products similar to those registered or for the purpose of improving the reputation of such products;

(c) where usurpation, imitation or evocation is involved, even if the true origin of the product being marketed is indicated, and even if the indication of source or appellation of origin is accompanied by expressions such as "kind", "type", "method", "style", "imitation" or the like;

(d) where it involves other types of false or misleading indication, trickery or deception as to the source, origin, nature or essential characteristics of products that are not the original and protected products;

(e) for any other practice that may mislead consumers as to the real origin and/or distinctive qualities of the product or that involves unfair competition.

The aforementioned prohibitions shall apply to indications of source and/or appellations of origin used on containers, labels or packaging, or in advertising or documentation relating to the product in question.

CHAPTER VI

MODIFICATION AND/OR EXPIRY OF REGISTRATIONS

ARTICLE 28 – The council for appellation of origin may propose modification of the registration where changes have occurred in the original conditions, with respect to one or all of the production factors. Such proposals shall be approved and registered by the implementing authority.

ARTICLE 29 – In addition to the type of case provided for in the previous article, a user or other natural or legal person claiming a legitimate interest may request the modification of the registration, where changes have occurred in the original conditions

on the basis of which the appellation of origin of the product in question was registered. In such a case, before a decision is made, the request shall be transferred for ten (10) days to the Council that holds the registration, so that it may exercise its right of defense.

ARTICLE 30 – The registration of an appellation of origin of agricultural or food products shall expire on the following grounds:

- (a) Surrender of the registration by the Council using the appellation;
- (b) Cancellation of the registration owing to penalties;
- (c) Cancellation of the registration owing to changes in the natural or administrative conditions on the basis of which the appellation of origin was granted.

ARTICLE 31 – The following shall be grounds for expiry of the licence for use conferred on their partners by the councils for appellation of origin of the products covered by this Law:

- (a) Surrender of the license by the partner;
- (b) Cancellation of the license owing to penalties;
- (c) Cancellation owing to a change in the factual circumstances on the basis of which the license was granted;
- (d) Cancellation of the registration of the appellation of origin in respect of the Council to which the partner belongs.

ARTICLE 32 – With regard to subparagraphs (a), (b) and (c) of the previous article, the Council for appellation of origin shall make the relevant communication to the implementing authority within fifteen (15) days.

ARTICLE 33 – Decisions to modify or cancel the appellation of origin of agricultural and food products shall be published for one (1) day in the Official Gazette.

CHAPTER VII

IMPLEMENTING AUTHORITY

ARTICLE 34 - The implementing authority for the present Law shall be the SECRETARIAT FOR AGRICULTURE, LIVESTOCK, FISHERIES AND FOOD under the MINISTRY OF ECONOMIC AFFAIRS. Its functions shall be advising, monitoring, verification, control, registration and protection of the system of appellation of origin and representation before international organizations. It shall act as the technical and administrative body for the system of designation of the source and/or origin of agricultural and food products.

ARTICLE 35 – The functions of the implementing authority shall be as follows:

(a) to hear and approve or reject applications for indications of source and/or appellations of origin;

(b) to register indications of source and issue certificates in accordance with the regulations;

(c) to register appellations of origin of agricultural and food products, in accordance with the terms established by this Law, and to issue the relevant certificates;

(d) to monitor compliance with the production and processing conditions established in each set of regulations of an appellation of origin of agricultural and food products and to supervise the control exercised by councils;

(e) to register licenses for use granted to partners by councils for appellation of origin of agricultural and food products, in accordance with the terms established by this Law;

(f) to register appellations of origin of agricultural and food products from abroad that are recognized in accordance with the provisions of relevant treaties drawn up and with the present Law;

(g) to refer applications in accordance with Articles 8 and 18 of the present Law and to communicate to the National Institute of Industrial Property (Trademarks Register) appellations of origin that are registered, no more than fifteen (15) days after their final registration;

(h) to provide reports that may be requested with regard to registered names and licenses for use, in the form established by the regulations;

(i) to register modifications and/or the expiry of registrations of indications of source and appellations of origin;

(j) to register infringements of the present Law and its regulations with a view to establishing whether or not the possible infringer is a repeat infringer;

(k) to exercise control over the decisions and actions of councils for appellation of origin;

(l) to receive reports of possible infringements, process the relevant indictments and impose penalties;

(m) to act as an appellate body in cases of conflict between councils;

(n) to refer appeals against penalties imposed to the courts;

(o) to promote the conclusion of bilateral or multilateral agreements for the protection and promotion of appellations of origin of agricultural and food products recognized by Argentina;

(p) to take the necessary steps for the registration of indications of source and appellations of origin in the United Nations Industrial Property Register, with the World Trade Organization, and/or in other international or regional registers that may be established.

ARTICLE 36 - The expenses incurred by the implementing authority in the performance of its functions shall be paid from the annual budgetary provisions allocated to it from the time of enactment of the present Law.

ARTICLE 37 – In addition to the resources provided for in the previous article, the implementing authority's expenses shall be paid from the following real sources:

(a) Contributions, bequests and/or gifts from financial assistance furnished by public or private persons with an interest in the operation of the system;

(b) Fines imposed for infringements of the present Law;

(c) Fees received for the issuance of certificates and other services arising from the implementation of the system;

(d) The proceeds of sales of products confiscated on national territory because of infringements committed by responsible persons covered by the regime and by those not covered with respect to infringements of the present Law.

ARTICLE 38 - The NATIONAL ADVISORY COMMISSION FOR APPELLATION OF ORIGIN OF AGRICULTURAL AND FOOD PRODUCTS is hereby established. It shall function as a permanent and independent consultative body within the organizational structure of the implementing authority.

ARTICLE 39 – The Commission shall consist of representatives of provincial governments whose territory includes appellations of origin of agricultural or food products, public and private entities and agencies competent in that regard and the various councils for appellation of origin of agricultural or food products. The number of representatives and forms of representation shall be determined by the regulations.

All functions shall be performed on an honorary basis.

ARTICLE 40 – The Commission shall have the following functions:

(a) to issue its own rules of procedure;

(b) to support and promote the expansion of appellations of origin and the establishment of promotion councils;

(c) to verify the national register of indications of source and appellations of origin;

(d) To assist in monitoring compliance with the production and processing conditions established in each set of regulations of an appellation of origin;

(e) To promote the signing of technological and/or cooperation agreements with public and private organizations, whether national or international.

CHAPTER VIII

INFRINGEMENTS AND PENALTIES

ARTICLE 41 - Infringements of the present Law and its regulations or of the indication of source regime, and also of the regulations governing appellations of origin of agricultural and food products or the decisions of their councils, committed by natural or legal persons who or which use the system or are included in the relevant council's registers, shall be classified as follows for the purposes of penalties:

(a) "Minor infringements" means inaccuracies in compulsory statements or register entries, failure to issue communications, failure to meet deadlines and, in general, infringements of similar rules;

(b) "Infringements in the production and processing of protected products" means infringements involving failure to comply with quality protocol(s) approved by the area council for the product protected by an appellation of origin;

(c) "Breaches" means infringements involving the improper use of an indication of source or appellation of origin, and infringements of the rules and regulations relating to the use of names, symbols and emblems associated with an appellation of origin of agricultural and food products on other products which are not the protected products, or which, if they are protected, may harm their image or that of the regime of appellation of origin of agricultural and food products.

ARTICLE 42 – The minor infringements, infringements and breaches described in the previous article, where committed by users of the system, may be punished by the implementing authority with the following penalties:

(a) A fine of up to fifty (50) times the market value of the infringing product;

(b) Confiscation of infringing products;

(c) Temporary suspension of the use of the indication of source or appellation of origin in question;

(d) Permanent cancellation of the use of the indication of source or appellation of origin, which shall be announced in a mass-circulation national newspaper and in the Official Gazette for one (1) day.

ARTICLE 43 – The implementing authority may impose the penalties provided for in the previous article on natural or legal persons not registered in the protection system established by this Law, in the following cases:

(a) Improper use of an indication of source or appellation of origin;

(b) The use of trade names, expressions, signs, abbreviations or emblems which, because of their graphic or phonetic identity with or similarity to protected appellations or registered signs or emblems, may mislead or confuse as to the nature or origin of the agricultural or food products in question;

(c) Improper use of protected geographical names on labels or tags, in trade documents or product promotional material, even if they are accompanied by the terms "kind", "type", "style", "method", "imitation" or a similar expression that may confuse the consumer with respect to an indication of source or an appellation of origin.

ARTICLE 44 - In cases of repeat infringements or where the products are intended for export, fines may be increased by up to double the amount provided for in Article 42(a).

During administrative proceedings, the infringing products may be placed under preventive seizure; the relevant court authorization shall be required for this purpose.

ARTICLE 45 – In all cases of presumed infringements of this Law, its regulations, the regulations governing an appellation of origin or the decisions of councils, administrative proceedings shall be instituted, in which the right of defense of the presumed infringers shall be guaranteed.

If, during the proceedings, evidence emerges of the presumed commission of infringements which the prosecuting authority is not competent to judge, that authority shall refer the case to the appropriate body and/or the courts.

ARTICLE 46 – Decisions of the implementing authority to impose penalties shall be appealable before the federal court that has jurisdiction over the location of the office of the council for appellation of origin of agricultural and food products in question, within fifteen (15) court working days of notification of the penalty. The appeal shall not suspend enforcement of the decision.

CHAPTER IX

SUPPLEMENTARY PROVISIONS

ARTICLE 47 – A mark corresponding to an appellation of origin of agricultural and food products that has been duly registered and communicated to the National Institute of Industrial Property may not be registered as a trademark for the purpose of distinguishing products.

ARTICLE 48 – In the event of an application to register as an appellation of origin a trademark that is already registered, the appellation may not enter into force unless the trademark right has expired as a result of surrender by the owner, expiry of the term or lapse on any other grounds.

ARTICLE 49 - Where a council for appellation of origin exists prior to the entry into force of the present Law, and provided that it meets the requirements established by this Law, the council's legal representative may apply directly to the implementing authority for registration of the appellation.

ARTICLE 50 – The provisions of this Law shall not prevent compliance by councils for appellation of origin and/or users with other requirements, registrations, etc. determined by provincial laws and their regulations, in accordance with the jurisdiction applicable to each council's office.

ARTICLE 51 – Articles 7 and 8 of Law No. 22.802 are hereby repealed.

ARTICLE 52 - The National Executive shall issue regulations for the present Law within ONE HUNDRED AND EIGHTY (180) days of its publication.

ARTICLE 53 - This Law shall be transmitted to the Executive.

REGISTERED UNDER NO. 25.380.

DONE AT THE MEETING HALL OF THE ARGENTINE CONGRESS IN BUENOS AIRES ON NOVEMBER 30, 2000.

RAFAEL PASCUAL – MARIO A. LOSADA – Guillermo Aramburu – Juan C. Oyarzún