

GEOGRAPHICAL INDICATION PROTECTION ACT

Passed on 15 December 1999
Entered into force 10 January 2000
(RT I 1999, 102, 907)

Chapter 1

GENERAL PROVISIONS

§ 1. Scope of application of Act

This Act regulates the legal protection of geographical indications used to identify natural, agricultural, handicraft or industrial goods, and services.

§ 2. Equality of rights and obligations of natural and legal persons of the Republic of Estonia and of foreign states

The rights and obligations prescribed in legislation regulating the legal protection of geographical indications apply equally to natural and legal persons of the Republic of Estonia and of foreign states (hereinafter persons), considering restrictions provided for in this Act.

§ 3. Geographical indication and geographical area

(1) Geographical indication means:

1) the name of or a reference to a geographical area which indicates the specific geographical origin of a good or service if the given quality, reputation or other characteristic of the good or service so identified is essentially attributable to the geographical area where the good is produced, processed or prepared or where the service is rendered;

2) other word, phrase or symbol that, resulting from long-term and consistent use, has become essentially attributable to the geographical area where the good is produced, processed or prepared or where the service is rendered.

(2) For the purposes of this Act, a geographical area means the territory of a state, or a particular region or locality in that territory. The geographical area does not have to coincide with the administrative unit or settlement unit bearing the same name. The name of the geographical area serving as a geographical indication does not have to coincide with the current official name of that geographical area.

§ 4. Form of geographical indication

(1) A geographical indication may be in figurative or word form.

(2) A geographical indication in word form may be a word or a phrase which is the name of a geographical area, includes it or refers to it.

(3) A geographical indication in figurative form may be a cartographic representation or symbol of a geographical area referring to a particular geographical area.

Chapter 2

BASES FOR LEGAL PROTECTION OF GEOGRAPHICAL INDICATIONS

§ 5. Provision of legal protection to geographical indication

(1) Geographical indications shall be granted legal protection by registration in the state register of geographical indications (hereinafter register) pursuant to the procedure provided for in this Act.

(2) Legal protection to geographical indications shall be granted by exercising state supervision and applying enforcement powers of the state on the bases and pursuant to the procedure provided for in this Act.

§ 6. Extent of legal protection of geographical indications

The extent of legal protection of a geographical indication shall be determined on the basis of the geographical indication registration (hereinafter registration) data.

§ 7. Term of legal protection of geographical indications

Legal protection of geographical indications is perpetual.

§ 8. Indications not subject to legal protection

Legal protection is not granted to an indication which:

- 1) misleads the public as to the geographical origin of the good or service;
- 2) identifies a good or service where the given quality, reputation or other characteristic of the good or service is not essentially attributable to the geographical origin of the good or service;
- 3) although literally true as to the geographical origin of the good or service, may falsely represent to the public that the good or service originates in another geographical area;
- 4) is contrary to public order or morality;
- 5) has lost its original meaning of a geographical origin and become a generic name of a good or service and is being used to indicate the kind, quality, variety or other quality or characteristic of a good or service;
- 6) includes the name of an animal breed or plant variety or is misleadingly similar to it;
- 7) has not been granted legal protection in the country of origin or the legal protection of which has been terminated in the country of origin, or which has fallen into disuse in that country.

§ 9. Right to apply for registration of geographical indication

(1) The right to apply for the registration of a geographical indication is vested in:

- 1) a person who acts as the producer, processor or preparer of the good identified with the indication, or as the renderer of the service in the geographical area specified in the indication;
- 2) an association of consumers or persons referred to in clause 1 of this subsection, regardless of its location or legal form;
- 3) a competent administrative agency of the country of origin of the good or service.

(2) The person referred to in subsection 1 of this section may only apply for the registration of an indication which meets the requirements prescribed for geographical indications and complies with the provisions of § 4 of this Act and which is not excluded from protection under § 8 of this Act.

(3) The list of Estonian administrative agencies competent for applying for the registration of geographical indications is approved by the Government of the Republic.

§ 10. User of geographical indication

A registered geographical indication may be used for identifying goods or services by a person who acts as the producer, processor or preparer of the good specified in the registration or as the renderer of the service in the geographical area specified in the registration, and whose good or service has all the qualities, reputation or other characteristics specified in the registration.

§ 11. Unlawful use of geographical indication

(1) The following shall be prohibited:

1) the use of a geographical indication or a misleadingly similar indication for identifying goods or services by a person who does not act as the producer, processor or preparer of the good specified in the registration or as the renderer of the service in the geographical area specified in the registration;

2) the use of a geographical indication or a misleadingly similar indication for identifying goods or services if the good or service lacks any quality, reputation or other characteristic specified in the registration;

3) the use of a geographical indication or a misleadingly similar indication for identifying goods or services which are not covered by the registration but which are of the same kind than the goods and services covered by the registration;

4) the use of a geographical indication or a misleadingly similar indication for identifying other goods or services where it may constitute the use of the reputation of the geographical indication in bad faith;

5) the use of any misleading information about the origin, nature or basic characteristics of the good or service on the inner or outer packaging, advertising materials or relevant documents of the good or service;

6) the use of an indication which, although literally true as to the geographical origin of the good or service, may falsely represent to the public that the good or service originates in another area, even if the true origin is indicated;

7) other transactions which may mislead the public as to the true origin of the good or service.

(2) The prohibition provided for in subsection 1 of this Section shall not extend to the use in the course of trade of a person's trade name, except where such name is used in a manner as to mislead the public.

(3) Trading with a good which is unlawfully identified with a registered geographical indication shall be prohibited, regardless of whether the distributor, vendor or consumer has been notified of the said specification.

§ 12. Right of prior use of trademark containing geographical indication

(1) A trademark which has been filed for registration or registered in good faith for goods which are identical or of the same kind before the date of entering into force of this Act or before the geographical indication has been granted protection in its country of origin shall not be declared invalid, shall not be refused registration or its use shall not be prohibited for the reason that the

trademark contains a registered geographical indication or is misleadingly similar to it, unless otherwise specified in this Act.

(2) The trademark is filed for registration or registered in good faith if the person having applied for the registration of or registered the trademark did not know nor should he have known that the indication in question identifies the good or service as originating in a specific geographical area and a given quality, reputation or other characteristic is essentially attributable to the geographical origin of the good or service.

§ 13. Warning notice

The user of a registered geographical indication may add to the indication a warning notice "Registreeritud geograafilise tähistusega" ("Registered geographical indication") or an abbreviation "G".

Chapter 3

SPECIFICATIONS OF LEGAL PROTECTION OF GEOGRAPHICAL INDICATIONS FOR ALCOHOLIC BEVERAGES

§ 14. Homonymous geographical indications for wines

(1) For the purposes of this Act, homonymous geographical indications for wines (hereinafter homonymous indications) mean the identical or misleadingly similar word or figurative indications which are used for identifying different wines.

(2) Homonymous indications in word form may have:

- 1) the same pronunciation and spelling;
- 2) the same pronunciation but different spelling;
- 3) different pronunciation but the same spelling.

§ 15. Criteria for differentiating homonymous indications

Upon contestation, the following shall be taken into account in differentiating homonymous indications from each other:

- 1) the existence of differentiating information and its adequacy on the label of wine with a homonymous indication;
- 2) the official recognition of the homonymous indication in its country of origin;
- 3) the duration of use of the homonymous indication;
- 4) the good faith of the use of the homonymous indication.

§ 16. Provision of legal protection to homonymous indications

Legal protection shall be accorded to each homonymous indication independently.

§ 17. Stipulation upon using homonymous indications

The user of a homonymous indication shall be obliged to provide the wine label with information sufficient to differentiate one homonymous indication from another with the purpose of avoiding misleading the consumers.

§ 18. Unlawful use of registered geographical indication for identifying alcoholic beverage

In addition to the provisions of subsection 11(1) and (3) of this Act, a registered geographical indication shall not be used for identifying alcoholic beverage not originating in the geographical area indicated by the geographical indication in question, including cases where the true origin of the alcoholic beverage is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

§ 19. Trademark containing geographical indication misleading as to geographical origin of alcoholic beverage

Any interested person may request the declaration of invalid of a trademark registered for identifying alcoholic beverage before the date of entering into force of this Act if the trademark contains a registered geographical indication or is misleadingly similar to it and the alcoholic beverage identified by the trademark in question does not originate in the geographical area indicated by the geographical indication.

§ 20. Right of prior use of geographical indications of alcoholic beverage

Estonian citizen or any person who has permanent residence or location in Estonia and who has consistently and in good faith used a geographical indication registered for identifying alcoholic beverage before 15 April 1994 or used it consistently for not less than 10 years before the said date may continue to use the indication in the same extent for goods or services which are identical or of the same kind.

Chapter 4

REGISTRATION OF GEOGRAPHICAL INDICATION

§ 21. Register

(1) The register is established and the statutes for maintenance of the register are approved by the Government of the Republic.

(2) The Ministry of Economic Affairs is the chief processor of the register and the Patent Office is the authorised processor of the register.

(3) The Patent Office processes applications for registration of geographical indication (hereinafter registration application), makes decisions and entries in the register.

(4) The language of the register is Estonian. Foreign language documents shall be submitted to the register together with an Estonian translation.

§ 22. Registry entry

(1) A registry entry is an entry of registration application processing, an entry of registration data, an entry to amend a registration data entry and a deletion of a registration entry.

(2) A registry entry becomes valid on the date of making the entry.

(3) Notices of entries of registration data, entries to amend a registration data entry and deletions of a registration entry are published in the official gazette of the Patent Office.

(4) A state fee is paid for entry to amend a registration data entry.

§ 23. Registration

(1) A registration is made on the basis of a decision to register the geographical indication.

(2) Registrations are numbered in the order in which the geographical indications are registered.

(3) A registration becomes valid retroactively from the filing date of the registration application.

(4) Registration data are:

1) the registration number;

2) the date of making the entry of registration data;

3) the reproduction of the geographical indication;

4) the list of goods and services which are identified with the geographical indication;

5) the identification of the geographical area;

6) the description showing the link of a given quality, reputation or other characteristic of a good or service with the geographical origin of the good or service and identifying the geographical area (hereinafter description);

7) the short summary of the description;

8) the data of the protection of the geographical indication in its country of origin or the data of the competent agency of the country of origin who has certified the link of a given quality, reputation or other characteristic of a good or service with the geographical origin of the good or service, and the data of the competent agency of the country of origin who has certified the right of the applicant for registration of geographical indication (hereinafter applicant) to apply for registration of geographical indication pursuant to the provisions of Section 9(1) of this Act;

9) the name and address of residence or location of the applicant;

10) if the applicant has a representative, the name of the representative of the applicant;

11) the registration application number;

12) the filing date of the registration application.

§ 24. Registration application

(1) In one registration application, the applicant may apply for the registration of only one geographical indication.

(2) A registration application shall comprise the following documents:

1) a request for the registration of a geographical indication;

2) a description;

3) a certificate of the protection of the geographical indication in its country of origin, or a certificate issued by the competent agency of the country of origin certifying the link of the given quality,

reputation or other characteristic of the good or service with the geographical origin of the good or service, and a certificate issued by the competent agency of the country of origin of the right of the applicant to apply for registration of geographical indication pursuant to the provisions of Section 9(1) of this Act;

4) a document certifying payment of the state fee;

5) an authorization if the applicant has a representative.

(3) The list of Estonian agencies competent to issue a certificate specified in clause 3 of subsection 2 of this section and the procedure for issuing certificates is established by the Government of the Republic.

(4) The formal requirements of registration application documents are established by the Minister of Economic Affairs.

§ 25. Request for registration of geographical indication

A request for the registration of a geographical indication shall set out:

1) a statement requesting the registration of a geographical indication;

2) a reproduction of the geographical indication;

3) the name and address of residence or location of the applicant and other contact information;

4) information about the possession of the right to apply for the registration of the geographical indication pursuant to the provisions of subsection 9(1) of this Act;

5) a short summary of the description which shall comply with the contents of the description;

6) the name of the representative if the applicant has a representative;

7) the signature of the applicant or representative.

§ 26. Description

(1) A description shall set out:

1) the name of the good or service;

2) features characterising the good (physical, chemical, microbiological, organoleptic or other qualities according to the particular good);

3) features characterising the service or the method of producing the good;

4) identification of the geographical area;

5) details certifying the link of a given quality, reputation or other characteristic of the good or service with the geographical origin.

(2) The description may contain features characterising the raw material, information about the use of the warning notice and other details which the applicant considers necessary to submit.

(3) The description shall give a clear and complete depiction of the link of the given quality, reputation or other characteristic of the good or service with the geographical origin of the good or service.

(4) If the same geographical indication is used to identify goods or services with different features, the description shall be submitted for each good or service separately.

§ 27. Filing of registration application

(1) Registration applications are filed with the Patent Office by hand delivery, by post or by telefax.

(2) The original documents of registration applications filed by telefax shall be filed within one month after the date of receipt of the telefax.

(3) The document certifying payment of the state fee shall be submitted within one month after the date of receipt of the registration application at the latest.

(4) The authorization shall be submitted within two months after the date of receipt of the registration application at the latest.

§ 28. Representation of applicant

(1) Procedures related to the registration of the geographical indication and with maintaining the registration shall be performed by an applicant or an Estonian patent attorney authorised by the applicant (hereinafter patent attorney).

(2) If the residence or location of the applicant is outside the Republic of Estonia, the registration application shall be filed by the applicant or the patent attorney. After the filing of the registration application, procedures related to the registration or maintenance of the geographical indication shall be performed only by a patent attorney authorised by the applicant.

(3) If several applicants file a joint registration application, they shall appoint a patent attorney or choose a representative from among themselves (hereinafter common representative), whose residence or location is in the Republic of Estonia, to perform any procedures related to the registration or maintenance of the geographical indication.

(4) An authorization shall set out the following:

1) the name and address of residence or location of the applicant;

2) in the case of a patent attorney, the given name and surname of the patent attorney;

3) in the case of a common representative, the name and address of residence or location of the representative;

4) the scope of the authority;

5) the right to transfer the authority if the person represented authorizes the patent attorney or the representative to transfer the authority;

6) the term of the authority;

7) the signature of the person represented;

8) the place and date of issue of the authorization.

§ 29. Notation of receipt

(1) Every document of the received registration application shall be marked with a notation of receipt which shall set out the date of receipt of the registration application and the sequence number of the registration application (hereinafter registration application number).

(2) If a registration application is filed by post or by telefax, the date of receipt of the registration application is deemed to be the true date of receipt of the application.

§ 30. Acceptance of registration application for processing

(1) The filing date of a registration application shall be deemed to be the date of receipt of the registration application if at least the following documents are filed:

- 1) a statement requesting the registration of a geographical indication;
- 2) a reproduction of the geographical indication;
- 3) a list of goods and services which are identified by the geographical indication;
- 4) the identification of the geographical area;
- 5) the name and address of the residence or location of the applicant and other contact information.

(2) A filed registration application shall be accepted for processing if the following documents have been filed: document certifying payment of the state fee, authorization if it is required, and original documents if the registration application is filed by telefax.

§ 31. Refusal to accept registration application for processing

A decision shall be made to refuse to accept a registration application for processing and the state fee shall be refunded if:

- 1) the document certifying payment of the state fee is not filed within one month after the date of receipt of the registration application;
- 2) an authorization is requested and it is not filed within two months after the date of receipt of the registration application;
- 3) the registration application has been sent by telefax and the original documents are not filed within one month after the date of receipt of the telefax.

§ 32. Examining of registration application

(1) During processing, the compliance of the geographical indication with the provisions of clauses 1 to 3 and 5 to 7 of § 8 of this Act or the correctness of the facts presented in the registration application shall not be examined.

(2) The applicant shall be notified in writing of formal or substantive deficiencies of the registration application or of any other circumstances which hinder the processing and a term of two months shall be established for elimination of the deficiencies or provision of relevant explanations.

(3) On the basis of a request from the applicant, the term for elimination of deficiencies in a registration application or for provision of explanations shall be extended by up to six months from the beginning of the term specified in subsection 2 of this section. The request with the document certifying payment of the state fee shall be filed before the end of the term established in subsection 2 of this section.

§ 33. Correction and supplementation of registration application

An applicant may correct and supplement a registration application during processing provided that no alterations are made to the reproduction of the geographical indication which was presented in the registration application on the filing date of the registration application and the identification of the geographic area or the list of goods or services is not extended.

§ 34. Withdrawal of registration application

(1) An applicant may withdraw a registration application during processing by filing a corresponding written request. A registration application is deemed to be withdrawn upon receipt of it by the Patent Office.

(2) A registration application is deemed to be withdrawn if the applicant has failed to eliminate deficiencies in the registration application or to provide explanations by the end of the term established pursuant to subsections 32(2) and (3) of this Act.

§ 35. Termination of processing

If a registration application is withdrawn or deemed to be withdrawn, a decision is made on the termination of processing.

§ 36. Restoration of processing of registration application

Terminated processing shall be restored on the basis of a decision of the Intellectual Property Board of Appeal (hereinafter Board of Appeal) or court order.

§ 37. Decision to register geographical indication

If a registration application complies with the requirements of §§ 4, 24, 25 and 26(1) and (4) of this Act and is not contrary to public order or morality, a decision shall be made without delay to register the geographical indication.

§ 38. Decision to refuse registration of geographical indication

If a registration application does not comply with any of the requirements provided for in §§ 4, 24, 25 and 26(1) and (4) of this Act or is contrary to public order or morality, a decision shall be made without delay to refuse registration of the geographical indication.

§ 39. Decision and appeal against decision

(1) Decisions referred to in §§ 31, 35, 37 and 38 of this Act shall set out:

- 1) the date of the decision;
- 2) the grounds for the decision;
- 3) the conclusion;
- 4) information on the procedure and term for appeal against the decision;
- 5) the name and signature of the official who makes the decision.

(2) Decisions referred to in §§ 31, 35, 37 and 38 of this Act enter into force on the date on which they are made.

(3) The applicant shall be notified in writing of the decisions referred to in §§ 31, 35, 37 and 38 of this Act.

(4) An applicant may appeal against decisions referred to in §§ 31, 35, 37 and 38 of this Act pursuant to procedure prescribed in §§ 41 to 54 of Industrial Design Protection Act (RT I 1997, 87, 1466; 1998, 108/109, 1783).

§ 40. Access to and release of data from register

(1) During processing, only the following information shall be released: registration application number, filing date, reproduction of geographical indication, definition of geographical area, list of goods or services, name of the applicant and name of the representative of the applicant.

(2) After a decision is made on the registration of geographical indication, information and documents pertaining to the geographical indication are public.

(3) A state fee is paid for the release of information from the register with the exception of release of information to supervisory agencies, Board of Appeal or to a court.

§ 41. Certificate of registration of geographical indication

(1) A certificate of registration of a geographical indication (hereinafter certificate) is a document which certifies the registration.

(2) Certificates are issued in the name of the Republic of Estonia.

(3) The registration number is also the certificate number.

(4) The formal requirements for and the procedure for completing of certificates are established by the Minister of Economic Affairs.

§ 42. Issue of certificate

(1) After making a registration, the Patent Office issues a certificate to the applicant within ten working days.

(2) After registration data is amended, the Patent Office issues to the applicant an annex to the certificate within one month.

Chapter 5

CONTESTATION AND PROTECTION OF RIGHTS

§ 43. Contestation of registration

(1) Any interested person or supervisory agency who considers that the applicant, pursuant to subsection 9(1) of this Act, had no right to file a registration application, may submit a petition in court against the applicant, his successor or legal successor to declare the registration unlawful. If the applicant, his successor or legal successor is missing, the court shall hear the declaration of the registration unlawful as proceedings on petition.

(2) A petition specified in subsection 1 of this section may be filed within one year from the publication date of the entry of registration data.

(3) Any interested person or supervisory agency who considers that the applicant, pursuant to subsection 9(2) of this Act, had no right to file a registration application, may submit a petition in court against the applicant, his successor or legal successor to declare the registration unlawful. If the applicant, his successor or legal successor is missing, the court shall hear the declaration of the registration unlawful as proceedings on petition.

(4) A petition specified in subsection 3 of this section may be submitted during the term of the registration.

(5) Any interested person who considers that the registration is contrary to the requirements of §§ 4, 24, 25 or 26(1) or (4) of this Act, or to public order or morality, may submit an appeal in administrative court to declare the registration unlawful and require that the Patent Office restore the processing and make a new decision.

(6) An appeal specified in subsection 5 of this section may be submitted within 3 months from the publication date of the entry of registration data.

(7) If the court declares the registration unlawful, a deletion of the registration entry shall be made upon the request of the interested person or supervisory agency on the basis of a court order that has entered into force.

§ 44. Contestation of registration for amending registration data

(1) Any interested person or supervisory agency who considers that the list of goods or services, identification of geographical area or description in the registration are inaccurate or insufficient, may submit a petition in court against the applicant, his successor or legal successor for amending registration data. If the applicant, his successor or legal successor are missing, the court shall hear the amending of registration data as proceedings on petition.

(2) A petition specified in subsection 1 of this section may be submitted during the term of the registration.

(3) If the court satisfies a petition for amending registration data, an entry to amend the registration data entry shall be made upon the request of the interested person or supervisory agency on the basis of a court order that has entered into force.

§ 45. Contestation of unlawful use of registered geographical indication

(1) An interested person may file an action in court:

1) for termination of the unlawful use of a registered geographical indication;

2) for restoration of the situation which existed prior to the unlawful use of a registered geographical indication;

3) for compensation for moral and proprietary damage caused by the unlawful use of a registered geographical indication.

(2) Actions may be filed in court as follows:

1) actions specified in clauses 1 and 2 of subsection 1 of this section may be filed in court during the term of the registration;

2) actions specified in clause 3 of subsection 1 of this section may be filed in court within three years from the date on which the user of a geographical indication becomes or should have become aware of the violation of his rights.

§ 46. Specifications for resolution of disputes relating to geographical indications

(1) Appeals and actions specified in this Act fall within the jurisdiction of the court in the jurisdiction of which the Patent Office is located.

(2) The court notifies of the submitting of petitions specified in subsections 43(1) and (3) and subsection 44(1) of this Act in the official gazette Official Announcements and establishes a term during which the users of a geographical indication may submit a petition in court to intervene in the proceedings in support of the plaintiff or the defendant, whereby the term shall be no less than two months from the publication date of the notice.

§ 47. Representatives in court disputes relating to geographical indications

(1) Upon the resolution of disputes relating to geographical indications, patent attorneys may act as representatives in court.

(2) A patent attorney shall present to the court his or her patent attorney's certificate.

Chapter 6

SUPERVISION

§ 48. Bases for exercising supervision

(1) Supervision is exercised over the lawfulness of the use of protected geographical indication, including the complying of the good or service identified with the geographical indication with the description contained in the register.

(2) A supervisory agency exercises supervision on its own initiative or on the basis of a request from an interested person.

§ 49. Agencies exercising supervision

Supervision over the fulfilment of requirements provided for in this Act is exercised by the following agencies according to their competence:

- 1) Competition Board;
- 2) Plant Production Inspectorate;
- 3) Consumer Protection Board,
- 4) Veterinary and Food Inspectorate.

§ 50. Rights of official exercising supervision

An official of a supervisory agency has the right to:

- 1) receive from state agencies, agencies administered by state agencies, local government agencies and legal and natural persons information necessary for exercising supervision;
- 2) take samples for establishing potential offence;
- 3) to receive all information from the register free of charge.

§ 51. Maintaining confidentiality of business secrets

Officials of a supervisory agency are required to maintain the confidentiality of business secrets of which they become aware in performing their duties.

Chapter 7

LIABILITY FOR UNLAWFUL USE OF GEOGRAPHICAL INDICATION

§ 52. Bases for imposing punishment

(1) For violation of this Act, an administrative, civil or criminal punishment is imposed pursuant to procedure provided for in law.

(2) Criminal punishment imposed on a natural person for violation of this Act does not prevent the imposing of administrative punishment on a relevant legal person.

(3) Administrative court judges shall hear administrative offence matters involving legal persons.

(4) Matters regarding administrative offences which involve legal persons shall be conducted pursuant to the procedure provided for in the Code of Administrative Offences (RT 1992, 29, 396; RT I 1999, 41, 496; 45, rectification; 58, 608; 60, 616; 87, 792; 92, 825; 95, 843).

§ 53. Administrative liability of legal persons for unlawful use of geographical indication

(1) A fine of 50 000 to 100 000 kroons shall be imposed on a legal person who uses:

1) a registered geographical indication or a misleadingly similar indication for identifying goods or services if the good or service lacks any quality, reputation or other characteristic specified in the registration, or

2) a registered geographical indication or a misleadingly similar indication for identifying goods or services which are not covered by the registration but which are of the same kind with the goods or services covered by the registration, or

3) a registered geographical indication or a misleadingly similar indication for identifying goods or services if it may use the reputation of a protected geographical indication in bad faith, or

4) an indication which, although literally true as to the geographical origin, may falsely represent to the public that the good or service originates in another geographical area, including cases where the true origin of the good is indicated.

(2) A fine of 100 000 to 200 000 kroons shall be imposed on a legal person who uses:

1) a registered geographical indication or a misleadingly similar indication for identifying goods or services and does not act as the producer, processor or preparer of the good specified in the registration or the renderer of the service in the geographical area specified in the registration, or

2) misleading information on the origin, nature or chief qualities of a good or service on the inner or outer package, advertising materials or relevant documents of the good.

§ 54. Seizure

(1) Upon hearing a matter regarding administrative offence referred to in § 53 of this Act, the following shall be subject to seizure:

- 1) the means of committing administrative offence;
- 2) property acquired by committing administrative offence;
- 3) the good, inner or outer package, advertising materials or relevant documents unlawfully identified with a registered geographical indication or a misleadingly similar indication.

(2) The unlawfully identified items referred to in clause 3 of subsection 1 of this section are subject to destruction upon entering into force of a decision on seizure.

§ 55. Preparation of administrative offence report for legal person

(1) In administrative offence matters specified in § 53 of this Act, officials of supervisory agencies specified in § 49 of this Act have the right to prepare administrative offence reports.

(2) An administrative offence report shall set out the following:

- 1) the date and place of preparation thereof;
- 2) the name and address of the agency in whose name the report is prepared;
- 3) the given name, surname and official title of the person who prepared the report;
- 4) the name and address of the administrative offender;
- 5) the given name, surname and position of the representative of the administrative offender;
- 6) the time, place and description of the administrative offence;
- 7) a reference to the provision of law which prescribes liability for the administrative offence;
- 8) an explanation from the representative of the administrative offender;
- 9) a notation that the representative of the administrative offender has been advised of the right to obtain legal assistance;
- 10) other information necessary for the just adjudication of the administrative offence matter.

(3) The official who prepares the report and the representative of the administrative offender shall sign the administrative offence report.

(4) If the representative of the administrative offender refuses to sign the administrative offence report, the person who prepares the report shall make a corresponding entry therein. Written notations made by the representative of the administrative offender concerning the report and reasons for refusal to sign the report shall be annexed to the administrative offence report.

Chapter 8

FINAL PROVISIONS

§ 56. State fees

(1) State fees are charged for the performance of transactions provided for in this Act pursuant to the rates provided for in the State Fees Act (RT I 1997, 80, 1344; 86, 1461; 87, 1466 and 1467; 93, 1563; 1998, 2, 47; 4, 63; 23, 321; 36/37, 552 and 553; 52/53, 771; 57, 859; 59, 941; 60, 951; 61, 979 and 985; 64/65, 1004, 1005 and 1008; 86/87, 1408; 97, 1519; 103, 1701; 108/109, 1783; 111, 1829; 1999, 16, 275; 23, 355; 24, 359 and 360; 25, 364; 27, 380, 384, 385, 386 and 392; 29, 400 and 404; 30, 415; 58, 608; 75, 704; 84, 764; 87, 790; 92, 827; 97, 861).

(2) State fees shall be paid by applicants or persons who have the right to use a protected geographical indication, or by third parties who have an interest in the performance of transactions and issue of documents prescribed in this Act. If the state fee is paid by third parties, the consent of the applicant or the user of the geographical indication is required.

(3) The state fee is deemed to be paid upon receipt of a document by the Patent Office certifying payment of the state fee or, in the case of an appeal, upon receipt of such document by the Board of Appeal formed on the basis of subsection 35(1) of the Trademark Act (RT 1992, 35, 459; RT I 1998, 15, 231; 1999, 93, 834).

(4) Paid state fees are not refunded, except in cases provided for in § 31 of this Act.

§ 57. Amendment of State Fees Act

§§ 14715 to 14717 are added to the State Fees Act (RT I 1997, 80, 1344; 86, 1461; 87, 1466 and 1467; 93, 1563; 1998, 2, 47; 4, 63; 23, 321; 36/37, 552 and 553; 52/53, 771; 57, 859; 59, 941; 60, 951; 61, 979 and 985; 64/65, 1004, 1005 and 1008; 86/87, 1408; 97, 1519; 103, 1701; 108/109, 1783; 111, 1829; 1999, 16, 275; 23, 355; 24, 359 and 360; 25, 364; 27, 380, 384, 385, 386 and 392; 29, 400 and 404; 30, 415; 58, 608; 75, 704; 84, 764; 87, 790; 92, 827; 97, 861) in the following wording:

"§ 14715. Filing of application for registration of geographical indication

A state fee of 1600 kroons shall be paid for filing an application for registration of a geographical indication.

§ 14716. Extension of term for elimination of deficiencies in application for registration of geographical indication and for provision of explanations

A state fee of 400 kroons shall be paid for extension of term for elimination of deficiencies in an application for registration of a geographical indication and for provision of explanations.

§ 14717. Amendment of registration data of geographical indication

A state fee of 500 kroons shall be paid for entry to amend registration data of a geographical indication.

§ 58. Amendment of Alcohol Act

The following amendments are made to the Alcohol Act (RT I 1999, 24, 359; 58, 610; 92, 827):

1) the beginning of subsection 6(3) is amended and worded as follows:

"(3) When deciding on the entry of alcohol in the register, the committee specified in subsection 1 of this section shall take into account the following, thereby ceasing the processing of the application if necessary:"

2) clause 4 of subsection 6(3) is amended and worded as follows:

"4) legal acts and international agreements regulating legal protection of trademarks and geographical indications.";

3) subsection 44(2) is amended by adding the words "instead of a valid activity licence until 1 March 2000" after the word "granted".

§ 59. Amendment of Trademark Act

Trademark Act (RT 1992, 35, 459; RT I 1998, 15, 231, 1999, 93, 834) is amended as follows:

1) clause 61 is added to subsection 7(1) in the following wording:

"61) trademarks which contain a registered geographical indication or are misleadingly similar to it if it may result in an unlawful use of the geographical indication pursuant to the provisions of §§ 11 or 18 of the Geographical Indication Protection Act;"

2) section 241 is added to the Trademark Act in the following wording:

"§ 241. Invalidation and deletion from register of registration of trademark containing geographical indication

(1) Any interested person may request the invalidation of a trademark filed for registration or registered in bad faith in the following cases:

- 1) the trademark contains a registered geographical indication or a confusingly similar indication, and
- 2) the goods or services identified with the trademark and the geographical indication are identical or of the same kind;
- 3) the trademark has been registered or filed for registration after the geographical indication has been granted legal protection in its country of origin.

(2) If the trademark specified in subsection 1 of this section contains the name of Estonian geographical area, the condition specified in clause 3 of subsection 1 of this section shall not be applied upon the invalidation of such trademark.

(3) The filing for registration or registration of a trademark is done in bad faith if the person who registers a trademark or files it for registration knew or should have known that the indication in question identifies the good or service as originating in a certain geographical area and a given quality, reputation or other characteristic of the good or service is essentially attributable to its geographical origin.

(4) Any interested person may request the invalidation of a trademark registered for identifying alcoholic beverage before the date of entry into force of the Geographical Indication Protection Act if the trademark contains a registered geographical indication or is confusingly similar to it and the alcoholic beverage does not originate in the geographical area identified by the geographical indication.

(5) A request for the invalidation of registration of trademarks specified in subsections 1 and 4 of this section shall be filed with the Board of Appeal.

(6) Upon invalidation of a trademark registration, the Patent Office deletes the trademark from the register.

(7) The provisions of this section are also applied upon the invalidation of trademarks containing a geographical indication which were filed for registration or registered before the date of entry into force of the Geographical Indication Protection Act.";

3) in subsection 35(2), the words "subsection 11(3), and §§ 13 and 24 of this Act" are substituted by the words "subsection 11(3), and §§ 13, 24 and 241 of this Act".

§ 60. Amendment of Criminal Code

The Criminal Code (RT 1992, 20, 287 and 288; RT I 1999, 38, 485; 57, 595, 597 and 598; 60, 616; 97, 859) is amended as follows:

1) clause 3 of subsection 33(6) is amended and worded as follows:

"3) good, package, economic or business document, advertising material or instruction for using the good which is unlawfully identified with a legally protected trademark, geographical indication or an indication misleadingly similar to them.";

2) in the text of § 283 the word "two" is substituted by the word "four";

3) the Criminal Code is amended by adding § 2831 in the following wording:

"§ 2831. Unlawful use of registered geographical indication

Unlawful use of a registered geographical indication shall be punishable by a fine or imprisonment for up to four years.

§ 61. Amendment of Consumer Protection Act

Consumer Protection Act (RT I 1994, 2, 13; 1999, 35, 450) is amended as follows:

1) in subsection 6(4) the words "to a legal person" are substituted by the word "to an entrepreneur";

2) in subsection 6(5) the words "with a product which has been made by violating the exclusive right of the owner of trademark" with the words "with counterfeit goods";

3) clause 11 is added to subsection 11(2) in the following wording:

"11) Competition Board - in preventing the circulation of counterfeit goods;"

4) in clause 2 of subsection 17(4) the words "with a good manufactured by violating the exclusive right of the owner of trademark" are substituted by words "counterfeit goods".

§ 62. Amendment of Customs Act

Customs Act (RT I 1998, 3, 54; 1999, 86, 782; 97, 859) is amended as follows:

1) subsection 26(1) is amended and worded as follows:

"(1) For the purposes of this Act, counterfeit goods means:

1) goods in the meaning of subsection 33(4) of the Trademark Act (RT 1992, 35, 459; RT I 1998, 15, 231; 1999, 93, 834);

2) goods which are unlawfully identified with a registered geographical indication.";

2) subsection 26(3) is amended by adding the words "or legal acts or international agreements regulating legal protection of geographical indications" following the word "copyright";

3) subsection 45(11) is amended by adding clause 11 in the following wording:

"11) lawful user of the registered geographical indication or".

§ 63. Amendment of Commercial Code

Subsection 31 is added to § 12 of the Commercial Code (RT I 1995, 26-28, 355; 1998, 91-93, 1500; 1999, 10, 155; 23, 355; 24, 360; 57, 596) in the following wording:

"(31) A person who has no right to use a geographical indication shall be prohibited to use a registered geographical indication in a business name except for cases where he acts in a field for which the geographical indication is not protected."
