

REPUBLIC OF VANUATU

BILL FOR THE

GEOGRAPHICAL INDICATIONS (WINE) ACT

NO. OF 2000

Explanatory Note

This Note does not form part of the Bill

The purpose of this Bill is to provide for the protection of geographical indications that show the origins of wine.

The Bill reflects international trends towards greater uniformity in the field of the protection of geographical indications. In particular, the Bill conforms with the minimum standards and principles prescribed for the protection of geographical indications in the international Agreement on Trade-related Aspects of Intellectual Property Rights.

The Bill defines a geographical indication for wine as being a word or expression that shows where the wine was made, or the qualities it has. It prohibits selling, importing and exporting of wines that have a false or misleading description or presentation (such as packaging), and allows the Supreme Court to grant injunctions to prevent the sale, importing or exporting.

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An Act to control the use of false or misleading geographical indications for the origin of wine.

BE IT ENACTED by the President and parliament as follows:

INTERPRETATION

1. In this Act, unless the contrary intention appears:

“Court” means the Supreme Court;

“geographical indication”, for wine, means:

- (a) a word or expression used in the description and presentation of the wine to show the country, region or locality where the wine originated; or
- (b) a word or expression used in the description and presentation of the wine to suggest that the wine has a particular quality, reputation or characteristic because it originated in the country, region or locality indicated by the word or expression;

“sell” includes offer, expose or advertise for sale;

“traditional expression”, for wine, means a word or expression used in the description and presentation of the wine to refer to the method of production, or to the quality, colour or type, of the wine;

“wine” means an alcoholic beverage produced by the complete or partial fermentation of fresh grapes or products derived solely from fresh grapes, or both.

MEANING OF “DESCRIPTION AND PRESENTATION”

2. In this Act, a reference to the description and presentation with which wine is sold, exported or imported is a reference to all names (including business names) or other descriptions, references (including addresses), signs, designs and trade marks used to distinguish the wine and appearing:
- (a) on the container (including on the device used to seal the container or on a label affixed to the container), on any tag attached to the container or, if the container is a bottle, on the sheathing covering the neck of the bottle; or
 - (b) on protective wrappings (such as papers and straw envelopes of all kinds), cartons and cases used in the packaging of the wine or the transport of the wine; or
 - (c) in documents relating to the transport of the wine or in other commercial documents (for example, invoices or delivery notes) relating to the sale or transport of the wine; or
 - (d) in advertisements relating to the wine.

WHERE WINE ORIGINATES

3. For the purposes of this Act:
- (a) a wine is taken to have originated in a foreign country or Vanuatu only if the wine is made within the territory of that country or of Vanuatu, as the case may be; and
 - (b) a wine is taken to have originated in a particular region or locality of a foreign country or of Vanuatu only if the wine is made from grapes grown in that region or locality.

SALE, EXPORT OR IMPORT OF WINE WITH A FALSE DESCRIPTION AND PRESENTATION

4. (1) A person must not, in trade or commerce, knowingly sell wine with a false description and presentation.
- (2) A person must not, in trade or commerce, knowingly export wine with a false description and presentation.
- (3) A person must not, in trade or commerce, knowingly import wine with a false description and presentation.
- (4) It is not a defence to a prosecution for an offence against subsection (1), (2) or (3) that the description and presentation showed the country, region or locality, as the case may be, where the wine originated.

Penalty: Imprisonment for 2 years.

MEANING OF "FALSE DESCRIPTION AND PRESENTATION"

5. (1) Subject to this section, the description and presentation of wine is false if:
 - (a) it includes the name of a country, or any other indication that the wine originated in a particular country, and the wine did not originate in that country; or
 - (b) it includes a traditional expression and the wine did not originate in a country, region or locality to which the expression relates.
- (2) Subsection (1) does not limit what, apart from that subsection, is a false description and presentation of wine.
- (3) A geographical indication or a traditional expression is taken to be included in the description and presentation of wine even if the indication or expression is accompanied by another word or expression such as "kind", "type", "style", "imitation" or "method", or a similar word or expression

(4) If:

- (a) the description and presentation of wine includes a word or expression that is a geographical indication, or a traditional expression, in relation to a country, region or locality; and
- (b) the wine originated in that country, region or locality; and
- (c) the description and presentation indicates that the wine originated in that country, region or locality;

the description and presentation is not false merely because the word or expression included in the description and presentation is also a geographical indication, or a traditional expression, in relation to another country, region or locality.

(5) The description and presentation of wine is not false merely because it includes:

- (a) the name of an individual who manufactured, sold, exported or imported the wine; or
- (b) if an individual who manufactured, sold, exported or imported the wine lawfully carries on business under the name of another individual who previously carried on the business—the name of that other individual; or
- (c) the address of the winery where the wine was manufactured.

SALE, EXPORT OR IMPORT OF WINE WITH A MISLEADING DESCRIPTION AND PRESENTATION

6. (1) A person must not, in trade or commerce, knowingly sell wine with a misleading description and presentation.
- (2) A person must not, in trade or commerce, knowingly export wine with a misleading description and presentation.
- (3) A person must not, in trade or commerce, knowingly import wine with a misleading description and presentation.

Penalty: Imprisonment for 2 years.

MEANING OF "MISLEADING DESCRIPTION AND PRESENTATION"

7. (1) Subject to subsection (5), the description and presentation of wine is misleading if:
- (a) it includes a geographical indication or a traditional expression; and
 - (b) the indication or expression is used in such a way in the description and presentation as to be likely to mislead as to the country, region or locality in which the wine originated.
- (2) Subject to subsection (5), the description and presentation of wine is misleading if:
- (a) it includes a translation of a geographical indication or a traditional expression; and
 - (b) the inclusion of the translation is likely to mislead as to the country, region or locality where the wine originated.
- (3) The description and presentation of wine is misleading if:
- (a) it includes:
 - (i) the name of an individual who manufactured, sold, exported or imported the wine; or
 - (ii) if an individual who manufactured, sold, exported or imported the wine lawfully carried on business under the name of another individual who previously carried on the business—the name of that other individual; or
 - (iii) the name or address of the winery where the wine was manufactured; and
 - (b) the name or address is used in such a way in the description and presentation as to be likely to mislead as to the country, region or locality where the wine originated.
- (4) Subsections (1), (2) and (3) do not limit what, apart from those subsections, is a misleading description and presentation of wine.

(5) If:

- (a) the description and presentation of wine includes a word or expression that:
 - (i) is a geographical indication, or a traditional expression, in relation to a country, region or locality; or
 - (ii) is a translation of an indication or expression referred to in subparagraph (i); or
 - (iii) resembles an indication or expression referred to in subparagraph (i); and
- (b) the wine originated in that country, region or locality; and
- (c) the description and presentation shows that the wine originated in that country, region or locality;

the description and presentation is not misleading merely because the indication or expression referred to in subparagraph (a)(i) is also an indication or expression in relation to another country, region or locality.

EXCEPTION FOR WINES IN TRANSIT

8. Sections 4 and 6 do not apply to wines that are in transit through Vanuatu.

REMEDIES

9. (1) If a person has engaged, is engaging or proposes to engage in any conduct in contravention of this Act, the Court may grant an injunction:
- (a) restraining the person from engaging in the conduct; and
 - (b) if the Court thinks it desirable to do so—requiring the person to do a particular act.
- (2) An application for an injunction may be made by, or on behalf of, any person aggrieved by the conduct.
- (3) The Court may also make an order awarding damages if it considers it appropriate to do so.

- (4) The Court has jurisdiction to hear and determine matters under this Act.

COMMENCEMENT

10. This Act commences on the day on which it is published in the Gazette.