

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

**REVIEW UNDER ARTICLE 24.2 OF THE APPLICATION OF THE PROVISIONS OF THE
SECTION OF THE TRIPS AGREEMENT ON GEOGRAPHICAL INDICATIONS**

Checklist of Questions

At its meeting of 12 May 1998, the Council took note of the annexed Checklist of Questions and invited those Members already under an obligation to apply the provisions of the Section on Geographical Indications to provide their responses by 16 November 1998, it being understood that other Members could also furnish replies on a voluntary basis. This action was taken by the Council on the understanding that both the questionnaire itself and the responses to it would be without prejudice to the rights and obligations of Members. Responding Members would be free to group their responses to questions as they find appropriate in the context of their national systems. It was further understood that should Members have any additional points that they would wish to make regarding the questionnaire they could do so at the July 1998 meeting of the Council.

ANNEX

REVIEW UNDER ARTICLE 24.2 OF THE APPLICATION OF THE PROVISIONS OF THE SECTION OF THE TRIPS AGREEMENT ON GEOGRAPHICAL INDICATIONS

Checklist of Questions

A. GENERAL

1. Is protection for geographical indications provided through unfair competition law, *e.g.*, passing off, false designation of origin; through a formal procedure for notification/registration before protection is available; or through both? Does the recognition of a geographical indication require registration?
2. Is there one single regime of protection of geographical indications for all products? If not, identify the different regimes.
3. Do(es) the regime(s) of protection of geographical indications also extend to services?
4. What provisions of law or regulations are directed to the recognition of geographical indications required by Articles 22.2 and 23.1 of the TRIPS Agreement? Citations to laws should be provided and, if the texts of the laws have not been notified to the WTO, copies should be provided pursuant to Article 63.2.
5. If the required recognition of geographical indications is not provided through statutes or regulations, please explain, in detail, the mechanism or mechanisms through which the protection required is provided.
6. Please provide a few examples of domestic geographical indications protected in accordance with the means discussed above and indicate the means by which such protection is provided.
7. Is the higher level of protection required for wines and spirits under Article 23.2 of the TRIPS Agreement provided for any other product? If so, please specify such products and the law under which they are protected.

B. DEFINITION AND CRITERIA FOR RECOGNITION

8. How are geographical indications defined?
9. Would such a definition comprise geographical indications identifying products of a certain quality or reputation which are indirectly linked to a specific region?
10. In determining whether recognition should be given a geographical indication, what criteria are considered?
11. Is there any human creativity involved in the making of specific products under protection by the system of geographical indications? If so, how much? And do these products involve any human factors?
12. Are there any other intellectual property rights involved, such as patents for example?

13. What authority, if any, may define the geographic region or area for which rights are claimed and on what basis is such definition made?
14. Does your legislation contain criteria for homonymous geographical indications for wines?
15. Does your national legislation provide for recognition and protection of geographical indications or appellations of origin of foreign countries?
16. Is there any specific prohibition in the legislation/regulations/rules/procedures covering geographical indications not protected in the country of origin? If so, please specify the relevant statutory provision.

C. PROCEDURE FOR RECOGNITION

17. With respect to any formal system for recognition of geographical indications, must the applicant be a governmental organization or can a private entity own the rights to a geographical indication?
18. What are the competent authorities where the protection of a geographical indication can be obtained?
19. Do the procedures which lead to the recognition of a geographical indication take place ex officio or must they be based on the initiative of an entity or person?
20. What, if any, fees are involved in the application and maintenance of rights in a geographical indication?
21. If criteria must be set out in an application for recognition of a geographical indication, are those criteria purely geographic in nature?
22. What other criteria, if any, must be set out in an application for recognition of a geographical indication?
23. What information must be supplied in an application for rights in a geographical indication?
24. Must the goods or services with respect to which a geographical indication is claimed be set out?
25. What mechanisms are provided to oppose the recognition of a geographical indication? How is an investigation conducted after such a complaint?
26. Who can oppose the recognition of a geographical indication?
27. If your national legislation provides for recognition and protection of geographical indications or appellations of origin of foreign countries, what is the procedure that has to be followed in order to obtain such recognition and consequent protection?

D. MAINTENANCE

28. How long does recognition for a geographical indication continue?
29. If recognition of a geographical indication must be renewed or reaffirmed, what information must be provided in order to effect such a renewal or reaffirmation? Specify any fees involved in renewal or reaffirmation.

30. Must a geographical indication be used in order to maintain rights? If so, how is such use determined?

31. Is there a specified limit for non-use before rights in a geographical indication cease and, if so, what is that limit?

32. Who monitors the use of geographical indications to determine if the criteria identified in the application continue to be met?

33. If a government entity is responsible for monitoring the use of geographical indications, what are its procedures for doing so?

34. Are there means by which interested parties may request termination of a geographical indication based on non-use or failure to maintain the criteria identified in the application? Describe the procedure.

35. Do the procedures which lead to forfeiture of a geographical indication take place ex officio or must they be based on the initiative of an entity or person?

E. SCOPE OF RIGHTS AND USE

36. May anyone who meets the criteria submitted to obtain recognition of a geographical indication use that geographical indication after recognition is given or must additional criteria or procedures be followed by that party before use is permitted?

37. Who makes the determination regarding use of a geographical indication by particular parties, the entity responsible for the recognition or the entity that obtained the recognition?

38. Are there fees involved in receiving authorization to use a particular geographical indication and, if so, what are those fees and how are they established?

39. If there is a dispute regarding use of a geographical indication by a particular party, what procedures are followed to resolve it?

40. Must individual authorized users of a geographical indication use that geographical indication continually to retain their right to use it and, if so, how is their use determined and how long will disuse be permitted?

41. If there is a dispute over continuity of use by a particular party, how is it resolved?

42. Does the regime for protection of geographical indications allow geographical indications to be licensed and, if so, what conditions are imposed on such licenses? If such conditions are not met, what is the effect on the geographical indication?

43. How is "grandfathered use" of a geographical indication, under Article 24.4 of the TRIPS Agreement, applied in your country?

F. RELATIONSHIP TO TRADEMARKS

44. What steps are taken to ensure that, in recognizing a geographical indication, the obligations of Article 16.1 of the TRIPS Agreement are not nullified and impaired?

45. What steps are taken to ensure that, in recognizing a geographical indication, the obligations of Article 16.2 and 16.3 of the TRIPS Agreement are not nullified and impaired?

46. What procedures are foreseen in case of a conflict of a geographical indication with a trademark?

G. ENFORCEMENT

47. How are rights in the geographical indication enforced? Are provisions available under unfair competition law? Trademark law? Other laws? Provide citations to the laws and, if they have not been notified under Article 63.2 of the TRIPS Agreement, please provide copies.

48. Who has the right to enforce a geographical indication?

49. What judicial or administrative bodies have jurisdiction over enforcement actions related to geographical indications? Are there fees involved and, if so, what are those fees?

50. Must the public be notified of the existence of a geographical indication and, if so, how and how often?

51. Is unauthorized use of a geographical indication subject to criminal action and, if so, describe the procedures. If the law has not been notified pursuant to Article 63.2 of the TRIPS Agreement, please provide a copy.

H. INTERNATIONAL AGREEMENTS

52. Is your government party to an international, including bilateral or plurilateral, agreement for the notification and/or registration of geographical indications? If so, please name the international agreement and explain the relationship between it and your national legislation.

53. What other international agreements, if any, have been entered into? What do those agreements provide?
