

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

Responses to the Checklist of Questions¹

Supplement

The Secretariat has received the following responses from Greece, Ireland and Luxembourg*, by means of a communication from the Permanent delegation of the European Commission, dated 10 April 2000.²

Responses from Greece

I. REPLIES TO QUESTIONS IN DOCUMENT IP/C/13

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?

Wines and Spirits: Geographical indications and appellations of origin are protected ex officio. Recognition at national level as well as registration and publication in the EU Official Journal are required (see Regulations (EEC) 822/87 Article 72, 823/87 Article 1, 2392/89 Article 2, 1576/89 Article 5, 1601/91 Article 6; national laws: Legislative Decree 243/69 Articles 4 and 5, Law 427/76 Articles 3 and 4).

Protection is accorded on the condition that the products concerned are produced within the boundaries of specific regions and that certain strictly defined criteria such as: vine varieties, yields per Ha, cultivation and pruning techniques, minimum alcoholic content, organoleptic characteristics etc, are met.

¹ Documents IP/C/13 and IP/C/13/Add.1.

* The answers from Luxembourg only concern the questions contained in document IP/C/13.

² These responses supplement those reproduced in document IP/C/W/117/Add.10.

Protection is provided against any misuse or imitation even if the indication is used in translation or with reference to the actual origin or with additions such as "type", "method", "style", "kind", "imitation" or the like.

Other agricultural products and foodstuffs: Registration of protected geographical indications and appellations of origin at the Community level is needed (Regulation (EEC) 2081/92 Articles 5, 6 and 7).

A group of producers must submit a detailed application for registration. Natural or legal persons may also submit an application under certain conditions (Regulation (EEC) 2037/93 Article 1). The application should be submitted to the competent regional directorate for agriculture and must contain at least the information and data specified in Article 4 of Regulation (EEC) 2081/92. A first examination of the application takes place at local level. The file together with the opinion of the regional directorate of agriculture as well as the views of other relevant bodies in the region having an economic interest is transmitted to the competent central services of the Ministry of Agriculture who takes a final decision at the national level. After that the file is transmitted to the Commission of the EU. Within six months, the Commission must take a final decision and publishes the application in the Official Journal of the EU. Following publication a six month period is opened for objections by interested parties (other member States or any natural or legal person having a legitimate economic interest).

Appropriately registered geographical indications and appellations of origin are protected ex officio against any misuse as referred to in Article 13 of Regulation (EEC) 2081/92.

2. Is there one single regime of protection of geographical indications for all products? If not, identify the different regimes.

No, different regimes exist for the protection of geographical indications and denominations of origin as follows:

Wines: Regulations (EEC) 2247/73, 822/87, 823/87, 2392/89, 3886/89, 3201/90, laying down special provisions relating to the quality wines produced in specified regions, as well as establishing general rules for the designation and presentation of wines and grape musts. In addition national laws (i.e. Legislative Decree 243/25.7.69, Law 427/31.8.76) setting general rules concerning procedures, inspections, imposition of penalties and criminal procedures for protected geographical indications and designations of origin are applied.

Spirits: Regulations (EEC) 1576/89, 3378/94 laying down general rules on the definition, description and presentation of spirit drinks.

Other agricultural products and foodstuffs: Regulation (EEC) 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs. In addition, national laws (i.e. Law 2040/92 Article 11, Presidential decrees 61/93, 81/93, 291/93) setting general rules concerning the definition, presentation, inspection, imposition of penalties and other criminal procedures in relation to olive oil and other agricultural products and foodstuffs are also applied.

3. Do(es) the regime(s) of protection of geographical indications also extend to services?

No.

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.

See replies to question 1 above. Also the following provisions are applied:

- Wines: Article 72a of Regulation (EEC) 822/87, Article 10a of Regulation (EEC) 601/91. Articles 14, 15, 16 and 17 of Legislative Decree 243/69 as amended by Law 427/76.
- Spirits: Article 11a of Regulation (EEC) 1576/89.
- Other agricultural products and foodstuffs: In addition to the provisions of Regulation (EEC) 2081/92, Article 11 of Law 2040/92 is applied.

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.

See replies to questions 1 – 4 above.

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.

Wines: Nemea, Mandenea, Peza, Archanes, Samos, Mavrodafni from Patras, Retsina from Attiki, local wine from Macedonia, Santorini, Zitsa, etc. Registered and published in the Official Journal "C" No. 348/82, 155/92, 203/93 according to Regulations (EEC) 2247/73, 2392/89.

Spirits: Tsikoudia from Creta, Tsipouro from Macedonia, Brandy from Attiki, Brandy from Peloponnesos etc. Regulation (EEC) 1576/89, Annex II.

Other agricultural products and foodstuffs: Cheeses: Katiki Domokou, Manouri, Kefalograviera, Graviera Naxou, etc. Registered and published in the Official Journal of the EU, "L" 148/96, Regulation (EC) 1107/96.

Olive oil: Thasos, Lakonia, Preveza, Kranidi Argolidas, Chania from Creta etc. Registered and published in the Official Journal of the EU, "L" 148/96, Regulation (EC) 1107/96.

Table olives: Kalamatas, Conservilia Amfissas, Throuba Thasou etc. Registered and published in the Official Journal of the EU, "L" 163/96, Regulation (EC) 1263/96.

Fruits and Vegetables: kiwi fruit from Sperchios, apples from Zagora of Pelion, dried figs from Kymi, eggplant Tsakoniki from Lonidion, pistachios from Aegina, orange from Maleme of Chanea etc. Registered and published in the Official Journals of the EU, "L" 148/96, 163/96, Regulations (EC) 1107/96, 1263/96.

Other: honey from Menalon etc. Registered and published in the Official Journal of the EU, "L" 163/96, Regulation (EC) 1263/96.

Protection is provided according to the provisions of Regulation (EEC) 2081/92.

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.

Yes, pursuant to Regulation (EEC) 2081/92 (Article 13).

B. DEFINITION AND CRITERIA FOR RECOGNITION

8. How are geographical indications defined?

Wines: The definitions for quality wines of controlled appellations of origin and of table wines of simple appellations of origin are given in Article 3 of Regulation (EEC) 823/87, Article 72 of Regulation 822/87, as well as in Articles 4 and 5 of Legislative Decree 243/69 as amended by Articles 3 and 4 of Law 427/76.

In general, quality wines of controlled appellations of origin should come from grapes of selected fine varieties growing on soils proper for the production of high-quality wines, cultivated traditionally within restricted viticultural zones. Certain production requirements, namely yield per Ha, cultivation techniques and methods, minimum natural alcoholic strength and organoleptic characteristics, also should be met. Table wines of simple appellations of origin should come from appropriate varieties of grapes grown on proper soils, within a restricted viticultural zone.

Processing of grapes into must and of must into wine should take place within the defined zone of origin.

Spirits: The definition is given in Article 5 of Regulation (EEC) 1576/89 in conjunction with Annex II.

Other agricultural products and foodstuffs: The definitions are given in Article 2 of Regulation 2081/92 as well as in Article 11 of Law 2040/92, Article I of Presidential Decree 61/93 and Article 1, paragraphs 1, 2 of Presidential Decree 81/93.

In general, the term "geographical indication" means the name of a specific region, a specific place or in exceptional cases a country, used to describe an agricultural product or a foodstuff originating in that region, specific place or country and which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area.

The term "designation of origin" means the name of a specific region, a specific place or in exceptional cases a country, used to describe an agricultural product or a foodstuff originating in that region, specific place or country and the quality or characteristics are essentially exclusively due to a particular geographical environment with its inherent natural and human factors and the production and/or processing and/or preparation of which take place in the defined geographical area.

Furthermore, as "designations of origin" are considered certain traditional geographical or non-geographical names designating an agricultural product or foodstuff originating in a region or a specific place which fulfil the conditions set out for designations of origin.

9. Would such a definition comprise geographical indications identifying products of a certain quality or reputation which are indirectly linked to a specific region?

The definitions referred to above identify products of a certain quality, notoriety or reputation which are directly linked to the region of origin.

10. In determining whether recognition should be given a geographical indication, what criteria are considered?

See answers to question 8 above as well as the replies of the European Communities.

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?

Yes. See also the replies of the European Communities.

12. Are there any other intellectual property rights involved, such as patents for example?

No.

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?

Wines: The Ministry of Agriculture defines the geographical region or area as well as all other conditions and criteria required, on the basis of a recommendation given by the Central Committee for the Protection of Vine Production.

Other products: Geographic region or area as well as all other specifications required are defined by the group of producers applying for registration to the regional directorates for agriculture and subsequently to the central services of the Ministry of Agriculture and to the European Commission.

14. Does your legislation contain criteria for homonymous geographical indications for wines?

Yes, in Article 15 of Regulation (EEC) 823/87 and Article 29 of Regulation (EEC) 2392/89.

15. Does your national legislation provide for recognition and protection of geographical indications or appellations of origin of foreign countries?

Wines: Yes, Regulations (EEC) 822/87 Articles 61 and 72a, 2392/89 Article 40, 1601/90 Article 10a.

Spirits: Yes, Regulation (EEC) 1576/89 Article 11a.

Other agricultural products and foodstuffs: Yes, Regulation (EEC) 2081/92 Article 12.

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.

As a general rule protection of geographical indications and designations of origin is based on the principle of its recognition and protection in the country of origin.

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?

Wines: The Ministry of Agriculture.

Other products: Groups of producers and/or processors engaged in the production of the specific product are entitled to submit an application (Regulation (EEC) 2081/92 Article 5). Natural or legal persons may also submit an application under certain conditions (Regulation (EEC) 2037/93 Article 1).

18. What are the competent authorities where the protection of a geographical indication can be obtained?

Wines and spirits: The Ministry of Agriculture following a recommendation by the Central Committee for the Protection of Vine Production.

Other agricultural products and foodstuffs: A group of producers and/or processors must submit an application to the regional directorate of agriculture. Following its first examination by the local authorities the application along with the opinion of the regional directorate of agriculture and the views of other local professional bodies are transferred to the central services of the Ministry of Agriculture and subsequently to the European Commission for final verification, approval and publication.

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?

Wines and spirits: Yes, it takes place ex officio.

Other agricultural products and foodstuffs: It is only granted upon request.

20. What, if any, fees are involved in the application and maintenance of rights in a geographical indication?

There are no fees.

21. If criteria must be set out in an application for recognition of a geographical indication, are those criteria purely geographic in nature?

No, see answers to question 10 above.

22. What other criteria, if any, must be set out in an application for recognition of a geographical indication?

See answers to question 10 above.

23. What information must be supplied in an application for rights in a geographical indication?

Wines: Determination of the area of production, vine varieties, yields per Ha, cultivation techniques and methods, wine making methods, minimum natural alcoholic strength, organoleptic characteristics.

Other agricultural products and foodstuffs: These are enumerated in Article 4 of Regulation (EEC) 2081/92.

24. Must the goods or services with respect to which a geographical indication is claimed be set out?

Yes.

25. What mechanisms are provided to oppose the recognition of a geographical indication? How is an investigation conducted after such a complaint?

Article 7 of Regulation (EEC) 2081/92 describes the mechanism and procedures to oppose the recognition of a geographical indication.

26. Who can oppose the recognition of a geographical indication?

In general any natural or legal person who has a legitimate economic interest.

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?

See answers to questions 4 and 15 above. In addition for wines and spirits inclusion in a positive list is possible by agreement (Article 8 of Legislative Decree 144/69). For other agricultural products and foodstuffs pursuant to the provisions of Article 12 of Regulation (EEC) 2081/92.

D. MAINTENANCE

28. How long does recognition for a geographical indication continue?

The recognition is unlimited.

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.

There is no need for renewing or reaffirming the recognition.

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

There is not any explicit provision on this.

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

There is no specific limit for non-use.

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

Wines: The Agricultural Services at local or regional level and the State Chemical Laboratory and its regional branches (Article 7 of Legislative Decree 243 FEK 144A/69 as amended by Article 6 of Law 427 FEK 230A/76).

Other agricultural products and foodstuffs: The agricultural services at local or regional level.

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

Wines: In general monitoring takes place ex officio or following a complaint by an interested party having a legitimate economic interest. Responsible bodies may carry out their task every working day at wineries, wine storehouses, wine sale stations and are entitled to have full access on any relevant document and information.

Other agricultural products and foodstuffs: Monitoring takes place ex officio or following a complaint by an interested party having a legitimate economic interest. The main aim is to verify the compliance to the specifications and conditions determined in the application form of the product concerned.

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.

On non-use see answer to question 31 above.

Failure to maintain the criteria identified and/or violation to meet specifications, imply the imposition of financial and administrative penalties, including the termination of protection, as well as criminal penalties, provided by Article 458 of the Criminal Code. Legal proceedings are taking place on the basis of a violation protocol issued by the responsible monitoring body.

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?

The relevant procedures may take place:

- By national authorities, ex officio (Regulation (EEC) 2081/92 Article 13, ...).
- By the initiative of any natural or legal person (Regulation (EEC) 2081/92 Article 13, ...).
- By the initiative of a member State (Regulation (EEC) 2081/92 Article 11, ...).

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?

No additional criteria are required.

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?

Anybody established in the geographical area and/or region and who meets the conditions specified in the relevant laws and regulations has the right to use the registered name.

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?

There are no fees.

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

In cases of a dispute ordinary courts are competent.

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?

No, see answer to question 30 above.

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

Such dispute could be resolved through the normal administrative and/or judicial procedures concerning the application of the relevant national and EU legislation.

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?

No.

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

No "grandfathered use" of a geographical indication exists.

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?

See the replies by the European Communities to the above question.

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?

See answer to question 44 above.

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

See answer to question 44 above.

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.

The relevant EEC and national legislation are applied through judicial and administrative procedures.

Wines: Details are foreseen in Articles 14-17 of the Legislative Decree 243/69 as amended by Law 427/76.

Other agricultural products and foodstuffs: On the basis of provisions of Articles 13-14 of Regulation (EEC) 2081/92.

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

See answer to question 47 above.

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?

See answer to question 47 above.

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

Yes, all recognized and protected geographical indications and designations of origin must be published in the Official journal of the EU.

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.

Yes, see also answer to question 47 above.

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.

Greece is a member of the EU and therefore applies the relevant Community legislation as well as all bilateral agreements that have been concluded between the EU and several third countries. Greece is also a member of the OIV.

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

There are no other agreements.

II. REPLIES TO QUESTIONS IN DOCUMENT IP/C/13/ADD.1

A. GENERAL (SECTION A OF DOCUMENT IP/C/13/ADD.1)

1. Does your economy's industrial property law and/or related law prevent the use of geographical indications identifying wines or spirits against products not originating in the place indicated by the geographical indication, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like?

See answers to question 1 under I above.

B. DEFINITION AND CRITERIA FOR RECOGNITION (SECTION B OF DOCUMENT IP/C/13/ADD.1)

2. Is there a clear distinction among the terms "geographical indications", "appellations of origin" and "indications of source" in your economy's industrial property law and/or related law, or are there any substantive criteria to distinguish these terms?

See answers to question 8 under I above.

3. Does your legislation contain criteria for homonymous geographical indications for wines and spirits?

See answers to question 14 under I above.

C. RELATIONSHIP TO TRADEMARKS (SECTION F OF DOCUMENT IP/C/13/ADD.1)

4. Does your economy's industrial property law and/or related law provide the refusal or invalidation of a trademark registration, which consists of or contains geographical indications identifying wines or spirits with respect to such wines or spirits not originating in the indicated territory?

See answers to question 44 under I above.

Responses from Ireland

III. REPLIES TO QUESTIONS IN DOCUMENT IP/C/13

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?

In Ireland there is no formal domestic national system of protection of geographical indications of foodstuffs/agricultural products as such. Protection of geographical indications for foodstuffs and spirit drinks/wine is achieved through the European systems already in place. In the case of spirits, protection is provided under the Irish Whiskey Act 1980 and under Council Regulation 1576/89, as amended by Regulation No. 3378/94 and Irish law through national regulations entitled European Communities (Definition, Description and Presentation of Spirit Drinks) Regulations 1995 (S.I. No. 300 of 1995). Protection for certain foodstuffs is provided for under Council Regulation EEC No. 2081/92 for the protection of designations of origin and geographical indications for agricultural products and foodstuffs and national regulations entitled European Communities (Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs) Regulations 1995 (S.I. No. 148 of 1995). Protection of geographical indications for wines is provided for under European Communities Wine Regulations Nos. 822/87; 823/87 and 2392/89.

There is no provision for the registration of geographical indications under the Trade Marks Act, 1996. However, Section 8(3) of that Act provides that a trademark shall not be registered if it is of such nature as to deceive the public as to the geographical origin of the goods or services. For instance, a trademark which falsely indicates that goods originate from a geographical area with a reputation for producing those goods would be refused registration.

2. Is there one single regime of protection of geographical indications for all products? If not, identify the different regimes.

Not under national provisions. See reply to question 1 above.

3. Do(es) the regime(s) of protection of geographical indications also extend to services?

The Trade Mark Act, 1996 applies 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.

Regulations entitled European Communities (Definition, Description and Presentation of Spirit Drinks) (Amendment) Regulations, 1998 (S.I. No. 7 of 1998) have been made to effect the transposition of Articles 23 and 24 of the TRIPS Agreement as contained in Regulation (EC) 3378/94 insofar as this affects the Spirit Drinks Regulation 1576/89. Other agricultural products and foodstuffs can also be protected under Council Regulation EEC 2081/92, which provides for the same type of protection.

The Trade Marks Act 1996 and Trade Mark Rules 1996 provide procedures for making oppositions against trademark applications and for the removal of registered trademarks.

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.

There is no provision for the registration of geographical indications under the Trade Marks Act 1996. However, Section 8(3) of that Act provides that a trademark shall not be registered if it is of such nature as to deceive the public as to the geographical origin of the goods or services. For instance, a trademark which falsely indicates that goods originate from a geographical area with a reputation for producing those goods would be refused registration.

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.

Protection for Irish whiskey and Irish cream liqueur is provided under EU Spirits Regulation No. 1576/89. While a number of applications for protection of certain Irish foodstuffs with geographic indications are under review by the Commission, no Irish foodstuffs or products are as yet protected under Regulation EEC 2081/92 for the protection of designation of origin and geographical indications for agricultural products and foodstuffs.

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.

Yes, a higher level of protection is also provided to other agricultural products and foodstuffs under Council Regulation EEC 2081/92 (see Article 13).

B. DEFINITION AND CRITERIA FOR RECOGNITION

8. How are geographical indications defined?

Under EC Regulation No. 3378/94 a "geographical designation" is defined as "any indication identifying a product as originating in the territory of a third country which is a Member of the WTO or in a region or locality of that territory where a quality, reputation or other specific characteristic of that product can essentially be attributed to that geographical origin."

While neither the EU wine nor spirits Regulations define geographical indications *per se*, they have been amended by Regulation No. 3378/94 to take account of our TRIPS obligations.

Under foodstuffs Regulation No. 2081/92 Article 2.2 a "geographical indication" is defined as "the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff originating in that region, specific place or country and which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area". That same Article defines a "designation of origin" as "the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or foodstuff originating in that region, specific place or country and the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area".

9. Would such a definition comprise geographical indications identifying products of a certain quality or reputation which are indirectly linked to a specific region?

No.

10. In determining whether recognition should be given a geographical indication, what criteria are considered?

Under foodstuffs Regulation 2081/92, PDO registration is open to products bearing the name of a particular geographical area and which are produced, processed and prepared within that area. They must also have features and characteristics which must be due to that particular geographical area. PGI registration is open to products bearing the name of a particular geographical area and which are produced or processed or prepared within that geographical area and have a reputation, features or certain qualities attributable to that area. Most foods intended for human consumption may be eligible for registration including cheese, meat, dairy and fish products, fruit and vegetables, beer, beverages made from plant extracts, bread, pastries, cakes, biscuits, confectionery, natural mineral and spring waters.

No specific criteria are listed in wines or spirits legislation.

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?

The PDO Regulations provide that the human factor be taken into account in assessing the applications for protection.

12. Are there any other intellectual property rights involved, such as patents for example?

No.

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?

Under PDO and PGI legislation the geographical area is defined in the application, in particular by the interested 'group' defined pursuant to Article 5 of Council Regulation 2081/92. Under wines and spirits legislation each member State approves the region subject to the agreement of the Commission and the Agriculture Council.

14. Does your legislation contain criteria for homonymous geographical indications for wines?

Insofar as this, national legislation reflects the EU position. There is no other national legislation.

15. Does your national legislation provide for recognition and protection of geographical indications or appellations of origin of foreign countries?

Yes, under the terms of the statutory instruments which transpose our TRIPS obligations.

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.

The Statutory Instruments provide for protection if the geographical indication is protected in the country of origin only. In addition, EC Directives on labelling and advertising always apply independently of the recognition of a geographical indication in the country of origin.

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?

Applications for PDO/PGI registration can be put forward by groups of producers and individuals may also apply under certain conditions. Producers who are not part of the original applicant group and who can show that their product conforms fully with the registered specifications may also use a registered name.

Under wines and spirits legislation the Department of Agriculture and Food makes the application.

18. What are the competent authorities where the protection of a geographical indication can be obtained?

Department of Agriculture and Food for foods and agricultural products initially and all applications are examined by the EU Commission and other member States. The Department is also responsible for wines and spirits protection.

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?

The procedure for PDO/PGI recognition must be based on the initiative of the entity or person (group or individual in certain cases). Protection of wines and spirits may and has taken place ex-officio.

20. What, if any, fees are involved in the application and maintenance of rights in a geographical indication?

The fee for registration of a trademark is £200.00. The renewal fee after 10 years is £200.00.

21. If criteria must be set out in an application for recognition of a geographical indication, are those criteria purely geographic in nature?

Criteria for PDO/PGI registration are not solely geographic in nature.

22. What other criteria, if any, must be set out in an application for recognition of a geographical indication?

Under PDO/PGI Regulations a product must comply with a specification if it is to benefit from a designation. The specification includes the name of the product; a description of the product including raw materials; organoleptic characteristics; the definition of the geographical area; evidence that the product originates in that area; description of methods of production etc.

As Irish whiskey is protected under the Irish Whiskey Act and the EU Spirits Regulation 1576/89, all whiskey produced in Ireland must comply with the whiskey definition of that Regulation. Similarly Irish cream liqueur is protected as a geographical indication and liqueur is defined in the Regulation. Wines availing of such designations must comply with the provisions of Regulation 822/87 as amended.

23. What information must be supplied in an application for rights in a geographical indication?

PDO/PGI applications must specify, *inter alia*, the product name, applicant details, names and addresses of group members, a definition of the geographical area, whether the product is produced, prepared or processed in the area, raw materials used, their sources, a description of how the main characteristics are linked to the geographical area and influenced by its environment, whether the product is protected by national or EU certification schemes, the nominated inspection body. See question 22 above.

24. Must the goods or services with respect to which a geographical indication is claimed be set out?

Yes, the product category must be set out in PDO/PGI applications.

25. What mechanisms are provided to oppose the recognition of a geographical indication? How is an investigation conducted after such a complaint?

PDO/PGI legislation provides a formal system of review and complaint under Article 7 of Regulation 2081/92. Information on applications is published in the Official Journal of the European Communities and other member States may seek information on applications or object under a formal system of review/complaint.

26. Who can oppose the recognition of a geographical indication?

Under PDO/PGI Regulations any legitimately concerned natural or legal person may object to a proposed registration.

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?

As an EU member Ireland recognizes all products registered as PDO/PGI from other EU member States.

D. MAINTENANCE

28. How long does recognition for a geographical indication continue?

There is no time-limit set in PDO/PGI legislation nor in wine and spirit legislation.

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.

Not applicable.

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

There is no requirement within the PDO/PGI Regulations or the Wine and Spirit Regulations for use of designation to enable it to be maintained.

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

No.

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

Products which are covered by PDO/PGI registration are subject to inspection by a nominated body to ensure adherence to the specification.

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

The Department of Agriculture and Food in conjunction with the Revenue Commissioners monitors compliance in the wine and spirits sector at production, warehousing and retailing level.

We have yet to have any product registered under the PDO/PGI Regulations, and monitoring in that area will depend on the product registered.

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.

PDO/PGI Regulations allow such review by a member State under Article 11 of Regulation 2081/92.

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?

PDO/PGI legislation can be forfeited based on the initiative of an entity or person, not ex-officio.

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?

Under PDO/PGI rules any producers who is not part of the original applicant group and who can show that their product conforms with a registered specification may use the registered name.

For wines and spirits any product conforming to a geographical indication may use the name.

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?

The entity that obtained the recognition under PDO/PGI legislation.

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?

There are no fees involved for wines, spirits or foodstuffs.

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

The competent authorities may prosecute in the event of breach of EU Regulations in the wine/spirit/foodstuffs sector.

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?

There is no time-limit on the use or non-use of a registered PDO/PGI as long as the product continues to meet the specifications.

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

The Trade Marks Act 1996 and Trade Mark Rules 1996 provide procedures for making oppositions against trademark applications and for the removal of registered trademarks.

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?

There is no provision in PDO/PGI or wine or spirits legislation for licensing of geographical indications. However, for other products than wines and spirits, it is interpreted under Regulation EEC 2081/92, that licences are allowed (within imposed conditions) in favour of producers who are not established in the area in question for stages other than production or transformation.

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

The EU legislation applies.

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?

See reply to question 46.

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?

See reply to question 46.

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

Article 14 of Regulation 2081/92 deals with PDO/PGI – trademark conflict and states that "where a designation of origin or geographical indication is registered in accordance with this

Regulation, the application or registration of a trademark corresponding to the situation referred to in Article 13 and relating to the same type of product shall be refused, provided that the application for registration of the trademark was submitted after the date of the publication provided for in Article 6(2).

"Trademarks registered in breach of the first subparagraph shall be declared invalid. This paragraph shall also apply where the application for registration of a trademark was lodged before the date of publication of the application for registration provided for in Article 6(2), provided that that publication occurred before the trademark was registered.

"With due regard for Community law, use of a trademark corresponding to one of the situations referred to in Article 13 which was registered in good faith before the date on which application for registration of a designation of origin or geographical indication was lodged may continue notwithstanding the registration of a designation of origin or geographical indication, where there are no grounds for invalidity or revocation of the trademark as provided respectively by Article 3(1)(c) and (g) and Article 12(2)(B) of First Council Directive 89/104/EEC to approximate the laws of the member States relating to trademarks.

"A designation of origin or geographical indication shall not be registered where, in the light of a trademark's reputation and renown and the length of time it has been used, registration is liable to mislead the consumer as to the true identity of the product."

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.

Enforcement is by way of statutory instrument for PDO/PGI and for wines and spirits legislation. These have already been notified to the WTO Secretariat.

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

Authorized officers appointed by the Minister under relevant statutory instruments.

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?

See the answers to questions 47 and 48 above. Civil courts.

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

For PDO/PGI, notifications of applications are published throughout the EU in the Official Journal of the European Union. Wines and spirits so protected are published in the Regulations and published in the Official Journal also.

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.

See previous answers.

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.

Not bilaterally.

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

None.

IV. REPLIES TO QUESTIONS IN DOCUMENT IP/C/13/ADD.1

A. GENERAL (SECTION A OF DOCUMENT IP/C/13/ADD.1)

1. Does your economy's industrial property law and/or related law prevent the use of geographical indications identifying wines or spirits against products not originating in the place indicated by the geographical indication, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like?

EU wines and spirits legislation prevent such misuse of geographical indications and have been transposed into national law by means of statutory instrument. Similarly, PDO/PGI legislation prevents such misuse of terms for foodstuffs.

B. DEFINITION AND CRITERIA FOR RECOGNITION (SECTION B OF DOCUMENT IP/C/13/ADD.1)

2. Is there a clear distinction among the terms "geographical indications", "appellations of origin" and "indications of source" in your economy's industrial property law and/or related law, or are there any substantive criteria to distinguish these terms?

See reply to question 3 below.

3. Does your legislation contain criteria for homonymous geographical indications for wines and spirits?

There is a clear distinction between protected designations of origin and protected geographical indications in Regulation 2081/92. Existing wine and spirits legislation also provides for such distinctions and this legislation is directly applicable in all member States.

C. RELATIONSHIP TO TRADEMARKS (SECTION F OF DOCUMENT IP/C/13/ADD.1)

4. Does your economy's industrial property law and/or related law provide the refusal or invalidation of a trademark registration, which consists of or contains geographical indications identifying wines or spirits with respect to such wines or spirits not originating in the indicated territory?

National instruments cover enforcement of existing EU wine and spirits legislation in this area.

There is no provision for the registration of geographical indications under the Trade Marks Act 1996. However, Section 8(3) of that Act provides that a trademark shall not be registered if it is of such a nature as to deceive the public as to the geographical origin of the goods or services. For instance, a trademark which falsely indicates that goods originate from a geographical area with a reputation for producing those goods would be refused registration.

Responses from Luxembourg

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?

Geographical indications are recognized and protected by means of the registration procedure referred to in Article 5 of Council Regulation (EEC) No. 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (O.J.E.C No. L 208/1, 24 July 1992). This Regulation is directly applicable to Luxembourg and binding in all respects.

Geographical indications are also protected under:

- The Law of 2 July 1932 concerning the standardization of agricultural and horticultural products and the creation of a national trademark;
- the Law of 27 November 1986 (Article 17) regulating certain commercial practices and penalizing unfair competition, as amended by the Law of 14 May 1992 (Memorial A 1992, No. 35, p. 1119, coordinated text);
- the Law of 25 September 1953 having as its object the reorganization of the inspection of common foodstuffs, drinks and products (Memorial A 1953, No. 62, p. 1259), and the Grand-Ducal Regulation of 16 April 1992 (Article 15) concerning the labelling and presentation of foodstuffs and their advertising (Memorial A 1992, No. 27, p. 895);
- the Grand-Ducal Decree of 28 December 1936 concerning the protection of champagne;
- the Grand-Ducal Decree of 5 May 1927 regulating the import of port wine and Madeira;
- the Grand-Ducal Decree of 6 May 1937 amending the Law of 24 July 1909 on the regime of wines and similar drinks with a view to protecting the designation of origin "cognac".

2. Is there one single regime of protection of geographical indications for all products? If not, identify the different regimes.

Geographical indications are protected by two regimes at the Community level:

- (1) Foodstuffs and agricultural products: Council Regulation (EEC) No. 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs;
- (2) Products in the wine and spirit drinks sector: Council Regulation (EEC) No. 823/87 of 16 March 1987 laying down special provisions relating to quality wines produced in specified regions; Council Regulation (EEC) No. 1576/89 of 29 May 1989 laying down general rules on the definition, description and presentation of spirit drinks.

3. Do(es) the regime(s) of protection of geographical indications also extend to services?

No.

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.

Community law

1. Foodstuffs and agricultural products:

- Council Regulation (EEC) No. 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (O.J.E.C No. L 208/1, 24 July 1992);
- Commission Regulation (EEC) No. 2037/93 of 27 July 1993 laying down detailed rules of application of Council Regulation (EEC) No. 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (O.J.E.C. No. L 185/5, 28 July 1993);
- Council Regulation (EC) No. 535/97 of 17 March 1997 amending Council Regulation (EEC) No. 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (O.J.E.C No. L 83/3, 25 March 1997);
- Commission Regulation (EC) No. 1428/97 of 23 July 1997 amending Commission Regulation (EEC) No. 2037/93 laying down detailed rules of application of Council Regulation (EEC) No. 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJEC No. L 196/39, 24 July 1997);
- Several dozen Commission regulations relating to the inclusion of certain names in the "Register of protected designations of origin and protected geographical indications" envisaged in Council Regulation (EEC) No. 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

2. Products in the wine and spirit drinks sector:

- Council Regulation (EEC) No. 822/87 of 16 March 1987 on the common organization of the market in wine (O.J.E.C. No. L 84/1, 27 March 1987);
- Council Regulation (EC) No. 2087/97 of 20 October 1997 amending Council Regulation (EEC) No. 822/87 of 16 March 1987 on the common organization of the market in wine (O.J.E.C. No. L 292/1, 25 October 1997);
- Council Regulation (EEC) No. 823/87 of 16 March 1987 laying down special provisions relating to quality wines produced in specified regions (O.J.E.C. No. L 84/59, 27 March 1987);

- Council Regulation (EEC) No. 4252/88 of 21 December 1988 on the preparation and marketing of liqueur wines produced in the Community (O.J.E.C. No. L 373/59, 31 December 1988);
- Council Regulation (EEC) No. 1576/89 of 29 May 1989 laying down general rules on the definition, description and presentation of spirit drinks (O.J.E.C. No. L 160/1, 12 June 1989);
- Council Regulation (EEC) No. 2392/89 of 24 July 1989 laying down general rules for the description and presentation of wines and grape musts (O.J.E.C. No. L 232, 9 August 1989);
- Regulation (EC) No. 3378/94 of the European Parliament and of the Council of 22 December 1994 amending Regulation (EEC) No. 1576/89 laying down general rules on the definition, description and presentation of spirit drinks and Regulation (EEC) No. 1601/91 laying down general rules on the definition, description and presentation of aromatized wines, aromatized wine-based drinks and aromatized wine-product cocktails following the Uruguay Round of the multilateral trade organisations (O.J.E.C. No. L 366/1, 31 December 1994);
- Council Regulation (EEC) No. 1601/91 of 10 June 1991 laying down general rules on the definition, description and presentation of aromatized wines, aromatized wine-based drinks and aromatized wine-product cocktails (O.J.E.C. No. L 149/1, 14 June 1991).

Domestic law

1. Foodstuffs and agricultural products:

- The Law of 2 July 1932 concerning the standardization of agricultural and horticultural products and the creation of a national trademark;
- the Law of 27 November 1986 (Article 17) regulating certain commercial practices and penalizing unfair competition, as amended by the Law of 14 May 1992 (Memorial A 1992, No. 35, p. 1119, coordinated text);
- the Law of 25 September 1953 having as its object the reorganization of the inspection of common foodstuffs, drinks and products (Memorial A 1953, No. 62, p. 1259), and the Grand-Ducal Regulation of 16 April 1992 (Article 15) concerning the labelling and presentation of foodstuffs and their advertising (Memorial A 1992, No. 27, p. 895).

2. Products in the wine and spirit drinks sector:

- The Grand-Ducal Regulation of 19 November 1974 establishing the penal sanctions for violations of the regulations of the European Communities with regard to wine (Memorial A 1974 p. 1706), as amended by the Law of 19 November 1975 (Memorial 1975 p. 1558).

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.

1. Foodstuffs and agricultural products:

The following four designations appear in the Annex to Commission Regulation (EC) No. 1107/96 of 12 June 1996:

- Viande de porc marque nationale grand-duché de Luxembourg (PGI)
- Salaisons fumées marque nationale grand-duché de Luxembourg (PGI)
- Miel luxembourgeois de marque nationale (PDO)
- Beurre rose de marque nationale grand-duché de Luxembourg (PDO)

The domestic regulations relating to these designations are:

- Regulation of the Government in Council of 3 July 1970 establishing a *national trademark for Luxembourg butter*;
- Regulation of the Government in Council of 3 July 1973 establishing a *national trademark for Luxembourg honey*;
- Regulation of the Government in Council of 9 June 1983 establishing a *national trademark for pork* and establishing the conditions for assigning this trademark (Memorial A 42 of 28 June 1989), as amended by the Regulation of the Government in Council of 25 October 1991 (Memorial A 78 of 26 November 1991); Ministerial Regulation of 12 June 1989 laying down detailed rules of application (Memorial A 42 of 28 June 1989), as amended by several ministerial regulations (Memorial A 78 of 26 October 1992, Memorial A 80 of 23 October 1992, Memorial A 51 of 8 August 1996);
- Regulation of the Government in Council of 9 February 1990 establishing a *national trademark for smoked salted meats* and establishing the conditions for assigning this trademark (Memorial A 13 of 15 March 1990), as amended by the Regulation of the Government in Council of 3 June 1994 (Memorial A 54 of 30 June 1994); Ministerial Regulation of 7 March 1990 laying down detailed rules of application (Memorial A 16 of 5 April 1990).

2. Products in the wine and spirit drinks sector:

The designations protected under the above-mentioned Regulation (EEC) No. 1576/89 are:

- *eau-de-vie de pommes de marque nationale luxembourgeoise* (for apple spirit);
- *eau-de-vie de poires de marque nationale luxembourgeoise* (for pear spirit);
- *eau-de-vie de kirsch de marque nationale luxembourgeoise* (for kirsch spirit);
- *eau-de-vie de quetsch de marque nationale luxembourgeoise* (for plum spirit);
- *eau-de-vie de mirabelle de marque nationale luxembourgeoise* (for mirabelle spirit);

- *eau-de-vie de prunelles de marque nationale luxembourgeoise* (for sloe spirit);
- *eau-de-vie de marc de marque nationale luxembourgeoise* (for grape marc spirit);
- *eau-de-vie de seigle de marque nationale luxembourgeoise* (for rye spirit).

The designations protected under the above-mentioned Regulation (EEC) No. 823/97 are:

- *vins mousseux de marque nationale luxembourgeoise* (for sparkling wines);
- *vins de marque nationale luxembourgeoise* (wine);
- *Crémant de Luxembourg de marque nationale luxembourgeoise*.

The domestic regulations relating to these designations are:

- Regulation of the Government in Council of 21 June 1985 establishing a *national trademark for natural spirits* (Memorial A 44 of 31 July 1985);
- Regulation of the Government in Council of 18 March 1988 establishing a *national trademark for sparkling wines* (Memorial A 1988 p. 190) as amended by the Regulation of 25 October 1991 (Memorial A 1991 p. 1457);
- Regulation of the Government in Council of 4 January 1991 relating to the designation *Crémant de Luxembourg* (Memorial A 1991 p. 34) as amended by the Regulations of 25 October 1991 (Memorial A 1991 p. 1457) and of 18 October 1996 (Memorial A of 7 November 1996 p. 225);
- Grand-Ducal Regulation of 13 November 1998 establishing rules for the *national trademark for wine* and establishing the criteria for assigning this trademark (Memorial A 98 of 26 November 1998).

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.

This level of protection is provided for all the products referred to in the above-mentioned Regulation (EEC) No. 2081/92.

B. DEFINITION AND CRITERIA FOR RECOGNITION

8. How are geographical indications defined?

The designations of origin and geographical indications are defined respectively in Article 2, § 2, (a) and (b) of Regulation (EEC) No. 2081/92.

9. Would such a definition comprise geographical indications identifying products of a certain quality or reputation which are indirectly linked to a specific region?

No. Indirect indication of origin is not protected by the Community law on protected geographical designations.

However, Article 2, § 4 of Regulation (EEC) No. 2081/92 states that "certain geographical designations shall be treated as designations of origin where the raw materials of the products concerned come from a geographical area larger than or different from the processing area, provided that:

- The production area of the raw materials is limited;
- special conditions for the production of the raw materials exist; and
- there are inspection arrangements to ensure that those conditions are adhered to".

The designations in question may be or have already been recognized as designations of origin with national protection by the member State concerned, or, if no such scheme exists, have a proven, traditional character and an exceptional reputation and renown (Article 2, § 6).

10. In determining whether recognition should be given a geographical indication, what criteria are considered?

The following four criteria have been established by Community law: origin, typicality, quality and reputation. The combination of these criteria differs according to whether a geographical indication or a designation of origin is involved (Article 2, § 2 of Regulation (EEC) No. 2081/92).

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?

Yes. The geographical environment referred to includes natural factors, but also human factors.

12. Are there any other intellectual property rights involved, such as patents for example?

The production, processing and preparation of products whose geographical indication is protected employ methods which help to produce the quality, typicality and reputation of the products in question, or which are even only used in a specific geographical area. The use of these methods may, in certain cases, be obligatory in order to obtain protection under a PGI or a PDO. However, protection of a geographical indication or designation of origin registered in accordance with the relevant rules does not extend, by itself, to the techniques and procedures used for the manufacture of the products in question.

In addition, Article 14, § 3 of Regulation (EEC) No. 2081/92 stipulates that "a designation of origin or geographical indication shall not be registered where, in the light of the trademark's reputation and renown and the length of time it has been used, registration is liable to mislead the consumer as to the true identity of the product".

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?

Under the terms of Article 4, § 1 of the aforementioned Regulation No. 2081/92, an agricultural product or foodstuff must comply with a specification to be eligible to use a protected designation of origin or a protected geographical indication. Article 5, § 2 contains a non-exhaustive list of the elements included in such a specification.

The application for registration, which shall include the specification, shall be submitted either by a group of producers and/or processors working with the same agricultural product or

foodstuff or by a natural or legal person (Article 5, § 3). It shall be sent to the member State of the European Union in which the geographical area is located (Article 5, § 4). The member State shall check that the application is justified and shall forward the application, including the product specification, to the Commission, if it considers that it satisfies the requirements of Regulation (EEC) No. 2081/92 (Article 5, § 5, 1st paragraph).

14. Does your legislation contain criteria for homonymous geographical indications for wines?

See Article 29, §§ 1 and 3 of the above-mentioned Regulation (EEC) No. 2392/89.

15. Does your national legislation provide for recognition and protection of geographical indications or appellations of origin of foreign countries?

Council Regulation (EEC) No. 2081/92 states, in Article 12, that its provisions may apply, given compliance with certain conditions, to an agricultural product or foodstuff from a third country.

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.

Regulation (EEC) No. 2081/92 provides that names registered in conformity with the arrangements that it has established may be protected by national measures taken by the member States of the European Union, under certain conditions, for a period of five years from the date of publication of the Regulation (24 July 1992). After that period or in the absence of specific national measures, the Community law directly applicable prevails and all the geographical names registered under the Regulation are protected in the country of origin.

With regard to wine products, see Article 29, § 1 of Regulation (EEC) No. 2392/89.

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?

According to Article 5, § 1 of Regulation (EEC) No. 2081/92, the applicant must be either a group of producers and/or processors working with the same agricultural product or foodstuff or, subject to certain conditions to be laid down in accordance with the procedure provided for in Article 15 of the Regulation, a natural or legal person.

According to Article 5, § 2 of the same Regulation, a group or a natural or legal person may apply for registration only in respect of agricultural products or foodstuffs which it produces or obtains within the meaning of Article 2, § 2, (a) or (b) [definition of PDO and PGI].

In exceptional, duly substantiated cases applications for registration may also be submitted by a natural or legal person not complying with the definition given above [which is that contained in Article 5, § 1, 2nd paragraph] where the person concerned is the only producer existing in the geographical area defined at the time the application for registration is submitted [Article 1, § 1 of the above-mentioned Commission Regulation 2037/93 of 27 July 1993]. In that case, that person is considered to be a group in the meaning of Article 5 of Regulation (EEC) No. 2081/92.

18. What are the competent authorities where the protection of a geographical indication can be obtained?

The application for registration is transmitted to the European Community by the member State of the European Union to which it was sent so that compliance with the conditions of Regulation (EEC) No. 2081/92 may be checked and a decision taken.

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?

The regime for the protection of geographical indications instituted by Regulation (EEC) No. 2081/92 depends on voluntary action by the persons entitled to apply for registration.

20. What, if any, fees are involved in the application and maintenance of rights in a geographical indication?

No fees are involved in the application or 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?

No. Article 4, § 2 of Regulation (EEC) No. 2081/92 provides that the specification that accompanies the application for registration "shall include at least:

- (a) The name of the agricultural product or foodstuff, including the designation of origin or the geographical indication;
- (b) a description of the agricultural product or foodstuff including the raw materials, if appropriate, and principal physical, chemical, microbiological and/or organoleptic characteristics of the product or the foodstuff;
- (c) the definition of the geographical area and, if appropriate, details indicating compliance with the requirements of Article 2(4) [geographical designations ... where the raw materials of the products concerned come from a geographical area larger than or different from the processing area];
- (d) evidence that the agricultural product or the foodstuff originates in the geographical area, within the meaning of Article 2(2)(a) or (b), whichever is applicable [definitions of PDO and PGI];
- (e) a description of the method of obtaining the agricultural product or foodstuff and, if appropriate, the authentic and unvarying local methods;
- (f) the details bearing out the link with the geographical environment or the geographical origin within the meaning of Article 2 (2)(a) or (b), whichever is applicable;
- (g) details of the inspection structure provided for in Article 10;
- (h) the specific labelling details relating to the indication PDO or PGI, whichever is applicable, or the equivalent traditional national indications;
- (i) any requirements laid down by Community and/or national provisions".

Articles 1 and 2 of Regulation (EEC) No. 823/87 provide that:

"Article 1: This Regulation lays down special provisions for quality wines produced in specified regions.

Quality wines psr shall mean wines which satisfy the provisions of this Regulation and the national rules adopted pursuant thereto.

Article 2: The provisions referred to in the first paragraph of Article 1 shall, taking into account the traditional conditions of production insofar as these are not such as to prejudice the policy of encouraging quality production and the creation of a single market, be based on the following factors:

- (a) Demarcation of the area of production;
- (b) vine varieties;
- (c) cultivation methods;
- (d) wine-making methods;
- (e) minimum natural alcoholic strength by volume;
- (f) yield per hectare;
- (g) analysis and assessment of organoleptic characteristics.

In addition to the factors listed in paragraph 1 and taking into account authentic and traditional practices, member States may determine such other conditions of production and characteristics as shall be obligatory for quality wines psr".

22. What other criteria, if any, must be set out on an application for recognition of a geographical indication?

See the reply to question 21.

23. What information must be supplied in an application for rights in a geographical indication?

See the reply to question 21.

24. Must the goods or services with respect to which a geographical indication is claimed be set out?

Yes. (N.B. services may not bear a protected geographical indication.)

25. What mechanisms are provided to oppose the recognition of a geographical indication? How is an investigation conducted after such a complaint?

Under the terms of Article 7, § 1 of Regulation (EEC) No. 2081/92, any member State of the European Union may object to the registration of an indication within six months of the date of publication of the application for registration in the Official Journal of the European Communities.

Any legitimately concerned natural or legal person may object to the proposed registration by sending a duly substantiated statement to the competent authority of the member State in which he resides or is established (Article 7, § 3). The competent authority shall take the necessary measures to consider these comments or objections within the deadlines laid down.

A statement of objection shall be admissible only if it:

- Either shows non-compliance with the conditions referred to in Article 2 of Regulation (EEC) No. 2081/92;
- or shows that the proposed registration of a name would jeopardize the existence of an entirely or partly identical name or trademark or the existence of products which have been legally on the market for at least five years preceding the date of publication of the application for registration;
- or indicate the features which demonstrate that the name whose registration is applied for is generic in nature (Article 7, § 4).

Where an objection is admissible, the European Commission shall ask the member States concerned to seek agreement among themselves in accordance with their internal procedures within three months.

If agreement is reached, the member States in question shall communicate to the Commission all the factors which made agreement possible together with the applicant's opinion and that of the objector. Where there has been no change to the information contained in the application for registration, the Commission shall proceed to publish this application. If there has been a change, it shall again initiate the procedure allowing, if applicable, for an objection to be made.

26. Who can oppose the recognition of a geographical indication?

See the reply to question 25.

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?

The normal procedure is followed subject, however, to the application of Article 12 of the aforesaid Regulation (EEC) No. 2081/92.

D. MAINTENANCE

28. How long does recognition for a geographical indication continue?

The geographical indication (PDO or PGI) is protected as long as the reputation attached to the products and foodstuffs concerned is justified, that is to say, as long as the conditions of the specification established are respected by the producers and processors. The structures of inspection established by the members of the European Union check compliance with the specification.

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.

There is no renewal or reaffirmation of the application for registration.

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

Regulation (EEC) No. 2081/92 contains no provision of this kind.

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

Regulation (EEC) No. 2081/92 contains no provision of this kind.

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

Compliance with the conditions for producing national products benefiting from these indications is monitored by specific inspection commissions made up of officials, professionals and consumers. The chairman is always an official. If necessary, the inspection commission may propose to the Minister of Agriculture, as the competent authority, that the right to use the trademark should be temporarily withdrawn from a producer.

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

Article 10, § 3 of Regulation (EEC) No. 2081/92 establishes certain general rules concerning, firstly, the guarantees of objectivity and impartiality of the inspection authorities and/or private bodies and, secondly, the permanent availability of trained staff and resources necessary to carry out inspection of agricultural products and foodstuffs bearing a protected name.

Regulation (EEC) No.2081/92 provides that if a designated inspection authority and/or private body in a member State establishes that an agricultural product or foodstuff bearing a protected name of origin in that member State does not meet the criteria of the specification, they shall take the steps necessary to ensure that this Regulation is complied with (Article 10, § 4).

Under domestic law the examination and inspection powers of officials are governed by Articles 5 to 7 of the Law of 25 September 1953 having as its object the reorganization of the inspection of common foodstuffs, drinks and products (Memorial A 1953 p.1259). Such officials have the power to carry out visits, even during the night if there are serious indications giving rise to a presumption of fraud, to make all the necessary checks, to require the production of all the commercial documents necessary for their examinations and inspections, to take samples and to seize the objects. If necessary they may transmit a complaint to the Public Prosecutor.

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.

Specific inspection commissions check compliance with the conditions for producing national products. In the event of evidence being found of an abuse of the trademark, the inspection commission informs the Minister of Agriculture, who may, under the terms of Article 5 of the Law of 2 July 1932 concerning the standardization of agricultural and horticultural products and the creation of a national trademark (Memorial 1932 p. 461), withdraw from a producer the right to use the trademark.

In addition, the Law of 27 September 1986 regulating certain commercial practices and penalizing unfair competition, as amended by the Law of 14 May 1992 (Memorial 1992, p.1119) provides in Article 21 that the judge presiding over the chamber of the district court sitting in

commercial matters may, at the request of any person, a professional group or a consumer association represented on the price commission, order the termination of acts of unfair competition (for example, false indications likely to mislead the buyer; leading people to believe in an inaccurate origin or provenance of the product, etc.). The action is brought and judged on the basis of a summary procedure. The judge may order the decision to be posted up and may also order its publication, in all or in part, at the expense of the offender.

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?

The procedure which leads to the forfeiture of a right to a protected geographical name is initiated by a member State. Article 11 of Regulation (EEC) No. 2081/92 provides that:

- "1. Any member State may submit that a condition laid down in the product specification of an agricultural product or foodstuff covered by a protected name has not been met.
2. The member State referred to in paragraph 1 shall make its submission to the member State concerned. The member State concerned shall examine the complaint and inform the other Member State of its findings and of any measures taken.
3. In the event of repeated irregularities and the failure of the member States concerned to come to an agreement, a duly substantiated application must be sent to the Commission.
4. The Commission shall examine the application by consulting the member States concerned. Where appropriate, having consulted the committee referred to in Article 15, the Commission shall take the necessary steps. These may include cancellation of the registration."

D. 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 its use is permitted?

Any producer or processor who meets the conditions laid down in the specification may use the geographical indication after it has been recognized and included on the Register of protected designations of origin and protected geographical indications kept by the European Commission.

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?

Under the terms of Regulation (EEC) No.2081/92 any producer established within the specified area who meets the conditions laid down by the specification has the right to use the protected geographical indication.

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?

No.

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

See the reply to question 35.

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?

See the reply to question 30.

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

See the reply to question 30.

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

No.

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

See the provisions of paragraphs 2 and 4 of Article 13 of Regulation (EEC) No. 2081/92.

E. 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?

Article 14, § 1 of Regulation (EEC) No. 2081/92 provides that:

"Where a designation of origin or geographical indication is registered in accordance with this Regulation, the application for registration of a trademark corresponding to one of the situations referred to in Article 13 [content of the protection accorded] and relating to the same type of product shall be refused, provided that the application for registration of the trademark was submitted after the date of the publication provided for in Article 2(6) [publication in the Official Journal of the European Communities].

Trademarks registered in breach of the first subparagraph shall be declared invalid.

This paragraph shall also apply where the application for registration of the trademark was lodged before the date of publication of the application for registration provided for in Article 6(2), provided that that publication occurred before the trademark was registered".

Article 14, § 2 of Regulation (EEC) No. 2081/92 provides that:

"With due regard for Community law, use of a trademark corresponding to one of the situations referred to in Article 13 [i.e. which infringes a protected name] which was registered in good faith before the date on which application for registration of a designation of origin or geographical indication was lodged may continue notwithstanding the registration of a designation of origin or geographical indication, where there are no grounds for invalidity or revocation of the trademark as provided respectively by Article 3(1)(c) and (g) and Article 12(2)(b) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the member States relating to trademarks".

With regard to wines and grape musts, see Article 40, § 2 and 3 of the above-mentioned Regulation (EEC) No. 2392/89.

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?

Article 14, § 3 of Regulation (EEC) No. 2081/92 provides that:

"A designation of origin or geographical indication shall not be registered where, in the light of a trademark's reputation and renown and the length of time it has been used, registration is liable to mislead the consumer as to the true identity of the product".

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

See the reply to question 44.

F. ENFORCEMENT

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

See the replies to questions 17, 34 and 44. It is for the member States themselves to adopt the necessary measures to ensure compliance with the provisions of Regulation (EEC) No. 2081/92.

This same obligation applies with regard to wine products: Article 16 of Regulation (EEC) No. 823/87 and Articles 72, § 4, 72 *bis* and 79 of Regulation (EEC) No. 822/87.

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

See the reply to question 17.

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?

See the reply to question 34.

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

The public is informed of the protection of a geographical indication by means of its publication in the Official Journal of the European Communities (Article 6 § 4 of Regulation (EEC) No. 2081/92).

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.

Yes. See the replies to questions 33 and 34.

G. 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.

The Grand Duchy of Luxembourg is a member of the European Union and, consequently, applies the Community legislation relating to geographical indications and designations of origin.

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

None.
