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

Original: French

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

Reply to Checklist of Questions<sup>1</sup>

Addendum

ROMANIA

**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?**

Protection for geographical indications is provided within the territory of Romania under the Law on Trademarks and Geographical Indications, No. 84/1998, published in *Monitorul Oficial al României* (Official Gazette of Romania) No. 161/23 April 1998 and the Government Decree No. 833/1998 approving the Regulations governing the application of Law No. 84/1998 published in *Monitorul Oficial al României* (Official Gazette of Romania) No. 455/27 November 1998.

The Law provides that geographical indications in respect of products shall be protected in Romania by means of their registration with the "*Oficiul de Stat pentru Invenții și Mărci - OSIM*" (State Office for Inventions and Trademarks).

Under the provisions of the Regulations governing the application of the Law, any decision of OSIM to register a geographical indication shall be published in the "*Buletinul Oficial de Proprietate Intelectuală*" - BOPI (Official Bulletin on Industrial Property Issues) within a period of two months; a notification of opposition to the registration may be submitted within a period of three months of the date of publication.

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

Yes.

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<sup>1</sup>Documents IP/C/13 and IP/C/13/Add.1.

**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.**

Law No. 84/1998 contains a series of regulations to which Articles 22.2 and 23.1 of the TRIPS Agreement relate i.e. Article 76, Article 83, paragraph 1(c), Article 84, Article 86 and Article 87.

Law No. 84/1998 on Trademarks and Geographical Indications was published in *Monitorul Oficial al României* (Official Gazette of Romania) No.161 of 23 April 1998, notified to the World Trade Organization pursuant to Article 63.2 of the TRIPS Agreement and circulated in document IP/N/1/ROM/I/1 of 27 April 1998, without prejudice to the provisions of Article 65 of the TRIPS Agreement.

**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 reply to Question No. 1 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.**

Examples of geographical indications protected as trademarks prior to the coming into force of Law No. 84/1998:

- "Dobrogea" for dairy products
- "Panciu" for spirits
- "Cotnari" for wines
- "Murfatlar" for spirits, particularly wines.

**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.**

Article 5(g) of Law No. 84/1998 transposes the provisions of Article 23.2 of the TRIPS Agreement in relation to any product.

**B. DEFINITION AND CRITERIA FOR RECOGNITION**

**8. How are geographical indications defined?**

Under Article 3(f) of Law No. 84/1998, the "geographical indication" is the name used to identify a product originating from a country, region or locality in a State in cases where a quality,

reputation or other characteristics which have been laid down may be essentially attributed to this geographical 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 definition of geographical indication conforms with Article 22.1 of the TRIPS Agreement.

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

The Regulations governing the application of the Law provide that a "geographical indication" shall be protected only if there is a close connection between the products to which the geographical indication refers and their place of origin from the point of view of the quality, reputation or other characteristics of the products.

**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?**

No. The definition of geographical indication conforms to Article 22.1 of the TRIPS Agreement.

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

Under the provisions of the Regulations governing the application of the law, "a notification of opposition to the registration of a geographical indication may be submitted if a person has a legitimate interest based on an industrial/intellectual property right previously protected with which the geographical indication would be in conflict".

**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 Article 69 of Law No. 84/1998, the Ministry of Agriculture and Food or, where relevant, the competent authority of the country of origin of the applicant, certifies the geographical area of production. The Regulations governing the application of the law provide that the applicant shall submit, at the same time as the application for registration of the geographical indication, a specification containing, *inter alia*, the boundaries of the geographical area of production; if the applicant is a foreign association of producers, the application shall be accompanied by a certified copy of the right to protection in the country of origin.

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

Under the Regulations governing the application of the Law, in the case of homonymous geographical indications for wines, protection shall be granted for every geographical indication on condition that the geographical indication in question is used in a traditional and constant manner, to describe and display a wine produced in the geographical zone to which it refers.

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

Yes, in accordance with Article 69 of Law No. 84/1998.

**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.**

In a case where the applicant is a foreign association of producers, registration of the geographical indication with OSIM is subject to certification of the elements laid down in Article 69 of Law No. 84/1998, by the competent authority of the country of origin of the applicant. If the registration of geographical indication was carried out without complying with the legal provisions, any interested person can make application to the Municipal Tribunal of Bucharest for the revocation of its registration, in accordance with Article 79, paragraph 1, of Law No. 84/1998.

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?**

Under Article 68, paragraph 1, of Law No. 84/1998, associations of producers who are engaged in a production activity within the geographical zone involving the products indicated in the application, are entitled to request the registration of a geographical indication by OSIM.

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

OSIM is the sole competent authority from which protection for 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?**

The procedures which lead to the recognition of protection for a geographical indication take place ex officio by OSIM, following the submission of an application by an interested person or entity.

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

Government Order No. 41 of 30 January 1998 relating to fees in the area of industrial property lays down the following fees:

- (a) Registration of an geographical indication: 2,400,000 lei or \$400;
- (b) issue of a certificate of registration of a geographical indication: 300,000 lei or \$50;
- (c) renewal of the period of use of a geographical indication: 2,400,000 lei or \$400.

**21/22/23/24. If criteria must be set out in an application for recognition of a geographical indication, are these criteria purely geographic in nature? What other criteria, if any, must be set out in an application for recognition of a geographical indication? What information must be supplied in an application for rights in a geographical indication? Must the goods or services with respect to which a geographical indication is claimed be set out?**

Under the Regulations governing the application of the law, an application for the registration of a geographical indication must, in principle, contain the following:

- The name of the association of producers requesting the registration of the geographical indication;
- the geographical indication which is the subject of the application;
- the type of products to which the geographical indication refers, an indication of the place of production and the limits of the geographical area of production.

The application should be accompanied by a specification containing the following:

- A description of the product and its principal characteristics;
- the boundaries of the geographical area of production;
- the elements which prove that the product originates in the geographical area of production;
- other particulars.

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

Under the Regulations governing the application of the law, a notification of opposition to the registration of a geographical indication may be submitted to OSIM within a period of three months of the publication of the application for registration of the geographical indication.

OSIM shall furnish a copy of the notification of opposition to the applicant requesting the registration of the geographical indication so that the applicant may submit his observations regarding the grounds of the opposition.

If the grounds of opposition are well-founded, OSIM will reject the application for registration of the geographical indication and publish the decision to reject the application in BOPI. Otherwise, OSIM will register the geographical indication in the National Register of Geographical Indications.

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

Opposition may be made by any interested person.

**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 procedure for the recognition in Romania of protection for geographical indications of foreign countries is the same as that laid down by the law for nationals. However, certification of the elements set out in Article 69 is carried out, in the case of nationals, by the Ministry of Agriculture and Food and, in the case of foreign applicants, by the competent authority of the country of origin.

Article 67, paragraph 2, of Law No. 84/1998, provides that geographical indications which have obtained or are going to acquire protection under bilateral or multilateral conventions concluded by Romania will not be subject to the registration procedure set up under the present law. Under paragraph 3 of the same article, a list of geographical indications in respect of which protection is recognized in Romania pursuant to these conventions shall be registered by OSIM in the National Register of Geographical Indications and will be published in BOPI.

D. MAINTENANCE

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

The period of protection of geographical indications runs from the date of submission of the application to OSIM and is unlimited. The right to use the geographical indication is granted to the applicant for a period of ten years, renewable indefinitely, provided that the conditions on which this right was obtained remain valid.

**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.**

Any person authorized to use a geographical indication may request renewal of the right to use the said indication.

The fee for the renewal of the period of use of a geographical indication is 2,400,000 lei or \$400, under Government Order No. 41/1998.

Under the Regulations governing the application of the law, an application for the renewal of the right to use the geographical indication should be accompanied by confirmation from the Ministry of Agriculture and Food regarding the preservation of the characteristics of the products and evidence of the payment of the renewal fee. The provision concerning the said confirmation refers to national applicants only.

**30/31. Must a geographical indication be used in order to maintain rights? If so, how is such use determined? Is there a specified limit for non-use before rights in a geographical indication cease and, if so, what is that limit?**

No.

**32/33/34/35. Who monitors the use of geographical indications to determine if the criteria identified in the application continue to be met? If a government entity is responsible for monitoring the use of geographical indications, what are its procedures for doing so? 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. 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?**

Under the Regulations governing the application of the law, the specification attached to the application for registration should contain "references to the procedures to monitor the quality of the products, as well as the competent body to effect this monitoring".

Pursuant to Article 77 of Law No. 84/1998, the Ministry of Agriculture and Food, ex officio or at the request of an interested person, may undertake to carry out monitoring of the quality of products marketed under the registered geographical indication.

Article 79, paragraph 2, of Law No. 84/1998 provides that, for failure to comply with the conditions relating to the quality and specific characteristics of products from the region to which the geographical indication refers, the Ministry of Agriculture and Food or any other interested person may ask the Municipal Tribunal of Bucharest to revoke the rights of parties which were authorized by OSIM to use the registered geographical indication.

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?**

The right of use is granted on the registration of the geographical indication; this implies compliance with the criteria laid down by the law to obtain recognition of the geographical indication; there are no additional criteria to be satisfied.

**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?**

OSIM is the body which authorizes the use of the geographical indication by persons registered on the list included with the application for registration of the 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?**

Authorization to use a geographical indication is granted at the time that the application for its registration is accepted. The registration fee is: 2,400,000 lei or \$400.

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

In the event of a dispute arising regarding use of a geographical indication, it is possible to initiate criminal proceedings, under Article 86 of Law No. 84/1998. The criminal proceedings are commenced following prior complaint by the injured party.

**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. Authorized users of a geographical indication are not obliged to use this geographical indication continually.

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

See reply to Question 40.

**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?**

The legislation currently in force does not require the grant of licences for geographical indications. Under Article 78 of Law No. 84/1998, "the right to use a geographical indication may not be transferred".

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

Law No. 84/1998 does not provide any specific provisions in relation to the application of Article 24.4 of the TRIPS Agreement.

However, the Regulations governing the application of Law No. 84/1998 provide, within the framework of the procedure for the registration of a geographical indication, for the possibility of the submission of a notification of opposition by any person who holds a previously protected industrial property right with which the said geographical indication would be in conflict. If the grounds of opposition are justified, OSIM will reject the application for registration of the geographical indication.

#### F. RELATIONSHIP TO TRADEMARKS

**44/45/46. 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? 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? What procedures are foreseen in case of a conflict of a geographical indication with a trademark?**

The provisions of Article 16.1, 16.2 and 16.3 of the TRIPS Agreement have been transformed into Article 35, paragraph 2, of Law No. 84/1998.

Under the provisions of the Regulations governing the application of the law, a notification of opposition to the registration of a geographical indication may be submitted by a person with a legitimate interest based on a previously protected industrial property right with which the geographical indication would be in conflict.



G. ENFORCEMENT

**47. How are rights in the geographical indications 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 provisions aimed at the enforcement of rights to geographical indications are contained in the following:

- Articles 76, 79 and 83-87 of Law No. 84/1998, published in the *Monitorul Oficial al României* (Official Gazette of Romania) No. 161 of 23 April 1998 and notified to the World Trade Organization (document IP/N/1/ROM/I/1 of 27 April 1998);
- Rules 43 and 44 of the Regulations governing the application of Law No. 84/1998, approved by Government Decree No. 833/1998, published in the *Monitorul Oficial al României* (Official Gazette of Romania) No. 455/27 November 1998 (which has just been notified to the World Trade Organization);
- Article 5 of Law No. 11 of 29 January 1991 on combating unfair competition, published in the *Monitorul Oficial al României* (Official Gazette of Romania) No. 24 of 30 January 1991 and notified to the World Trade Organization (document IP/N/1/ROM/I/Add.1 of 30 January 1998);
- Article 301 of the Penal Code, republished in the *Monitorul Oficial al României* (Official Gazette of Romania) No. 65 of 16 April 1997, notified to the World Trade Organization (document IP/N/1/ROM/I/Add.1 of 30 January 1998).

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

The party entitled to take action to enforce the rights to a geographical indication is, depending on the particular case, the Ministry of Agriculture and Food, any interested person or the injured party.

**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?**

Any civil action initiated to enforce a right to a geographical indication shall be submitted to the competent judicial authority, in accordance with the law.

The fees are those provided for in Law No. 146 on Legal Stamp Duties, published in the *Monitorul Oficial al României* (Official Gazette of Romania) No. 173 of 29 July 1997 (notified to the World Trade Organization).

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

Yes. In accordance with Article 72 of Law No. 84/1998, "OSIM shall publish the geographical indication in the BOPI within a period of two months of the date of the decision in favour of registration".

**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.**

Under Article 86 of Law No. 84/1998, any use of trademarks or geographical indications contrary to fair practice in industrial or commercial operations, aimed at misleading consumers, constitutes an act of unfair competition and is punishable by imprisonment for between one month and two years or by a fine of 15,000,000 lei.

Criminal proceedings commence following prior complaint by the injured party.

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.**

Yes. The Agreement between Romania and the European Community on the reciprocal protection and control of the denominations of wines. Pursuant to Article 67, paragraph 2, of Law No. 84/1998, protected indications, in accordance with this Agreement in Romania will not be subject to the registration procedure provided for by the law.

The list of geographical indications whose protection is recognized in Romania under bilateral or multilateral agreement will be registered by OSIM in the National Register of Geographical Indications and published in BOPI.

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

Romania has concluded commercial or economic cooperation agreements which contain provisions on "the reciprocal protection of intellectual property". These agreements have been notified to the World Trade Organization, document IP/N/4/ROM/1 of 18 September 1996.

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

GENERAL (SECTION A OF DOCUMENT IP/C/13)

**1. Does your country'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?**

Yes. Under Article 76, paragraph 2, of Law No. 84/1998, persons authorized by the State Office for Inventions and Trademarks to use a geographical indication for wines or spirits may prohibit the use of this indication by any other person for wines and spirits, which do not come from the region suggested by the relevant geographical indication, even where the true origin of the product is specifically mentioned or the geographical indication is used in translated form or accompanied by expressions such as: *kind*, *type*, or the like.

## RECOGNITION DEFINITIONS AND CRITERIA (SECTION B OF DOCUMENT IP/C/13)

**2/3. Is there a clear distinction among the terms "geographical indications", "appellations of origin" and "indications of source" in your country's industrial property law and/or related law, or are there any substantive criteria to distinguish these terms? Does your legislation contain criteria for homonymous geographical indications for wines and spirits?**

The legislation currently in force only contains the expression *geographical indication*, in accordance with Section 3: *Geographical indications* of the TRIPS Agreement.

Under the Regulations governing the application of the law, in the case of homonymous geographical indications for wine, protection will be granted for each geographical indication, on condition that the relevant geographical indication is used in a traditional and constant manner to describe a wine produced in the geographical region to which it refers.

## RELATIONSHIP TO TRADEMARKS (SECTION F OF DOCUMENT IP/C/13)

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

Yes. Under Article 5(h), of Law No. 84/1998, trademarks which consist of or contain a geographical indication identifying wines or spirits which do not originate in the place indicated are excluded from protection and will not be registered. Pursuant to Article 48(a) of Law No. 84/1998, any interested person may apply to the Bucharest Tribunal for the revocation of the trademark, if registration was made without compliance with Article 5(h) of the same law.

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