

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

Checklist of Questions<sup>1</sup>

Addendum

VENEZUELA

The present document represents the responses to the Checklist which the Secretariat has received from Venezuela, by means of a communication from its Permanent Mission dated 22 February 1999.

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**I. RESPONSES TO THE 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?**

The law of the Andean Community, created by the Cartagena Agreement, protects geographical indications<sup>2</sup> through the application of the rules laid down in Decision 344<sup>3</sup> - Common Provisions on Industrial Property.

In accordance with Article 131 of the above-mentioned Decision, "the use of appellations of origin by unauthorized persons shall be considered a sanctionable act of unfair competition". The Article also provides that "the right to the exclusive use of an appellation of origin shall originate with the declaration that the competent national office makes to that end".

Consequently, a declaration by the competent national office is necessary for the grant of protection and recognition of the appellation of origin.

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

<sup>2</sup> Decision 344 governs these as appellations of origin.

<sup>3</sup> In accordance with Chapter I of the Treaty Establishing the Court of Justice of the Andean Community, the Commission's decisions form part of the law of the Andean Community and hence are directly applicable in Member countries.

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

Yes, there is a single regime of protection and it is set forth in Chapter VII (Articles 129 to 142 inclusive) of Decision 344.

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

The Community provisions apply solely to goods.

**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.**

As mentioned in the previous answer, it is Chapter VII of Decision 344 – Common Provisions on Industrial Property. However, with regard to TRIPS Article 23, first paragraph, Decision 344 does not provide for specific treatment of specific products (in this case wines and spirits) but rather a general treatment for all goods.

**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.**

Does not apply.

**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.**

Does not apply.

**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.**

Protection of specific products is not provided for; protection of appellations of origin is of a general nature.

**B. DEFINITION AND CRITERIA FOR RECOGNITION**

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

Article 129 of Decision 344 states that "an appellation of origin shall be understood to be a geographical designation consisting of the name of a particular country, region or locality, or of a name which, without being that of a particular country, region or locality, refers to a specific geographical area, which name is used to designate a product originating therein the qualities or characteristics of which are exclusively or essentially due to the geographical environment in which it is produced, including both natural and human factors".

**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 appellation of origin in Decision 344 covers the definition of geographical indication contained in the TRIPS Agreement.

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

The criteria are that the qualities or characteristics of the product are due exclusively or essentially to the geographical environment in which it is produced: hence they take the appellation of the locality or region of their provenance.

**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?**

According to Article 129 of Decision 344, both natural and human factors are included in relation to the specific products that may enjoy protection because they come from a specified geographical environment.

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

No, but the protection and some of the procedures relating to appellations of origin follow the same principles as in the case of trademarks.

**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?**

The competent national office of each member country of the Andean Community.

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

No.

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

Article 142 of Decision 344 authorizes national offices to declare appellations of origin of other countries of the subregion protected. In the case of third countries, protection may be granted if the appellation of origin is protected in the third country and there is a written agreement or the latter country grants reciprocal treatment in that respect.

**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.**

This does not exist in Community law.

**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?**

Protection of an appellation of origin may be carried out ex officio or at the request of persons who can prove a legitimate interest, understood as being natural persons or legal entities directly engaged in the activity giving rise to the protection and carrying out such activity within the territory specified in the declaration. Protection may also be requested by local or state authorities interested in the protection of appellations of origin of their own areas of concern.<sup>4</sup>

It should also be noted that the authorization to use an appellation of origin declared protected by the competent national office may be applied for only by those directly engaged in the extraction, production or processing of the products identified by the appellation of origin and who conduct the said activity within the territory specified in the declaration.<sup>5</sup>

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

Only from the competent national office of each member country. In Venezuela the competent national office is the Autonomous Intellectual Property Service (SAPI) attached to the Ministry of Industry and Trade.

**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?**

Both possibilities exist, but requirements are laid down for the submission of applications for protection.

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

Article 145 of Decision 344 provides that "the competent national offices may introduce such fees as they consider necessary for the handling of the procedures referred to in this Decision".

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

No. It is also necessary to determine the product or products that will be identified by the requested protection, as well as their characteristics and the information required by the competent national office.<sup>6</sup>

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

Article 134 of Decision 344 lays down the following requirements for the application for declaration of protection:

- (a) Name, domicile, residence and nationality of the applicant or applicants, and legal interest;
- (b) the appellation of origin in respect of which the application is filed;

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<sup>4</sup> See Article 133 of Decision 344.

<sup>5</sup> See Article 137 of Decision 344.

<sup>6</sup> See Article 134(d) of Decision 344.

- (c) the geographical area within which the production, extraction or processing of the product to be identified by the appellation takes place, demarcated according to geographical features and political divisions;
- (d) a detailed description of the product or products that the appellation applied for will identify, together with the characteristics thereof;
- (e) any other information stipulated by the competent national office.

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

Article 137 of Decision 344 states that authorization to use an appellation of origin declared protected by the competent national office "shall be applied for before the said office by those persons who:

- (a) Are directly engaged in the extraction, production or processing of the products identified by the appellation of origin;
- (b) conduct the said activity within the territory specified in the declaration;
- (c) comply with other requirements imposed by competent national offices".

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

Yes, they must.

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

Article 135 of Decision 344 states that in this case the procedure is that followed in the case of registration of a mark, in other words, anyone with a legitimate interest may submit comments within 30 working days following publication of the application; thereafter, the competent national office analyses the comment, and if it finds it valid, notifies the applicant. The latter has 30 working days to submit a rebuttal, after which the decision on granting or refusing the protection has to be taken.

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

Any person having a legitimate interest in doing so.<sup>7</sup>

**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?**

Article 142 of Decision 344 empowers competent national offices to grant protection of appellations of other countries of the subregion where the application for such protection is filed by producers, extractors, manufacturers or craftsmen who have a legitimate interest or by the public authorities of those countries. In the case of other countries, protection may be granted where the appellation of origin is protected in that country and there is a written agreement with that country or the latter grants reciprocal treatment in that connection.

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<sup>7</sup> See Article 93 of Decision 344.

D. MAINTENANCE

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

The grant of an appellation of origin is indefinite in terms of time, but the entitlement for a producer to use it by means of an authorization has a duration of ten years, which may be renewed for equal periods.<sup>8</sup>

**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.**

See the reply to the previous question.

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

We do not have any such provision in Decision 344.

**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?**

The competent national office (Article 136).

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

Decision 344 does not have any provision in this regard.

**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.**

The competent national office may terminate it ex officio or at the request of an interested party to the competent national office, in accordance with the criteria laid down in Article 140.

**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?**

According to Article 140 of Decision 344, "the competent national office may, either ex officio or at the request of a party, invalidate the authorization to use a protected appellation of origin, after the parties have been heard, in it has been granted in contravention of this Decision".

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<sup>8</sup> See Articles 139 in conjunction with Article 99 of Decision 344.

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?**

Once an area has been declared an appellation of origin by the competent office, the interested party has to apply for authorization from the competent national office to use the appellation of origin. The office will assess the status of the producer, manufacturer or craftsman. Following authorization, the geographical indication may be used.

**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 responsible for the recognition.

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

Article 145 of Decision 344 provides that "the competent national offices may introduce such fees as they consider necessary for the handling of the procedures referred to in this Decision".

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

Decision 344 refers to the procedure in respect of marks.

**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 requirements are laid down for monitoring the use of an appellation of origin. The only requirement is that once the protection period has lapsed, the person who has the authorization must apply to renew it within six months, failing which the authorization expires.

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

This possibility is not provided for, but a party may apply for the authorization to use an appellation of origin to be cancelled if it has been granted in contravention of the Andean Decision, in which case the dispute has to be settled by the competent national office.

**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?**

Decision 344 does not provide for this possibility. All that is provided for is the authorization to use a protected appellation of origin.

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

Decision 344 does not contain any provision in this regard.

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?**

Decision 344 only provides that as regards procedures, duration of protection, authorization and renewal of authorization, the same criteria as are applicable for trademarks shall be followed.

**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?**

Decision 344 does not provide measures in this regard.

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

Decision 344 does not provide measures in this regard.

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.**

Rights relating to geographical indications are governed by Decision 344 – Common Provisions on Industrial Property. The legislation on marks for member countries of the Andean Community are also contained in Decision 344, which provides for the possibility of cancelling registration owing to inappropriate use of protected geographical indications as a mark (see previous reply).

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

Each member country through its competent national office.

**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?**

The competent national office of each country. The fees for applications to these offices depend on each country.<sup>9</sup> If an action is brought before the national courts and they have to take a decision relating to the provisions of the legal system of the Andean Community, they must refer the matter to the Court of Justice of the Cartagena Agreement for a ruling on the disputed matter, in what is called a pre-judicial interpretation.

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

For the declaration of protection of an appellation of origin to be granted, the application must be published once only (each country determines where, usually in its official journal), which enables possible interested parties to be aware of the procedure.

**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.**

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<sup>9</sup> See Article 145 of Decision 344.

Decision 344 does not provide for this; it is a matter for the domestic law of each country. Venezuelan law does not provide for criminal action under the 1995 Industrial Property Law.

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.**

Decision 344 contains the basic provisions to be applied by each of the member countries of the Andean Community in relation to appellations of origin. In addition, all the member countries are members of the World Intellectual Property Organization (WIPO) and have signed the TRIPS Agreement.

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

The member countries of the Andean Community are also members of the Paris Convention for the Protection of Industrial Property.

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

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

**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?**

Article 132(b) of Decision 344 establishes that those appellations of origin may not be declared such that: "... are liable to mislead the public as to the source, nature, manner of manufacture or characteristics or qualities of the products concerned".

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

**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?**

No. As mentioned in footnote 1, under Community law the concept of "geographical indication" is equivalent to that of "appellation of origin".

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

No, the provisions are general and apply to any product.

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

**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?**

Yes, Article 82 of Decision 344 states that those signs may not be registered as marks that:

- (i) Reproduce or imitate a protected appellation of origin, consist of a national or foreign geographical designation that is liable to be misleading in relation to the products or services to which it is applied or, in use, to mislead the public as to the origin, source, qualities or characteristics of the goods for which the marks are used". Accordingly, cancellation of registration of a mark may be applied for, ex officio or at a request of a party.
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