

**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>

*Responses from Bulgaria*

The present document represents the responses to the Checklist which the Secretariat has received from Bulgaria, by means of a communication from its Permanent Mission, dated 16 November 1998.

**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 Bulgarian laws do not provide for the protection of geographical indications within the sense of Article 22.1 of the TRIPS Agreement. In Bulgaria, being member of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, the Law on Trademarks and Industrial Designs provides for the protection of appellations of origin. Legal protection is granted through their registration at the Patent Office. The term "geographical indication" is not used in the Bulgarian Unfair Competition Law. The Law uses the term "origin". Article 33.1 of the Law provides for a prohibition of offering for sale or advertising of goods with a mark, packing or name, which mislead or lead into error with regard to the origin of the product.

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

The regime of protection of appellations of origin is the same for all products.

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

The regime of protection of appellations of origin concerns products only.

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

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.*

There are not any specific provisions of this kind in the Law on Trademarks and Industrial Designs.

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.*

The Law on Trademarks and Industrial Designs provides for legal protection of appellations of origin through their registration at the Patent Office.

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.*

There are 192 local appellations of origin registered, e.g. Bulgarian yoghurt, Traminer from Khan Kroum for wine, Merlou from Sakar for wine, etc.

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.*

The Law on Trademarks and Industrial Designs does not provide for a higher level of protection for wines and spirits compared to any other product.

B. DEFINITION AND CRITERIA FOR RECOGNITION

8. *How are geographical indications defined?*

The definition of appellation of origin is in compliance with that contained in the Lisbon Agreement. Under Article 38 of the Law on Trademarks and Industrial Designs an appellation of origin is the geographical name of the country, region or locality, which serves to designate the goods originating in that country, region or locality, whose characteristics or peculiarities are due exclusively or essentially to the geographical environment, including the natural factors or traditions of production.

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 appellations of origin under the Law on Trademarks and Industrial Designs does not comprise the reputation of the products as a criterion.

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

The criteria are: geographical environment, including natural factors and/or traditions of production; specific properties of the products due to the geographical environment; products shall be made in the indicated territory.

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?*

There is a human factor involved in the registration of appellations of origin, i.e. the traditions of production.

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

No other intellectual property rights are involved in the registration of appellations of origin.

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 geographic region or area shall be defined by the office whose activity covers the production of the respective goods.

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

Bulgarian laws do not contain criteria concerning homonymous appellations of origin.

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

Under the Law on Trademarks and Industrial Designs, appellations of origin registered in the country of origin may be applied for registration in Bulgaria too.

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.*

Foreign appellations of origin are registered in Bulgaria if only they have been registered in the country of origin (Article 39.3 of the Law on Trademarks and Industrial Designs).

#### 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?*

Any natural or legal person who carries out his production activity in the indicated locality shall be entitled to use the appellation of origin (file the application resp.), provided that the properties of the products he makes correspond to the specific features characterizing the appellation of origin.

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

Appellations of origin shall be registered at the Patent Office.

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?*

Appellations of origin are not registered ex officio; registration is carried out at the request of the person concerned.

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

There is a fee provided for the registration and publication in the Official Bulletin of the Patent Office (Tariff of Fees Collected by the Patent Office of the Republic of Bulgaria, State Gazette No. 53 of 4 July 1997).

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

The criteria are not purely geographic in nature; they comprise the human factor as well.

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

The criteria are: geographic environment, including natural conditions and/or traditions of production; specific properties of the products due to the geographic environment; products shall be made in the indicated territory.

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

An application must contain: data identifying the applicant; data concerning the subject of activity of the applicant; a list of the products the appellation of origin relates to; the appellation of origin; the country, region or locality where the products are made; the borders of the geographic region; specific properties or peculiarities of the products.

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

A list of the products covered by the application for registration of the appellation of origin must be given.

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

There are no such mechanisms provided.

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

Please, see the answer to question 25 above.

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 is the same.

D. MAINTENANCE

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

Protection of appellations of origin is not restricted in time.

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 are no such provisions (see the answer to question 28 above).

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

There is no provision requiring use of the appellation of origin in order to maintain its protection.

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 provision for such a requirement in the law (see the answer to question 30 above).

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

The institution whose activity the production of the respective goods relates to.

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

The Law on Trademarks and Industrial Designs contains no provisions concerning such procedures.

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.*

No (see the answer to question 30 above).

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?*

Registered Bulgarian appellations of origin are cancelled upon termination of the production of all users of the appellation of origin. Foreign appellations of origin are cancelled upon their cancellation in the country of origin.

#### 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?*

Any person who carries out production activity in the indicated locality and whose products possess the specific properties characterizing the appellation of origin may use that appellation of

origin after he is registered as a user thereof in the Register of Appellations of Origin kept by the Patent Office.

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 manner of use of an appellation of origin shall be determined by the parties entitled to use it (the users).

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?*

In order to acquire the right to use an appellation of origin, users must be registered in the Register of Appellations of Origin, subject to payment of fees for the registration and the publication in accordance with a tariff of fees endorsed by the Council of Ministers (Tariff of Fees Collected by the Patent Office of the Republic of Bulgaria, State Gazette No. 53 of 4 July 1997).

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

According to Article 51 of the Law on Trademarks and Industrial Designs disputes regarding use of appellations of origin are resolved by District courts.

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?*

Under the Law on Trademarks and Industrial Designs, there is no obligation for continuous use of appellations of origin in order to maintain the protection thereof.

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

There is no provision concerning disputes over continuity of use of appellations of origin.

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 allowing licensing of rights to use appellations of origin.

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

The Law on Trademarks and Industrial Designs does not contain such provisions.

#### 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?*

There are no provisions of this kind in the Law on Trademarks and Industrial Designs. The Law provides for a possibility to register a mark containing a registered appellation of origin

(Article 44). Such a mark may be registered if the applicant is registered as a user of the appellation of origin.

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?*

The Law on Trademarks and Industrial Designs does not contain such provisions.

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

Trademark registration shall be refused or cancelled, where there is a registered appellation of origin for identical or similar goods.

#### 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.*

Article 52 of the Law on Trademarks and Industrial Designs provides for the deprivation on behalf of the State of goods, imported or produced in Bulgaria and bearing a false appellation of origin.

Article 33 of the Law on the Protection of Competition prohibits the advertising or offering for sale of goods bearing a name which misleads or may lead into error as regards the origin of the goods.

Article 227 of the Penal Code provides for a penalty, i.e. imprisonment of up to 3 years or a fine of one million leva, for any person illegally using the appellation of origin of a third party for the purpose of unfair competition.

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

The right to enforce an appellation of origin belongs to all registered users.

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?*

Under Article 52 of the Law on Trademarks and Industrial Designs the deprivation on behalf of the State shall be carried out on the basis of a penal injunction issued by the President of the Patent Office. Under the Law on the Protection of Competition, the Competition Protection Committee is authorized to ascertain the fact of infringement and to impose property sanctions and penalties.

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

Appellations of origin shall be published in the Official Bulletin of the Patent Office following their 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.*

Where a registered appellation of origin is used, for the purpose of unfair competition, by a person who is not registered as a user, such an act shall be regarded as a crime. The procedures are stipulated in the Code on Penal Procedure.

#### 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.*

The Republic of Bulgaria is party to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. Chapter III "Appellations of Origin" of the Law on Trademarks and Industrial Designs is in compliance with that Agreement.

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

The Republic of Bulgaria is party to the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, and Article 52 of the Law on Trademarks and Industrial Designs is in compliance with the provisions of that Agreement.

## II. RESPONSES 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?*

The Law on Trademarks and Industrial Designs provides for appellations of origin to enjoy protection against incorrect use or counterfeit also in cases where the true origin of the products is indicated on the product itself, or where the appellation of origin is translated into a foreign language and the terms "kind", "type", "style", "imitation", etc. are added thereto. That prohibition concerns any products, not only wines or spirits.

### 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?*

Subject of protection under the Law on Trademarks and Industrial Designs are appellations of origin only.

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

The Law does not contain any provisions concerning homonymous geographical indications for wines and spirits. The Patent Office disposes of no information as to whether such provisions are contained in other specific laws.

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 contain geographical indications identifying wines or spirits with respect to such wines or spirits not originating in the indicated territory?*

According to Article 4 (i) of the Law on Trademarks and Industrial Designs provides for a trademark registration to be refused or cancelled, if the mark consists of or contains a geographic indication differing from the place of the true origin of the products.

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