

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

Checklist of Questions¹

Responses from Korea

Addendum

The present document represents the responses to the Checklist which the Secretariat has received from the Republic of Korea, by means of a communication from its Permanent Mission, dated 21 September 2000.

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?

Korea provides protection for geographical indications through both the measures mentioned above.

(i) In general, geographical indications are protected through the Unfair Competition Prevention and Trade Secret Protection Act, the Fair Labelling and Advertising Act, Trademark Act, and several other laws and regulations. Protection under these laws does not require any procedures for notification/registration.

(a) Unfair Competition Prevention and Trade Secret Protection Act

Articles 2(1)(iii) and (iv) of the Unfair Competition Prevention and Trade Secret Protection Act provide that the following acts fall into the ambit of the unfair competition acts:

- an act of causing confusion with another person's commercial facilities or activities by using marks identical with or similar to another person's name, trade name, emblem or any other mark which is widely known in Korea;

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

- an act of making a mark on goods, advertisements, trade documents communicated to the public or in communications, or selling, distributing, importing or exporting goods marked with such mark which would mislead the public into believing that the place of production, manufacturing or processing is different from the actual place of production, manufacturing or processing.

(b) Fair Labelling and Advertising Act

The Fair Labelling and Advertising Act enacted in July 1999 and enforced by the Korean Fair Trade Commission is not pursuant to the TRIPS Agreement. Nevertheless, it can indirectly have an effect of protecting geographical indications.

- Rather than to guarantee the protection of intellectual property rights (IPRs), the purpose of this Act is to prevent unfair labelling and advertising that may deceive or mislead consumers and to facilitate the provision of fair and useful information to consumers, thereby establishing a fair trade order and protecting consumers (Article 1 of the Fair Labelling and Advertising Act).
- However, geographical indications can be indirectly protected in the process of regulating undue geographical indications to protect consumers.
- Relevant Provisions:

"Article 3 - Prohibition of Unfair Labelling and Advertising

(1) Enterprises, etc. shall not post labels or advertisements as set forth in the following subparagraphs that may deceive or mislead consumers, thus impairing fair trade order, nor shall they force other enterprises to do so:

1. false or exaggerating labelling and advertising;
2. deceptive labelling and advertising;
3. unduly comparative labelling and advertising;
4. slanderous labelling and advertising."

- Notification on Types of and Criteria for Undue Labelling and Advertising.
 - Pursuant to the Fair Labelling and Advertising Act and its Enforcement Decree, the KFTC issued the notification specifying the types of and criteria for undue labelling and advertising.
 - Paragraph 10, Article II: In labelling or advertising the origin and manufacturer of the products supplied, any vague or false labelling and advertising that may mislead consumers shall be deemed as undue labelling and advertising.

(c) Trademark Act

When any trademark consists of or contains a geographical name, it may be rejected or invalidated, under one of these provisions:

- Article 6(1)(iv) of the Trademark Act aims to prevent any conspicuous geographical name from being registered as a trademark, the reason being that such a name lacks the distinctiveness needed to be registered as a trademark, and it would be unreasonable to grant an exclusive right to a specific person, which would result in giving an unexpected disadvantage to his competitors;
 - even when a geographical name is not conspicuous, the registration of a trademark may be refused or invalidated under Article 6(1)(iii) of the Act if the trademark solely consists of such a geographical name; and, finally,
 - even if a trademark does not consist solely of a conspicuous geographical name, it may be rejected or invalidated under Article 7(1)(xi) if it is liable to mislead or deceive consumers as to the quality of the goods.
- (ii) The geographical indications of agricultural and fisheries products and their processed products are protected through formal registration procedures according to the Agro-Fisheries Product Quality Management Act(1999). Protection under the Act requires recognition and registration, by the National Agricultural Products Quality Management Service, of the geographical indications of agricultural and fisheries products and their processed products.
- (iii) The strengthened protection of geographical indications for wines and spirits is provided in the Notice Concerning Liquor Labelling and the Trademark Act.
- Additional protection as provided for in Article 23 of the TRIPS Agreement is provided to wines and spirits in the Notice Concerning Liquor Labelling, an amendment to which took effect 14 June 2000. According to the amended Notice, even where the true origin of the goods is indicated or a geographical indication is used in translation or is accompanied by expressions such as "kind", "type", "style", "imitation" or the like, the use of the geographical indication identifying wines or spirits that do not originate in the place indicated by the geographical indication is prohibited.
 - An application for the registration of any trademark that contains or consists of the geographical indications of wines or spirits that originate in any WTO Member is to be rejected under Article 7(1)(xiv) of the Trademark Act.

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

As indicated in the response to question 1 above, Korea protects geographical indications through a number of regimes.

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

The protection of geographical indications through the relevant provisions of the Trademark Act and the Unfair Competition Prevention and Trade Secret Protection Act is also extended 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.*

Articles 2(1)(iii) and 2(1)(iv) of the Unfair Competition Prevention and Trade Secret Protection Act, Article 3 of the Fair Labelling and Advertising Act, and Article 9 of the Agro-Fisheries Product Quality Management Act provide the legal means for protecting geographical indications as required by Article 22.2 of the TRIPS Agreement. The text of the said laws were duly notified to the WTO pursuant to Article 63.2 of the TRIPS Agreement.

The strengthened protection of geographical indications for wines and spirits, as required by Article 23.1 of the TRIPS Agreement, is provided by the Amendment to the Notice Concerning Liquor Labelling.

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 the responses 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.*

Until now, there have been no cases of registered geographical indications.

One should apply for registration to obtain protection for geographical indications according to the Agro-Fisheries Product Quality Management Act. If the Geographical Indication Registration Council decides that an application meets the criteria set by the Act, the geographical indication is registered, and the registration of false or similar geographical indications of a registered geographical indication is prohibited.

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 higher level of protection for wines and spirits required by Article 23.2 of the TRIPS Agreement is available under Articles 6(1)(iii), 6(1)(iv) and 7(1)(xiv) of the Trademark Act. Article 6 applies to all goods, while Article 7 applies only to wines and spirits.

B. DEFINITION AND CRITERIA FOR RECOGNITION

8. *How are geographical indications defined?*

The responses to questions 8-11 focus on the protection of geographical indications of agricultural and fisheries products and their processed products through formal registration procedures according to the Agro-Fisheries Product Quality Management Act.

The only definition of "geographical indication" is found in the Agro-Fisheries Product Quality Management Act. According to Article 2(5) of the Agro-Fisheries Product Quality Management Act, a geographical indication means the geographical name of a specified region, which serves to designate a product or a processed product originating therein, the reputation, quality and characteristics of which are essentially attributable to the 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 in the response to question 8 above requires that the quality or reputation of products with geographical indications be linked directly to the geographical origin.

Article 15 of the Enforcement Decree of the Agro-Fisheries Product Quality Management Act stipulates that one of the criteria for determining whether a geographical indication is recognized is whether the reputation, quality, and other special characteristics of the product concerned can be attributed to the environmental and human factors from the geographical area concerned.

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

In Article 15 of the Enforcement Decree of the Agro-Fisheries Product Quality Management Act, the following criteria are provided for determining whether a geographical indication is recognized:

- (i) whether the superior quality of the product concerned is widely recognized both within Korea or abroad;
- (ii) whether the quality of the product is of the highest grade as determined in accordance with the standards specified under Article 4 of the Agro-Fisheries Product Quality Management Act. However, in the case where such standards are not specified under the Act for the product concerned, then the required standard shall be that of the highest grade as given under other laws and regulations, or that of the highest grade as determined through customary use in the respective industry;
- (iii) whether the reputation, quality, and other special characteristics of the product concerned can be attributed to the environmental and human factors from the specific geographic area;
- (iv) whether the product concerned is produced or processed within the defined area; and
- (v) other standards that are deemed necessary by the Minister of Agriculture and Forestry and the Minister of Maritime Affairs and Fisheries, in regard to geographical indications.

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?*

Human creativity constitutes human factors, and thereby may be taken into account in the procedure for the recognition of geographical indications (see the response to question 10 above).

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

No other intellectual property rights are involved.

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?*

For agricultural and fisheries products and their processed products, if one applies for the registration of a geographical indication on the basis of his/her own definition of geographical region or area, the National Agricultural Products Quality Management Service and the Geographical Indication Registration Council then establish the official definition of the geographical region or area in the course of examining the application.

Regarding the basis of such a definition, see the response to question 9 above.

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

Under the Examination Guideline for Article 7(1)(xiv) of the Trademark Act, the registration of any trademark with a homonymous geographical indication for wines may be rejected and, if registered, invalidated. Whether any trademark contains or consists of a homonymous geographical indication will be determined subject to specific elements including its translation and the relationship between the trademark and designated goods.

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

There is no provision related to the recognition of foreign geographical indications.

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.*

There are no statutory provisions related to geographical indications not protected in the country of origin. However, the Examination Guideline for Article 7(1)(xiv) of the Trademark Act stipulates that this Article does not apply to geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

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?*

Only producers' organizations or corporate processors are eligible for applications for the registration of geographical indications. If there exists only one producer or processor of a product, however, this restriction may not be applied.

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

The National Agricultural Products Quality Management Service and the Geographical Indication Registration Council are the competent authorities.

* It is to be noted that C (procedure for recognition) and D(maintenance) are applied only to agricultural and fisheries products and their processed products.

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 must be based on the initiative of an entity or person.

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

A fee of W 100,000 is required per application.

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

The criteria also include human factors.

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

See the responses to questions 10 and 21 above.

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

The name of a geographical indication, the regional range of a geographical indication, an explanatory note on the relationship between qualitative characteristics and geographical factors, an explanatory note on qualitative characteristics, data to prove the reputation of the product, a production schedule, self-imposed quality criteria and a quality control schedule.

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

The goods for which a geographical indication is claimed should be set out at the time of application for registration.

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

When an application for the registration of a geographical indication is recognized, it should be announced on the official gazette by the authorities concerned. The procedure for an objection against the recognition with the National Agricultural Products Quality Management Service is available to anyone within 30 days from the date of the announcement. In doing so, he or she should provide in writing the reasons for the objection and submit adequate evidence therewith.

When an objection is received, the National Agricultural Products Quality Management Service should examine it in consideration of the judgement by the Geographical Indication Registration Council. The National Agricultural Products Quality Management Service should either register the geographical indication applied for, if it is judged that there is no justifiable reason for rejection, or notify the applicant of its inadequacy, if judged otherwise.

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

See the response 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?*

Foreign geographical indications are also protected domestically under the general WTO/TRIPS obligations. The Agro-Fisheries Product Quality Management Act does not contain any special provisions concerning the registration of foreign geographical indications.

D. MAINTENANCE*

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

Indefinitely.

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.*

Renewal procedures for geographical indications do not exist.

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

The National Agricultural Products Quality Management Service monitors registered products *ex post facto* and may take necessary actions including the cancellation of the certification and registration, if it is judged that such products have failed to satisfy relevant standards or that their production is no longer possible because of the cessation of business.

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

See the response to question 30.

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

The National Agricultural Products Quality Management Service.

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

The National Agricultural Products Quality Management Service may instruct government officials to review the appropriateness of the products with geographical indications in terms of standard, quality, certification or registration, to ensure consumer protection and to maintain the quality of the geographically specified products. It may also take necessary actions including the cancellation of the registration, based upon the results of the investigation.

* It is to be noted that C (procedure for recognition) and D(maintenance) are applied only to agricultural and fisheries products and their processed products.

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.*

Interested parties of a specific registered geographical indication may submit to the National Agricultural Products Quality Management Service an adequate evidence to prove the geographical indication's non-use or failure to maintain the criteria identified in the application.

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 National Agricultural Products Quality Management Service may conduct monitoring either ex officio or in response to the request of the interested parties.

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 criteria submitted to obtain the recognition of a geographical indication apply to the submitting applicant. Other persons or entities who meet the criteria may use that geographical indication by joining that party.

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?*

Persons or entities who want to use a specific geographical indication may use it after applying for registration and obtaining recognition in accordance with relevant laws and regulations.

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 fees are required to obtain authorization under the Agro-Fisheries Product Quality Management Act.

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

This kind of dispute may be settled by general dispute settlement procedures.

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 response to question 30 above.

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

This kind of dispute may be settled by general dispute settlement procedures.

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 Agro-Fisheries Product Quality Management Act does not contain any special provisions concerning the licence of a geographical indication.

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

There is no provision regarding "grandfathered use".

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?*

Since a geographical indication cannot be registered as a trademark under relevant provisions of the Trademark Act, there is no possibility of conflict between Article 16.1 of the TRIPS Agreement and geographical indications. In this perspective, there is no relevant provision addressing the correlation between geographical indications and the obligation in Article 16.1 of the Trademark Act.

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 the response to question 44 above.

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

Where a trademark falls under Article 6(1)(iii), 6(1)(iv), 7(1)(xiv) of the Trademark Act in relation to a geographical indication, the application shall be refused by an examiner, or the registration shall be cancelled or invalidated upon request by any interested parties (see 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.*

- Pursuant to Articles 4 and 5 of the Unfair Competition Prevention and Trade Secret Protection Act, a person whose business interests are infringed or threatened by an act of causing confusion, i.e. falsely marking the source of origin on the goods, or selling, distributing, importing or exporting the goods marked with such a source of origin, is entitled to seek a court injunction or preventive order against a person who engages in the act of unfair competition. Additionally, he or she may demand the destruction of the goods which were involved in the aforementioned act of unfair competition, removal of facilities used during such act, or other measures necessary to prohibit or prevent such act. In case a person's business interests are infringed intentionally or negligently, he or she may seek compensation for damages in a civil suit.

- The Agro-Fisheries Product Quality Management Act stipulates that anyone who attaches a false or similar mark of a registered geographical indication on agricultural or fisheries products or their processed products shall be sentenced to imprisonment for up to three years or a fine not exceeding W 30 million.
- The Fair Labelling and Advertising Act stipulates the following:

"Article 7 - Corrective Measures

- (1) In the case where any enterprise, etc., posts undue labels or advertisements in violation of Article 3, paragraph 1, the FTC shall take the following corrective measures against such enterprises, etc.:
1. cease and desist order;
 2. public notification on the fact of law violation;
 3. corrective advertisements;
 4. other measures necessary to correct the violations."

"Article 8 - Temporary Cease and Desist Order

- (1) The FTC may issue a temporary cease and desist order against enterprises, etc., whose labels or advertisements are:
1. suspected to be in clear violation of Article 3, paragraph 1; or,
 2. likely to cause irreparable injury to consumers or rival enterprises, and thus preventive measures are in urgent need."

"Article 9 – Surcharge

- (1) The FTC may impose upon enterprises in violation of Article 3, paragraph 1 surcharges not exceeding 2 per cent of their turnover as set forth in the Presidential Decree (meaning operational profits as for the enterprises set forth in the Presidential Decree. Hereinafter, the same shall apply.)."

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

- Any person whose business interests are infringed or threatened by an aforementioned act of unfair competition (the Unfair Competition Prevention and Trade Secret Protection Act).
- Any person or entity that marks products with a geographical indication that is registered under the Agro-Fisheries Product Quality Management Act or the National Agricultural Products Quality Management Service (the Agro-Fisheries Product Quality Management Act).

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?*

Courts and relevant administrative bodies have jurisdiction over enforcement actions related to geographical indications.

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

Once a geographical indication has been recognized under the Agro-Fisheries Product Quality Management Act, a registration certificate is issued to the applicant and the date of registration, the name and address of the applicant, the appellation of the product and the regional range of the geographical indication are announced in the official gazette.

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.*

The Agro-Fisheries Product Quality Management Act stipulates that those who have attached a false or similar mark of a registered geographical indication on agricultural or fisheries products or their processed products shall be sentenced to imprisonment for not more than three years or a fine not exceeding W 30 million.

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.*

No.

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

Korea is a member state of the Paris Convention for the Protection of Industrial Property. The Convention provides means for preventing false geographical indications.

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?*

Additional protection as provided for in Article 23 of the TRIPS Agreement is provided to wines and spirits in the Notice Concerning Liquor Labelling, an amendment to which took effect 14 June 2000. According to the amended Notice, even where the true origin of the goods is indicated or a geographical indication is used in translation or is accompanied by the expressions such as "kind", "type", "style", "imitation" or the like, the use of the geographical indication identifying wines or spirits that do not originate in the place indicated by the geographical indication is prohibited.

B. DEFINITION AND CRITERIA FOR RECOGNITION (SECTION B OF DOCUMENT IIP/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?*

Those terms are not clearly distinguished in our laws related to intellectual property. However, according to Article 2(5) of the Agro-Fisheries Product Quality Management Act, a geographical indication means the geographical name of a specified region, which serves to designate a product or a processed product originating therein, the reputation, quality and characteristics of which are essentially attributable to the geographical origin.

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

See the response to question 14 above.

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?*

An application for the registration of any trademark that contains or consists of the geographical indications of wines or spirits that originate in any WTO Member is to be rejected under Article 7(1)(xiv) of the Trademark Act.
