

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

Checklist of Questions¹

Addendum

Replies by Morocco

The present document represents the responses to the Checklist which the Secretariat has received from Morocco, by means of a communication from its Permanent Mission, dated 10 July 2002.

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?

Law No. 17-97 on the Protection of Industrial Property assures protection of indications of source and appellations of origin of goods and services once its implementing regulations take effect.

Besides, Article 4 of Law 13-83 concerning the repression of merchandise fraud may also provide protection for the origin of food and agricultural products.

Appellations of origin may also be attributed to wines under the regulations governing wine products, in force since 1977.

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

Law No. 17-97 on the Protection of Industrial Property provides protection for appellations of origin and indications of source of goods and services, in keeping with Article 22 of the TRIPS Agreement, though without stipulating a procedure for the registration of appellations of origin.

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

In addition, under Article 4 of Law 13-83 concerning the repression of merchandise fraud, the contractor is protected against any deception or attempted deception as to the origin of foodstuffs and agricultural produce when, by agreement or custom, the designation of the species or kind or of the origin falsely attributed to goods must be considered as the main reason for the contractor's commitment.

The regulations on appellations of origin of wines define the geographical areas of wine production.

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

As indicated in the reply to Question 1 above, the protection of appellations of origin and indications of source covers both goods and 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.

The relevant laws and regulations are the following:²

- Dahir No. 1-00-19 of 9 kaada 1420 (15 February 2000) enacting Law No. 17-97 concerning the protection of industrial property;
- Dahir 1.83.108 of 5 October 1984 enacting Law No. 13-83 concerning the repression of merchandise fraud;
- Order No. 869-75 of 15 August 1977 issued by the Minister of Agriculture and Agrarian Reform regulating the appellation of origin regime for wines;
- Order No. 1956-98 of 8 October 1998 issued by the Minister of Agriculture, Rural Development and Sea Fisheries supplementing Order No. 869-75 of 15 August 1977 issued by the Minister of Agriculture and Agrarian Reform regulating the appellation of origin regime for wines;
- Order No. 1956-98 of 8 October 1998 issued by the Minister of Agriculture, Rural Development and Sea Fisheries concerning the general conditions governing wine production and registered appellations of origin;
- Order No. 957-98 of 8 October 1998 issued by the Minister of Agriculture, Rural Development and Sea Fisheries concerning the registered appellation of origin "Les coteaux de l'Atlas";
- Order No. 436-99 of 30 March 1999 issued by the Minister of Agriculture, Rural Development and Sea Fisheries amending and supplementing Order No. 869-75 of 15 August 1977 issued by the Minister of Agriculture and Agrarian Reform regulating the appellation of origin regime for wines.

² These texts were all notified to the TRIPS Council at the time of the review of Morocco's laws on the protection of industrial property.

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.

This question is not relevant to Morocco.

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.

The designation "Les coteaux de l'Atlas" is a registered appellation of origin for a particular type of wine, laid down by Order No. 1957-98 of 8 October issued by the Ministry of Agriculture, Rural Development and Sea Fisheries concerning the registered appellation of origin "Les coteaux de l'Atlas", pursuant to the regulations governing the appellation of origin regime (Order No. 869-75 of 15 August 1977 of the Ministry of Agriculture and Agrarian Reform, as amended and supplemented by Order No. 1956-98 of 8 October 1998 issued by the Ministry of Agriculture, Rural Development and Sea Fisheries and Order No. 436-99 of 30 March issued by the Ministry of Agriculture, Rural Development and Sea Fisheries).

This appellation of origin is protected specifically by Law No. 17-97 on the Protection of Industrial Property and Law No. 13-83 concerning the Repression of Merchandise Fraud.

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 given to wines under Article 23.2 of the TRIPS Agreement is not provided for other products.

Morocco is preparing to enact new legislation in this field, however. A draft law on the quality, safety and the regulation of foodstuffs and a draft decree on appellations of origin and geographical indications for agricultural products and foodstuffs and their protection are currently under study.

B. DEFINITION AND CRITERIA FOR RECOGNITION

8. How are geographical indications defined?

Law No. 17/97 defines indication of source as an "expression or sign used to indicate that a product or service comes from a country or group of countries, or from a region or specific place." (Article 180).

This same law prescribes that "an appellation of origin is the geographical name of a country, region or locality used to designate a product originating therein whose quality, reputation or other specified characteristics are exclusively or essentially attributable to the geographical environment, including natural and human factors." (Article 181).

With respect to guaranteed appellations of origin, Order No. 869-75 dated 15 August 1977 of the Ministry of Agriculture and Agrarian Reform regulating the regime of appellations of origin for wine established 14 geographical regions, and the wine produced may only be marketed under an appellation of origin, provided that they:

- are produced in a defined geographical area;

- are obtained from clearly specified vine varieties for red wines or white wines;
- have an alcoholic content of 12°;
- come from vineyards cultivated by methods in keeping with local usage;
- are produced using consistently used wine-making techniques;
- are produced in quantities not exceeding the yield per hectare set annually for each appellation;
- are obtained by a wine-making method different from that used for other wines; and
- have obtained an appellation of origin label.

At present there is only one registered appellation of origin, namely "Les coteaux de l'Atlas", produced within the Béni M'Tir geographical region.

The wines entitled to the registered appellation of origin "Les coteaux de l'Atlas" must also meet the following specifications:

- Red and rosé wines must come from the following vine varieties:

1.	Cabernet sauvignon Merlot Syrah Timpranillo	Minimum 1/3 of the package
2.	Carignon Cinsault Grenache	Maximum 1/3 of the package

- White wines must be produced from the following vine varieties:

Chardonnay Sauvignon blanc Vermentino Ugni blanc and Clairette	Minimum 50% of the package
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9. Would such a definition comprise geographical indications identifying products of a certain quality or reputation which are indirectly linked to a specific region?

No, Article 181 of Law No. 17/97 states that "an appellation of origin is the geographical name of a country, region or locality used to designate a product originating therein whose quality, reputation or other specified characteristics are exclusively or essentially attributable to the geographical environment, including natural and human factors".

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

The criteria described above (reply to Question 8) are the ones considered for the recognition of guaranteed or registered appellations of origin for wines.

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?

Article 181 of Law No. 17/97 defines an appellation of origin as the geographical name of a country, region or locality used to designate a product originating therein whose quality, reputation or other specified characteristics are exclusively or essentially attributable to the geographical environment, including natural and human factors.

Human creativity therefore plays a significant role together with natural factors in determining the quality, reputation and other specific features of a given product.

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

The criteria for the patentability of an invention stipulated by Law No.17/97, as against those outlined in Article 181 of the same law, play no part in the determination of an appellation of origin. A separate patent application may be filed for the role played by human factors that stand out for their creativity and innovation if they fulfil the requirements prescribed by the law.

Likewise, Morocco's regulations do not require property rights such as patents for wines with 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?

An order issued by the Ministry of Agriculture specifies the geographical areas for the production of wines with appellations of origin. The conditions for the use of appellations of origin and the obtention of labels are within the purview of the National Wine Commission (*Commission nationale vitivinicole*), whose secretariat services are provided by the Anti-Fraud Division (*Division de la répression des fraudes*), a subdivision of the Ministry of Agriculture, Rural Development, Water and Forests.

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

Moroccan legislation contains no criteria for homonymous geographical indications for wines.

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

Article 1 of Law No. 17/97 states: " ... the protection of industrial property shall have as its subject-matter patents for invention, layout-designs (topographies) of integrated circuits, industrial designs, trademarks, service marks, trade names, and indications of source and appellations of origin, as well as the prevention of unfair competition".

Accordingly, Article 3 clearly provides in this regard that "[n]ationals of each of the countries forming part of the International Union for the Protection of Industrial Property shall enjoy protection of the industrial property rights for which this Law provides, subject to fulfilment of the conditions and formalities laid down therein.

The same protection shall be accorded to nationals of countries parties to any other industrial property treaty to which Morocco is party whose provisions prescribe treatment for its nationals no less favourable than that enjoyed by nationals of the aforesaid countries".

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.

Negative reply.

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 wine-producer or person may claim the right to an appellation of origin under the terms and conditions set out above.

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

The competent authorities in respect of appellations of origin for wines are:

- the Anti-Fraud Division (Division de la répression des fraudes), and
- the National Wine Commission (Commission nationale vitivinicole) comprised of members of the profession and of the administration.

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?

It is the professionals who launch the procedures for the recognition of appellations of origin by filing an application with the Anti-Fraud Division at the time of the declaration of implementation. That application must indicate:

- The nature of the appellation;
- the name of the vineyards;
- their surface area;
- the vine varieties;
- the weight of the wine harvest;
- the volume and colour of the wines;

- the location of the cellars where the wines are being stored.

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

Our national regulations do not provide for the payment of fees for the obtention of guaranteed or registered appellations of origin labels for wines.

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

Applications for appellation labels for wines must set out the criteria given in Reply No. 19.

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

The other recognition criteria for wines with appellations are:

1. The field survey conducted by anti-fraud agents to verify the information given in the application;
2. analyses of the wine concerned by the application;
3. tasting by a panel of tasters.

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

The information is that given in the application for an appellation of origin label for wines.

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

The application clearly pertains to wines only.

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

Failure to meet any of the criteria set out in the reply to Question 22 is enough for the application to be rejected by the National Wine Commission. These criteria are:

- A field survey;
- analysis;
- organoleptic testing.

The field survey is carried out by the anti-fraud department so as to verify the information given in the application.

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

The National Wine Commission.

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 wines with appellations of origin may be sold in Morocco provided they comply with the rules of production of the country of origin.

D. MAINTENANCE

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

Appellations of origin for wines are laid down in regulations that remain in force until repealed by other regulations.

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.

The geographical regions corresponding to appellations of origin are defined and require neither renewal, reaffirmation nor payment of any additional fees.

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

The non-use of appellations of origin does not lead to their elimination.

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 National Wine Commission examines the applications and the information they contain so as to recommend the obtention of an appellation. For wines already in circulation in the trade, it is the anti-fraud services that recommend the obtention of an appellation.

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

The procedure is that followed by the department responsible for the repression of merchandise fraud and applicable to all products, pursuant to the regulations governing wines, and more specifically those with appellations of origin.

That procedure is based on the reporting of offences and the transmission of dossiers to the competent public prosecutor's offices.

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.

Should the product no longer meet the established criteria for an appellation of origin for wines, the batches may be reclassified as common beverage wine (vin ordinaire) if the analysis shows that the wine is marketable, and at the request of the wine-producer.

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?

All instances of illegal use of appellations of origin are dealt with under the usual procedures followed by the provincial anti-fraud authorities.

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 wine producer may apply for an appellation of origin so long as he satisfies the criteria set for that appellation, without need of satisfying any additional criteria.

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?

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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 envisaged under Moroccan regulations for securing authorisation to use an appellation of origin for wine. We should point out, however, that the costs of analysing samples submitted to the official laboratory for analysis and chemical research in Casablanca are borne by the producer.

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

There has never been a dispute so far concerning the use of an appellation of origin for wine, and any producer contesting the use of a guaranteed or registered appellation of origin as a trade name may bring a criminal action before the competent court. The Anti-Fraud Division may nevertheless intervene in all cases of fraudulent use of appellations of origin for wines.

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?

In wine production, the appellation of origin continues until the exhaustion of batches of wine and its use ceases with the end of stock of the product.

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

Please refer to Reply No. 39.

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 regulations on appellations of origin for wines make no mention of the grant of licences for appellations of origin for wines, but refers instead to labels accorded under clearly defined conditions.

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

Our regulations do not contemplate the principle of grandfathered use of either guaranteed or registered appellations of origin.

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?

By citing indications of source and appellations of origin amongst the spheres covered by its protection, in Article 1 in particular, Law No. 17/97 accords them adequate protection against any act that could be detrimental to them.

Likewise, pursuant to Article 16 of the TRIPS Agreement, this law clearly defines the rights (Articles 134(b), 135, 137, 153 to 155, 162, 180 to 183, 201, 206 and 231) conferred on the owner of a registered trademark.

45. What steps are taken to ensure that, in recognizing a geographical indication, the obligations of Articles 16.2 and 16.3 of the TRIPS Agreement are not nullified and impaired?

Articles 137, 155 and 161 of Law No. 17/97 on the Protection of Industrial Property address this issue.

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

In the event of a conflict between a geographical indication and a trademark, the stipulations of Articles 135, 137, 155, 161, 182 and 183 of Law 17/97 shall apply.

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.

To enforce a right in a geographical indication, the owner of that right may bring a legal action under Law No. 17/97 on the protection of industrial property, and more specifically based on Articles 174, 185, 206 and 226.

Moreover, legal action may also be instituted in virtue of Law 13/83 on the repression of merchandise fraud.

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

Any owner of rights protected in Morocco may initiate a lawsuit against any act detrimental to those rights.

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?

For cases of infringement of industrial property rights, and of marks in particular, Article 15 of Law No. 17/97 stipulates that: "[o]nly the commercial courts shall have jurisdiction to hear disputes arising out of the application of this Law, with the exception of the administrative decisions for which it provides".

The institution of a legal action is subject to the fees prescribed by the regulations in force.

As far as wines are concerned, the administrative entity empowered to rule on the rights attached to appellations of origin is the National Wine Commission, and no fees are involved.

In criminal actions, it is the court of first instance in the place of residence of the wine-maker that is competent to rule on any disputes over rights to appellations of origin for wines.

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

As pertains to industrial property, the public may consult registered marks at the national registry of marks provided for in Article 157 of Law No. 17/97.

Similarly, Article 176 of this law stipulates that "[t]he agency responsible for industrial property matters shall publish an official catalogue of all registered trademarks, service marks, collective marks and collective certification marks. It shall include a reference to the acts mentioned in the first paragraph of Article 157 above".

Thus, pursuant to Article 151 of the same law, any interested party may obtain an official copy of the mark by written request, after producing the design of the registered mark.

For wines, the appellations of origin are created by the Minister responsible for agriculture and published 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.

Please refer to the description given by Morocco in document IP/N/6/MAR/1 (Checklist of issues on enforcement (replies to Questions 21, 24 and 25)).

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.

Morocco is party to several international agreements on industrial property, including:

- The Paris Convention for the Protection of Industrial Property;
- the Madrid Agreement Concerning the International Registration of Marks;
- the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods.

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

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II. REPLIES TO QUESTIONS CONTAINED 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?

In addition to the provisions of Articles 135 and 137 of Law No. 17/97, Article 182 of the same law stipulates as follows:

"The following shall be unlawful:

- (a) The direct or indirect use of a false or misleading indication concerning the source of a product or service or the identity of the producer, manufacturer or trader;
- (b) the direct or indirect use of a false or misleading appellation of origin or the imitation of an appellation of origin, even where the true origin of the product is indicated or the appellation is used in translation or accompanied by expressions such as 'kind', 'style', 'imitation' or the like."

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?

Article 1 of Law No. 17/97 states: "For the purposes of this Law, the protection of industrial property shall have as its subject-matter patents for invention, layout-designs (topographies) of integrated circuits, industrial designs, trademarks, service marks, trade names, and indications of source and appellations of origin, as well as the prevention of unfair competition."

Similarly, Articles 180 and 181 of this Law clearly define the expressions "indication of source" and "appellation of origin" in the following terms:

- Article 180: The term 'indication of source' means an expression or sign used to indicate that a product or service comes from a country or group of countries, or from a region or specific place.
- Article 181: An appellation of origin is the geographical name of a country, region or locality used to designate a product originating therein whose quality, reputation or other specified characteristics are exclusively or essentially attributable to the geographical environment, including natural and human factors.

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

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F. 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?

Law No. 17/97 prescribes the following:

"Article 164: The owner of a mark that has become by his doing:

- (a) The usual designation in trade for the product or service;
- (b) liable to mislead the public, in particular as to the nature, quality or geographical origin of the product or service

shall also be liable to forfeit his rights."

In this connection, please also see replies above (Articles 182 and 183).
