

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

Reponses to the Checklist of Questions<sup>1</sup>

Addendum

CUBA

This document contains the responses to the checklist of questions which the Secretariat has received from the Permanent Mission of Cuba in a communication dated 17 September 2002.

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**RESPONSES TO THE CHECKLIST OF QUESTIONS ON  
GEOGRAPHICAL INDICATIONS (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?**

No, they are not protected under unfair competition law; such norms are contained in a draft decree law which is still at the conciliation phase.

Under the regulations currently in force geographical indications include appellations of origin and indications of source; the former require registration in order to obtain protection, while the latter are not subject to registration.

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

Yes, there is one single regime of protection of geographical indications for all products.

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

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

Services are not included in the regime of protection of geographical indications.

**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 provisions of Article 22.2 and Article 23.1 of the TRIPS Agreement are given legal effect in Decree Law No. 228 on Geographical Indications, of 22 February 2002.

**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 required recognition of geographical indications is provided through the above-mentioned Decree Law No. 228 on Geographical Indications.

**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.**

Prior to the application of Decree Law No. 228, twenty (20) appellations of origin were already protected: eighteen (18) relating to tobacco, one relating to peloids (medicinal muds) and one relating to mineral waters. Special Provisions 3 and 4 of those regulations maintain the protection afforded to the appellations of origin already registered.

**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.**

Decree Law No. 228 affords all products the higher level of protection provided under Article 23 of the TRIPS Agreement.

**B. DEFINITION AND CRITERIA FOR RECOGNITION**

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

Article 2 of Decree Law No. 228 defines geographical indications as "indications which identify a good as originating in a country, a region or a place, where a given quality, reputation or other characteristic of the good is essentially attributable to its 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?**

This definition does not comprise geographical indications identifying products of a certain quality or reputation which are indirectly linked to a specific region.

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

In determining whether recognition should be given a geographical indication, consideration must be given to whether the applicant has demonstrated the validity of the geographical name in relation to the specific geographical area. In addition, there can be no registration of geographical indications that contravene public morals or public order, or of geographical appellations which are generic of a product, or which have become a common name or designation of a product instead of associating it or identifying it with its geographical origin.

**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 may be involved in the making of specific products under protection by the system of geographical indications. It may be involved to any degree, provided that natural factors together with human factors contribute in some way to the process of making such products.

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

Other intellectual property rights such as patents may be involved, since the process for the extraction, processing or production of a specific product related to an appellation of origin may be patented. Furthermore, the container in which the product is stored may be protected by an industrial design or three-dimensional mark. The use of appellations of origin may also be associated with the use of trademarks or other distinctive signs.

**13. What authority, if any, may define the geographical region or area for which rights are claimed and on what basis is such definition made?**

The authority authorized to define the geographical region or area for which rights are claimed is the Directorate of the Hydrographic and Geodesic Service of the Republic of Cuba.

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

There is no specific reference to homonymous geographic indications for wines, although in fact the possible coexistence of identical appellations of origin is regulated. The Office lays down the form in which their use is to be distinguished in accordance with the methodology established to that end, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

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

The legislation provides for recognition and protection of geographical indications or appellations of origin of foreign 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.**

Decree Law No. 228 on Geographical Indications provides that an essential prerequisite for the registration of foreign geographical indications is that they be protected in the country of origin.

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?**

The formal system for recognition of geographical indications only recognizes the right to the use of them. Registration and the right to the use of an appellation of origin may be requested by any natural or legal person, either national or foreign, provided they are located in the area of extraction, processing or production of the product protected by the appellation, by associations of such persons in accordance with the legal provisions in force and by the subsidiary bodies of the Central Administration of the State and by the local organs of the People's Authority, provided that their governmental activity is located in the area of extraction or production of the product protected by the appellation.

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

The Cuban Industrial Property Office is the competent authority for obtaining protection of a geographical indication.

**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 procedure for the recognition of a geographical indication does not take place ex officio; it is necessary for an authorized person to apply to the competent authority for registration.

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

Both the application for and the granting of registration of a geographical indication are subject to the payment of a fee.

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

An application for recognition of a geographical indication is subject to several statutory requirements, which are set out in detail in response to Question No. 23 of this questionnaire, and which have to be fulfilled within a period of three months from the submission of the application. Once registration has been granted, a fee must be paid within the period laid down; otherwise it will be considered to have lapsed.

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

As distinct from applications for registration of national geographical indications, other criteria apply in the case of applications for registration of foreign geographical indications. These must contain, *inter alia*, a certificate from the institution with which the geographical indication is registered in the country of origin proving that registration has been granted, its validity in that country and the applicant's right to use it.

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

An application for the registration of a national geographical indication must include, *inter alia*, the name, domicile and nationality of the applicant, the appellation of origin being applied for and the geographical area covered, the name of the product protected by the appellation and proof of the relation between the applicant and the geographical area delimited by the appellation. The requirements for applications for the registration of foreign geographical indications are listed in the previous response.

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

The names of the products, a detailed description of the process of extraction, processing or production, together with their characteristics and the effects on them of the natural and human factors of the geographical area, must be set out. The current regulations do not provide protection for services.

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

The regulations provide for the submission of objections and comments following publication of the application in the Official Industry Property Bulletin so that any interested person may object. Once the objection or comments have been submitted, the Office notifies the applicant so that he may state his position. In any event, the Office may request documentary evidence from persons and institutions able to provide specialized opinions on the fulfilment of the requirements for granting legal protection to a geographical indication.

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

A holder of a prior industrial property right who considers himself affected by the application for registration may oppose recognition; similarly, any other interested person may submit comments relating to the application for registration.

**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?**

Any foreign natural or legal person may apply to the Office for the registration of a foreign appellation of origin on condition that it is already currently protected in the applicant's country of origin, and provided the applicant can prove his rights to use it. The rest of the procedure with regard to the foreign appellation of origin is similar to that for national appellations of origin.

Furthermore, our country is a party to the Lisbon Agreement and the regulations in force stipulate that the procedure in this case must comply with by the agreements to which Cuba is a party.

D. MAINTENANCE

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

The rights to use geographical indications are granted for a period of ten (10) years from the date of submission of the application and may be renewed indefinitely for similar successive periods.

**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 rights to use an appellation of origin may be renewed indefinitely for successive periods of ten (10) years, for which purposes it is necessary to fill out a form providing information on the applicant and on the appellation of origin which it is wished to renew. This requires payment of a fee of \$360, if the application is submitted in the six (6) months prior to the date of expiry of the registration. An application for renewal may also be submitted during a further period of six (6) months, beginning from the above-mentioned date of expiry, upon payment of the established fee, in which case there is a surcharge for delay, so that the total fee amounts to \$430.

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

The rights to a geographical indication do not need to be used for them to be maintained. However, the regulations stipulate that a geographical indication must be used in conformity with the limits of the protection and in accordance with the established rules; otherwise it may be revoked.

In addition, the Office is responsible for the State inspection of the use of geographical indications.

**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 such limit.

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

State inspection of the use of geographical indications is the responsibility of the Cuban Industrial Property Office.

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

The official body responsible for monitoring the use of geographical indications is the Cuban Industrial Property Office, which proposes the measures that it considers appropriate for effective and efficient State inspection of this activity.

**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.**

Registration of an appellation of origin does not expire either through the mere lapse of time or through the extinction of all the rights to its use. If a geographical indication is not used in accordance with the terms set out in the application, the rights to its use may be revoked. Non-use of the geographical indication has no effect on the protection granted.

**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 procedures which lead to forfeiture of a geographical indication may take place ex officio or at the request of an interested party.

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 registration of a geographical indication has been granted the applicant has the right to its use and thus is able to use it without the need for any further procedure.

**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 determination is made by the entity or person that obtained 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?**

A document certifying the granting of the right to use a particular geographical indication is issued upon payment of a fee of \$170.

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

If there is a dispute regarding use of a geographical indication, the interested party may, in the first instance, request the Office to declare the registration null or cancelled and, in the event of failure to comply with this ruling, may seek redress through the judicial system.

**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?**

Users authorized to use a geographical indication are not required to use it continually to retain their right to use it.

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

The regulations do not require any continuity of use.

**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 regime for protection of geographical indications does not allow them to be licensed.

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

With regard to "grandfathered use", the regulations provide that, in exceptional circumstances, nationals who for ten years preceding 15 April 1994 or in good faith preceding that date have had continued and similar use of a particular foreign geographical indication identifying wines or spirits in connection with goods or services may continue to use it for the same or related goods or services.

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?**

The regulations relating to trademarks and other distinctive signs provide, among the absolute prohibitions on the registration of trademarks, that a sign composed exclusively of elements used for purposes of trade to indicate the geographical source of a product or service may not be registered as a trademark; as a result, there can be no conflict between trademarks and geographical indications. In addition, this regulation provides, among the relative prohibitions, that a sign which contains, or consists of, a geographical indication protected in the country, whether the sign is applied to the same products, or to different products or to services, may not be registered as a trademark if its use might lead to a likelihood of association with the protected indication, or would involve unfair exploitation of its reputation or renown, for which reason the registration of geographical indications is given priority over the registration of trademarks.

**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?**

The steps are set out in the response to question 44.

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

In the event of conflict between a geographical indication and a trademark, the regulations relating to geographical indications provide that the registration of a trademark that is phonetically or graphically identical or similar to a registered appellation of origin may be cancelled at the request of a party or ex officio, insofar as the trademark or trade name refers to the same products designated by the appellation of origin, or to different products if its use could give rise to a risk of confusion or association, or to unfair injury to its holder, or could constitute an act of unfair competition.

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.**



The regulations provide that geographical indications shall be used in accordance with their distinctive nature and, consequently, prohibit the use of any means by which the designation or presentation or any other form would indicate or suggest that the product in question originates from a geographical place or geographical places distinct from the true place of origin, in such a way as to mislead or confuse the public as to the geographical origin of the product.

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

The Cuban Industrial Property Office is the institution with authority to adjudicate in proceedings involving a geographical indication, although appeals against its rulings may be made through the judicial system.

**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 administrative body responsible for enforcement actions relating to geographical indications is the Cuban Industrial Property Office, for which purpose the following fees are payable:

- Remedy of appeal: \$150.00;
- re-establishment of rights: \$150.00;
- proceedings to nullify, cancel or revoke rights of use: \$250.00;
- the judicial body responsible for hearing appeals against the decisions of the Cuban Industrial Property Office is the Provincial Court of the City of Havana.

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

The Official Industrial Property Bulletin publishes applications and concessions of rights to use a geographical indication. It is published monthly.

**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.**

There is no provision in the Penal Code for this kind of offence, although a draft amendment has been prepared with a view to punishing unauthorized use of a geographical indication.

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.**

Cuba is a party to the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration and is a signatory to three bilateral agreements with France, Germany and Peru.

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

Cuba is also a party to the 1883 Paris Convention, the 1891 Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods and the 1995 TRIPS Agreement.

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