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**Council for Trade-Related Aspects
of Intellectual Property Rights**

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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 the Czech Republic

The present document represents the responses to the Checklist which the Secretariat has received from the Czech Republic, by means of a communication from its Permanent Mission, dated 5 November 1998.

Responses from other Members will be circulated in addenda to the present document.

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

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 protection of geographical indications in the Czech Republic is ensured by means of public law and also by means of private law. According to Czech legislation the recognition of geographical indications, on principle, does not require registration. The protection of appellations of origin of products is governed by the special Law No. 159/1973 Coll. concerning the Protection of Appellations of Origin of Products and by the implementing Order No. 160/1973 Coll. concerning the Procedure in respect of Appellations of Origin of Products. The protection of appellations of origin under this Law results from its registration in the Register of appellations of origin kept by the Industrial Property Office.

The Czech Republic has also a modern regulation of unfair competition (cf. Section 44 to 55) which is contained in Chapter V on economic competition of the Commercial Code (Law No. 513/1991 Coll.). This regulation structurally corresponds to the continental concept of combining a general clause (cf. Section 44, paragraph 1) prohibiting all conduct in competition contrary to honest practices, capable of damaging competitors or consumers, with a number of specific acts expressly declared unfair competition by Section 44, paragraph 2 as defined in Sections 45 to 52 such as deceptive labeling of goods and services, creating the danger of confusion (misappropriation and passing off), etc.

The above mentioned legal regulations have been notified under Article 63.2 of the TRIPS Agreement to the Council for TRIPS and can be found in document IP/N/1/CZE/1 and IP/N/1/CZE/G/1.

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

There are no different regimes of protection of geographical indications for different products. The regime of protection of appellations of origin under the Law No. 159/1973 Coll. explicitly refers to agricultural and natural products and products of handicraft or industry.

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

The Law No. 159/1973 Coll. has no explicit provisions on services. The protection of an appellation of origin of a service, which would meet criteria prescribed by this Law, is not excluded. For example: a spa service.

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.*

See the reply to question 1 above. See also the provisions of Section 2, paragraph 1 (c) and (g) and Section 9, paragraph 1 (f) of the Trademark Law No. 137/1995 Coll.

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 reply to questions 1 and 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.*

Examples:

- for beers: Plzeňské pivo (Pilsen Beer), Budějovické pivo (Budweis Beer);
- for vines: Pálavské bílé, Pavlovické ohnivé, Slovácký rubín;
- for liqueurs: Prostějovická starorežná, Slovácká borovička, Karlovarská hořká, Bohemia sekt rosé;
- for agricultural products: Žatecký chmel český (Saaz Hops), Tršický chmel moravský, Ústecký chmel - český (Auscha Hops), Třeboňský kapr;
- for handicraft products: Jablonecká bižutérie (Jablonec Jewellery), Český křišťál (Bohemia Crystal), Vamberská krajka (Lace of Vamberk).

The above mentioned appellations of origin are registered in the Register of appellations of origin of products according to the Law No. 159/1973 Coll. and in the International Register within WIPO under the Lisbon Agreement on the Protection of Appellations of Origin and their International Registration.

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.*

No.

B. DEFINITION AND CRITERIA FOR RECOGNITION

8. *How are geographical indications defined?*

According to Section 1 of the Law No. 159/1973 Coll., appellation of origin of products means the geographical name of a country, region or locality which has come to be generally known to designate a product originating therein the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.

Agricultural and natural products, in addition to products of handicraft or industry, are considered to be products for the purposes of this Law.

9. *Would such definition comprise geographical indications identifying products of a certain quality or reputation which are indirectly linked to a specific region?*

From the definition of an appellation of origin under the Law No. 159/1973 Coll. follows that all criteria are intimately linked to the geographical environment from which a product comes.

According to this Law, there must be a direct link between characteristics and quality of a product and geographical environment.

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

All criteria set out in Section 1 of the Law No. 159/1973 Coll. are taken into consideration in the procedure for the registration of an appellation of origin. See also the reply to question 8 above and to question 23 below.

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?*

Under the Law No. 159/1973 Coll., the quality and characteristics of a product are due exclusively or essentially to the geographical environment, including natural and human factors. The human factor is largely involved in the specific manufacturing technology. The data concerning the quantity of human creativity are not available.

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

No.

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?*

Under the Law No. 159/1973 Coll., there is no such authority. According to Section 2 of the implementing Order No. 160/1973 Coll., the applicant must indicate, in the application for registration of an appellation of origin, the country, region or locality from which a product comes.

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

No.

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

Yes. According to Section 16 of the Law No. 159/1973 Coll., foreigners shall enjoy subject to formal reciprocity the same rights and shall have the same obligations as Czech citizens.

16. *Is there any specific prohibition in the legislation/regulation/rules/procedures covering geographical indications not protected in the country of origin? If so, please specify the relevant statutory provision.*

No.

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?*

According to Section 6 and Section 7 of the Law No. 159/1973 Coll., an application for the registration of an appellation of origin may be filed with the Industrial Property Office by a legal entity or a natural person.

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

According to Section 2 of the Law No. 159/1973 Coll., the protection of an appellation of origin results from its registration in the register of appellations of origin kept by the Industrial Property Office, which is the competent authority for the registration procedure (hereinafter "the 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?*

The procedure for the registration of an appellation of origin is performed by the Office upon a filed application. The Office cannot act ex officio.

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

The administrative fee for filing an application for the registration of an appellation of origin is CZK 4,000. There are no maintenance fees.

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

Under the Law No. 159/1973 Coll., an appellation of origin means the geographical name of a country, region or locality which has come to be generally known to designate a product originating therein the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors. As follows from this definition all criteria, which must be described in the application for the registration, are intimately linked to geographical environment from which a product comes.

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

See the reply to question 21 above and to question 23 below.

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

According to Section 2 of the Order No. 160/1973 Coll., the application shall state:

- (a) the name and head office, or the given name, family name and domicile of the applicant and his nationality;
- (b) where the applicant is represented by an agent, the name and head office, or the given name, family name and domicile of the agent;
- (c) the name and head office of the undertaking or factory in the locality whose geographical name constitutes the appellation of origin;
- (d) the name of the appellation of origin;

- (e) the country, region or locality in which the product originates;
- (f) the products to which the appellation of origin applies;
- (g) the quality and characteristics of the said products.

According to Section 3 of this Order the application shall be accompanied by:

- (a) a document attesting to the name of the applicant and the nature of his activity;
- (b) a declaration by the competent central authority or a declaration by the competent regional authority, concerning the appellation of origin and the products to which the appellation relates;
- (c) a receipt showing that the administrative fee has been paid.

If the application is filed by a foreign legal entity or natural person, the applicant shall, in lieu of the above mentioned declaration, submit a certificate whereby the appellation of origin is recognized in the country of origin, issued in the name of the applicant.

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

Yes. See the reply to question 23 above.

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

Under the Law No. 159/1973 Coll., the registration procedure is not based on an opposition procedure.

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

See the reply to question 25 above and to question 34 below.

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 same procedure as in the case of domestic applications applies to applications for the registration of an appellation of origin of foreign countries. According to Section 15 of the Law No. 159/1973 Coll., legal entities or natural persons whose head office or domicile is not situated in the territory of the Czech Republic must be represented in proceeding before the Office by authorized representative, i.e. by an attorney at law or by a patent agent. According to Section 3, paragraph 2 of the Order No. 160/1973 Coll., if the application is filed by a foreign legal entity or natural person, the applicant shall submit a certificate whereby the appellation of origin is recognized in the country of origin, issued in the name of the applicant.

D. MAINTENANCE

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

According to Section 9 of the Law No. 159/1973 Coll., the protection resulting from the registration of an appellation of origin is of unlimited duration and it is not necessary to request its renewal.

29. *If recognition of a geographical indication must be renewed or reaffirmed, what information must be provided in order to effect such a renewal or reaffirmation? Specify any fees involved in renewal or reaffirmation.*

See the reply to question 28 above.

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

The Law No. 159/1973 Coll. does not require the mandatory use of an appellation of origin.

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

No. See the reply 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?*

There is no special authority for this purpose. In accordance with Section 10 of the Law No. 159/1973 Coll., anybody may submit the proposal for cancellation of the registration of an appellation of origin within the Office, if he/she finds that the conditions prescribed for the registration of an appellation of origin have ceased to exist.

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

See the reply to question 32 above.

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.*

According to Section 10 of the Law No. 159/1973 Coll., the Office shall cancel the registration of the appellation of origin if it finds that:

- (a) the appellation of origin was registered although the requirements set out in Section 1 had not been fulfilled;
- (b) the conditions prescribed for the registration of the appellation of origin have ceased to exist;
- (c) all the registered holders of the right to use the appellation of origin have renounced the appellation of origin in writing.

The Office shall cancel the registration of an individual holder of the right to use the appellation of origin, if the grounds set out in paragraph (b) or (c) apply only to that holder. In its decision, the Office shall mention the date of the cancellation of the registration of an appellation of origin or the registration of the holder of the right to use the appellation of origin. The Office shall

enter the cancellation in the register and shall publish it in the Bulletin. The decision of the Office shall be subject to appeal.

According to Section 9 of the Order No. 160/1973 Coll., a proposal for cancellation of the registration of an appellation of origin or of the registration of another holder of the right to use such an appellation shall be submitted in writing to the Office. The proposal must be accompanied by a statement of reasons and refer to the evidence furnished or proposed. The proposal may rely only to one appellation of origin. The Office shall send the proposal to each party and shall set the time limit within which the parties may comment on the proposal. Any failure to do so shall not prevent the Office from taking a decision on the proposal.

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 cancellation of the registration of the appellation of origin under Section 10 of the Law No. 159/1973 Coll., and the Order No. 160/1973 Coll., is carried out mostly upon a proposal. It may also take place ex officio.

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?*

According to Section 3 of the Law No. 159/1973 Coll., only the registered holder of the right to use an appellation of origin may use the registered appellation of origin, without any additional procedure. According to Section 8 of this Law, any person whose products fulfill the requirements laid down for an appellation of origin already registered may apply to the Office for registration as another holder of the right to use that appellation of origin. The protection of the rights of another holder of the right to use the appellation of origin under this Law shall result from his entry in the register.

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?*

Under the Law No. 159/1973 Coll., the registered holder of the right to use an appellation of origin makes decisions regarding use of an appellation of origin.

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?*

Under the Law No. 305/1997 Coll., on administrative fees, there are the following administrative fees:

- (a) filing an application for the registration of an appellation of origin: CZK 4,000
- (b) request for the registration of another user of a registered appellation of origin: CZK 3,000

There are no extra fees for using an appellation of origin.

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 Section 5 of the Law No. 159/1973 Coll., the registered holder of the right to use an appellation of origin may request the court to prohibit infringements of his right and to remedy the unlawful situation, without prejudice to other rights of the registered holder of the right to use the appellation of origin. The injured person may also request the protection of his rights according to the provisions on unfair competition (cf. Section 53 to 55 of the Commercial Code). See also the reply to question 47 below.

40. *Must individual authorized users of a geographical indication use that geographical indication continually to retain their right to use it and, if so, how is their use determined and how long will disuse be permitted?*

No. See also the reply to questions 28 and 30 above.

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

See the reply to question 40 above.

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 Law No. 159/1973 Coll., in its Section 4, explicitly provides that the right to use a registered appellation of origin may not be licensed.

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

There has not been such a case in our implementing practice up to now.

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 valid Czech Trademark Law No. 137/1995 Coll. excludes from registration a sign which consists exclusively of indications of geographical origin (cf. Section 2, paragraph 1(c)).

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?*

According to Section 16 of the Trademark Law No. 137/1995 Coll., the owner of the trademark shall be obliged to acquiesce to third parties using, in commercial relations, also information concerning a geographical origin, even where those data are identical or confusingly similar to the trademark or form part of the trademark, but only on condition that the data are used in accordance with established practice in trade or fair competition.

The owner of the trademark shall be obliged to acquiesce the use of an identical or confusingly similar sign which, in a period of two years before the filing of the application, has become characteristic for the identical or similar goods or services of its holder, such use being made by that holder in the Czech Republic.

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

There are the opposition procedure and the cancellation of trademark according to Section 9 and 10 and to Section 26, paragraph 2 of the Trademark Law No. 137/1995 Coll.

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.*

There are civil procedures and remedies available under Section 5 of the Law No. 159/1973 Coll., and under Section 53 to 55 (unfair competition provisions) of the Commercial Code and the Code of Civil Procedure. There are also criminal procedures and penalties available under the Penal Code No. 140/1961 Coll., as amended.

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

The registered user of the appellation of origin has the right to enforce its registered appellation of origin (cf. Section 5 of the Law No. 159/1973 Coll.).

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?*

Civil Courts (Regional Courts and the Municipal Court in Prague) make decisions on matters related to disputes resulting from the infringement of appellation of origin rights. The judicial fees are set out in the Law No. 549/1991 Coll., as amended, on judicial fees.

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

According to Section 7 of the Law No. 159/1973 Coll., the Office shall publish the registration of the appellation of origin in its Bulletin, which is issued each month. In this Bulletin, the cancellation of the registration of the appellation of origin and the registration of another user are also published (cf. Section 10 paragraph 3). Moreover, according to Section 12 of this Law, any person may consult the Register of appellations of origin of products and request official extracts therefrom.

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.*

Yes, provided the conditions of the criminal act according to Article 150 of the Penal Code are fulfilled. The criminal procedure can only be initiated on the basis of a suit lodged by the prosecuting counsel who is obliged to prosecute all criminal acts he/she is aware of (see also document IP/Q4/CZE/1 of 7 August 1998 (Review of legislation on enforcement) and document IP/N/6/CZE/1 of 16 September 1997 (Checklist of issues on enforcement)).

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 Czech Republic is a Member of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. In accordance with Czech constitutional law, this agreement, which was published in the official collection of laws, is an integral part of the Czech legal order.

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

The Czech Republic is also a Member of the Paris Convention for the Protection of Industrial Property and of the Madrid Agreement for the Repression of false or Deceptive Indications of Source on Goods. The Czech Republic is a contracting party to bilateral agreements with Austria, Switzerland and Portugal. These agreements established lists of respective appellations (designations and geographical denominations) to be protected between contracting parties and also specified what kind of protection is to be granted. See also the reply to question 52 above.

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?*

Yes. According to Section 4 of the Law No. 159/1973 Coll., no one shall have the right to misuse any registered appellation of origin, in particular to misappropriate it or to imitate it, even where the true origin of the product is indicated or where the appellation is used in a translated or altered form, or even where the appellation is accompanied by terms such as „kind“ „type“ „make“ „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?*

The Law No. 159/1973 Coll. contains in Section 1 a definition of appellation of origin of products. According to this definition, an appellation of origin of products means the geographical name of a country, region or locality which has come to be generally known to designate a product originating therein the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.

The term "indication of source" is not explicitly defined in valid legal regulations relating directly to the industrial property protection. In accordance with existing theory and practice, this term falls into the category of geographical indications in its broader sense. Unlike an appellation of origin, an indication of source need not have quality and other characteristics directly linked to a particular geographical environment, including natural and human factors.

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

No.

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?*

The valid Czech Trademark Law No. 137/1995 Coll. excludes from registration a sign which consists exclusively of indications of geographical origin. In addition, indications which may confuse the public about the geographical origin of products or services are excluded from registration. The law further enables to exclude from registration all indications whose utilization would be contrary to the commitments arising for the Czech Republic from international agreements (cf. Section 2, paragraph 1 (c), (g) and (h)). According to Section 25 of this Law, the Office shall cancel the

trademark from the Register if, at the request of the third party or ex officio, it finds that the trademark was registered in conflict with this law.

The draft amendment of the Czech Trademark Law which is currently under preparation envisages explicit supplementing of existing legal regulation in accordance with the wording and requirements under Article 23.2 of the TRIPS Agreement.
