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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**

RESPONSES TO THE CHECKLIST OF QUESTIONS¹

MONTENEGRO

Addendum

The present document contains the responses to the Checklist of Questions which the Secretariat has received from the delegation of Montenegro by means of communications dated 30 November 2018.

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 Law on Indications of Geographical Origin, the Law on Quality Schemes for Agricultural, the Law on Wine and the Law on Spirit Drinks prescribe that protection of geographical indications is provided through formal procedure for registration (protection is available after registration). Recognition of geographical indication requires registration.

Protection of geographical indications for agriculture and food products is regulated through these laws.

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

The Law on Indications of Geographical Origin prescribes that this Law shall not apply to products and services where acquisition, legal protection and the exercise of rights in respect of the use of the indication of geographical origin is regulated by a specific regulation.

The Law on Quality Schemes for Agricultural and Food Products prescribes protection for agricultural and food products. The provisions of this Law shall not apply to spirit drinks and products of grapes and wine, except for wine vinegar.

The Law on Wine prescribes protection of geographical indications for wines and Law on Spirit Drinks prescribes provisions for spirit drinks.

¹ Documents IP/C/13 and IP/C/13/Add.1. The four questions communicated in IP/C/13/Add.1 have been added to Sections A, B and F of the Checklist and appear as questions 7(a), 16(a), 16(b) and 46(a).

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

In accordance with the Law on Indications of Geographical Origin, protection of geographical indications also extends 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.

In accordance with Article 9 of the Constitution of Montenegro, the ratified and published international agreements (such as TRIPS Agreement) shall make an integral part of the internal legal order, shall have the supremacy over the national legislation and shall be directly applicable when they regulate the relations differently from the internal legislation. In accordance with above mentioned Article 9 of the Constitution of Montenegro, interested parties have legal means to prevent use of geographical indications as referred to in Article 22.2 of the TRIPS Agreement.

Also, the Law on Indications of Geographical Origin prescribes that a name that can create confusion among consumers that the product originates from the geographic area that is not the true place of origin shall not be protected.

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.

Recognition of geographical indications is provided through regulations/laws.

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.

In accordance with the Law on Quality Schemes for Agricultural and Food Products a ham produced under specific conditions in a place called Njeguši is labelled with a protected geographical origin named "Njeguški pršut" and a kind of cheese produced in Pljavlja city bears the protected designation of origin named "Pljevaljski sir".

7. Is the higher level of protection required for wines and spirits under Article 23.2 of the TRIPS Agreement provided for any other product? If so, please specify such products and the law under which they are protected.

The Law on Quality Schemes for Agricultural and Food Product prescribes protection for all agricultural and food products.

7(a). 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, in our legislation such provisions are prescribed. In the case of wine, it is regulated by the Wine Law, and in the case of spirits it is regulated by the Law on Spirit Drinks.

Namely, in Article 29, paragraph 3.a) of Wine Law, it is stipulated that:

"Traditional terms shall be protected, only in the language and for the categories of grape vine products claimed in the application, against:

- a) any misuse of the protected term, including where it is accompanied by an expression such as "style", "type", "method", "as produced in", "imitation", "flavour", "like" or similar."

In accordance with Article 59, Paragraph 7 of the Law on Spirit Drinks, it is regulated that:

"Spirit drinks not meeting the requirements of any of the categories may not be described, presented or labelled using phrases such as "like", "type", "style", "made", "flavour" or other similar terms associated with any denomination of spirit drinks indicated in this law and/or with geographical indications registered in accordance with this Law."

B DEFINITION AND CRITERIA FOR RECOGNITION

8. How are geographical indications defined?

The Law on Indications of Geographical Origin prescribes that a geographical indication shall be the indication that identifies certain goods as goods originating from the territory of a specific country, region or a locality within such territory, where a specific quality, reputation or other characteristics of the goods can be essentially attributed to their geographical origin.

The Law on Quality Schemes for Agricultural and Food Product prescribes two kinds of geographical indications:

Designation of origin and geographical indication

Article 5

(1) Designation of origin means the name of a region, a specific place, or, in exceptional cases, a state used to identify an agricultural or food product:

- Originating in that region, place or state, as appropriate;
- The quality or characteristics of which are exclusively or essentially due to particular natural and human factors of a defined geographical environment;
- Production, processing and preparation of which take place in a defined geographical area.

(2) Geographical indication means the name of a region, a specific place or, in exceptional cases, a state used to identify an agricultural or food product:

- Originating in that region, place or state, as appropriate;
- Which has a specific quality, reputation or other characteristics attributable to its geographical origin;
- Production and/or processing and/or preparation of which take place in a defined geographical area.

The Law on Spirit Drinks prescribes one kind of geographical indication:

Geographical indication

Article 75

Geographical indication in terms of this Law are indications identifying a spirit drink originating in the territory of a country, region or locality of that country, where a given quality, reputation or other characteristics of that spirit 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?

According to the Law on Indications of Geographical Origin no, but in the case of regulations by which is regulated Geographical indications for agricultural and food products, alcohol spirit drinks and wines yes.

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

Law on Indications of Geographical Origin

Initiation of the Proceedings for the Registration of the Appellation of Origin or the Geographical Indication

Article 14

- (1) The proceedings for the registration of the appellation of origin and geographical indication shall be initiated by the appropriate application.
- (2) The application for the registration of an appellation of origin or a geographical indication may be filed by the following persons:
- 1) Associations of natural and legal persons, commercial associations, associations of consumers, state and local authorities interested in protection of an appellation of origin or a geographical indication, within their activities;
 - 2) Foreign natural or legal persons, or foreign associations if an appellation of origin or a geographical indication were recognized in the country of origin, when it stems from the international agreements;
 - 3) Domestic natural and legal persons who, within a specified geographical area, produce products that bear the name of such geographical area, provided the following requirements are met:
 - That, at the time of filing of the application are the only producers or processors or service providers for whom the registration of an appellation of origin or a geographical indication is requested;
 - That the geographical area has the characteristics that significantly differ from those of the adjacent area or that the characteristics of the product differ from those of the product originating from the adjacent areas.
- (3) The application for registration of an appellation of origin or a geographical indication may be related to only one geographical indication or a name and to only one type of product.
- (4) The prescribed fee shall be payable for the application for the registration of the appellation of origin or a geographical indication.

Essential Elements of the Application

Article 15

The following shall be the essential elements of the application:

- 1) A request for the registration of an appellation of origin or a geographical indication, as the case may be;
- 2) A description of the geographical area;
- 3) An information on specific characteristics of the product.

**Request for the Registration of an Appellation of Origin
Or a Geographical Indication**

Article 16

- (1) A request for registration of an appellation of origin or a geographical indication shall include:
- 1) Particulars of the applicant;
 - 2) Geographical name to be protected;
 - 3) Type of a product to which the geographical indication applies;
 - 4) The name of the region or a locality of origin of the product to be marked by a geographical name;
 - 5) A signature of the applicant;
 - 6) A proof that the prescribed fee has been paid.
- (2) Where the applicant is a foreign natural or legal person or a foreign association, the application referred in paragraph 1 of this Article shall be accompanied by a public document verifying that the appellation of origin or a geographical indication has been recognized in the country of origin.
- (3) An application for the registration of an appellation of origin, along with the elements referred to in paragraph 1 of this Article, shall also include an information on the organization authorized to control the quality of a product.

(4) An application for the registration of a geographical indication, along with the elements referred to in paragraph 1 of this Article, may include the appearance of the geographical indication if comprising of words and possible figurative elements or figurative elements only, suitable to identify geographical origin of certain goods.

Description of the Geographical Area

Article 17

Description of the geographical area shall comprise information on the geographical area where the product originates from and shall include specifics on administrative borders of such area, its geographical map and the information on human factors suitable to cause specific characteristics, quality and reputation of the concerned product.

Information on Specific Characteristics of the Product

Article 18

In case of an application for the registration of a geographic indication, an information on specific characteristics of the product shall comprise detailed description of the production method of the product, precise indication of specific characteristics or quality of the product, including information on the reputation acquired, on persons authorized to use the geographical indication and conditions for such a use as well as rights and obligations of the user of the geographical indication.

Examination of the Registration Requirements

Article 22

(1) Where the application for the registration of an appellation of origin or a geographical indication is complete within the meaning of Article 21, paragraph 1 of this Law, the responsible authority shall examine whether the requirements for the registration of an appellation of origin or a geographical indication have been met.

(2) During the examination referred to in paragraph 1 of this Article, where the applicant is a domestic person or association of persons referred to in Article 14, paragraph 2, items 1 and 3 of this Law, the responsible authority shall obtain an opinion of the state administrative authority responsible for the subject of examination, which shall be taken into account when deciding on the application of the member state where an appellation of origin or a geographical indication for the registration of an appellation of origin or a geographical indication.

Decision to Deny the Registration

Article 23

(1) Where the responsible authority determines that the application for the registration of an appellation of origin or a geographical indication does not meet requirements for the registration under this Law, the responsible authority shall notify the applicant in writing stating the reasons for denial to register an appellation of origin or a geographical indication, as the case may be, and inviting him to comment those reasons within 60 days.

(2) Upon the substantiated request of the applicant and the payment of the prescribed fee, the responsible authority may extend the time limit referred to in paragraph 1 of this Article for as long as it finds appropriate, but not longer than three months.

(3) The responsible authority shall decide to deny the registration of an appellation of origin or a geographical indication if the applicant for the registration of an appellation of origin or a geographical indication does not comment reasons referred to in paragraph 1 of this Article.

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?

It is not specifically prescribed by legislation which regulated protection of geographical indications for agricultural and food products, wine and spirit drinks (Law on Quality Schemes for Agricultural and Food Products, Law on Wine and Law on Spirit Drinks).

According to the Law on Indications of Geographical Origin no.

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

According to the Law on Indications of Geographical Origin 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?

The Law on Indications of Geographical Origin does not prescribe which authority may define the geographic region or area for which rights are claimed.

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

Yes.

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

Yes. The Law on Indications of Geographical Origin prescribes that the application for the registration of an appellation of origin or a geographical indication may be filed by foreign natural or legal persons, or foreign associations if an appellation of origin or a geographical indication were recognized in the country of origin, when it stems from the international agreements.

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.

Yes. In the case of Law on Quality Schemes for Agricultural and Food Product it is prescribed by the Article 15.

The Law on Indications of Geographical Origin prescribes that the application for the registration of an appellation of origin or a geographical indication may be filed by foreign natural or legal persons, or foreign associations if an appellation of origin or a geographical indication were recognized in the country of origin, when it stems from the international agreements.

16(a). 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?

In accordance with our legislation there are three laws by which geographical indication are regulated. As we already have mentioned above, for wine and spirit drinks it has two separate laws. For other agricultural and foodstuff products geographical indication are regulated by Law on quality schemes for agricultural products and foodstuffs.

A product name identified as a geographical indication is one that is closely linked to a specific production area. This concept encompasses protected designations of origin (PDOs) and protected geographical indications (PGIs) for foods and wines, while spirits and aromatised wines have geographical indications.

16(b). Does your legislation contain criteria for homonymous geographical indications for wines and spirits?

In our legislation criteria for homonymous geographical indications for wines and spirits are prescribed. Regarding to the Wine Law provisions.

In accordance with the Spirit Drinks Law by Article 77 it is prescribing the next:

"Homonymous geographical indications meeting the requirements of this Law may be registered respecting the local and traditional usage and the risk of confusion.

Homonyms name misleading the consumer into believing that the product comes from another territory shall not be registered even if the name is accurate in terms of actual territory of the state, region or place of origin of the product in question.

The use of registered homonymous geographical indications shall authorise where there is a clear distinction in practice between the homonym registered subsequently and the name already registered, with due regard to treating producers in an equitable manner and not misleading the consumers."

In case of the Wine Law, it has implementing regulations by which criteria for homonymous geographical indications for wines are regulated.

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?**

In accordance with Article 14 paragraph 2 of the Law on Indications of Geographical Origin an application for the registration of an appellation of origin or a geographical indication may be filed by the following persons:

- 1) Associations of natural and legal persons, commercial associations, associations of consumers, state and local authorities interested in protection of an appellation of origin or a geographical indication, within their activities;
- 2) Foreign natural or legal persons, or foreign associations if an appellation of origin or a geographical indication were recognized in the country of origin, when it stems from the international agreements;
- 3) Domestic natural and legal persons who, within a specified geographical area, produce products that bear the name of such geographical area, provided the following requirements are met:
 - that, at the time of filing of the application are the only producers or processors or service providers for whom the registration of an appellation of origin or a geographical indication is requested;
 - that the geographical area has the characteristics that significantly differ from those of the adjacent area or that the characteristics of the product differ from those of the product originating from the adjacent areas.

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

In accordance with the Law on Indications of Geographical Origin, the competent authority where the protection of a geographical indication can be obtained is the Intellectual Property Office of Montenegro.

The competent authority where the protection of a geographical indication can be obtained for agriculture and food products, spirit drinks and wines is the Ministry of Agriculture and Rural Development.

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 which lead to the recognition of a geographical indication cannot be initiated ex officio. The procedure for the registration of the geographical indication shall be initiated by the appropriate application.

The application for registration of a designation of origin or a geographical indication may be submitted only by an association of producers or processors of agricultural or food products they produce or process (hereinafter referred to as: the association).

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

The applicant must pay an administrative fee for the application for the registration of a geographical indication.

The Ministry of Agriculture provides support for certification costs of the protected names of agricultural and food products.

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

Law on Indications of Geographical Origin

Essential Elements of the Application

Article 15

The following shall be the essential elements of the application:

- 1) A request for the registration of an appellation of origin or a geographical indication, as the case may be;
- 2) A description of the geographical area;
- 3) An information on specific characteristics of the product.

**Request for the Registration of an Appellation of Origin
Or a Geographical Indication**

Article 16

- (1) A request for registration of an appellation of origin or a geographical indication shall include:
 - 1) Particulars of the applicant;
 - 2) Geographical name to be protected;
 - 3) Type of a product to which the geographical indication applies;
 - 4) The name of the region or a locality of origin of the product to be marked by a geographical name;
 - 5) A signature of the applicant;
 - 6) A proof that the prescribed fee has been paid.
- (2) Where the applicant is a foreign natural or legal person or a foreign association, the application referred in paragraph 1 of this Article shall be accompanied by a public document verifying that the appellation of origin or a geographical indication has been recognized in the country of origin.
- (3) An application for the registration of an appellation of origin, along with the elements referred to in paragraph 1 of this Article, shall also include an information on the organization authorized to control the quality of a product.
- (4) An application for the registration of a geographical indication, along with the elements referred to in paragraph 1 of this Article, may include the appearance of the geographical indication if comprising of words and possible figurative elements or figurative elements only, suitable to identify geographical origin of certain goods.

Description of the Geographical Area

Article 17

Description of the geographical area shall comprise information on the geographical area where the product originates from and shall include specifics on administrative borders of such area, its geographical map and the information on human factors suitable to cause specific characteristics, quality and reputation of the concerned product.

Information on Specific Characteristics of the Product

Article 18

(1) In case of an application for the registration of a geographic indication, an information on specific characteristics of the product shall comprise detailed description of the production method of the product, precise indication of specific characteristics or quality of the product, including information on the reputation acquired, on persons authorized to use the geographical indication and conditions for such a use as well as rights and obligations of the user of the geographical indication.

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

Law on Indications of Geographical Origin

Essential Elements of the Application

Article 15

The following shall be the essential elements of the application:

- 1) A request for the registration of an appellation of origin or a geographical indication, as the case may be;
- 2) A description of the geographical area;
- 3) An information on specific characteristics of the product.

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 - 4) The name of the region or a locality of origin of the product to be marked by a geographical name;
 - 5) A signature of the applicant;
 - 6) A proof that the prescribed fee has been paid.
- (2) Where the applicant is a foreign natural or legal person or a foreign association, the application referred in paragraph 1 of this Article shall be accompanied by a public document verifying that the appellation of origin or a geographical indication has been recognized in the country of origin.
- (3) An application for the registration of an appellation of origin, along with the elements referred to in paragraph 1 of this Article, shall also include an information on the organization authorized to control the quality of a product.
- (4) An application for the registration of a geographical indication, along with the elements referred to in paragraph 1 of this Article, may include the appearance of the geographical indication if comprising of words and possible figurative elements or figurative elements only, suitable to identify geographical origin of certain goods.

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

Law on Indications of Geographical Origin

Essential Elements of the Application

Article 15

The following shall be the essential elements of the application:

- 1) A request for the registration of an appellation of origin or a geographical indication, as the case may be;
- 2) A description of the geographical area;
- 3) An information on specific characteristics of the product.

Request for the Registration of an Appellation of Origin Or a Geographical Indication

Article 16

- (1) A request for registration of an appellation of origin or a geographical indication shall include:
 - 1) Particulars of the applicant;
 - 2) Geographical name to be protected;
 - 3) Type of a product to which the geographical indication applies;
 - 4) The name of the region or a locality of origin of the product to be marked by a geographical name;
 - 5) A signature of the applicant;
 - 6) A proof that the prescribed fee has been paid.
- (2) Where the applicant is a foreign natural or legal person or a foreign association, the application referred in paragraph 1 of this Article shall be accompanied by a public document verifying that the appellation of origin or a geographical indication has been recognized in the country of origin.
- (3) An application for the registration of an appellation of origin, along with the elements referred to in paragraph 1 of this Article, shall also include an information on the organization authorized to control the quality of a product.
- (4) An application for the registration of a geographical indication, along with the elements referred to in paragraph 1 of this Article, may include the appearance of the geographical indication if comprising of words and possible figurative elements or figurative elements only, suitable to identify geographical origin of certain goods.

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Information on Specific Characteristics of the Product

Article 18

(1) In case of an application for the registration of a geographic indication, an information on specific characteristics of the product shall comprise detailed description of the production method of the product, precise indication of specific characteristics or quality of the product, including information on the reputation acquired, on persons authorized to use the geographical indication and conditions for such a use as well as rights and obligations of the user of the geographical indication.

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

In accordance with Article 16 paragraph 1 item 3 of the Law on Indications of Geographical Origin a request for registration of a geographical indication shall include a type of a product to which the geographical indication applies.

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

Law on Indications of Geographical Origin

Conditions for Cancellation of the Decision

Article 47

Upon the written proposal of an interested person, the responsible authority may cancel the decision on registration of an indication of geographical origin or a decision to recognize the status of an authorized user, if it determines that requirements for the registration of an indication of geographical origin or requirements for the recognition of the status of an authorized user have not been met at the time when the decision was issued.

Application for the Cancellation of the Decision

Article 48

(1) The proposal referred to in Article 47 of this Law shall be submitted in two copies and shall include:

- 1) Particulars of the person who submitted proposal;
- 2) Indication that the cancellation of the decision to register an indication of geographical origin or a decision to recognize the status of an authorized user is being requested;
- 3) Registration number of the indication of geographical origin whose cancellation is being requested or registration number of the indication of geographical origin against whose authorized user the proposal has been submitted;
- 4) Particulars of the authorized user of the indication of geographical origin whose cancellation is being requested;
- 5) Reasons for the cancellation;
- 6) Evidence supporting the reasons;
- 7) Power of attorney, where the proceedings are initiated through an attorney;
- 8) Evidence that the prescribed application fee has been paid.

(2) If the proposal to cancel the decision to register an indication of geographical origin or a decision to recognize the status of an authorized user does not meet requirements referred to in paragraph 1

of this Article, responsible authority shall invite the applicant in writing to regularize the application within 30 days from the date the notification has been served.

(3) If the applicant does not regularize the application within the time limit referred in paragraph 2 of this Article, the responsible authority shall reject the application.

Proceedings upon the Complete Proposal

Article 49

(1) Where the proposal referred to in Article 47 of this Law is complete, the responsible authority shall serve it on the opposing party and invite it to respond within 30 days from the date the invitation has been served.

(2) The responsible authority may schedule the hearing in the proceedings initiated upon the proposal referred to in Article 47 of this Law.

(3) If the applicant for the cancellation of the decision on registration an indication of geographical origin or a decision on recognition the status of an authorized user renounces the proposal, the responsible authority may continue the proceedings *ex officio*.

(4) Provisions of Articles 23 and 36 of this Law shall apply *mutatis mutandis* to the proceedings upon the proposal for the cancellation of the decision on registration an indication of geographical origin.

Article 50

(1) Upon the completion of the proceedings referred to in Article 47 of this Law, the responsible authority may issue or refuse to issue, a decision to cancel the decision on registration of an indication of geographical origin or a decision on recognition of the status of an authorized user.

(2) Three months after the decision to cancel the decision on registration of an indication of geographical origin or a decision on recognition of the status of an authorized user has become final and enforceable, the responsible authority shall publish prescribed information on such a decision in its official publication.

Law on Quality Schemes for Agricultural and Food Product:

Application for registration of a designation of origin or a geographical indication

Article 8

(1) The application for registration of a designation of origin or a geographical indication may be submitted only by an association of producers or processors of agricultural or food products they produce or process (hereinafter referred to as: the association).

(2) The association members may also be other producers of other agricultural and/or food products.

(3) Notwithstanding paragraph 1 of this Article, an application for registration of a designation of origin or geographical indication may be submitted by a natural or legal person provided that:

- 1) It proves that it is the only producer or processor of a specific product in a defined geographical area; and/or
- 2) The geographical area has characteristics that distinct it essentially from the neighbouring areas or the product characteristics are different from those produced in the neighbouring areas.

(4) The association shall perform internal control over production or processing of agricultural and food products carrying the designation of origin or geographical indication.

(5) The application referred to in paragraph 1 of this Article shall include: the name and address of the applicant, the designation of origin or the geographical indication registration of which is sought.

(6) Together with the application for registration of the designation of origin or geographical indication, the following shall be presented:

- 1) The specification referred to in Article 7 of this Law;
- 2) A single document that includes:
 - The main elements of the specification: the product name and description including, where appropriate, the specific rules concerning the packaging and labelling and a precisely defined space of the geographical area;
 - Description of the link between the product and the geographical environment or geographical origin referred to in Article 5 paragraphs 1 and 2 of this Law, including, where appropriate, the specific elements of the product description or production method justifying the link.
- 3) The document on internal rules, internal controls and procedures of the association.

(7) Registration of only designation of origin or geographical indication may be sought by the application referred to in paragraph 1 of this Article.

(8) The manner of submitting the application for registration of the designation of origin or geographical indication and the form of the single document referred to in the paragraph 6 item 2 of this Article shall be laid down by the Ministry.

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

In accordance with the Law on Indications of Geographical Origin any interested person can propose to the responsible authority to cancel the decision on registration of a geographical indication.

Law on Quality Schemes for Agricultural and Food Product

Objection to an application for registration

Article 10

(1) A legal or natural person having a legitimate interest that is established or resident in Montenegro may lodge an objection to the application for registration of a designation of origin or a geographical indication.

(2) The objection referred to in paragraph 1 of this Article shall be submitted to the Ministry within the period of 30 days from the day of publishing of the application in the Official Gazette of Montenegro.

(3) The objection referred to in paragraph 1 of this Article shall be admissible if:

- 1) It has been submitted within the deadline set;
- 2) The objection points that the designation of origin or a geographical indication sought by the application does not comply with the registration conditions referred to in Article 5 of this Law;
- 3) It points that registration of the name proposed would be contrary to Article 7 paragraphs 4, 6 and 7 of this Law;
- 4) It points that registration of the name proposed would jeopardize the existence of a wholly or partially identical name or trademark or the existence of products present at the market for at least five years before the date of publication of the application in the Official Gazette of Montenegro;
- 5) It includes information from which it can be concluded that the name for which the registration is sought is generic in terms of Article 6 of this Law.

(4) The manner of submitting the objection referred to in paragraph 1 of this Article shall be laid down by the Ministry.

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?

In accordance with Article 14 paragraph 1 item 2 of the Law on Indications of Geographical Origin the application for the registration of a geographical indication may be filed by foreign natural or

legal persons, or foreign associations if geographical indication was recognized in the country of origin, when it stems from the international agreements.

D MAINTENANCE

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

In accordance with Article 26 of Law on Indications of Geographical Origin the period of validity of the registered geographical indication shall not be limited.

Law on Quality Schemes for Agricultural and Food Product: The Commission for registration of the designation of origin/geographical indication, is responsible for consideration of the justification of the applications. The deadline for decision is 60 days from the date of receipt of the request.

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.

In accordance with the Law on Indications of Geographical Origin recognition of a geographical indication does not need to be renewed or reaffirmed.

In accordance with the Law on Quality Schemes for Agricultural and Food Product, the decision on registration of the designation of origin, or geographical indication shall be cancelled in case the procedure for verification of the compliance with the product specification establishes that the product does not comply with the conditions from the specification and that continuous compliance with the conditions from the specification will not be ensured and where no product protected with the designation of origin or geographical indication has been marketed for at least seven years.

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

In accordance with the Law on Indications of Geographical Origin geographical indication does not need to be used in order to maintain rights.

Law on Quality Schemes for Agricultural and Food Product

Names, designations and symbols

Article 18

(1) An agricultural or food product produced or processed in accordance with the corresponding product specification shall be identified so that its label, beside the registered name has a visible indication "Protected Designation of Origin" or "PDO", or „Protected Geographical Indication" or "PGI", together with the application of the corresponding symbol.

(2) In addition to indication, designation or symbol referred to in paragraph 1 of this Article, the label may contain also the image of the geographical area of origin as well as the text, graphic symbols or symbols related to the place, region or state that the geographical area is situated in.

(3) Only the producers or processors producing or processing agricultural or food products in accordance with the product specification and registered in the records referred to in Article 13 paragraph 2 of this Law, may apply the indication or designation referred to in paragraph 1 of this Article on the label, advertising or other documentation referring to the agricultural or food product.

(4) The symbol referred to in paragraph 1 of this Article is the graphic symbol of a registered designation or indication of an agricultural or food product.

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

In accordance with the Law on Indications of Geographical Origin recognition of a geographical indication does not need to be renewed or reaffirmed.

In accordance with the Law on Quality Schemes for Agricultural and Food Product, the decision on registration of the designation of origin, or geographical indication shall be cancelled in case the procedure for verification of the compliance with the product specification establishes that the product does not comply with the conditions from the specification and that continuous compliance with the conditions from the specification will not be ensured and where no product protected with the designation of origin or geographical indication has been marketed for at least seven years.

In accordance with the Law on Indications of Geographical Origin geographical indication does not need to be used in order to maintain rights.

Law on Quality Schemes for Agricultural and Food Product

Names, designations and symbols

Article 18

(1) An agricultural or food product produced or processed in accordance with the corresponding product specification shall be identified so that its label, beside the registered name has a visible indication "Protected Designation of Origin" or "PDO", or „Protected Geographical Indication" or "PGI", together with the application of the corresponding symbol.

(2) In addition to indication, designation or symbol referred to in paragraph 1 of this Article, the label may contain also the image of the geographical area of origin as well as the text, graphic symbols or symbols related to the place, region or state that the geographical area is situated in.

(3) Only the producers or processors producing or processing agricultural or food products in accordance with the product specification and registered in the records referred to in Article 13 paragraph 2 of this Law, may apply the indication or designation referred to in paragraph 1 of this Article on the label, advertising or other documentation referring to the agricultural or food product.

(4) The symbol referred to in paragraph 1 of this Article is the graphic symbol of a registered designation or indication of an agricultural or food product.

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

In accordance with Article 55 of the Law on Indications of Geographical Origin the responsible authority (Intellectual Property Office of Montenegro) monitors the use of geographical indications upon the application-request of an interested person and it can determine that the conditions prescribed by this Law for the recognition of the status of an authorized user of a geographical indication, have ceased to exist.

Law on Quality Schemes for Agricultural and Food Product:

Control body

Article 62

(1) Verification of compliance of agricultural or food products with the specification shall be done following the adoption of the decision on registration of designations of origin, geographical indications, traditional speciality guaranteed and the "Higher Quality" label.

(2) The verification of compliance with the specification referred to in paragraph 1 of this Article shall be done by a control body authorised by the Ministry.

(3) The authorization referred to in paragraph 2 of this Article shall be issued to a control body that:

- Is based in Montenegro;
- Is accredited in accordance with the standard MEST EN ISO/IEC 17065;
- Meets the conditions as regards technical equipment and qualified staff.

(4) The list of authorised control bodies shall be published in the Official Gazette of Montenegro.

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

Law on Indications of Geographical Origin

Revocation of the Decision on Recognition the Status of an Authorized User

Article 55

(1) Upon the application of an interested person, the responsible authority may revoke a decision on recognition the status of an authorized user of an appellation of origin or a geographical indication if it determines that the conditions prescribed by this Law for the recognition of the status of an authorized user of an appellation of origin or a geographical indication, have ceased to exist.

(2) In the proceedings initiated upon the application for the revocation of a decision on recognition the status of an authorized user of an appellation of origin or a geographical indication, an authorized user of an appellation of origin or a geographical indication must prove the existence of the conditions prescribed by the law for the recognition of the status of an authorized user of an appellation of origin or a geographical indication.

(3) If the applicant for the revocation of a decision on recognition the status of an authorized user of an appellation of origin or a geographical indication renounces the application, the responsible authority may continue the proceedings *ex officio*.

(4) Provisions of Article 36 of this Law shall apply *mutatis mutandis* to the proceedings initiated upon the application for the revocation of a decision on recognition the status of an authorized user of an appellation of origin or a geographical indication.

(5) The status of a person inserted in the appropriate register as the authorized user of an appellation of origin or a geographical indication shall be terminated on the first day subsequent to the day the decision to revoke a decision on recognition the status of an authorized user of an appellation of origin or a geographical indication became final and enforceable.

Law on Quality Schemes for Agricultural and Food Product

Procedure of verification of compliance with the specification

Article 63

(1) The procedure of verification of compliance of agricultural and/or food products with the specification shall start with submission of the application to the control body.

(2) Where the procedure of verification of compliance verifies that the agricultural and/or food products comply with the specification, the control body shall issue a document on compliance of the agricultural and/or food products, which is presented to the applicant and the Ministry.

(3) Where the control body establishes major non-compliance with the specification of agricultural and/or food products, it shall notify the Ministry thereof.

(4) The notification referred to in paragraph 3 of this Article shall include the extent of non-compliance and measures that need to be undertaken in order to eliminate the non-compliance.

(5) The control body shall present the Ministry annually with a report on assessments of compliance of agricultural or food products with the specification no later than by January 31 of the current year for the previous year.

(6) The costs of assessment of compliance with the specification shall be borne by the applicant.

(7) The assessment of compliance of agricultural and/or food products with the specification shall be done on the basis of the control plan of the control body.

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.

Law on Quality Schemes for Agricultural and Food Product

**Cancellation of the decision on registration of designation of origin
or geographical indication**

Article 15

(1) The decision on registration of the designation of origin, or geographical indication shall be cancelled in case the procedure for verification of the compliance with the product specification establishes that the product does not comply with the conditions from the specification and that continuous compliance with the conditions from the specification will not be ensured and where no product protected with the designation of origin or geographical indication has been marketed for at least seven years.

(2) The request for cancellation of the decision referred to in the paragraph 1 of this Article may be submitted to the Ministry by a legal or natural person having legitimate interest, stating the reasons for the cancellation.

(3) The Ministry shall publish the valid decision on cancellation of the decision on registration of a designation of origin or geographical indication in the Official Gazette of Montenegro.

(4) Use of a designation of origin or geographical indication following the cancellation of the decision on its registration shall be prohibited.

(5) Based on the decision referred to in paragraph 3 of this Article, the Ministry shall delete the registered designation of origin or geographical indication from the registers referred to in Article 12 of this Law.

Law on Indications of Geographical Origin:

Conditions for Cancellation of the Decision

Article 47

Upon the written application of an interested person, the responsible authority may cancel the decision on registration of an indication of geographical origin or a decision on recognition of the status of an authorized user, if it determines that requirements for the registration of an indication of geographical origin or requirements for the recognition of the status of an authorized user have not been met at the time when the decision was issued.

**Termination of the Appellation of Origin or Geographical Indication
In the Country of Origin**

Article 52

(1) Registered appellation of origin or registered geographical indication shall cease to be valid when its protection in the country of origin terminates.

(2) Upon the application of an interested person accompanied with the certificate of the competent authority of the country of origin of an appellation of origin or a geographical indication, or upon an information received from the competent authority of the country of origin of an appellation of origin or a geographical indication that the protection of such an appellation of origin or a geographical indication has been terminated in the country of origin, the responsible authority shall issue a decision that will cease validity of an appellation of origin or a geographical indication.

(3) The responsible authority shall enter a decision referred to in paragraph 2 of this Article into the appropriate register and shall publicize prescribed information on the termination of an appellation of origin or a geographical indication, as the case may be.

Termination of the Geographical Indication Based on the Court Decision

Article 53

(1) Any interested person may file a suit before the competent court in order to establish that certain geographical indication became generic, i.e. usual name for certain product.

(2) Registered geographical indication shall cease to be valid based on the final and enforceable decision of the court establishing that it became generic, i.e. usual name for certain product.

(3) Registered geographical indication that is registered and protected in its country of origin as an appellation of origin, cannot be declared as generic, i.e. usual name for certain product, for as long as such protection is valid in the country of origin.

(4) After the responsible authority receives the court decision referred to in paragraph 2 of this Article, it shall enter the decision in the appropriate register and publish the prescribed information on termination of the geographical indication in its official publication.

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 must be based on the initiative of an interested person.

Regarding the Law on Quality Schemes for Agricultural and Food Product (see also answer to question 33):

Cancellation of the decision on registration of designation of origin or geographical indication

Article 15

(1) The decision on registration of the designation of origin, or geographical indication shall be cancelled in case the procedure for verification of the compliance with the product specification establishes that the product does not comply with the conditions from the specification and that continuous compliance with the conditions from the specification will not be ensured and where no product protected with the designation of origin or geographical indication has been marketed for at least seven years.

(2) The request for cancellation of the decision referred to in the paragraph 1 of this Article may be submitted to the Ministry by a legal or natural person having legitimate interest, stating the reasons for the cancellation.

(3) The Ministry shall publish the valid decision on cancellation of the decision on registration of a designation of origin or geographical indication in the Official Gazette of Montenegro.

(4) Use of a designation of origin or geographical indication following the cancellation of the decision on its registration shall be prohibited.

(5) Based on the decision referred to in paragraph 3 of this Article, the Ministry shall delete the registered designation of origin or geographical indication from the registers referred to in Article 12 of this Law.

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 party needs to obtain recognition of the status of an authorized user of geographical indication before its use.

Law on Quality Schemes for Agricultural and Food Product

Use of designation of origin and geographical indication

Article 13

(1) A registered designation of origin or geographic indication may be used by a producer or processor of an agricultural or food product provided that the product complies with the conditions from the corresponding specification.

(2) Following the registration of the designation or indication referred to in paragraph 1 of this Article and following the procedure of verification of compliance of the product with the specification in accordance with Article 63 of this Law, a producer or processor of the agricultural or food product shall submit an application for entry in the Records on users of registered designations of origin or Records on users of registered geographical indications, as appropriate.

(3) The entry in the records referred to in paragraph 2 of this Article shall be done by a decision of the Ministry.

(4) The producer or processor of agricultural or food products shall be deleted from the records referred to in paragraph 2 of this Article where it no longer complies with the conditions from the product specification.

Law on Indications of Geographical Origin

Initiation of the Proceedings for the Recognition of the Status of the Authorized User

Article 27

(1) The procedure for recognizing the status of an authorized user of an appellation of origin or a geographical indication shall be initiated by filing the application for recognizing the status of an authorized user of an appellation of origin or a geographical indication.

(2) The application for recognizing the status of an authorized user of an appellation of origin or a geographical indication may be submitted by natural or legal persons who, within the geographical area, produce products marked by the name of such geographical area, as well as associations of such natural or legal persons.

(3) Prescribed fee shall be payable for filing of an application for recognition of a status of an authorized user of an appellation of origin or a geographical indication.

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?

In accordance with the Law on Indications of Geographical Origin the entity responsible for the recognition of a geographical indication (IP Office) shall issue a decision on recognition of the status of an authorized user of a geographical indication.

In accordance with Law on Quality Schemes for Agricultural and Food Product, it is the Ministry of Agriculture and Rural Development.

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?

Article 38 paragraph 1 of the Law on Indications of Geographical Origin prescribes that where the application for the recognition of a status of an authorized user of a geographical indication meets the requirements under this Law for the recognition of the status of an authorized user of a geographical indication, the responsible authority shall invite the applicant to pay the fee for the recognition of the status of an authorized user of a geographical indication for the first three years

and the costs of publication of the information on the authorized user of a geographical indication, and to furnish evidence of payment.

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

In case of a dispute regarding use of a geographical indication by a particular party, the dispute can be brought before the competent court in accordance with the provisions of the Law on Indications of Geographical Origin which prescribe civil law protection and provisional measures.

Law on Indications of Geographical Origin

Prohibited Actions

Article 43

Any person who has not been recognized as an authorized user of an appellation of origin or a geographical indication shall not be allowed to use registered appellation of origin or geographical indication, their translation, transcription or transliteration, regardless of the font or the colour used, or expressed in any other manner, to mark products, where the appellation of origin or the geographical indication is supplemented with the words such as: "kind", "type," "fashion," "imitation", "by the process" and the like, even where the geographical origin of the product is correct.

In accordance with Law on Quality Schemes for Agricultural and Food Product, the authorized certification body that conducts control and certification is obliged to inform the Ministry of Agriculture and the inspection of all nonconformities and use of the geographical indication.

Administrative measures and actions of the agricultural inspector

Article 66

In addition to administrative measures and actions as laid down by the law governing the inspectorial supervision, the agricultural inspector shall take also the following administrative measures and actions:

- 1) Prohibit the use of a registered designation of origin, geographical indication or name of the traditional speciality guaranteed that are not entered into the register;
- 2) Prohibit the use of designations and indications to producers of agricultural and food products who are not entered into the corresponding records of users of designations and indications;
- 3) Prohibit marketing of agricultural and food products with registered designation or indication or name that fail to comply with the conditions from the product specification;
- 4) Prohibit marketing of agricultural and food products with registered designation or indication where it is established that they have not been labelled in accordance with this Law;
- 5) Lay down also other measures and actions in accordance with the law.

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?

The Law on Indications of Geographical Origin does not prescribe any limitations or special conditions regarding continuous use geographical indication as a condition for authorized user of a geographical indication to retain the rights to use the geographical indication.

Law on Quality Schemes for Agricultural and Food Product

Use of designation of origin and geographical indication

Article 13

(1) A registered designation of origin or geographic indication may be used by a producer or processor of an agricultural or food product provided that the product complies with the conditions from the corresponding specification.

(2) Following the registration of the designation or indication referred to in paragraph 1 of this Article and following the procedure of verification of compliance of the product with the specification in accordance with Article 63 of this Law, a producer or processor of the agricultural or food product shall submit an application for entry in the Records on users of registered designations of origin or Records on users of registered geographical indications, as appropriate.

(3) The entry in the records referred to in paragraph 2 of this Article shall be done by a decision of the Ministry.

(4) The producer or processor of agricultural or food products shall be deleted from the records referred to in paragraph 2 of this Article where it no longer complies with the conditions from the product specification.

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

The Law on Indications of Geographical Origin does not prescribe any limitations or special conditions regarding continuous use geographical indication as a condition for authorized user of a geographical indication to retain the rights to use the geographical indication.

Law on Quality Schemes for Agricultural and Food Product

Use of designation of origin and geographical indication

Article 13

(1) A registered designation of origin or geographic indication may be used by a producer or processor of an agricultural or food product provided that the product complies with the conditions from the corresponding specification.

(2) Following the registration of the designation or indication referred to in paragraph 1 of this Article and following the procedure of verification of compliance of the product with the specification in accordance with Article 63 of this Law, a producer or processor of the agricultural or food product shall submit an application for entry in the Records on users of registered designations of origin or Records on users of registered geographical indications, as appropriate.

(3) The entry in the records referred to in paragraph 2 of this Article shall be done by a decision of the Ministry.

(4) The producer or processor of agricultural or food products shall be deleted from the records referred to in paragraph 2 of this Article where it no longer complies with the conditions from the product specification.

42. Does the regime for protection of geographical indications allow geographical indications to be licensed and, if so, what conditions are imposed on such licenses? If such conditions are not met, what is the effect on the geographical indication?

In accordance with Article 46 paragraph 1 of the Law on Indications of Geographical Origin a registered geographical indication may not be subject of a contract on transfer of rights, a license agreement, pledge, franchise or the like.

Law on Quality Schemes for Agricultural and Food Product

Use of designation of origin and geographical indication

Article 13

(1) A registered designation of origin or geographic indication may be used by a producer or processor of an agricultural or food product provided that the product complies with the conditions from the corresponding specification.

(2) Following the registration of the designation or indication referred to in paragraph 1 of this Article and following the procedure of verification of compliance of the product with the specification in accordance with Article 63 of this Law, a producer or processor of the agricultural or food product shall submit an application for entry in the Records on users of registered designations of origin or Records on users of registered geographical indications, as appropriate.

(3) The entry in the records referred to in paragraph 2 of this Article shall be done by a decision of the Ministry.

(4) The producer or processor of agricultural or food products shall be deleted from the records referred to in paragraph 2 of this Article where it no longer complies with the conditions from the product specification.

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

Law on Quality Schemes for Agricultural and Food Product

International registration

Article 34

(1) International registration of designations of origin, geographical indications and traditional specialities guaranteed shall be done in accordance with ratified international agreements.

(2) The application for international registration of designations of origin, geographical indications and traditional specialities guaranteed shall be submitted to first to the competent authority of Montenegro.

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?

Law on Indications of Geographical Origin

Relation to the Previously Registered Trademark

Article 44

(1) The provisions of this Law shall not prejudice the conditions for the registration, validity of the registration or the right to use the trademark which is identical or similar to a registered geographical indication or an appellation of origin, if the application for the registration of the concerned trademark has been done in a good faith or the trademark rights have been acquired by the use in good faith prior to the filing of the application for the registration of a geographical indication or an appellation of origin, as the case may be.

(2) A geographical indication or an appellation of origin shall not be registered where, in the light of a trademark's reputation and renown and the length of time it has been used, such registration could mislead the consumer as to the true identity and characteristics of the product.

Trademark Law

Exclusive Rights

Article 10

(1) The holder of the trademark shall be exclusively entitled to use the sign protected by a trademark for marking of goods and/or services to which such mark pertains.

(2) The trademark holder shall be entitled to prevent other persons from using in the course of trade without his consent the following:

- 1) A sign which is identical with his/her trademark in relation to goods and/or services which are identical with those goods and/or services for which the trademark has been registered;
- 2) Any sign where, because of its identity with, or similarity to the trademark and the identity or similarity of the goods or services covered by the trademark and the sign, there exists a likelihood of confusion on the part of the public which includes the likelihood of association between the sign and the trademark.

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?

Law on Indications of Geographical Origin

Relation to the Previously Registered Trademark

Article 44

(1) The provisions of this Law shall not prejudice the conditions for the registration, validity of the registration or the right to use the trademark which is identical or similar to a registered geographical indication or an appellation of origin, if the application for the registration of the concerned trademark has been done in a good faith or the trademark rights have been acquired by the use in good faith prior to the filing of the application for the registration of a geographical indication or an appellation of origin, as the case may be.

(2) A geographical indication or an appellation of origin shall not be registered where, in the light of a trademark's reputation and renown and the length of time it has been used, such registration could mislead the consumer as to the true identity and characteristics of the product.

Trademark Law

Relative Grounds for Refusal of a Trademark Registration Based on Earlier Trademarks

Article 7

Based on an opposition a trademark shall not be registered:

- 1) Should such trademark be identical to an earlier registered trademark for identical goods and/or services for which the new registration is applied for;
- 2) Should, because of the identity with, or similarity to the earlier trademark and because of the identity or similarity with goods or services covered by the trademark, there exists a likelihood of confusion of the public, which includes a likelihood of association with the earlier trademark.

An earlier trademark referred to in paragraph 1 of the present Article shall be considered:

- 1) A trademark registered in Montenegro which enjoys priority right stipulated in Articles 22, 23 and 24 of the present Law;
- 2) A trademark registered on the basis of ratified international treaties effective in Montenegro;
- 3) A trademark which is well known in Montenegro on the day of application for the registration or on the day of priority right, if the priority has been claimed, pursuant to Article 6bis of the Paris Convention.

An earlier trademark shall be also understood to include an application for the registration of a trademark referred to in paragraph 2 items 1 and 2 of the present Article, provided that it becomes registered.

In establishing whether the trademark referred to in paragraph 2, item 3 of this Article is well known in Montenegro pursuant to Article 6bis of the Paris Convention, the familiarity of the relevant part of the public with the trademark shall be taken into account, including their familiarity with the trademark as a consequence of trademark-related marketing activities.

The relevant part of the public shall be understood to mean actual and potential users of goods and/or services designated by such mark, as well as the persons involved in the process of distribution and trade of the respective goods and/or services.

Based on an opposition a new trademark for which the registration application has been filed shall not be registered if such trademark is identical or similar to an earlier trademark, and the registration of goods or services has been sought which are not similar to goods or services for which the earlier trademark has been registered, when this earlier trademark has a reputation in Montenegro and when the use of the later trademark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trademark.

Law on Quality Schemes for Agricultural and Food Product

Relation with trademarks

Article 17

(1) Where designations of origin or geographical indications are registered in accordance with this Law, the application for registration of a trademark, for the purpose of protection in accordance with Article 16 of this Law and relating to the same product category shall be rejected if the application for registration of the trademark is submitted after the date of submission of the application for registration of the designation of origin or geographical indication.

(2) Trademarks registered in contravention of paragraph 1 of this Article shall be invalidated, in accordance with the law.

(3) The trademark use of which is protected in accordance with Article 16 of this Law and registered in good faith before submitting the application for registration of the designation of origin or geographical indication in accordance with this Law may continue to be used in case there are no grounds for its invalidation in accordance with the specific regulation.

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

Law on Indications of Geographical Origin

Relation to the Previously Registered Trademark

Article 44

(1) The provisions of this Law shall not prejudice the conditions for the registration, validity of the registration or the right to use the trademark which is identical or similar to a registered geographical indication or an appellation of origin, if the application for the registration of the concerned trademark has been done in a good faith or the trademark rights have been acquired by the use in good faith prior to the filing of the application for the registration of a geographical indication or an appellation of origin, as the case may be.

(2) A geographical indication or an appellation of origin shall not be registered where, in the light of a trademark's reputation and renown and the length of time it has been used, such registration could mislead the consumer as to the true identity and characteristics of the product.

Trademark Law

Absolute Grounds for Refusal of a Registration

Article 6

A trademark shall not be used to protect a sign:

- 4) Consisting exclusively of indications which in trade serve to designate geographical origin of the goods and/or services;
- 8) Which is of such a nature as to deceive the public in particular with regard to the nature, quality or geographical origin of the goods or services;
- 12) Which contains or consists of geographical indication identifying wines and spirits, with respect to such wines and spirits not having that origin;
- 13) Which contains or consists of a geographical indication effective in Montenegro, if the application for the registration of a trademark has been submitted after the date of filing of the application for the registration of the geographical indication and to the extent determined by regulations governing the registration of geographical indication and regarding the same type of goods or services.

Annulment of the Trademark

Article 51

If the trademark has been registered contrary to the provisions of Articles 6 to 8 of this Law, the competent court may annul the registered trademark in whole or in part.

The claim for annulment of the registered trademark may be filed for the entire duration of the trademark right, as well as after the expiration of the right duration.

In cases of trademark registration contrary to Article 6 of this Law, the claim may be filed by any interested party, the State Prosecutor and the competent authority ex officio.

In cases of trademark registration contrary to Article 7 of this Law, the claim may be filed by the holder of the earlier trademark.

In cases of trademark registration contrary to Article 8 of this Law, the claim may be filed by the person whose right has been infringed.

When the trademark has been registered contrary to Article 6 of this Law, the trademark shall be annulled if the grounds for annulment exist at the time of rendering of the decision on the trademark annulment.

46(a). 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?

Yes, our laws that provide for geographical indications for spirits and wines contain provisions that regulate these issues.

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.

Rights in the geographical indication are enforced through provisions of the:

Law on Indications of Geographical Origin

IX. CIVIL LAW PROTECTION Protection in the Event of Infringement of Registered Indication of Geographical Origin

Article 56

(1) In the event of infringement of a registered indication of geographical origin, an action may be filed, and the plaintiff may request the following:

- 1) Determination of the infringement of an appellation of origin or a geographical indication;
- 2) Prohibition of acts that infringe an appellation of origin or a geographical indication;
- 3) Reimbursement of damages and justifiable legal costs and expenses;
- 4) Publication of the court decision at the expense of the defendant;
- 5) Confiscation and destruction, without any compensation, of any products created or obtained by infringing an appellation of origin or a geographical indication;
- 6) Confiscation and destruction, without any compensation, of the materials and objects (equipment, tools) predominantly used to manufacture objects that infringe an appellation of origin or a geographical indication.

(2) If the infringement of an appellation of origin or a geographical indication was intentionally or by gross negligence, the plaintiff may request from the defendant the compensation amounting up to three times of the amounts of direct damage and lost profits combined.

(3) In considering the claims referred to in paragraph 1, items 5 and 6 of this Article, the court shall take into account the need to maintain proportionality between the gravity of the infringement and the measures ordered, as well as the interests of third parties.

(3) Appropriate provisions of the Law of Obligations shall apply to those issues concerning damages for infringement of rights that are not provided for by this Law.

Infringement of Registered Appellation of Origin or Geographical Indication

Article 57

(1) Any unauthorized use of protected appellation of origin or a geographical indication by any economic operator within the meaning of Articles 42 and 43 of this Law shall constitute an infringement of an appellation of origin or a geographical indication.

(2) The imitation of the registered appellation of origin or geographical indication shall also constitute an infringement of an appellation of origin or a geographical indication.

Right to File an Action

Article 58

(1) An action for infringement of an appellation of origin or a geographical indication referred to Article 56 of this Law may be filed by any person referred to Article 14, paragraph 2 of this Law, authorized user of an appellation of origin or a geographical indication and public or state prosecutor.

(2) Where the proceedings referred to Articles 47, 52, 53 and 55 of this Law have been initiated before the responsible authority or the court, the court deciding the case based on the action referred

to in Article 56 of this Law shall delay the proceedings pending the final decision of the responsible authority or the court.

Time Limit to File an Action

Article 59

An action for the infringement an appellation of origin or a geographical indication may be filed within a period of three years as of the day on which the plaintiff became aware of the infringement and the identity of the infringer, but not later than five years as of the day of the first infringement.

X. PROVISIONAL MEASURES Provisional Measure of Seizure or Removal from the Circulation

Article 60

(1) Upon the request of the plaintiff who makes it probable that his appellation of origin or a geographical indication is or shall be infringed, the court may, ending a final decision, issue a provisional measure of:

- 1) Confiscation and/or withdrawal from the market of products made or obtained by infringement of an appellation of origin or a geographical indication;
- 2) Confiscation and/or withdrawal from the market of implements (equipment, tools) predominantly used in the production of products infringing appellation of origin or a geographical indication;
- 3) Prohibition of the further performance of acts infringing appellation of origin or a geographical indication.

(2) A request for the grant of a provisional measure may be filed even before filing an action, provided that the action is filed not later than 30 days from the execution of the provisional measure.

(3) Where there is risk of irreparable harm being caused or where there is demonstrable risk of evidence being destroyed, the court may order a provisional measure without the defendant being heard, whereas the defendant must be notified of the execution of the provisional measure without delay, but not later than five days from the execution of the provisional measure.

(4) The court may instruct the applicant to furnish additional evidence of the infringement of appellation of origin or a geographical indication or of the imminent risk of the infringement thereof and order him to provide a security in order to prevent any abuse.

(5) An appeal against the court decision on the provisional measure referred to in paragraph 1 of this Article shall not stay the execution of the decision.

(6) Appropriate provisions of the Law on Enforcement Procedure shall apply to those issues concerning the institution of provisional measures that are not provided for by this Law.

Securing of Evidence

Article 61

(1) At the request of the plaintiff who makes it credible that his/her right has been infringed, and that there is a reasonable doubt that the evidence of that will be destroyed or that it will not be possible to obtain it later on, the court may order a provisional measure to secure evidence without giving prior notice to or hearing the person from which evidence is to be collected.

(2) For the purposes of Paragraph 1 of this Article, the securing of evidence shall mean the inspection of premises, books, documents, databases, etc., as well as the seizure of documents and infringing goods, interrogation of witnesses and expert witnesses.

(3) The court order for measures to secure evidence shall be served to the person from which evidence is to be collected, on the occasion of the collection of evidence, and to an absent person, as soon as that becomes possible.

(4) Provisional measure to secure evidence may be requested even before filing an action, provided that the action is filed not later than 30 days from the execution of the provisional measure.

Obligation to Provide Information

Article 62

(1) A court may order a person responsible for an infringement of the registered appellation of origin or geographical indication to provide information about any third parties who have participated in the infringement of the appellation of origin or geographical indication and about their distribution channels.

(2) Person referred to in paragraph 1 of this Article who does not fulfil the obligation of providing information shall be held liable for any damages arising therefrom.

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

In accordance with the Law on Indications of Geographical Origin an action for infringement of a geographical indication may be filed by applicants for registration of registered geographical indications and authorized users of a geographical indications.

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?

Commercial courts have jurisdiction over civil law enforcement actions related to geographical indications. In proceedings before the Commercial court, court fees shall be paid in accordance with the Law on court fees.

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

In accordance with the Law on Indications of Geographical Origin registered a geographical indication shall be published in the official publication of the responsible authority, as well as information about registered authorized user of a geographical indication. Also, in the case of infringement of a registered geographical indication, an action may be filed, and the plaintiff may request publication of the court decision at the expense of the defendant.

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.

In accordance with Article 271 of the Criminal Code of Montenegro anyone who, with the intention to deceive buyers or service users, uses someone else's indication of geographic origin, shall be punished by a fine or a prison term up to three years. The procedure is prescribed by Criminal Procedure Code.

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.

Montenegro is a party of Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

In accordance with Article 9 of the Constitution of Montenegro, the ratified and published international agreements (such as TRIPS Agreement) shall make an integral part of the internal legal order, shall have the supremacy over the national legislation and shall be directly applicable when they regulate the relations differently from the internal legislation.

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

Montenegro is not a party of any other international agreement related to the geographical indications.
