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

**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 Liechtenstein

Addendum

The present document represents the responses to the Checklist which the Secretariat has received from Liechtenstein, by means of a communication from its Permanent Mission, dated 26 November 1998.

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?*

Protection for geographical indications is provided through the Law of 12 December 1996 regarding the protection of trademarks and geographical indications (Trademark Act; Liechtenstein Law Gazette 1997 No. 60²). Unfair competition law applies only if there is no specific provision in the Trademark Law. The recognition of geographical indications as such does not require registration. Nevertheless, if such indication is part of a trademark, it has to be registered.

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

There is not one single regime of protection for all products. As indicated under question 1 above, geographical indications for products and services are protected by the Trademark Act. Within the framework of the Customs Union Treaty between Liechtenstein and Switzerland of 1923³, parts of

¹ Documents IP/C/13 and IP/C/13/Add.1

² The new Trademark Law has been notified to the WTO in September 1998 and distributed as document IP/C/1/LIE/I/1/Rev.1.

³ See notifications in documents IP/N/4/LIE/1 and IP/N/4/CHE/1, respectively.

the Swiss Law on Agriculture, in particular the Swiss Ordinance of 28 May 1997 concerning the Protection of Appellations of Origin and Geographical Indications with respect to Agricultural Products and Processed Agricultural Products (RS 910.12, RO 1997 1188), are applicable in Liechtenstein. For further information about the system for the registration of geographical indications under this Ordinance, see document IP/C/W/76/Add.5/Suppl.1 and the Swiss answers to the related questions of this checklist. Liechtenstein producers face the same registration requirements as Swiss producers under this Ordinance. As the product-specific law applicable in Liechtenstein is not national law but Swiss law, it will not be elaborated in detail in our answers to this checklist.

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

Yes. See the answer to question 2 above.

4. *What provisions of law or regulations are directed to the recognition of geographical indications required by Articles 22.2 and 23.1 of the TRIPS Agreement? Citations to laws should be provided and, if the texts of the laws have not been notified to the WTO, copies should be provided pursuant to Article 63.2.*

The relevant provisions are contained in Articles 45 *et seq.* of the Trademark Act of 12 December 1996. For cases not covered by the provisions of the Trademark Act, Article 3(b) of the Unfair Competition Act may apply.⁴

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 answer to question 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.*

Such an example might be "Malbuner" for meat products produced in Liechtenstein and "Malbun" being the name of a mountain resort in Liechtenstein. The same would apply to "Balzers", a high technology enterprise with its headquarters in Balzers, a community of the Principality of Liechtenstein. Those indications are determined in accordance with Article 46 of the Trademark Act.

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

The higher level of protection required for wines and spirits under Article 23.2 of the TRIPS Agreement is granted to other agricultural products according to the Swiss Ordinance of 28 May 1997 concerning the Protection of Appellations of Origin and Geographical Indications with respect to Agricultural Products and Processed Agricultural Products (see the answer to question 2 above) which applies to all agricultural products including processed agricultural products, with the exception of wine but including spirits.

⁴ See the notification in document IP/N/1/LIE/1/3.

B. DEFINITION AND CRITERIA FOR RECOGNITION

8. *How are geographical indications defined?*

Geographical indications shall be direct or indirect references to the geographical origin of goods, including references to their property, having a relationship with their origin (Article 45, paragraph 1 of the Trademark Act).

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

If such products are bearing the name of that place, only for the purpose to pretend a certain quality: no. Neither does this definition comprise any requirements as to quality or reputation.

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

According to Article 46 of the Trademark Act and as there are no specific national laws in Liechtenstein as per today in this respect (see the answer to question 2 above), the origin of goods will be determined in accordance with the place of its manufacturing or the origin of basic materials and components used. Compliance may be required with other conditions, i.e. the observance of customary local or locally-prescribed manufacturing principles and quality requirements. According to Article 47 of the Trademark Act, the origin of any service shall be determined in accordance with the place of business of the person providing the service; the nationality of the persons exercising actual control over the business policy and management, or the domicile of the persons exercising actual control over business policy and management. In addition, compliance with other conditions may be required, i.e. the observance of customary or prescribed principles for provision of the service or the traditional association of the person performing the service with the country of origin.

11. *Is there any human creativity involved in the making of specific products under protection by the system of geographical indications? If so, how much? And do these products involve any human factors?*

No.

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

As already set out in the answers to questions 1, 2 and 4 above, trademark law may very often be involved.

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

With respect to the size of the country (160 km²), the geographical region will in many cases, but not necessarily, be the country itself. Should there be a dispute on a right to use a geographical identification, the Liechtenstein Office of National Economy has the authority to decide primarily such issues.

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. Liechtenstein is party to the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of 1891 and to the Paris Convention for the Protection of Industrial Property (ratification of the latest Acts of both 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.*

No, except for provisions contained in relevant international agreements.

C. PROCEDURE FOR RECOGNITION

As there is no formal registration or notification of geographical indications according to national law, the following answers refer to cases of litigation.

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?*

Usually it is a private entity owning the rights of geographical indications.

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

If in relation to a trademark application, it is the Office of National Economy where the geographical indication can be obtained.

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?*

If in connection with a trademark, the recognition of a geographical indication takes place on the initiative of an entity or person.

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

If related to a trademark, it is the fee according to the Ordinance of 1 April 1997 regarding the collection of fees under the Trademark Act (Liechtenstein Law Gazette 1997 No. 78⁵).

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

Purely geographic as the quality of the geographical indication is linked to its geographical origin.

⁵ This Ordinance has been notified together with the new Trademark Act in September 1998 and distributed in document IP/N/1/LIE/1/2/Rev.1.

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

Only the criteria according to the answer to question 10 above.

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

As there is no formal registration or notification for geographical indications as such (except when applied as a trademark) and geographical indications shall be presumed correct of corresponding to usage, no information must be supplied. Nevertheless, this assumption may be overruled by the proof of the contrary.

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

Only within the burden of proof in a litigation.

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

If in connection with a trademark, the same legal protection is granted to the person claiming the better right to a geographical indication as set out for trademarks (see the answers to questions 47 *et seq.* below).

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

Any interested person may oppose such use of a geographical indication.

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?*

See the answer to question 25 above.

D. MAINTENANCE

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

If in relation to a trademark: 10 years. The registration of trademarks may be extended upon request for further ten-year periods (cf. Article 10, paragraph 2 *et seq.* of the Trademark Act). Fees for the extension of a trademark are laid down in the Ordinance of 1 April 1997 regarding the Collection of Fees under the Trademark Act.

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 answer to question 28 above.

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

No.

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

No.

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

-

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

-

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.*

-

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?*

-

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?*

Generally anyone who meets the criteria submitted according to the answer to question 10 above may use 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?*

-

38. *Are there fees involved in receiving authorization to use a particular geographical indication and, if so, what are those fees and how are they established?*

No.

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

The procedures set out in the answers to questions 47 *et seq.* 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?*

There is no determination as to the use.

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

See the answer 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 licenses? If such conditions are not met, what is the effect on the geographical indication?*

Licensing is only possible when a geographical indication is part of a trademark; it then has to meet the provisions of the Trademark Act.

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

The use of a geographical indication remains unchanged by the new Trademark Act.

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?*

As a geographical indication is not a registered right compared to trademarks, the latter will not be infringed. Trademarks containing an incorrect geographical indication will not be registered and geographical indications conflicting with a registered trademark may not be used.

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

See the answer to question 44 above.

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

A trademark owner may prevent infringements by all the means available according to the answer to question 47 below. If a geographical indication is the major part of a trademark and the latter thus does not have distinctive function, the trademark may not be registered.

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.*

Enforcement is primarily granted under the Trademark Act. Articles 50 *et seq.* are related to the protection under Civil Law (declaratory judgement, action for execution, confiscation, precautionary measures ...). Article 62 of the Trademark Act imposes a penalty for the use of incorrect geographical indications. Articles 3(b), 9, 12 and 22 are the relevant provisions of the Unfair Competition Act.

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

Generally, every infringed party has the right to enforce a geographical indication. According to Article 54 of the Trademark Act, professional and business associations, authorized by statutes to protect the economic interests of their members as well as organizations devoted by statutes to protection of consumers, may file a civil action.

49. *What judicial or administrative bodies have jurisdiction over enforcement actions related to geographical indications? Are there fees involved and, if so, what are those fees?*

The courts enumerated in the answer to question 1 of the checklist of issues on enforcement⁶ have jurisdiction over enforcement actions related to geographical indications. Costs depend on the value in cause. There is a separation between the lawyers' tariff and the court fees. Both are regulated in acts and ordinances respectively. The costs of a proceeding comprise the court fees (including also all the costs in court and all other costs, in particular the representation costs of the lawyer). The fee to be paid for the execution of the proceedings depends on the value in dispute. It is a lump sum per instance appealed to for the decision, and a fee for the protocol depending on the duration of the proceedings, in particular the number and duration of the court hearings. To this must be added possible further costs (in particular the costs in court for experts and fees paid to witnesses), the amount of which cannot even be approximated in view of the different circumstances encountered in each procedure.

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

No.

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. See the answer to question 47 above.

⁶ Document IP/N/6/LIE/1.

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.*

Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of 1891 and the Paris Convention for the Protection of Industrial Property (ratification of the latest Acts of both Agreements). According to Liechtenstein Constitutional Law, international agreements are an integral part of national law and national legislation will be interpreted accordingly by national courts.

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

-

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?*

No.

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?*

In the national law (see the answer to question 2 under I above), only the term "geographical indication" is used.

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

See the answer to question 14 under I above.

C. RELATIONSHIP TO TRADEMARKS (SECTION F OF DOCUMENT IP/C/13)

4. *Does your economy's industrial property law and/or related law provide the refusal or invalidation of a trademark registration, which consists of or contains geographical indications identifying wines or spirits with respect to such wines or spirits not originating in the indicated territory?*

See the answer to question 44 under I above.
