

**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**

**SUMMARY OF THE RESPONSES TO THE CHECKLIST OF QUESTIONS  
(IP/C/13 AND ADD.1)**

Note by the Secretariat

Revision

*This document has been prepared under the Secretariat's own  
responsibility and without prejudice to the positions of Members  
and to their rights and obligations under the WTO.*

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>4</b>
<b>II.</b>	<b>OVERVIEW OF MEANS OF PROTECTION AVAILABLE.....</b>	<b>6</b>
	<b>A. LAWS FOCUSING ON BUSINESS PRACTICES .....</b>	<b>6</b>
	<b>B. TRADEMARK LAW .....</b>	<b>10</b>
	<b>C. SPECIAL PROTECTION.....</b>	<b>10</b>
<b>III.</b>	<b>DEFINITIONS AND CRITERIA FOR RECOGNITION.....</b>	<b>12</b>
	<b>A. LAWS FOCUSING ON BUSINESS PRACTICES .....</b>	<b>12</b>
	<b>B. TRADEMARK LAW .....</b>	<b>13</b>
	(a) Protection of IGOs as collective, guarantee or certification marks .....	13
	(b) Protection of IGOs as individual trademarks .....	14
	<b>C. SPECIAL PROTECTION.....</b>	<b>15</b>
	(a) Need for prior recognition .....	15
	(b) Main definitions used.....	16
	(c) Major criteria that determine eligibility for protection.....	18
<b>IV.</b>	<b>PROCEDURES FOR RECOGNITION .....</b>	<b>30</b>
	<b>A. LAWS FOCUSING ON BUSINESS PRACTICES .....</b>	<b>30</b>

<b>B. TRADEMARK LAW .....</b>	<b>30</b>
(a) Protection of IGOs as collective, guarantee or certification marks .....	30
(b) Protection as individual trademarks .....	30
<b>C. SPECIAL PROTECTION.....</b>	<b>30</b>
(a) Without procedures for the ex ante recognition of IGOs .....	30
(b) With procedures for the ex ante recognition of IGOs .....	31
<b>D. COSTS .....</b>	<b>43</b>
<b>V. ELIGIBLE/AUTHORIZED USERS AND MONITORING.....</b>	<b>47</b>
<b>A. LAWS FOCUSING ON BUSINESS PRACTICES .....</b>	<b>47</b>
<b>B. TRADEMARK LAW .....</b>	<b>47</b>
(a) Collective, guarantee or certification marks .....	47
(b) Individual trademarks.....	49
<b>C. SPECIAL PROTECTION.....</b>	<b>49</b>
(a) IGOs protected without a recognition procedure .....	49
(b) IGOs protected with a recognition procedure .....	49
<b>VI. PROTECTION AGAINST THOSE NOT ELIGIBLE/AUTHORIZED TO USE OR USING IMPROPERLY.....</b>	<b>55</b>
<b>A. LAWS FOCUSING ON BUSINESS PRACTICES .....</b>	<b>55</b>
<b>B. TRADEMARK LAW .....</b>	<b>56</b>
<b>C. SPECIAL PROTECTION.....</b>	<b>56</b>
<b>VII. ENFORCEMENT.....</b>	<b>59</b>
<b>A. LAWS FOCUSING ON BUSINESS PRACTICES .....</b>	<b>59</b>
(a) Persons entitled to initiate enforcement procedures .....	59
(b) Authorities responsible for enforcement proceedings.....	61
(c) Remedies .....	61
<b>B. TRADEMARK LAW .....</b>	<b>63</b>
(a) Protection of IGOs as collective, guarantee or certification marks .....	63
(b) Protection of IGOs as individual trademarks .....	64
<b>C. SPECIAL PROTECTION.....</b>	<b>64</b>
(a) Persons entitled to initiate enforcement procedures .....	64
(b) Authorities responsible for enforcement proceedings.....	65
(c) Remedies .....	66
<b>D. FOREIGN IGOs .....</b>	<b>66</b>
<b>E. COSTS .....</b>	<b>67</b>
<b>VIII. RELATIONSHIP TO TRADEMARKS .....</b>	<b>68</b>
<b>A. PROTECTION AGAINST REGISTRATION OF IGOs AS TRADEMARKS.....</b>	<b>68</b>

<b>B. POSSIBLE CONFLICTS.....</b>	<b>71</b>
(a) Simultaneous applications.....	71
(b) Prior trademark rights .....	71
 <b>ANNEX A      EXAMPLES OF IGOS PROVIDED BY MEMBERS IN RESPONSE TO                  QUESTION 6 OF DOCUMENT IP/C/13 .....</b>	 <b>74</b>
 <b>ANNEX B      SPECIAL DEFINITIONS OF IGOS .....</b>	 <b>83</b>

## TABLES

<b>TABLE I:</b>	<b>PROTECTION OF IGOS: INFORMATION PROVIDED BY MEMBERS ON THE MEANS OF PROTECTION AVAILABLE.....</b>	<b>8</b>
<b>TABLE II:</b>	<b>INFORMATION PROVIDED BY MEMBERS ON THE COVERAGE OF SPECIAL PROTECTION AVAILABLE WITH PRIOR RECOGNITION OF THE IGO (X) OR WITHOUT (Y).....</b>	<b>11</b>
<b>TABLE III:</b>	<b>MEMBERSHIP IN INTERNATIONAL AGREEMENTS: INFORMATION PROVIDED BY MEMBERS.....</b>	<b>28</b>
<b>TABLE IV(A):</b>	<b>RECOGNITION OF IGOS: INFORMATION PROVIDED BY MEMBERS ON COSTS.....</b>	<b>44</b>
<b>TABLE IV(B):</b>	<b>REGISTRATION UNDER TRADEMARK LAW: INFORMATION PROVIDED BY MEMBERS ON COSTS.....</b>	<b>46</b>

## I. INTRODUCTION

1. The original version of this note was prepared in response to the request of the TRIPS Council, at its meeting of 7-8 July 1999, to the Secretariat to prepare a paper summarizing the responses to the Checklist of Questions (IP/C/13 and IP/C/13/Add.1) on the basis of an outline contained in informal document No. 2104 of 13 April 1999, on the understanding that it would be made explicit that the paper would be without prejudice to the rights and obligations of Members and that its purpose was merely to facilitate an understanding of the more detailed information that had been provided in national responses to the Checklist. At its meeting of 4-5 June 2003 the Council requested the Secretariat to update this summary note to take into account the information received from Members in response to the Checklist of Questions since the circulation of this note.<sup>1</sup>

2. The following are the Members which have responded to the Checklist and the documents in which their responses can be found:

Australia	IP/C/W/117/Add.19
Bulgaria	IP/C/W/117/Add.2
Canada	IP/C/W/117/Add.5
Cuba	IP/C/W/117/Add.26
Czech Republic	IP/C/W/117
Ecuador	IP/C/W/117/Add.9
Estonia	IP/C/W/117/Add.22
European Communities	IP/C/W/117/Add.10
Austria	IP/C/W/117/Add.10
Belgium	IP/C/W/117/Add.10
Denmark	IP/C/W/117/Add.10
Finland	IP/C/W/117/Add.10
France	IP/C/W/117/Add.10
Germany	IP/C/W/117/Add.10
Greece	IP/C/W/117/Add.10/Suppl.2
Ireland	IP/C/W/117/Add.10/Suppl.2
Italy	IP/C/W/117/Add.10
Luxembourg	IP/C/W/117/Add.10/Suppl.2
Netherlands	IP/C/W/117/Add.10
Portugal	IP/C/W/117/Add.10/Suppl.1
Spain	IP/C/W/117/Add.10
Sweden	IP/C/W/117/Add.10
United Kingdom	IP/C/W/117/Add.10
Hong Kong, China	IP/C/W/117/Add.21
Hungary	IP/C/W/117/Add.8
Iceland	IP/C/W/117/Add.15 and Suppl.1
Japan	IP/C/W/117/Add.1
Korea	IP/C/W/117/Add.20
Liechtenstein	IP/C/W/117/Add.11/Rev.1
Lithuania	IP/C/W/117/Add.24
Mexico	IP/C/W/117/Add.14
Morocco	IP/C/W/117/Add.25
New Zealand	IP/C/W/117/Add.12
Norway	IP/C/W/117/Add.7
Peru	IP/C/W/117/Add.16/Rev.1
Poland	IP/C/W/117/Add.23

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<sup>1</sup> The following additional Members have submitted responses: Cuba, Estonia, Lithuania, Morocco, Poland, Slovenia and Uruguay.

Romania	IP/C/W/117/Add.17
Slovak Republic	IP/C/W/117/Add.6
Slovenia	IP/C/W/117/Add.27
Switzerland	IP/C/W/117/Add.13
Turkey	IP/C/W/117/Add.4
United States	IP/C/W/117/Add.3
Uruguay	IP/C/W/117/Add.28
Venezuela	IP/C/W/117/Add.18

3. The paper is based on the information contained in the responses to the Checklist that were received from some Members and circulated in documents IP/C/W/117 and addenda. The footnotes in this paper which refer to these documents simply provide the name of the Member concerned and the question number under which the relevant information has been provided, without reproducing in each case the full document symbol. Thus, "Australia (Q1)" should be taken as a reference to the response to question 1 in document IP/C/W/117/Add.19, the responses to the main Checklist (IP/C/13) received from Australia, and "Australia (Add.Q1)" should be taken as a reference to the response in the same document to question 1 of the questions contained in the addendum to the Checklist (IP/C/13/Add.1). Since Mexico did not follow the order of the questions in the Checklist when responding, references to Mexico's replies correspond to the numbering of the replies used by Mexico in its response to the Checklist (for example, "(Reply 1)" should be taken to refer to the response to question 1 as contained in document IP/C/W/117/Add.14).

4. Not all Members have provided responses to the Checklist (only those Members which were already under an obligation to apply the provisions of the Section of the TRIPS Agreement on Geographical Indications were invited by the Council, at its meeting of 12 May 1998, to respond to the Checklist, it being understood that other Members could also furnish replies on a voluntary basis). The data provided by Members is of varying degrees of comprehensiveness and detail. Some have focused mainly on legislation specifically dedicated to the protection of geographical indications, while others have also covered, in differing levels of detail, more general laws which may also be relevant. Moreover, not all Members have understood certain questions in the same way. In addition, in order to avoid overburdening the paper, not all the footnotes necessarily provide references to all Members whose practices would correspond to the point being made. For these reasons, this paper should not be regarded as providing a fully comprehensive picture of the situation worldwide regarding the protection of geographical indications. This also means that the fact that a Member is not referred to in a table or in a footnote should not be taken as necessarily meaning that that Member's legislation does not contain the provision in question.

5. However, it should also be noted that the summary paper was circulated in a preliminary form (document JOB(00)/5619 of 19 September 2000) to Members for their comments. Eight Members submitted comments and new responses were received from three Members. These have been taken into account.

6. In regard to terminology, the paper, when referring to the various terms used and defined by Members to indicate the geographical origin of goods and services, uses the expression "IGOs" (indications of geographical origin) as a common denominator. Given that "geographical indication" has a specific legal meaning under Article 22.1 of the TRIPS Agreement, it has not been used in order to avoid any appearance of prejudicing the rights and obligations of Members. This has been done solely for the purposes of this summary paper and should not be given any other significance. Another point in connection with terminology is that Members use a large variety of expressions to describe their national laws, the forms of protection granted and the procedures involved. For example, a range of terms are used and defined to describe IGOs which can benefit from special protection, including geographical indications, appellations of origin, designations of origin, etc. This paper does not seek to reflect this full range of expressions in the body of the paper (some of this

additional detail can be found in the footnotes), but rather to focus on the substance of the protection available.

7. The paper does not attempt to enable a reader to obtain a full understanding of the system for the protection of IGOs in individual Members; for this, readers should consult the responses to the Checklist provided by the Member concerned. Rather, the paper seeks to provide a horizontal summary of the types of protection provided and their features.

## **II. OVERVIEW OF MEANS OF PROTECTION AVAILABLE**

8. This paper treats the differing means of protection available for IGOs in three broad categories: laws focusing on business practices; trademark law; and special means of protection. This section of the paper provides a brief overview of the content of each of these categories and their main features. A summary presentation of which Members have indicated that they provide which forms of protection, as the Secretariat understands it on the basis of the information provided, can be found in Table I.

9. These categories are used to present more detailed information in sections III-VII of this paper, which concern, respectively, definitions and criteria for the recognition of IGOs; procedures for the recognition of IGOs; eligible/authorized users and monitoring; protection against those not eligible/authorized to use or using improperly; and enforcement. Section VIII concerns the relationship between IGOs and trademarks, both in respect of the protection accorded against registration of IGOs as trademarks and the way in which conflicts between pre-existing trademarks and IGOs are handled.

10. Examples of domestic IGOs protected in accordance with these means of protection, as provided by Members in response to question 6 of document IP/C/13, can be found in Annex A to this note.

### **A. LAWS FOCUSING ON BUSINESS PRACTICES**

11. This category of means of protection for IGOs covers laws which, while not specifically providing for the protection of IGOs, prohibit business practices which can involve the misuse of IGOs. A broad range of laws of this nature have been referred to, many relating to the repression of unfair competition or the protection of consumers either in general terms or more specifically in regard to such matters as the labelling of products, health protection and food safety.<sup>2</sup> Some Members

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<sup>2</sup> Australia, trade practices legislation (Trade Practices Act), truth in labelling legislation (e.g. Commerce Trade Descriptions Act, the common law tort of passing off, state and territory Food Acts, Australia New Zealand Food Authority (ANZFA) Labelling and Advertising Standard, Fair Trading Acts of the Australian states and territories (Q1,47); Bulgaria, Law on the Protection of Competition (Q1,47); Canada, common law of passing off, Article 1457 of the Civil Code of Quebec (Q1); the Czech Republic, rules on unfair competition and passing off (chapter V on economic competition of the Commercial Code) (Q1); Estonia, relevant provisions of the Competition Act on unfair competition (Chapter 8, Sections 28 and 29), the Commercial Code (Section 63) and the Consumer Protection Act (Q1,47); Hong Kong China, common law action of passing off, Trade Descriptions Ordinance (Q1,4,7,47); Hungary, Act on the Prohibition of Unfair and Restrictive Market Activity, (Q1,47); Iceland, Competition Act and Icelandic Food Act (Q2,3,4); Japan, Unfair Competition Prevention Law (Q1,47); Korea, Unfair Competition Prevention and Trade Secret Protection Act, Fair Labelling and Advertising Act (Q1); Liechtenstein, Unfair Competition Act (Q47); Lithuania (Q1,47); Mexico, Industrial Property Act (which also provides for a special protection of appellations of origin) (Replies 1,2,3,51); Morocco, Article 4 of Law 13-83 (concerning the repression of merchandise fraud) in respect of food and agricultural products (Q1,2,47); New Zealand, Fair Trading Act, common law of passing off (Q1/2/3,4,47); Norway, Marketing Act (Q1,47-51); Peru, Unfair Competition Act (Q4,47); Poland, Act of 1993 on Combating Unfair Competition (Q1,47); Romania, Law on combating unfair competition (Q47); Slovak Republic, provisions on unfair competition and passing off are contained in the Commercial Code (Q1,3,47);

have also referred to provisions of common law, in particular in relation to passing off (see footnote 2). These laws generally cover all goods and services, but some, especially those relating to agricultural products, may have a narrower focus. They do not call for any prior recognition of an IGO as protected or contain procedures in this connection. The issue at stake in legal proceedings regarding use of an IGO under these laws is not whether the IGO as such is eligible for protection but whether a specific act involving the use of an IGO has contravened the general standards contained in the law relating to unfair competition, consumer protection, trade descriptions, food standards, etc. It would appear that laws of this nature apply in respect of foreign IGOs in the same way as they apply to national IGOs.

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Slovenia, Protection of Competition Act (Q1,4); Turkey, Turkish Competition Code, Consumer Protection Act (Q1,47); United States, Federal Unfair Competition Law, State Unfair Competition Law, common law rights (Q1,47).

European Communities, Regulation concerning misleading description, presentation and advertising of wines and grape must, Directive relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer, Directive concerning misleading advertisement (Q1); Austria, Unfair Competition Law (Q1,2,47); Belgium, Law on trade practices and consumer information and protection (Q1,34); Denmark, Danish Marketing Practices Act, Danish Food, etc. Act (Q1,47); Finland, Consumer Protection Act, Unfair Business Practices Act (Q1,47-49); France, Consumer Code (Q1); Germany, Act Against Unfair Competition, Act on Foodstuffs and Commodities (Q1,47); Luxemburg, Law concerning the standardization of agricultural and horticultural products and the creation of a national trademark, Law regulating certain commercial practices and penalizing unfair competition, Law concerning the inspection of common foodstuffs, drinks and products, Grand-Ducal Regulation concerning the labelling and presentation of foodstuffs and their advertising (Q1,34,47); Netherlands, Civil Code, Commodities Act, Decree on the labelling of foodstuffs, "Dutch Advertising Code" (private code by the advertising branch), other regulations concerning the *Holland Kwaliteit* label (Q1,47); Portugal, unfair competition law (Q1,47); Sweden, Marketing Act for the general protection of IGOs (Q1,47,Annex); the United Kingdom, Trade Descriptions Act, common law tort of passing off (Q1,4,5,47).

**TABLE I: PROTECTION OF IGOs: INFORMATION PROVIDED BY MEMBERS  
ON THE MEANS OF PROTECTION AVAILABLE**

	Laws Focusing on Business Practices <sup>P</sup>		Trademark Law			Special Protection		
Member	Focus on Unfairness vis-à-vis Competitors	Focus on Misleading of Consumers	Protection against Passing Off	Protection against Registration Trademarks		Collective, Certification, Guarantee Marks	Prior Recognition Requirement <sup>Z</sup>	
				Any IGO	Certain IGOs <sup>Q</sup>		No	Yes
Australia	X	X	X	X	X		X	X
Bulgaria	X	X			X			X
Canada	X	X	X		X			X
Cuba				X			X	X
Czech Rep.	X	X	X	X	X <sup>1</sup>			X
Ecuador	X	X						X
Estonia	X	X		X	X			X
EC/MS <sup>a</sup>	X	X		X	X			X
Austria	X			X	X	<sup>1</sup>		X
Belgium	X	X		X	X			X
Denmark	X	X		X	X	X		
Finland	X	X		X	X			
France	X	X		X	X			X
Germany	X	X		X		X	X	X
Greece				X	X			
Ireland				X	X			
Italy					X			X
Luxembourg	X	X		X	X			
Netherlands	X	X		X	<sup>1</sup>	X	?	
Portugal	X				X			X
Spain		X		X	X			X
Sweden		X			X	X	X	
UK		X	X	X	X	X		X
Hong Kong, Ch.		X	X	X		X		
Hungary	X			X	X			X
Iceland	X?	X		X	X			
Japan	X			X	X			X
Korea	X	X		X	X		X	X
Liechtenstein	X	X		X	X	X	X	X
Lithuania	X			X	X			
Mexico	X	X		X				X
Morocco	X						X	X
New Zealand		X	X	X	X			<sup>1</sup>
Norway	X	X		X	X		X	
Peru	X			X	X		Y	X
Poland	X	X?		X	X		X	X

<sup>P</sup> The first column is meant to reflect information relating to provisions addressing acts which concern rather the establishment, the goods, or the industrial or commercial activities of *a competitor* and the second column provisions addressing acts rather relating to misleading allegations concerning the goods of *the person who makes the allegations*. In respect of this distinction, see also the guide to the application of the Paris Convention by Prof. G.H.C. Bodenhausen, in particular pages 145 and 146.

<sup>Z</sup> Some of these means provide *sui generis* protection for IGOs that relate to products with specifically defined characteristics or methods of production (see further Table II below); other means apply without such specific definitions.

<sup>Q</sup> Certain IGOs only or IGOs in respect of specific categories of products only.

<sup>a</sup> Information concerning EC instruments is reflected on the line of the EC and their member States and information concerning other instruments on the line of the member State in question.



Member	Laws Focusing on Business Practices <sup>P</sup>			Trademark Law			Special Protection	
	Focus on Unfairness vis-à-vis Competitors	Focus on Misleading of Consumers	Protection against Passing Off	Protection against Registration Trademarks		Collective, Certification, Guarantee Marks	Prior Recognition Requirement <sup>Z</sup>	
				Any IGO	Certain IGOs <sup>Q</sup>		No	Yes
Romania	X			X	X			X
Slovak Rep.	X	X	X	X	X			X
Slovenia		X		X	X			X
Switzerland	X	X		X	X	X	X	X
Turkey	X	X		X				X
USA	X	X	X?	X	X	X		X
Uruguay				X	X		X	X
Venezuela				X	X			X

<sup>P</sup> The first column is meant to reflect information relating to provisions addressing acts which concern rather the establishment, the goods, or the industrial or commercial activities of *a competitor* and the second column provisions addressing acts rather relating to misleading allegations concerning the goods of *the person who makes the allegations*. In respect of this distinction, see also the guide to the application of the Paris Convention by Prof. G.H.C. Bodenhausen, in particular pages 145 and 146.

<sup>Z</sup> Some of these means provide *sui generis* protection for IGOs that relate to products with specifically defined characteristics or methods of production (see further Table II below); other means apply without such specific definitions.

<sup>Q</sup> Certain IGOs only or IGOs in respect of specific categories of products only.

<sup>a</sup> Information concerning EC instruments is reflected on the line of the EC and their member States and information concerning other instruments on the line of the member State in question.

## B. TRADEMARK LAW

12. Trademark law may provide two types of protection for IGOs: on the one hand, protection against the registration and use of IGOs as trademarks; and, on the other, the protection of IGOs against unauthorized use by third parties. As Table I shows, most Members have indicated that their law provides protection in regard to the former aspect. This generally involves two levels of protection: that available for any IGO against registration of trademarks containing or comprising IGOs which may confuse or mislead the public as to the geographical origin or the identity of the goods or services in question; and that available for specific IGOs, for example those for specific categories of products or those that have been previously recognized as protected IGOs, for which a higher level of protection may be available, not involving, for example, tests of confusion or misleading the public. Further details can be found in section VIII of this paper, which also summarizes information provided on how conflicts between IGOs and pre-existing trademarks are handled.

13. As shown in Table I, some Members have indicated that IGOs may be protected as collective, certification or guarantee marks against unauthorized use by third parties. Although the information provided is not very detailed, it would appear that the normal trademark procedures and rights apply in general, but with some special requirements to ensure that rules are established and respected in each case regarding the use of the collective, certification or guarantee mark in question and that all persons capable of meeting the requirements for the use of such marks are fairly treated. It would also appear that in certain situations an "individual trademark" can also serve as a vehicle for the protection of an IGO, notably where there can only be one enterprise producing the product in question in the geographical area concerned, for example an enterprise controlling a natural source for mineral water. These forms of trademark protection do not appear to discriminate as between different products or services. Protection of this sort would appear to be available equally to foreign and national IGOs.

## C. SPECIAL PROTECTION

14. The forms of protection that have been put in this category cover those under laws specifically dedicated to the protection of IGOs or those under provisions providing for special protection of IGOs contained in other laws, for example on trademarks<sup>3</sup>, marketing<sup>4</sup>, labelling<sup>5</sup> or taxation.<sup>6</sup> Some of these means provide *sui generis* protection for IGOs that relate to products with specifically defined characteristics or methods of production (see further Table II below); other means apply without such specific definitions. Generally speaking, the protection provided is stronger than that available under the other two categories of means of protection. As shown in Table I, there is usually, but not in all cases, a requirement for prior recognition of an IGO as a condition of protection. Procedures in this connection vary considerably, from essentially informal and political procedures to a registration type system with procedural steps and criteria clearly defined in advance. Recognition of foreign IGOs is obtained either as a consequence of the conclusion of a bilateral, regional or multilateral agreement listing the name and/or by virtue of the use of the normal application procedure. In most cases, it would seem that protection in the country of origin is a precondition. Table II sets out the information that has been provided on the coverage of products and services of these special means of protection. In some countries, several systems co-exist with different although sometimes overlapping coverage, with tests for eligibility of differing severity, and rights of differing scope.

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<sup>3</sup> Canada (Q1); Germany (Q1); Switzerland (Q1,2,4); Uruguay (Q1).

<sup>4</sup> Norway, Marketing Act (Q1).

<sup>5</sup> Sweden, Act Containing Certain Provisions concerning the Marketing of Alcoholic Beverages (Q2); United States, Bureau of Alcohol, Tobacco and Firearms (BATF) regulations (Q1).

<sup>6</sup> Japan, Liquor Business Association and Measures for Securing Revenue from Liquor Tax (Q1).

**TABLE II: INFORMATION PROVIDED BY MEMBERS ON THE COVERAGE OF SPECIAL PROTECTION AVAILABLE WITH PRIOR RECOGNITION OF THE IGO (X) OR WITHOUT (Y)**

Member	Wines	Spirits	Other Agricultural or Food Products	Products in General	Services
Australia	X <sup>A</sup>	Y <sup>A</sup>			
Bulgaria				X <sup>B</sup>	
Canada	X	X			
Cuba				X	
Czech Rep.				X <sup>BC</sup>	
Ecuador				X <sup>B</sup>	
Estonia				X	X
EC/MS <sup>a</sup>	X <sup>B</sup>	X <sup>B</sup>	X <sup>B</sup>		
Austria	X				
Belgium				X	
Denmark					
Finland					
France	X <sup>B</sup>	X <sup>B</sup>	X <sup>B</sup>	X <sup>B</sup>	
Germany	X <sup>B</sup>	X <sup>B</sup>		Y <sup>D</sup>	
Greece	X <sup>B</sup>				
Ireland					
Italy	X <sup>B</sup>				
Luxembourg					
Netherlands				?	
Portugal				X <sup>B</sup>	
Spain	X <sup>B</sup>	X <sup>B</sup>	X <sup>B</sup>		
Sweden	Y	Y			
UK	X	X			
Hong Kong, Ch.					
Hungary				X <sup>B</sup>	
Iceland					
Japan	X	X			
Korea	Y	Y	X <sup>B</sup>		
Liechtenstein	X <sup>B</sup>	X <sup>B</sup>	X <sup>B</sup>	Y	Y
Lithuania					
Mexico				X <sup>B</sup>	
Morocco	X			Y? <sup>E</sup>	Y?
New Zealand					
Norway	Y	Y			
Peru				X <sup>B</sup> and Y	Y
Poland				X	
Romania				X <sup>B</sup>	
Slovak Rep.				X <sup>BC</sup>	
Slovenia	X <sup>A</sup>		X <sup>B</sup>	X	
Switzerland	X <sup>B</sup>	X <sup>B</sup>	X <sup>B</sup>	Y <sup>D</sup>	Y <sup>D</sup>
Turkey				X <sup>B</sup>	
USA	X	X			
Uruguay	X	X		X and Y <sup>E</sup>	X and Y <sup>E</sup>
Venezuela				X <sup>B</sup>	

<sup>A</sup> "Wines" covers "wine or grape products"; "spirits" covers "spirits which are not wine or grape products".

<sup>B</sup> *Sui generis* protection is available, in respect of one or more categories of products and on the basis of one or more definitions specifying characteristics of the product or methods of production. Information on these and other definitions, as well as the criteria for the recognition of IGOs under them, can be found in sub-section III.C(b) below, including its footnotes, and Annex B to the present document.

<sup>C</sup> Agricultural and natural products and products of handicraft or industry.

<sup>a</sup> See footnote <sup>a</sup> to Table I above.

<sup>D</sup> Under the special means available without prior recognition of the IGO, specific product/production criteria may be laid down in special ordinances.

<sup>E</sup> Appellations of Origin must be registered to enjoy protection while Indications of Source enjoy protection without the need for registration.

### III. DEFINITIONS AND CRITERIA FOR RECOGNITION

15. This section summarizes the information provided on the definitions of protectable subject-matter used under the various means of protection for IGOs and any other substantive criteria that may need to be complied with for an IGO to be eligible for protection.

#### A. LAWS FOCUSING ON BUSINESS PRACTICES

16. Laws of this nature generally do not include any specific definition of subject-matter eligible to be protectable as an IGO or other criteria relevant to such a determination.<sup>7</sup> In legal proceedings under such laws, the question at stake will normally be that of whether the practices proscribed by the law have occurred, not whether a particular term should be determined to have the status of a protected IGO.<sup>8</sup>

17. However, some Members have provided some information on the types of considerations that would be important in determining the extent to which an IGO might be protectable under general laws of this nature. For example, it has been pointed out that under unfair competition and consumer protection law an important factor is the extent to which the geographical term in question is known as an indicator of geographical origin to the public. If it is not so known or it has become a generic term, protection is not granted.<sup>9</sup> It has also been pointed out that, in determining whether advertising is misleading as to the origin of products, an important criterion is what impression the consumer normally gets from indications used about the origin of the products.<sup>10</sup> One Member has stated that, under its law on the repression of merchandise fraud, a contractor is protected against any deception or attempted deception as to the origin of foodstuffs and agricultural produce when, by agreement or custom, the designation of the species or kind or of the origin falsely attributed to goods must be considered as the main reason for the contractor's commitment.<sup>11</sup>

18. One Member has indicated that protection of this sort against unfair or misleading use can apply not only to IGOs which directly mention a place of origin but also where the origin is indirectly referred to, for example by reference to a flag, a symbol or a picture which suggests a geographical origin.<sup>12</sup> Furthermore, the information provided indicates that, in those countries where "passing off" relief is available, an important consideration is that the plaintiff demonstrates that it has established a sufficient degree of "goodwill" in the relevant sector of the public so that an act of the defendant to misappropriate some parts of this goodwill is likely to mislead members of the public as to the origin of goods or services.<sup>13</sup>

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<sup>7</sup> In Lithuania, however, Article 16.3 of the Law on Competition seems to have such definition: "information specified in subparagraph (2) of paragraph 1 hereof on the designation of origin of a good implies geographical indications provided in any suitable way characterizing the good as produced in the territory of a certain state or in a certain region or area of the territory which is associated with quality, reputation or other properties of the good" (Q4,8,47).

<sup>8</sup> Australia has pointed out, for example, that under the Australian Trade Practices Act the party would obtain protection for a particular geographical term by demonstrating that use of that term by another party is misleading or deceptive, in that it suggests that the product originates from the place or region while it does not. Australia points out further that there would not necessarily be a decision to recognize that term as a geographical indication *per se* (Q10).

<sup>9</sup> Denmark (Q10).

<sup>10</sup> Denmark (Q6).

<sup>11</sup> Morocco (Q2).

<sup>12</sup> Germany (Q4/5/6,9).

<sup>13</sup> Canada (Q5): "In a common law action for passing off, the plaintiff must prove that his or her goods or services have acquired a reputation or goodwill, that the defendant is trading on that reputation or goodwill, and that damages are being or will be suffered as a result. [...] In an action based on Article 1457 of the Civil

19. As regards the eligibility of foreign IGOs to be protected under laws focusing on general business practices, those Members who have provided information on this have indicated that their laws would apply to such foreign indications in the same way as they apply to national IGOs.<sup>14</sup> It would also appear that under such general means of protection the extent to which the IGO is protected as such in its country of origin is not a relevant factor, although not all Members have made this clear, apparently focusing in their replies on this point on special means of protection.<sup>15</sup>

## B. TRADEMARK LAW

### (a) Protection of IGOs as collective, guarantee or certification marks

20. In some Members, IGOs can be protected as collective, guarantee or certification marks.<sup>16</sup> While these terms are used somewhat differently in different countries, generally speaking, a collective mark protects a specific sign which belongs to a group of enterprises and is used or intended to be used by its members for goods or services, and a certification or guarantee mark protects a specific sign which belongs to a legal entity supervising or laying down standards for goods or services and is used or intended to be used for the goods or services which are the object of supervision or for which standards are laid down. Several Members have indicated that specific rules governing the use of such marks must be established.<sup>17</sup> It has been pointed out that these rules must not be contrary to public order, morality or the law in force.<sup>18</sup> One Member has indicated that the standards need not be original to the applicant and that they may be established by another party, such as specifications promulgated by a government agency or standards developed through the research of a private research organization.<sup>19</sup>

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Code of Quebec, a plaintiff must prove the basic conditions of civil liability, i.e., fault, damage and causal connection. In this case, fault would consist of non-authorized use of reputation or goodwill and/or the use of reputation or goodwill to mislead the public on the origin of the product or service." The UK has referred (Q5) to its responses to the Checklist of Issues of Enforcement as contained in document IP/N/6/GBR/1 where it has stated, in response to question 2 of that checklist under (1), second paragraph: "Unregistered trademarks are enforced by 'passing off' action in which the plaintiff must show that the defendant has misappropriated some part of the plaintiff's 'goodwill', that is that, as a result of a reputation gained from past activities, members of the public are likely to be misled by the acts of the defendant as to the origin of goods or services for which the public has an expectation that such are associated with the plaintiff". In Hong Kong, China, "any trader misrepresenting his goods as those of another trader who has acquired a reputation, causing loss to the other trader, faces an action for passing off. The distinctiveness of a plaintiff's goodwill in his business can derive from his name, his mark, a description or the get-up of his goods." [...] "The action for passing off is also available for anyone who wishes to stop the use of a geographical indication where the true origin of the goods has been stated or is used with words like "kind", "type", "style", "imitation"" (Q4). Other Members that have referred in their responses to passing off (see Table I) have not provided details as to application of the law.

<sup>14</sup> Austria (Q15); Australia (Q15); Denmark (Q15); France (Q15,27); Germany (Q15); Iceland (Q15); Liechtenstein (Q15); Lithuania (Q15); Netherlands (Q15); Portugal (Q15); Sweden (Q15); United Kingdom (Q15).

<sup>15</sup> European Communities, in respect of Directives on labelling and advertising (Q16); Denmark (Q16); Finland (Q16); Germany (Q16); Ireland (Q16); Netherlands (Q16); Sweden (Q16); United Kingdom (Q16); United States (Q16).

<sup>16</sup> See Table I. Austria has stated that it is in the process of amending its trademark law to enable the registration of IGOs as collective marks (Q1).

<sup>17</sup> Germany (Q17-27); Hong Kong, China (Q8,36); Switzerland (Q17); United Kingdom (Q10); United States (Q11,17).

<sup>18</sup> Switzerland (Q17).

<sup>19</sup> United States (Q11).

21. One Member has indicated that, if a geographical term is being used as a certification mark to indicate the regional origin of goods, registration should be refused if the term in question has acquired a principal significance as a description of the goods rather than as an IGO.<sup>20</sup>

22. Some Members have indicated that an important consideration for the trademark office when a collective, guarantee or certification mark consists solely, or essentially, of a geographic term is to satisfy itself of the authority of the applicant to control the use of the term. One Member has indicated that, to meet this requirement, normally the authority which exercises control over the use of the term is a government body or a body operating with governmental authorization.<sup>21</sup> Some other Members have stated that, to avoid any conflict of interest, a guarantee mark must not be used by the holder of the mark or by a company with which the holder has close economic ties.<sup>22</sup>

23. Another important consideration mentioned by some responding Members is to ensure that persons in the geographical area referred to by the mark are not prevented from making use of the geographical term contained in the mark. In the Members who have supplied information on this matter, this goal is met in two ways:

- ensuring that all persons in the area concerned are eligible to be admitted to use the mark on the same terms<sup>23</sup>;
- limiting the rights conferred by such a mark so that they do not prevent a third party from using in the course of trade the geographical signs or indications in question in accordance with honest practices in industrial or commercial matters<sup>24</sup>;

24. It has been stated that the criteria for eligibility for protection of an IGO as a certification mark could include human factors as well as natural factors.<sup>25</sup>

25. In regard to the eligibility of foreign IGOs to be protected as collective, guarantee or certification marks, Members who have provided information on this question have said that their law applies equally to national and foreign signs.<sup>26</sup>

(b) Protection of IGOs as individual trademarks

26. There are situations where, notwithstanding the protection usually available against registration of an IGO as a trademark, such registration can be effected<sup>27</sup>, notably when a sign incorporating or consisting of an IGO has acquired, through use, the function of distinguishing the goods or services of a particular enterprise. Such trademark will normally indicate the enterprise source of the goods or services rather than their geographical origin and thus cannot generally be regarded as a form of protection for IGOs. However, a Member has pointed out that where these two sources coincide such an individual mark can constitute a means of protecting an IGO. An example

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<sup>20</sup> United States (Q10).

<sup>21</sup> United States (Q17).

<sup>22</sup> Liechtenstein (Q12); Switzerland (Q17).

<sup>23</sup> Germany (Q17-27,36); United States (Q 17).

<sup>24</sup> Denmark (Section 3 of the Collective Marks Act referred to in Q2); Germany: adding "and in accordance with the accepted principles of morality" (Q36); Netherlands: the protection in respect of a collective mark under the Benelux Trademark Law does not extend to use of the IGO "in accordance with normal trade practice and in everyday language" (Q1).

<sup>25</sup> United States (Q11).

<sup>26</sup> Germany (Q15); United Kingdom (Q27); United States (Q27).

<sup>27</sup> Uruguay: "[d]omestic legislation does not allow the registration of appellations of origin as trademarks. However, indications of source may be registered as trademarks provided that their use is not liable to create confusion regarding the origin, source, qualities or characteristics of the goods or services for which the trademark is used" (Q44).

of a trademark for mineral water coming from a particular geographical source has been given.<sup>28</sup> Another Member has mentioned that under its law rights to an individual trademark can be acquired through actual use, without applying for registration.<sup>29</sup>

27. With regard to the applicability of such protection to foreign IGOs, no indication has been given that such protection is not equally available. A Member has said that, if such a mark has established itself or has been registered in the country to which an IGO relates, the mark can be registered in its territory, provided it does not mislead the public as to the source of the goods or services.<sup>30</sup>

#### C. SPECIAL PROTECTION

28. This sub-section first discusses the extent to which special systems require prior recognition of IGOs. It then discusses the main definitions used by Members under such legislation. It then examines in turn each of the major criteria that determine eligibility for protection that have been referred to in the responses by Members, namely:

- criteria to demarcate the area covered by an IGO;
- rules ensuring that products eligible to use the IGO come from that area;
- rules regarding the characteristics that such a product must have:
  - quality, including production and product specifications;
  - reputation;
  - other characteristics;
- rules regarding the link that must exist between these characteristics and their geographical origin;
- rules regarding the extent to which there must be public knowledge of that link;
- generic terms;
- foreign IGOs;
- homonymous IGOs.

##### (a) Need for prior recognition

29. As mentioned in Section II, special protection is given to IGOs in a variety of ways. Most involve some form of system by which ex ante recognition is given to an IGO as a protected IGO. This can be a formal system which provides for applications for registration to be made or a more informal system by which an administrative entity or other public institution has the authority to take decisions as to the recognition of IGOs but usually in response to some informal application or expression of interest by interested parties. In some cases, the establishment of an IGO results from a specifically dedicated legislative instrument. Further details are provided in Section IV below.

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<sup>28</sup> Switzerland (Q17,44). A similar type of situation may be envisaged in the laws of Mexico (Replies 6 and 49).

<sup>29</sup> United States (Q1).

<sup>30</sup> Switzerland (Q44).

30. However, in a few countries there are also legal provisions which provide for special protection for IGOs without any prior recognition procedure.<sup>31</sup> While laws which provide for any specific recognition procedure for IGOs provide an opportunity for relatively detailed criteria for protection to be laid down in advance, the question of whether an IGO should be protected under a law which does not provide for a prior recognition procedure will depend on a specific court decision on the basis of the general definition contained in the relevant law.

(b) Main definitions used

31. With regard to the main definitions used for determining what IGOs are protectable under special forms of protection, the information provided indicates the following main categories of situation:

- (i) definitions following closely the language of Article 22.1 of the TRIPS Agreement, which defines geographical indications as indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin<sup>32</sup>;

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<sup>31</sup> Australia, in respect of spirits (other than spirits which are wine or grape products) (Q1,2); Cuba, in respect of "indications of source" (Q1); Germany, in respect of products in general under Section 127 of its Trademark Law (Q1); Korea, in respect of wines and spirits (Q1); Liechtenstein, Trademark Act (Q1); Morocco, in respect of goods and services under Law 17/97 on the Protection of Industrial Property (Q2); Norway, for wines and spirits, under its Marketing Act (Q1); Peru, in respect of "indications of source" (Q2,8); Sweden, in respect of alcoholic beverages under its Act Containing Certain Provisions Concerning the Marketing of Alcoholic Beverages (Q2 and Annex); Switzerland, in respect of products and services under its Law on Trademarks and the Protection of Indications of Source (Q1); Uruguay, in respect of "indications of source" (Q1).

<sup>32</sup> The definition applies as such in Canada (Q8); in the European Communities and their member States, under Regulations 3290/94 and 3378/94 in respect of the protection pursuant to Articles 23 and 24 of the TRIPS Agreement of geographical indications for wines or spirits originating in third countries that are Members of the WTO – United Kingdom (Q8); in Romania (Q8); and in Slovenia, in respect of handicrafts and other goods (Q8).

The definition applies in Australia, under the Trade Marks Act, the Australian Wine and Brandy Corporation Act as well as the Australian Food Standards Code Spirit Standard (P3), with slightly different wording in each case (Q8); Cuba (Q8); it applies in Ecuador, with the additional phrase "including natural and human factors" (Q8); Estonia (Q8); in Japan, "geographical indication" is defined as "the indication specifying that a [wine's or] liquor's place of origin is the territory of area/district of the territory of a Member State of the WTO in the case that the established quality, general reputation, and other characteristics of the liquor are mainly attributable to its geographical origin" (Q8); in Korea, under the Agro-Fisheries Product Quality Management Act, "geographical indication" is defined as meaning "the geographical name of a specified region, which serves to designate a product or a processed product originating therein, the reputation, quality and characteristics of which are essentially attributable to the geographical origin" (Q8 and Add.Q2); Peru has indicated that, under Decision 486 of the Commission of the Andean Community, the definition applies with slightly different wording, in particular specifying that not only geographical names but also non-geographical names can be protected as appellations of origin, if they relate to specific geographical areas (Q8); Poland (Q8,9).

In the European Communities and their member States, in respect of agricultural products and foodstuffs other than wines and spirits, the definition applies with the addition that the production and/or processing and/or preparation take place in the defined geographical area – EC (Q8); in Switzerland (Q8) and Liechtenstein (Q2), the definition applies in respect of agricultural products and processed agricultural products, except wines, under the Swiss Ordinance concerning the Protection of Appellations of Origin and Geographical Indications with respect to Agricultural Products and Processed Agricultural Products, with the addition that the production, processing or preparation takes place in the defined geographical area; and in Turkey the definition applies, in respect of any kind of product, with the addition that the production, processing or preparation takes place in the defined geographical area (Q8).



- (ii) definitions modelled on that used in the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. Article 2 of the Agreement defines an appellation of origin as meaning the geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors<sup>33</sup>;
- (iii) more specific national definitions. A number of those on which information has been provided can be found in Annex B to this document. It will be noted that many of them include the essential elements of the definition contained in the TRIPS Agreement and Lisbon Agreements, namely that the product has distinctive characteristics which are due to its geographical origin. Some of the definitions focus more on ensuring that the product comes from the designated area.<sup>34</sup> These

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In Hungary, the definition applies in respect of any kind of product other than agricultural products and foodstuffs, provided that the production, processing and preparation of the product take place in the defined area. In respect of agricultural products and foodstuffs, it applies as well on that basis, but only if the products bearing the geographical indication also comply with the conditions specified in the product specification provided for by special legislation (Q8).

<sup>33</sup> The definition applies as such in Belgium (Q8); in Bulgaria (Q8); in Italy (Q8,Add.Q1); in Mexico (Replies 9,10); in Portugal (Q8).

In France, the definition of Article 2 of the Lisbon Agreement applies as such in respect of any kind of product other than agricultural products and foodstuffs. In respect of any agricultural products and foodstuffs, the definition applies with the addition that the products concerned must have a "*notoriété dûment établie*" and "*font l'objet de procédures d'agrément*", in which case the appellations of origin are protectable as "*appellations d'origine contrôlées*" (see Annex B to this document).

In the Czech Republic, the definition applies with the words "serves to designate" reading "has come to be generally known to designate" (Q8); in the Slovak Republic, the geographical name must be a name which has come to be generally known, i.e., according to the nature of the product, either among experts or common consumers, as information about a product's origin (Introduction,Q10).

In Peru, under the Industrial Property Act, a similar definition applies, but which is limited to appellations of origin "using the name of a geographical region or place" and on the basis of "the place's natural and human factors" (Q2,8).

In Uruguay, Article 75 of Law No. 17.011 has a similar definition, but which also includes the geographical name of a "city" and services (Q8).

In the European Communities and their member States, the definition applies in respect of agricultural products and foodstuffs other than wines and spirits, with the addition that the production, processing and preparation take place in the defined geographical area (Q8); in Switzerland (Q8) and Liechtenstein (Q2), it applies in respect of agricultural products and processed agricultural products, except wines, under the Swiss Ordinance concerning the Protection of Appellations of Origin and Geographical Indications with respect to Agricultural Products and Processed Agricultural Products, with the addition that the production, processing and preparation take place in the defined geographical area; in Turkey the definition applies, in respect of any kind of product, with the addition that the production, processing and preparation take place in the defined geographical area (Q8).

In Hungary, the definition applies in respect of any kind of product other than agricultural products and foodstuffs, provided that the production, processing and preparation of the product take place in the defined area. In respect of agricultural products and foodstuffs, it applies as well on that basis, but only if the products bearing the geographical indication also comply with the conditions specified in the product specification provided for by special legislation (Q8).

<sup>34</sup> For example, in Australia one of the two definitions for "geographical indications" in respect of wine or grape products under the Australian Wine and Brandy Corporation Act (Q8 under (a)); New Zealand (Q8); in Estonia, one of the two definitions for "geographical indication" defines it as "other word, phrase or symbol that, resulting from long-term and consistent use, has become essentially attributable to the geographical area where the good is produced, processed or prepared or where the service is rendered" (Q8); Slovenia, in respect of agricultural products and foodstuffs (Q8); Morocco, in respect of "guaranteed appellations of origin" for wines under Order No. 869-75 of 15 August 1977 of the Ministry of Agriculture and Agrarian Reform (Q8).

definitions, like those of other categories above, are sometimes combined with particular product/production requirements;

- (iv) the information provided does not include general legislative definitions established at the level of the Member in question or only includes partially such definitions.<sup>35</sup> This is sometimes combined with a situation where the detailed definitional criteria are established and/or applied at a lower level of government.<sup>36</sup>

(c) Major criteria that determine eligibility for protection

(i) *Criteria employed to demarcate the area covered by an IGO*

32. Some of the information provided focuses more on the types of terms for geographical units that may constitute an IGO, while other information provided focuses on criteria of a more qualitative nature relevant to demarcating areas to be covered by an IGO.

33. On the first of these points, a wide range of terms for geographical units that may be eligible for constituting an IGO has been referred to. These include:

- political boundaries/administrative territorial classification<sup>37</sup>, including:
  - political sub-divisions<sup>38</sup> on maps<sup>39</sup>;
  - continents<sup>40</sup>, country or territory of a WTO Member<sup>41</sup>, region within that territory<sup>42</sup>, countries<sup>43</sup>, state<sup>44</sup>, group of countries<sup>45</sup>, county<sup>46</sup>, *département*<sup>47</sup>, canton<sup>48</sup>, district<sup>49</sup>, commune<sup>50</sup>, city<sup>51</sup>, village<sup>52</sup>, local administrative area or part thereof<sup>53</sup>;

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<sup>35</sup> For example, the EC has indicated that IGOs for spirits are determined on a case-by-case basis (Q8); in Germany, while a summary of the generally accepted view on the composition and labelling of individual categories of spirit drinks for which national IGOs exist has been elaborated in agreement with business circles and consumers, such definitions are not binding but used by courts as an aid in interpretation in the event of disputes (Q4/5/6); the United Kingdom has indicated that no specific criteria are used for recognized IGOs for wines and spirits in the United Kingdom and that most are long-standing and included in EC legislation (Q10).

<sup>36</sup> For example, Germany, in respect of wines (Q1,2,4/5/6,13); Spain, in respect of wines and spirits (13,17,18,23); Switzerland, in respect of wines (Q8); United States, in respect of wines (Q13).

<sup>37</sup> Estonia (Q13): "The geographical area does not have to coincide with the administrative unit or settlement unit bearing the same name. The name of the geographical area serving as a geographical indication does not have to coincide with the current official name of that geographical area."; Japan (Q8): including geographical names used in foreign countries; Slovak Republic (Q13); Slovenia, for agricultural products and foodstuffs in respect of the "name of a geographical region, in exceptional cases, a country" (Q8).

<sup>38</sup> United States, in respect of wines and spirits (Q10).

<sup>39</sup> Australia has referred to "local government boundary maps in relation to the area" as possible evidence in connection with the criteria for determining a "geographical indication" for wine under the Australian Wine and Brandy Corporation Regulations (Q10); see also "indications on maps" under the third sub-indent below.

<sup>40</sup> Switzerland (Q8).

<sup>41</sup> Generally, in those countries that employ definitions based on the TRIPS or Lisbon Agreements. In the European Communities and some other Members only in exceptional circumstances. See responses to Q8.

<sup>42</sup> Generally, in those countries that employ definitions based on the TRIPS or the Lisbon Agreements. See responses to Q8.

<sup>43</sup> Japan (Q8): including former names of countries; United States, in respect of wines and spirits (Q10).

<sup>44</sup> Germany, in respect of spirits (Q8); United States, in respect of wines and spirits (Q1,10,Add.Q1), including foreign equivalents.

<sup>45</sup> Morocco, in respect of "indications of source" (Q8).

<sup>46</sup> United States, in respect of wines (Q1,Add.Q1), including foreign equivalents.

<sup>47</sup> France (Q8 - through the reference to Article 5 of Decree No. 68-807).

- locality<sup>54</sup>, small locality or group of such localities<sup>55</sup>, area<sup>56</sup>, place or specific place<sup>57</sup>, linear feature<sup>58</sup>, zone<sup>59</sup>, street names<sup>60</sup>, indications on maps<sup>61</sup>;
- *sui generis* geographical areas such as:
  - specified region<sup>62</sup>, defined area larger than the production or processing area<sup>63</sup>, wine-growing area<sup>64</sup>, combination of wine-growing areas<sup>65</sup>, small locality or group of such localities<sup>66</sup>, restricted vinicultural zone<sup>67</sup>, single viticulture district or particular viticulture region<sup>68</sup>, vine-growing district<sup>69</sup>, wine growing sub-region or part thereof<sup>70</sup>, region other than a specified region which is reserved for table wines meeting certain production requirements<sup>71</sup>, vine-growing regions and villages<sup>72</sup>, vineyard site or unit comprising several vineyard sites (collective site or area)<sup>73</sup>, vineyard site or area registered in the vineyard register<sup>74</sup>, wine grape vineyard<sup>75</sup>, community or part

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<sup>48</sup> France (Q8 - through the reference to Decree No. 68-807); Switzerland (Q8).

<sup>49</sup> Slovak Republic (Q13).

<sup>50</sup> France (Q8 - through the reference to Decree No. 68-807); Switzerland, in respect of appellations of origin for wines (Q8).

<sup>51</sup> Germany, in respect of spirits (Q8); Uruguay (Q8).

<sup>52</sup> Slovak Republic (Q13).

<sup>53</sup> European Communities, in respect of table wines (Q8); Japan (Q8); Spain, in respect of table wines (Q8).

<sup>54</sup> Generally, in those countries that employ definitions based on the TRIPS or Lisbon Agreements. See responses to Q8.

<sup>55</sup> European Communities, in respect of table wines (Q8).

<sup>56</sup> Germany, in respect of wines (Q8).

<sup>57</sup> Canada (Q10); European Communities (Q8); Germany (Q8); Greece; (Q8); Ireland (Q8); Morocco, in respect of "appellations of origin" under Law 17/97 on the Protection of Industrial Property (Q8); Netherlands (Q9,10); Peru (Q8); Spain (Q8); Switzerland (Q8) and Liechtenstein (Q2), in respect of agricultural products and processed agricultural products, except wines, under the Swiss Ordinance concerning the Protection of Appellations of Origin and Geographical Indications with respect to Agricultural Products and Processed Agricultural Products.

<sup>58</sup> New Zealand (Q8).

<sup>59</sup> Australia (Q10).

<sup>60</sup> Japan (Q8): including famous streets in foreign countries.

<sup>61</sup> Japan (Q8).

<sup>62</sup> Austria (Q4); European Communities (Q1,8,13); France (Q14); Germany (Q4/5/6,8,11,14,17-27,36,Add.Q2,3); Greece (Q2); Korea (Q8,Add.Q2); Luxembourg (Q21); Spain (Q2,6,7,8,10,14,32,36,50).

<sup>63</sup> Poland, in respect to "products produced of raw materials or intermediate products" coming from that specified area (Q8).

<sup>64</sup> European Communities, in respect of quality wines produced in a specified region (Q8); Germany (Q8,16, Add.Q2).

<sup>65</sup> European Communities, in respect of quality wines produced in a specified region (Q8).

<sup>66</sup> European Communities, in respect of table wines (Q8); Spain, in respect of table wines (Q8).

<sup>67</sup> Greece (Q8).

<sup>68</sup> Slovenia (Q8).

<sup>69</sup> Slovak Republic (Q13).

<sup>70</sup> European Communities, in respect of table wines (Q8); Germany (Q4/5/6,8,Add.Q2); Spain, in respect of table wines (Q8).

<sup>71</sup> European Communities (Q8); Spain (Q8) .

<sup>72</sup> Slovak Republic (Q13).

<sup>73</sup> Germany (Q8,Add.Q2)

<sup>74</sup> Germany (Q8).

<sup>75</sup> Australia (Q10).

thereof (place)<sup>76</sup>, area cultivating *Landwein*<sup>77</sup>, *château*<sup>78</sup>, *domaine*<sup>79</sup>, viticultural area<sup>80</sup>; "geographical indications recognized in the specific regulations"<sup>81</sup>.

34. On the question of the extent to which terms which are suggestive of a geographical origin but are not in themselves place names ("indirect" geographical indications) may be eligible for protection, not all responding Members have supplied information. Indeed, it seems that Members understood the question on this matter in different ways. However, some have indicated that such terms may be protected in their territory as IGOs by special forms of protection.<sup>82</sup> In some cases, this is because the general definition does not exclude this possibility and in others because it is specifically included.<sup>83</sup> One Member has stated that in its territory only direct indications, that is the names of the specific regions, places or countries are covered.<sup>84</sup>

35. Some Members have provided information on criteria of a more qualitative nature employed to de-limit the area from which products will benefit from an IGO. This information has mainly been supplied in respect of wine. Many of these criteria appear to be aimed at establishing the homogeneity of the cultivation conditions within the area<sup>85</sup> and the distinctiveness of those conditions *vis-à-vis* other areas<sup>86</sup>. The specific criteria that have been referred to include: natural features<sup>87</sup> including rivers, contour lines and other physical<sup>88</sup> or topographical features; geographical characteristics<sup>89</sup> or agronomic characteristics<sup>90</sup> such as the geographical formation of the area<sup>91</sup>, soil<sup>92</sup>,

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<sup>76</sup> Germany (Q4/5/6,8,Add.Q2).

<sup>77</sup> Germany (Q4/5/6,8,Add.Q2). See also Annex B to this document.

<sup>78</sup> Switzerland (Q8).

<sup>79</sup> Switzerland (Q8).

<sup>80</sup> United States (Q10,Add.Q2). The United States has also indicated that the name of a vineyard, orchard, farm or ranch as part of a wine label is prohibited, unless 95 per cent of the wine in the container was produced from primary winemaking material grown on the named vineyard, orchard, farm or ranch.

<sup>81</sup> United States, in respect of spirits, referring to "Bourbon" as an example (Q10).

<sup>82</sup> Australia has stated that the Australian Food Standards Code Spirit Standard (P3) includes any indication, either express or implied, and therefore would probably include geographical indications indirectly linked to a specific region, while adding that this has never been tested (Q9); European Communities (Q8,9); Germany under its Trademark Law and for spirits (Q8,9); Liechtenstein (Q8,9); Switzerland under each of its systems (Q8,9).

<sup>83</sup> For example, the EC system for the protection of IGOs for agricultural products and foodstuffs provides that certain traditional non-geographical names designating an agricultural product or a foodstuff originating in a region or a specific place can also be considered as designations of origin (European Communities (Q8); France (Add.Q2); Greece (Q8); Spain (Q8)). Switzerland has, in connection with the protection for indications of source under the Law on the Protection of Trademarks and Indications of Source given the example of a graphical representation of the Matterhorn (Q8). The common Andean regime contained in Decision 344 includes within its definition of "appellation of origin" names which, without being that of a specific country, region or place, relates to a specific geographical area (Peru Q8). In Poland, Article 174 of the Industrial Property Law of 2000 states that "geographical indications are word indications which in an *explicit* or *implicit* manner designate the name of a place, locality, region or country (territory) (...)" (Q9).

<sup>84</sup> Netherlands (Q9).

<sup>85</sup> Australia (Q10); Spain (Q21). Germany has, in this regard, specified as factors to be looked at "the equivalence and similarity of yields of a site"; "the similarity of yields of an area, the traditional use of site and area names"; and "an economically sound demarcation of sites and areas maintaining the site-related character" (Q13).

<sup>86</sup> Australia (Q10); Spain (Q10 - the reference to the "originality" of the product); United States (Q10). In respect of agricultural products and foodstuffs, the United Kingdom has stated that it looks to the extent to which the geographical area has characteristics different from those of neighbouring areas or the products in question coming from the area have characteristics different from similar products (Q17).

<sup>87</sup> Australia (Q10).

<sup>88</sup> United States (Q10), referring also to "features which can be found on the United States Geological Survey (USGS) maps".

<sup>89</sup> Mexico (Reply 14).

<sup>90</sup> Spain (Q21).

climate<sup>93</sup>, drainage<sup>94</sup>, irrigation<sup>95</sup>, elevation of the area<sup>96</sup>, or whether the date on which harvesting a particular variety is expected to begin in the area is the same as the date on which harvesting is expected to begin in neighbouring areas<sup>97</sup>; and human features including the choice of varieties or breeds employed<sup>98</sup>, the technical skill of the makers or processors<sup>99</sup>, methods of production, preparation and processing developed by the enterprises located in the area<sup>100</sup> and constructed features.<sup>101</sup> Historical<sup>102</sup> and traditional<sup>103</sup> factors may also be taken into consideration, as well as plans for the development of the area.<sup>104</sup> The need for an economically sound demarcation of an area, including equivalence of yield, has been mentioned.<sup>105</sup>

36. Some Members have indicated that the responsibility for demarcating geographical units to which IGOs apply is or can be that of another level of government.<sup>106</sup>

(ii) *Origin requirements*

37. Many Members have provided information on requirements to ensure that the products to which an IGO is attached actually come from the area designated. Some have done this in general terms by saying that the product must be made in the area in question or that the producer must be located in that area. Some have provided more precise information, from which the following categories of situation emerge:

- requirements that all stages of production (raw material, processing and preparation) must be in the designated area<sup>107</sup>;
- requirements that the raw material (e.g. grapes) must have originated in the area in question.<sup>108</sup> In some cases, there is tolerance of a small proportion coming from outside the area<sup>109</sup>;

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<sup>91</sup> Australia (Q10).

<sup>92</sup> Greece (Q8); Spain (Q13); United States (Q10).

<sup>93</sup> Australia (Q10); Spain (Q21); United States (Q10).

<sup>94</sup> Australia (Q10).

<sup>95</sup> Australia (Q10); Mexico (Q10); Spain (Q13,21); United States (Q10).

<sup>96</sup> Australia (Q10); United States (Q10).

<sup>97</sup> Australia (Q10).

<sup>98</sup> EC (Q10); Greece (Q8); Spain (Q13,21).

<sup>99</sup> Spain (Q21).

<sup>100</sup> Spain (Q13). Such cultivation, production practices and/or wine-making methods have been referred to by the European Communities (Q10), Germany (Q11), Greece (Q8), Morocco (Q8), Spain (Q10,11). In respect of agricultural products and foodstuffs, the United Kingdom has indicated that, under EC Regulation 2081/92, the methods used to produce the product must be unique in the area.

<sup>101</sup> Australia (Q10).

<sup>102</sup> Australia (Q10,23); United States (Q10).

<sup>103</sup> Australia (Q10,23); Bulgaria (Q8,10,22); European Communities (Q10); Germany (Q8,9,13); Greece (Q8); Slovenia (Q10); Spain (Q21).

<sup>104</sup> Australia (Q10).

<sup>105</sup> Germany (Q13).

<sup>106</sup> Cuba (Q13); Germany, in respect of wines (Q4/5/6,13); Switzerland, in respect of wines (Q13); United States, in respect of wines (Q13). It might also be noted that in the EC the authority for demarcating the areas to which IGOs relate for quality wine is in the competence of the EC member States (European Communities (Q13)).

<sup>107</sup> The European Communities, for "protected designations of origin" (PDOs) in respect of agricultural products and foodstuffs (Q8). Slovenia, for "designation of origin" in respect of agricultural products and foodstuffs (Q8); However, certain IGOs can be treated as PDOs even where the raw materials of the products concerned come from a geographical area larger than or different from the processing area, provided that the production area of the raw materials is limited, specific conditions for the production of the raw materials exist and there are inspection arrangements to ensure that these conditions are adhered to (Belgium - Q9).

- a particular stage of production must have occurred in the area, for example for spirits, the decisive stage or stage that gives the product its distinctive character must have occurred in the area<sup>110</sup>;
- at least one of the stages of production must have occurred in the area.<sup>111</sup>

38. As regards IGOs for services, some Members which provide special protection for such IGOs have said that the source of a service is determined by one of the following criteria: the registered office of the service provider, the nationality of the persons who effectively control the commercial policy and management, or the domicile of such persons. Further conditions may be imposed, such as observance of customary or prescribed principles for the provision of the services in question or a factual link between the service provider and the source country.<sup>112</sup>

(iii) *Characteristics of the product*

39. In many countries, it is necessary that the product has specific characteristics linked to its origin for it to benefit from the special protection for IGOs. As indicated by the definitions listed above, a special quality is the most common requirement. In some cases, this requirement is only taken into consideration at the time of taking the decision on the protection of an IGO, with subsequent quality and consumer expectations about it being left to the market-driven behaviour of those entitled to use the IGO.<sup>113</sup> In many cases, however, ongoing requirements regarding production methods and product specifications are specified as a condition of use of the protected IGO, with systems for monitoring respect for these requirements (elaborated further in section V below). In some cases, the special protection for IGOs may be available without the quality (or reputation) of the products being an issue, but rather with a focus on whether the IGO identifies products coming from a particular place.<sup>114</sup>

*Quality*

40. The reference to quality in the definitions of IGOs employed varies somewhat, for example "established quality"<sup>115</sup>, "particular quality"<sup>116</sup>, "given quality"<sup>117</sup>, "specific quality"<sup>118</sup>, "special quality

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<sup>108</sup> Australia, in respect of grapes (Q8); Canada, in respect of wines (Q10); European Communities, in respect of table wines (Q8); Slovenia, for "designation of origin" in respect of agricultural products and foodstuffs (Q8); Switzerland for *appellations d'origine contrôlées* for wines (Q8). See also Annex B to this document.

<sup>109</sup> In the United States, in order to qualify for an "appellation of origin", at least 75% of wine must be derived from fruit grown in the appellation area. For a "viticultural area", the proportion is 85%. However, some States in the United States have higher requirements (100% in Oregon) (Add.Q2 ).

<sup>110</sup> Canada (Q10).

<sup>111</sup> In Ecuador, extraction, production or preparation (Q21,23); in the European Communities, in respect of "protected geographical indications" (PGIs) under EC regulation 2081/92: production and/or processing and/or preparation (Q8); in Germany, in respect of spirits, a special quality must be given either by virtue of the geographical origin of the raw materials or because of a characteristic manufacturing process prevailing in the region of origin (Q10); in Korea, under the Enforcement Decree of the Agro-Fisheries Product Quality Management Act, produced or processed within the defined area (Q10); in Switzerland (Q8,10) and Liechtenstein (Q2), in respect of "protected geographical indications" (PGIs) under the Swiss Ordinance concerning the Protection of Appellations of Origin and Geographical Indications with respect to Agricultural Products and Processed Agricultural Products, production, processing or preparation; Slovenia, for "geographical indications" in respect of agricultural products and foodstuffs, production, processing or preparation (Q8); in Turkey, in respect of "geographical indications", production, processing or preparation.

<sup>112</sup> Liechtenstein (Q10); Switzerland (Q10).

<sup>113</sup> Australia (Q9).

<sup>114</sup> Australia, in respect of wines (Q8,9); New Zealand (Q8).

<sup>115</sup> Japan (Q8).

characteristics"<sup>119</sup>, "special outstanding quality distinguishing the product from generic products"<sup>120</sup>, superior quality/quality of the highest grade as determined in accordance with standards specified in the law for the product concerned or, in the absence of such specification, as determined through customary use in the respective industry<sup>121</sup>. It is not clear what significance should be attached to these different formulations.

41. In some countries, compliance with particular requirements regarding production methods and product specification is a requirement for eligibility to use an IGO under at least some special regimes for their protection. Examples are requirements relating to the use of particular varieties, minimum alcohol strength, volatile acidity, sulphur dioxide, organoleptic characteristics, natural sugar content, authorized assemblages, cultivation methods, wine-making methods, yield.<sup>122</sup>

#### *Reputation*

42. As indicated earlier, many but not all of the definitions include reputation as a specific characteristic related to the geographical origin of a product that might justify protection of the IGO designating that product. This is the case for those Members who base their definitions on the language used in Article 22.1 of the TRIPS Agreement and certain others. Those who base their definitions on that in the Lisbon Agreement generally do not make specific reference to reputation as a characteristic of the product.<sup>123</sup> Once again a variety of qualifiers are used ("general", "given", "specific", etc.).

#### *Other characteristics*

43. Most of the definitions refer to "other characteristics" of the product that are attributable to its geographical origin, but little additional information has been provided in this regard.

#### *Role of human creativity and human factors*

44. Most Members have indicated that human factors can play a role in regard to the characteristics of products that are linked to their origin and that may justify protection. Some have indicated that human factors are specifically mentioned in their definitions of protectable geographical indications, especially those which base such definitions on that in the Lisbon Agreement. Some others have highlighted the relevance of human factors to matters such as quality, traditional methods of production, vinicultural practices and methods of production, preparation and cultivation.<sup>124</sup> Some, however, have also indicated that no specific level of human creativity is called for and the contribution of human factors is not essential.<sup>125</sup>

#### *(iv) Link between characteristics and geographical origin*

45. Those definitions that call for the product to have certain characteristics require that those characteristics be related to the geographical origin of the good. In addition to the terms used in the

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<sup>116</sup> Australia, in respect of wines (Q8).

<sup>117</sup> Australia, in respect of spirits (Q8).

<sup>118</sup> European Communities, in respect of "protected geographical indications" for agricultural products and foodstuffs other than wines and spirits (Q8).

<sup>119</sup> European Communities, in respect of quality wine produced in a specified region (Q8).

<sup>120</sup> Germany, in respect of spirits (Q10).

<sup>121</sup> Korea, in respect of agricultural and fisheries products and their processed products (Q10).

<sup>122</sup> For source references, see Annex B to the present document.

<sup>123</sup> However, the notion of "reputation" is contained in the definition of "country of origin" stipulated in Article 2(2) of the Lisbon Agreement.

<sup>124</sup> Czech Republic (Q11); Germany (Q10); Slovenia (Q11); Spain (Q8).

<sup>125</sup> Ecuador (Q11); Canada (Q11); Portugal, in respect of "geographical indications" (Q11).

Article 22.1 of the TRIPS Agreement ("essentially attributable") and in the Lisbon Agreement ("due exclusively or essentially"), a number of other terms have been employed including "mainly attributable"<sup>126</sup> and "attributable".<sup>127</sup> Some of the national definitions do not explicitly call for a causal link between the geographical origin of the product and its characteristics.<sup>128</sup>

(v) *Public knowledge*

46. Some Members have indicated that, for an IGO to be eligible for protection as identifying or designating a product as having certain characteristics because of its geographical origin, some public knowledge that the IGO serves this role is necessary.<sup>129</sup> This consideration is, of course, closely related to the "reputation" characteristic that may give rise to protectability in some Members mentioned above. However, whereas that is an optional characteristic that may, among others, lead to protection and is linked to the product rather than the IGO, it seems that for some Members the required public notoriety of the IGO itself is a necessary or important condition of protection – at least under some of the forms of protection they provide.<sup>130</sup>

47. In regard to some of those systems of special protection that do not provide for ex ante recognition, it has been emphasized that the extent to which an IGO is known as identifying the geographical origin is a key consideration in determining its eligibility for protection.<sup>131</sup>

(vi) *Generic terms and other factors justifying non-protection*

48. A number of Members have indicated that terms that have become generic are not protectable as geographical indications.<sup>132</sup> One Member has made the point that, whereas protection provided

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<sup>126</sup> Japan (Q8).

<sup>127</sup> Australia, in respect of wines (Q8); Belgium (Q8), European Communities (Q8) and Spain (Q8), in respect of "protected geographical indications" (PGIs) of agricultural products and foodstuffs other than wines and spirits under EC Council Regulation 2081/92 (Q8); Slovenia, for "geographical indications" in respect of agricultural products and foodstuffs (Q8).

<sup>128</sup> In Australia, under one of the two definitions for "geographical indications" in respect of wines under the Australian Wine and Brandy Corporation Act (Q8 under (a)); New Zealand (Q8). In the European Communities, protection is available for quality wines from a "specified region" which produces wine possessing special quality characteristics, and for table wines from areas reserved for table wines and meeting certain production requirements (Q8).

<sup>129</sup> Australia (Q10).

<sup>130</sup> Australia has indicated that the extent to which an expression is known to wine retailers beyond the boundaries of the area is an important consideration (Q10); in France, the criteria expressing the link with the place of origin taken into consideration include reputation and renown (Q10,23); in the Czech Republic (Q8) and the Slovak Republic (Q10), an IGO must have become generally known – according to the nature of the product, either among experts or among ordinary consumers – as information about a product's origin for it to be eligible for protection as an appellation of origin; in Korea, the "superior quality" of the product concerned must be widely recognized both within Korea or abroad (Q10); in Slovenia, one of the bases of protection of "geographical indications" is "good reputation" (Q10); in Spain, a condition of protection of IGOs for wines, spirits and other agricultural products or foodstuffs as *denominación de origen* is that the IGO must be permanently in wide circulation and well-known on the domestic market or has at least achieved a considerable reputation on a regional scale or a developed market abroad (Q8); in the United States, the BATF, in considering the establishment of American viticultural areas, calls for evidence that the name of the viticultural area is locally and/or nationally known as referring to the area specified (Q10). See also Annex B to the present document.

<sup>131</sup> In Germany, for the protection of IGOs under Section 127 of its Trade Mark Law, it is necessary that the product stands in the public view, i.e. in the relevant circles, not only for the origin of the product but also for a certain quality (Q1,4/5/6,10); in Switzerland's provisions on indications of source, geographical names or signs which are not considered by the circles concerned to be a reference to the source of the products or services are not eligible for such protection (Q8).

<sup>132</sup> In Cuba, there can be no registration of "geographical appellations" which are generic of a product, or which have become common name or designation of a product instead of associating it or identifying it with



through systems that do not provide for ex ante recognition depends on the link between the product and the place designated by the IGO being recognized by the circles concerned, IGOs recognized ex ante cannot become generic.<sup>133</sup>

49. Some Members have indicated that IGOs contrary to morality or public order or such as to mislead the public as to the source, nature, method of manufacture or characteristics or qualities of the products concerned are not protectable.<sup>134</sup>

(vii) *Foreign IGOs*

50. Where special protection is provided without the use of a specific prior recognition procedure, it would appear that such protection is available to foreign IGOs on the same basis as national ones.<sup>135</sup> It has been made clear that, at least under one of these systems, protection does not depend on recognition and protection in the country of origin of the IGO.<sup>136</sup>

51. With regard to other special systems for the protection of IGOs, some Members have drawn a distinction between "recognition" of a foreign IGO in the sense of "participation in existing domestic regimes providing for positive recognition (positive lists)", on the one hand, and "protection within the meaning of the TRIPS Agreement", on the other.<sup>137</sup>

52. The following modalities for foreign IGOs to obtain recognition under special systems which require prior recognition as a condition of protection have been referred to in the information provided:

*By an international agreement.* Many Members have indicated that the inclusion of foreign IGOs on lists of IGOs that are recognized and protected in their territory can result from international agreements, whether multilateral, regional or bilateral.<sup>138</sup> A number of Members have referred in particular to their participation in the Lisbon Agreement. A listing of the international agreements that have been referred to by

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its geographical origin (Q10); Ecuador has stated that common or generic indications used to distinguish the particular product, when considered as such by persons with knowledge of the subject or by the general public, are not protectable as geographical indications (Q10). In Germany, indications of a generic nature are not eligible for protection as IGOs under the Trade Mark Law (Q8) or for spirits (Q17-27). In Poland, a given indication may not be registered, if in consequence of its use it has become a generic name (Q10); In Switzerland, a name that has become generic in the sense that it has become a common name for the product is not protectable as protected appellation of origin or protected geographical indication for agricultural products other than wine; to establish whether a name has become generic, account is taken of the views of the producers and consumers, especially in its region of origin, and of cantonal provisions (Q10). In the United States, an exception applies to the rule that geographical names for distinctive types of distilled spirits may not apply to any distilled spirits produced in any other place than the particular region indicated by the name, if the Director of the BATF specifically finds that such a geographical name has, by usage and common knowledge, lost its geographical significance to such a extent that it has become generic.

<sup>133</sup> Switzerland, in respect of registered IGOs for agricultural products and foodstuffs other than wines (Q7).

<sup>134</sup> Cuba: "there can be no registration of geographical indications that contravene public morals or public order" (Q10); Ecuador (Q10).

<sup>135</sup> Australia, in respect of spirits (Q8,15); Germany (Q15); Sweden (Q15,16); Uruguay (Q15,27).

<sup>136</sup> Germany (Q16).

<sup>137</sup> European Communities, for example where non-WTO Members are concerned (Q27 and EC comments on JOB(00)/5619), the preliminary version of the present summary paper); Japan (Q27); Spain (Q27).

<sup>138</sup> Australia (Q15); Czech Republic (Q52); European Communities (Q27); France (Q27); Germany (Q52); Greece (Q27); Hungary (Q15); Italy (Q15); Mexico (Reply 18); New Zealand (Q15,16); Peru (Q15); Romania (Q27); Slovak Republic (Q15); Slovenia (Q15, 27); Spain (Q15); Switzerland (Q15); Venezuela (Q15).

Members can be found in Table III<sup>139</sup>. Reference has also been made to special provisions for IGOs originating in partner countries in regional arrangements.<sup>140</sup> In at least one case, the legislation lays down criteria to be taken into account in concluding international agreements.<sup>141</sup> While some countries have indicated that protection and recognition of the IGO in its country of origin is not a precondition built into their legislation, the point has also been made that it would be difficult to envisage a foreign IGO being protected under an international agreement without this condition being met<sup>142</sup> and that, in at least some international agreements, protection in the country of origin is a precondition written into the agreement itself.<sup>143</sup> In some countries, a special part of the register is reserved for IGOs protected as a result of international agreements.<sup>144</sup>

*By use of the normal procedure.* A number of Members have indicated that recognition of foreign IGOs can result from use of the normal application procedure provided in their laws.<sup>145</sup> In some cases, this is in addition to the possibility for recognition to result from the conclusion of an international agreement, while in other cases it would appear to be the only avenue available. In most cases, it would seem that protection (or protection and recognition), in the country of origin is a precondition.<sup>146</sup> Under some systems, such recognition is conditional on the existence of equivalent recognition and inspection requirements in the country of origin.<sup>147</sup> Some Members have indicated that reciprocity on the part of the country of origin of the IGO is a condition of recognition of the IGO in question.<sup>148</sup> One Member has indicated that the requirement of reciprocity only applies in respect of applicants who are not domiciled or do not have an industrial or commercial establishment in a WTO Member or a member of the Paris or Berne Conventions.<sup>149</sup>

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<sup>139</sup> Not all of these agreements necessarily provide for the recognition of specific IGOs.

<sup>140</sup> For example, Peru (Q15) and Venezuela (Q15,27) in regard to Andean Pact countries; and member States of the European Communities.

<sup>141</sup> Under the European Communities' arrangements for geographical indications for wines, foreign IGOs whose country of origin is a Member of the World Trade Organization are recognized after the country of origin has submitted its legal provisions on the application of the TRIPS Agreement to the Commission of the European Communities. In the case of third countries not applying Section 3 of Part II of the TRIPS Agreement, such recognition is only granted where (a) the IGO in question designates a clearly demarcated wine-growing area, which is smaller than the entire wine-growing area of the country concerned, (b) the grapes from which the product was made come from this geographical unit, (c) the grapes from which the wine with characteristic properties was made are harvested in this geographical unit, and (d) the IGO is used on the domestic market of the country of origin to designate the wines and is intended for this purpose under the provisions of this country (Germany Q16).

<sup>142</sup> New Zealand (Q15,16).

<sup>143</sup> Spain (Q16).

<sup>144</sup> Australia (Q8,15,27); Peru (Q15).

<sup>145</sup> Australia (no formal legislative procedure laid out as yet) (Q27); Bulgaria (Q27); Canada (Q27); the Czech Republic (Q27); Ecuador (Q15); European Communities, in respect of agricultural products and foodstuffs (Q27); Romania (Q27); Slovak Republic (Q27).

<sup>146</sup> Australia (Q27); Bulgaria (Q16); Canada (Q8,16); Cuba (Q16,22,23,27); Czech Republic (Q27); Ecuador (Q16); Estonia (Q16); European Communities (Q16); Poland (Q15,16); Romania (Q16); Slovak Republic (Q15).

<sup>147</sup> European Communities (Q27 - through the reference to Article 12 of Regulation 2081/92 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs); Turkey (Q27).

<sup>148</sup> Czech Republic (Q15); European Communities, in respect of agricultural products and foodstuffs other than wines and spirits (Q27 and EC comments on JOB(00)/5619, the preliminary version of the present summary paper); Morocco (Q15); Hungary (Q15); Peru (Q15); Venezuela (except for other countries of the subregion - Q15,27).

<sup>149</sup> Turkey (Q15).

Another has indicated that the reciprocity requirement is "without prejudice to international agreements".<sup>150</sup> In some countries, additional procedural requirements may have to be met, notably in regard to providing evidence of protection and recognition in the country of origin and in regard to local representation.

These are discussed in more detail in the next section of this note.

(viii) *Homonymous IGOs*

53. With regard to the question of how conflicting demands for the recognition of IGOs of two or more countries that are spelt or sound the same are handled, those Members who have supplied information on this point have referred to consultations and/or negotiations between the countries concerned, including the use of opposition procedures, and possible recognition of both names with due regard for local and traditional usage and the practical risks of confusion.<sup>151</sup> In some cases, a "second" homonymous indication is not recognized as such, but its use may be tolerated subject to certain conditions (see paragraph 111 below). Some Members have indicated that their legislation includes no criteria to deal with homonymous indications<sup>152</sup> or have referred to general principles of unfair competition and trademark law.<sup>153</sup>

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<sup>150</sup> European Communities (Q27 - through the reference to Article 12 of Regulation 2081/92 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs).

<sup>151</sup> In the EC, with respect to products other than wines and spirits, IGOs indicating areas in two EC member States require consultations before registration and are a ground for opposition. Those indicating areas in the EC and a third country may be registered with due regard for local and traditional usage and the practical risks of confusion. Use of such names shall be authorized only if the country of origin of the product is clearly and visibly indicated on the label (Q14). Switzerland has indicated that such issues within Switzerland are regulated by intercantonal agreements and by the possible use of additional information on the IGO. The bilateral treaties which Switzerland has signed contain an homonymous indication clause, sometimes supplemented by a protocol (Q14).

<sup>152</sup> Morocco, in respect of wines (Q14); Uruguay (Q14).

<sup>153</sup> For example, France (Q14); Iceland (Q14).

**TABLE III: MEMBERSHIP IN INTERNATIONAL AGREEMENTS: INFORMATION PROVIDED BY MEMBERS**

Member	Bilateral agreements	Regional agreements	Multilateral agreements
Australia	wines: EC/MS		
Bulgaria			Lisbon, Madrid
Canada		NAFTA	
Cuba	France, Germany, Peru		Lisbon, Madrid, Paris, TRIPS
Czech Rep.	Austria, Portugal, Switzerland		Lisbon, Paris, Madrid
Ecuador		Cartagena (Andean Community)	TRIPS
Estonia			
EC/MS <sup>A</sup>	- wines: Australia, Bulgaria, Hungary, Romania; - spirits: Mexico, USA		
Austria	"Several bilateral agreements on geographical indications exist."		
Belgium			
Denmark			Madrid, Paris, TRIPS
Finland			
France <sup>B</sup>	Austria, Costa Rica, El Salvador, Germany, Italy, Norway, Spain, Switzerland, UK, US		Paris, Madrid, Lisbon, International Olive Oil Agreement, Stresa
Germany <sup>B</sup>	France, Greece, Italy, Spain, Switzerland		OIV
Greece			OIV
Ireland			
Italy <sup>B</sup>	wines: Switzerland		Stresa
Luxembourg			
Netherlands			
Portugal	Czechoslovakia <sup>C</sup> , Hungary, Spain, Switzerland,		Paris, Madrid, Lisbon
Spain <sup>B</sup>	Austria, Czechoslovakia <sup>C</sup> , France, Germany, Hungary, Italy, Portugal, Switzerland		Paris, Madrid
Sweden			Madrid, TRIPS, Paris
UK			
Hong Kong, Ch			
Hungary	- agricultural and industrial products: Austria - indications of source and appellations of origin: Portugal, Switzerland - wine: EC/MS		Lisbon
Iceland			Madrid, Paris, TRIPS
Japan			Paris, Madrid
Korea			Paris
Liechtenstein		EEA	Madrid, Paris
Lithuania <sup>D</sup>	Mexico		
Mexico	FTAs with Bolivia, Chile, Costa Rica, Nicaragua spirits: EC/MS	NAFTA, Agreement between Colombia, Venezuela, Mexico (G-3)	Lisbon
Morocco			Paris, Madrid (Indication of Source), Madrid (international registration of marks)
Norway		EEA	Stresa
New Zealand <sup>B</sup>			

<sup>A</sup> Information concerning international instruments between the EC and third countries is reflected on the line of the EC and their member States. As regards the relationship within the EC context, some EC member States have referred to EC legislation, in particular the mutual recognition and protection among the member States applying thereunder.

<sup>B</sup> Recognition of foreign IGOs presupposes inclusion in a bilateral, regional or multilateral agreement.

<sup>C</sup> Agreement concluded before the Czech Rep. and the Slovak Rep. became two separate countries.

<sup>D</sup> Involving the recognition of "Tequila" as a Mexican GI and "Palanga" as a Lithuanian GI.

<sup>E</sup> The Accession procedure to the Lisbon Act has been initiated.

Member	Bilateral agreements	Regional agreements	Multilateral agreements
Peru		Cartagena (Andean Community), Interamerican General Conv. on Trademark and Trade Protection	Paris
Poland			Paris, Madrid <sup>E</sup>
Romania	EC/MS		
Slovak Rep.	Austria, Portugal, Switzerland		Paris, Lisbon, Madrid
Slovenia	Wines, spirits and aromatised drinks: EC		
Switzerland	Czechoslovakia <sup>C</sup> , France, Germany, Hungary, Portugal, Spain		Paris, Madrid, Stresa
Turkey			
US	EC/MS		
Uruguay		MERCOSUR	Paris, TRIPS
Venezuela <sup>B</sup>		Andean Community legislation	Paris, TRIPS

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<sup>D</sup> Involving the recognition of "Tequila" as a Mexican GI and "Palanga" as a Lithuanian GI.

<sup>E</sup> The Accession procedure to the Lisbon Act has been initiated.

#### IV. PROCEDURES FOR RECOGNITION

54. This section focuses on the procedures used for the ex ante recognition of IGOs as eligible for protection applied under the various means of protection for indications of geographical origin on which Members have given information in response to the Checklist.

##### A. LAWS FOCUSING ON BUSINESS PRACTICES

55. Members providing protection for IGOs under general provisions for the protection of consumers, for protection against unfair competition or in connection with the other types of laws covered by this heading have indicated that, in the application of these provisions, there are no special procedures for the ex ante recognition of specific IGOs as eligible for protection under such laws.

##### B. TRADEMARK LAW

###### (a) Protection of IGOs as collective, guarantee or certification marks

56. Some of those Members who offer this form of protection for IGOs have confirmed that an application must be filed with the trademark office.<sup>154</sup>

57. Some of these Members have provided information on procedural requirements they impose in order to ensure that the substantive conditions referred to in section III above are complied with. These include requiring applicants to submit a copy of the regulations established governing use of the mark.<sup>155</sup> One Member has indicated that such rules must be approved by the trademark office.<sup>156</sup> Another has indicated that, where a geographical term is used as a certification mark to indicate regional origin, the trademark application should define the regional origin which the mark certifies, if the wording comprising the mark does not clearly indicate what origin is intended.<sup>157</sup>

58. Some Members who have supplied information on this point have indicated that normal procedures for opposition/cancellation/invalidation of a trademark apply to collective/guarantee/certification marks.<sup>158</sup>

###### (b) Protection as individual trademarks

59. No information has been provided that would suggest that the normal trademark procedures do not apply in these cases.<sup>159</sup>

##### C. SPECIAL PROTECTION

###### (a) Without procedures for the ex ante recognition of IGOs

60. As indicated earlier on in this note, some Members provide special systems of protection for IGOs without the need for any prior recognition procedure but on the basis of general definitions and criteria laid down in the law. Nevertheless, some of the Members employing such systems occasionally adopt in addition decrees or ordinances for the application of the law in question in

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<sup>154</sup> Germany (Q17-27); Hong Kong, China (Q18); United States (Q18,27).

<sup>155</sup> Germany (Q17-27); Hong Kong, China (Q8); United Kingdom (Q10); United States (Q11).

<sup>156</sup> Switzerland (Q17).

<sup>157</sup> United States (Q10).

<sup>158</sup> United Kingdom (Q25,41); United States (Q25).

<sup>159</sup> United States (Q25,30).

respect of individual IGOs in respect of a particular product, which lay down certain requirements for the making of the product in question.<sup>160</sup>

(b) With procedures for the ex ante recognition of IGOs

61. This sub-section first looks briefly at the main different types of procedure for recognition on which information has been provided, focusing on substantive rather than terminological differences. It then looks in turn at each of the steps that are evident under these procedures, examining successively the persons eligible to initiate them, the authorities involved in the decision-making process, the information to be provided to those authorities and consultation and opposition procedures. It then takes up the question of procedures applicable to foreign IGOs.

(i) *Different means of recognition*

62. On the basis of the information made available by Members, the following main types of means of recognition can be distinguished:

- (i) Recognition by virtue of a legislative instrument specifically dedicated to a particular IGO. Such legislative instruments would appear generally to result from an ad hoc procedure rather than from the application of a procedure defined by law in advance. In some cases, they are adopted by the legislative body at central government level and in other cases by that at a sub-central government level.<sup>161</sup>
- (ii) Recognition by virtue of a decision of an administrative entity or other public institution which has authority to take such decisions under the legal system of the country but which does not amount to a formal registration procedure of the sort referred to under (iii) below. Such an administrative entity or other public institution could be a ministry, or a specialized administrative or statutory body.<sup>162</sup>
- (iii) Recognition by virtue of the registration of a particular IGO by those eligible for protection pursuant to an applicable definition. These systems differ from those referred to under (ii) above in that the producers themselves generally determine the product specification, the production requirements and the area of production, and the entity which registers IGOs has no discretionary authority to determine whether the IGO should be recognized if the definitions and criteria laid down by the law are fulfilled. In some systems, this entity will check whether an application substantively meets the

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<sup>160</sup> In Germany, for example, a legal ordinance has been adopted under the special provisions on geographical indications of the Trade Mark Law in respect of steel from the town of Solingen (Q2); in Switzerland, a special ordinance has been adopted under the Federal on the Protection of Trade Marks and Indications of Source in respect of "Swiss made" for watches (Q6).

<sup>161</sup> Examples include Austria, in respect of wines, where a change of federal laws is required (Q17,18); and Germany, in respect of spirits (Q17-27). In respect of wines, Germany has indicated that "some of the admissible geographical indications are laid down in the Wine Act itself" (Q1) and that "Section 3 of the Wine Act lays down the 13 German wine-growing areas" (Q4/5/6).

<sup>162</sup> France (Q1,13,18); In respect of wines, Germany has indicated that "some of the admissible geographical indications are governed by ordinances of the Federal Ministry of Food, Agriculture and Forestry, and some have been laid down by the *Land* governments and the communities" (Q1); that "Section 2 of the Wine Ordinance lays down the 19 German areas cultivating *vin de pays* (*Landwein*); and that "Section 1 of the Wine Ordinance lays down the 5 German wine-growing areas for table wine, including their sub-regions" (Q4/5/6). Greece, in respect of wines and spirits (Q17,18,19); Ireland, in respect of wines and spirits (Q17,18,19); Slovenia, in respect of wines (Q18); Spain, in respect of wines (Q17,18).

requirements of the law for the protection as an IGO, while in others it will just check formally whether the required information has been submitted; such information may include an attestation from the Ministry of Agriculture, or another competent authority, certifying, for example, the definition of the geographical area or that the applicants are producers in the defined area.<sup>163</sup>

(ii) *Persons eligible to initiate procedures*

63. Some of the responses have referred in general terms to public or private entities, or legal entities and natural persons as having standing to initiate application procedures.<sup>164</sup> In some cases this criterion has been qualified by a requirement that the person demonstrate a legal interest<sup>165</sup>, is engaged in the extraction, production, processing and/or preparation of the product concerned in the geographical area in question<sup>166</sup>, or is in a position to control the use of the geographical indication.<sup>167</sup>

64. Many Members have indicated that producer associations can initiate procedures for recognition.<sup>168</sup> In some cases this is in addition to individual natural or legal persons<sup>169</sup> while in some other cases it has been made clear that the procedures must necessarily be initiated by the trade.<sup>170</sup> In

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<sup>163</sup> European Communities, under Regulation No. 2081/92 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs (Q17,18,19); Korea, in respect of agricultural and fisheries products and their processed products (Q6,10,13,18,25,33); Switzerland (Q17,18,19) and Liechtenstein (Q2), under the Swiss Ordinance concerning the Protection of Appellations of Origin and Geographical Indications with respect to Agricultural Products and Processed Agricultural Products. The United States has indicated that the procedures leading to recognition generally require the initiative of a private entity or person and that, under the procedures of the Bureau of Alcohol, Tobacco and Firearms (BATF), the United States provides ex officio protection for IGOs that are notified to the BATF. Under 27 CFR §4.39(i), generally, a brand name of viticultural significance may not be used unless the wine meets the appellation of origin requirements for the geographic area named; a name has viticultural significance when it is the name of a state or county (or the foreign equivalents), when approved as a viticultural area, or by a foreign government, or when found to have viticultural significance by the Director of the BATF. Decisions on petitions for the establishment of American viticultural areas are taken by the BATF. Other recognized IGOs for wines are defined by political subdivisions, such as the names of states or counties (or the foreign equivalents), or the name "United States" itself; similar political subdivisions are used as IGOs for spirits, in addition to IGOs recognized in the specific regulations, such as "Bourbon" (Q1,10,18,19,20). Poland (Q13); Slovenia, in respect of handicrafts and other goods and of agricultural products and foodstuffs (Q17,18).

<sup>164</sup> In Australia, a winemaker or a grower of grapes (Q17); Canada (Q10,17/18); Cuba (Q17); Czech Republic (Q17); Estonia (Q17); New Zealand (Q17,19); Slovak Republic (Q17). The United States has indicated that the procedures leading to recognition generally require the initiative of a private entity or person and that, under the procedures of the BATF, the United States provides ex officio protection for IGOs that are notified to the BATF.

<sup>165</sup> Mexico (Reply 21).

<sup>166</sup> Belgium (Q17); Bulgaria (Q17); Cuba (Q17); Ecuador (Q15,21,22); Hungary (Q17); Morocco (Q17); Peru (Q17); Turkey (Q17).

<sup>167</sup> Canada (Q10,17/18).

<sup>168</sup> Australia (winemakers or grape growers organizations) (Q17); Austria, in respect of wines (Q17); Cuba (Q17); Japan, in respect of wines and spirits (Q17); Poland (Q17); Romania (Q17); Spain, in respect of wines and spirits (Q17,23); Switzerland (Q17,19) and Liechtenstein (Q2), under the Swiss Ordinance concerning the Protection of Appellations of Origin and Geographical Indications with respect to Agricultural Products and Processed Agricultural Products. Germany has indicated, in respect of wines, that "owners and beneficiaries may, in principle, submit proposals to the local government regarding the names of sites"; however, "applications for registration of sites should be made by the local government of the region where the areas under vines are located" (Q13). In respect of spirits, Germany has indicated that "in the event of several producers of spirit drinks in a certain region wishing to adopt an additional new geographical description into the national ordinance on spirit drinks, the competent Federal Ministry of Health initiates a legislative process" (Q17-27); Slovenia (Q19).

<sup>169</sup> Australia (Q17); Cuba (Q17); Turkey (Q17).

<sup>170</sup> France (Q13,19).



some Members, application procedures are to be initiated by producer groups<sup>171</sup>, while some others, in exceptional circumstances, also allow individual natural or legal persons to have standing to initiate procedures<sup>172</sup>. Reference has also been made to consumer associations as having a right to initiate procedures.<sup>173</sup>

65. Some Members have indicated that public entities may initiate procedures<sup>174</sup>, for example local or regional government entities.<sup>175</sup> Some Members have indicated that decisions on the recognition of IGOs may be made *ex officio* without any application<sup>176</sup>, while some others have stated that this is not possible.<sup>177</sup>

66. Some Members have indicated that a producer group obtaining recognition of an IGO is not the owner of the IGO but only a user, like anyone else who meets the specification for use of the IGO; the group must, however, be representative.<sup>178</sup> Some Members have stated that in their jurisdictions IGOs are owned by the State and cannot be owned privately.<sup>179</sup> Some have indicated that an IGO constitutes a "collective right", which cannot be assigned to any one individual.<sup>180</sup> Some Members have indicated that a government organization or a private entity can own the rights to an IGO<sup>181</sup>, or that private entities may own intellectual property rights in an IGO<sup>182,183</sup>

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<sup>171</sup> Switzerland (Q19) and Liechtenstein (Q2), under the Swiss Ordinance concerning the Protection of Appellations of Origin and Geographical Indications with respect to Agricultural Products and Processed Agricultural Products.

<sup>172</sup> European Communities (Q17), Belgium (Q17), Greece (Q17), Ireland (Q17), Luxembourg (Q17), Netherlands (Q17), Spain (Q17) and the United Kingdom (Q19), under Regulation No. 2081/92 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs. These Members have referred to Article 5 of this Regulation, which requires applications to be made by groups of producers and/or processors or, subject to certain conditions, natural or legal persons. Some of these Members have also referred to Article 1(1) of Commission Regulation 2037/93, which lays down that applications may be submitted by a natural or legal person in exceptional, duly substantiated cases, where the person concerned is the only producer existing in the geographical area defined at the time the application for registration is submitted. In Korea, under the Agro-Fisheries Product Quality Management Act, only producers' organizations or corporate processors are eligible for applications for the registration of "geographical indications", except if there exists only one producer or processor of a product (Q17).

<sup>173</sup> Estonia (Q17); Turkey (Q17).

<sup>174</sup> Canada (Q10,17/18); Cuba (Q17); Ecuador (Q15); Ireland, in respect of wines and spirits (Q17,19); Peru (Q17); Portugal (Q13); Turkey (Q17).

<sup>175</sup> Italy (Q19); Cuba: the local organs of the People's Authority (Q17); Poland (Q17); Switzerland, in respect of wines (Q19); Venezuela (Q17). For Germany, reference is made to footnote 231 below.

<sup>176</sup> Australia (Q19); Ecuador (Q19); Greece (Q17,18,19); Mexico (Reply 21); Peru (Q17); Spain, in respect of wines and spirits (Q17); United Kingdom, in respect of wines and spirits (Q17,19,21). Switzerland has indicated that, in respect of wine, "the initiative is generally shared by the trade, on the one hand, and the canton, on the other," and that "there is not any application for recognition as such" (Q19).

<sup>177</sup> Bulgaria (Q19); Cuba (Q19); Czech Republic (Q19); Finland (Q19); New Zealand (Q19); Poland (Q19); Slovak Republic (Q19).

<sup>178</sup> Switzerland (Q17,37) and Liechtenstein (Q2), under the Swiss Ordinance concerning the Protection of Appellations of Origin and Geographical Indications with respect to Agricultural Products and Processed Agricultural Products; Cuba (Q17).

<sup>179</sup> France (Q17). This also seems to be the situation in Mexico (Reply 45) and Peru (Q36,37,42,48).

<sup>180</sup> Germany, in respect of wines (type of collective right from which benefits arise for each individual wine grower within a geographical unit) (Q17/27); Hungary (protection belongs jointly to those who produce, process or prepare the product in question) (Q17).

<sup>181</sup> Portugal (Q17).

<sup>182</sup> United States (Q17).

<sup>183</sup> See also paragraph 91 below.

(iii) *Authorities involved in the decision-making process*

67. A range of different types of authorities that are competent to take decisions on the recognition of IGOs has been referred to. These include:

- the national intellectual property or industrial property office<sup>184</sup>;
- the ministry of agriculture or a closely-related statutory body<sup>185</sup>;
- another central government authority<sup>186</sup>;
- a national legislative body<sup>187</sup>;
- a special statutory body<sup>188</sup>;
- a sub-central government body.<sup>189</sup>

68. There is in some Members more than one stage to the decision-making procedure. For example, in some countries the initial decision on the determination of IGOs for wines is made at the

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<sup>184</sup> Bulgaria, Patent Office (Q18); Canada, Registrar of Trade-marks (Q17/18); Cuba, Cuban Industrial Property Office (Q18); Czech Republic, Industrial Property Office (Q18); Ecuador, National Directorate of Industrial Property (Q18); Hungary, Patent Office (Q18); Mexico, IMPI (Mexican Industrial Property Institute) (Reply 20); Peru, Distinguishing Signs Office of INDECOPI (National Competition and Intellectual Property Protection Office) (Q18); Poland, Patent Office of the Republic of Poland (Q18); Portugal, National Institute of Industrial Property (Q18); Romania, OSIM (The State Office for Inventions and Trademarks) (Q18); Slovak Republic, Industrial Property Office (Q18); Slovenia, Slovenian Intellectual Property Office in respect of handicrafts (Q18); Turkey, Turkish Patent Institute (Q18); Uruguay, National Directorate of Industrial Property (Q18); Venezuela, SAPI (The Autonomous Intellectual Property Service) (Q18).

<sup>185</sup> Estonia, Ministry of Agriculture (and the Ministry of Economic Affairs) (Q18); Finland, Ministry of Agriculture and Forestry (Q13); Greece, Ministry of Agriculture, following a recommendation by the Central Committee for the Protection of Vine Production (Q17); Ireland, Department of Agriculture and Food (Q18); Italy, Ministry of Agricultural Policies (Q18); Netherlands, Ministry of Agriculture, Nature Management and Fisheries (Q18); Slovenia, Ministry of Agriculture, Forestry and Food, in respect of wine, and the Office for Recognition of denominations of Agricultural Products and Foodstuffs within the Ministry of Agriculture, Forestry and Food, in respect of agricultural products and foodstuffs (Q18); Spain, Ministry of Agriculture, Fisheries and Food, if the IGO concerns more than one Autonomous Community (Q13); Switzerland, Federal Agricultural Office, in respect of agricultural products other than wines and, on the basis of cantonal decisions, in respect of wines (Q18); the United Kingdom, Ministry of Agriculture, Fisheries and Food (Q13).

<sup>186</sup> Estonia, Ministry of Economic Affairs (and the Ministry of Agriculture) (Q18); Germany, Federal Ministry of Health (in respect of spirits) (Q17-27); Japan, National Tax Administration (Q13); United States, BATF (Bureau of Alcohol, Tobacco and Firearms, a law enforcement agency under the US Department of the Treasury) (Q10,18).

<sup>187</sup> Austria, in respect of wines (Q18); Germany, in respect of spirits (Q17-27). In respect of wines, Germany has indicated that "some of the admissible geographical indications are laid down in the Wine Act itself" (Q1) and that "Section 3 of the Wine Act lays down the 13 German wine-growing areas" (Q4/5/6).

<sup>188</sup> Australia, Geographical Indications Committee of the Commonwealth Statutory Authority for Wine (Q18). According to additional information provided by New Zealand in its comments to JOB(00)/5619, the preliminary version of the present summary paper, the Surveyor-General will appoint a Geographical Indications Committee in respect of each application for determination of an IGO (there will not be a permanent body established) (Q13); Uruguay, INAVI (*Instituto Nacional de Vitivinicultura*) (Q18).

<sup>189</sup> In Belgium, while the Federal Government has sole jurisdiction in respect of industrial and intellectual property and competition law, the regions (Wallonia, Flanders and Brussels) lay down the rules governing the award of quality marks and designations of origin, on a regional or local basis. Germany, in respect of wines (Q13); Spain, when the area of production lies entirely within the territory of a single Autonomous Community (Q13); Switzerland, in respect of wines (Q13,18,19).

local<sup>190</sup> or state<sup>191</sup> government level. Moreover, in some other Members it would appear that the Ministry of Agriculture is responsible for the demarcation of the area to benefit from an IGO and another authority for the decision on the recognition of the IGO.<sup>192</sup> Some Members have identified a range of national public authorities involved in the decision-making process, in some cases with information on their respective roles<sup>193</sup> and in other cases without.<sup>194</sup>

(iv) *Information to be provided to the authorities*

69. Members have mentioned various elements as being required to be included in applications for the authorization of the geographical origin as the product identification and/or the recognition of an IGO for the same. The following list of these elements is based on the information provided by Members enumerating them irrespective of the systems they form part of:

- (a) name, address, residence and nationality of the applicant or applicants, and their legal interest<sup>195</sup>;

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<sup>190</sup> Germany (Q13,17/27); Spain (Q13).

<sup>191</sup> In Greece, in respect of agricultural products and foodstuffs pursuant to EEC Regulation 2081/92, a first examination of the application takes place at local level. The file together with the opinion of the regional directorate of agriculture as well as the views of other relevant bodies in the region having an economic interest is transmitted to the competent central services of the Ministry of Agriculture who takes a final decision at the national level. After that the file is transmitted to the Commission of the EU (Q1,13). The arrangements of the EC and its member States generally involve action at both the Community and national level as well as, in some cases, at the sub-national level. For example, it would seem that the arrangements in Germany for wine may involve four stages: a decision at the local government level to apply to the *Länder*; a *Länder* decision on the registration of the site; recognition by the Federal Ministry; and recognition at the Community level by the Commission (Q13). In Switzerland, in respect of wines, the cantons define the use of appellations of origin and determine the production area and the authorized assemblages and other production requirements, on the understanding that the federal provisions of the Law on Agriculture and the Ordinance on Wine are also respected (i.e. conditions relating to the viticultural land register, classification, wine harvest controls, etc.). They keep an inventory of their *appellations d'origine* and *indications de provenance* and make it known to the Federal Agriculture Office, which maintains a list of protected wine designations (see the answers to Q2,8,13). United States (Q18).

<sup>192</sup> Hungary (Q13,18); Morocco (Q13);

<sup>193</sup> For example, in Korea, in respect of agricultural and fisheries products and their processed products, applications for registration are examined by the National Agricultural Products Quality Management Service (NAPQMS) and the Geographical Indication Registration Council, who establish the official definition of the geographical region or area in the course of examining the application. However, anyone has the right to file an objection with the NAPQMS, which should examine such an objection in consideration of the judgement by the Geographical Indication Registration Council and register the "geographical indication", in case there is no justifiable reason for rejection, or, in case there is, notify the applicant of the inadequacy of the "geographical indication" (Q13,18,25). In the Netherlands, under EC Regulation 2081/92, the Central Commodity Board for Arable Products is responsible for a primary assessment, which is then passed on to the Ministry of Agriculture, Nature Management and Fisheries for a national level decision (which is then passed on to the EC Commission) (Q18).

<sup>194</sup> For example, the information provided by France indicates that INAO (National Institute of Appellations of Origin) and ONIVINS (The National Joint-Trade Wines Office), in their capacity as public institutions, and CNLC (The National Commission of Agricultural and Food Product Labels and Certificates), an independent administrative authority, the ministries concerned and the *Conseil d'État* all contribute to the recognition of IGOs (Q13,18).

<sup>195</sup> Ecuador (Q23); Cuba (Q23); Mexico (Reply 26) (although no reference to the requirement to indicate legal interests); Peru (Q23); United Kingdom, in respect of agricultural products or foodstuffs other than wines or spirits (Q23); Venezuela (Q22). Bulgaria (Q23) and the Slovak Republic: "data identifying the applicant" (Q21); Bulgaria: "data concerning the subject of activity of the applicant" to be mentioned (Q23); Canada: "name and address of the responsible authority, with a description of the state or commercial responsibility, interest and knowledge in relation to the wine or spirit" (Q22-24); Czech Republic: "name and

- (b) the IGO applied for as well as the product to be identified by the IGO or a list of products covered<sup>196</sup>;
- (i) a declaration by the competent central authority or by the competent regional authority, concerning the IGO and the product(s) to which it relates<sup>197</sup>;
- (c) the definition or description of the geographical area in which the product in question originates<sup>198</sup>;
- (ii) the geographical area of production, extraction or preparation, delimited with reference to its geographical characteristics and political boundaries<sup>199</sup>;
- (iii) information and documents clearly indicating the geographical boundaries<sup>200</sup>;
- (iv) historical or current evidence that the boundaries of the area are as specified<sup>201</sup>;
- (v) an explanation of how the area differs from neighbouring areas<sup>202</sup>;
- (vi) the agronomic characteristics of the geographical area<sup>203</sup>;

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head office, or given name, family name and domicile of the applicant and his nationality" (Q23); Poland: "the specification of the undertakings which use or intend to use the indication" (Q22-24); Portugal: "the name of the individual persons or corporate bodies, public or private, with capacity to acquire the registration" (Q23); Romania (Q21-24): "the name of the association of producers requesting the registration of the IGO" (Q21-24); Slovenia, in respect of agricultural products and foodstuffs (Q23); Turkey: "information identifying the applicant, and information concerning the applicant's group" (Q23).

<sup>196</sup> Belgium, in respect of agricultural products and foodstuffs other than wines or spirits (Q21); Bulgaria (Q23,24); Canada, in respect of a wine or a spirit, (Q22-24); Cuba (Q23); Czech Republic (Q23,24); Ecuador (Q23); France (Q24); Hungary (Q21); Korea, in respect of agricultural and fisheries products and their processed products (Q23,24); Netherlands, in respect of agricultural products and foodstuffs other than wines or spirits (Q21-24); Peru (Q23); Portugal (Q23); Romania (Q21-24); Slovak Republic (Q21); Slovenia, in respect of agricultural products and foodstuffs, and of handicrafts (Q18); Spain, in respect of agricultural products other than wines or spirits (Q23); Turkey (Q23); Venezuela (Q24).

<sup>197</sup> Czech Republic (Q23); Uruguay (Q23).

<sup>198</sup> Canada: "territory, region and/or locality in which the wine or spirit is identified as originating" (Q22-24); Czech Republic (Q13,23); the European Communities, in respect of agricultural products and foodstuffs other than wines or spirits (EC Q10,13,23; Belgium Q21; Spain Q23; United Kingdom Q23); Hungary has indicated that, in the case of agricultural products or foodstuffs other than wines, the applicant defines the region under the control, as part of the product specification, by the competent authority (Q13); Korea, in respect of agricultural and fisheries products and their processed products: "the regional range of a geographical indication" (Q23); Slovak Republic: "country, region or locality ..." (Q21).

<sup>199</sup> Austria, in respect of wines (Q23); Bulgaria: "the region or locality where the products are made" to be mentioned as well as "the borders of the geographic region" (Q23); Cuba: "the geographical area covered" (Q23); Ecuador (Q23); Netherlands, in respect of agricultural products or foodstuffs other than wines or spirits: "the delineation of the geographical area" (Q21-24); Mexico (Replies 13,14); Peru (Q23); Venezuela (Q22).

<sup>200</sup> Turkey (Q23); Poland (Q22-24); Romania has indicated that the application must be accompanied by a specification, among others, of the boundaries of the geographical area of production and that the Ministry of Agriculture and Food or, in the case of foreigners, the competent authority of the country of origin, is to certify the geographical area of production (Q13,21-24); the United States, in respect of American viticultural areas: "the specific boundaries of the viticultural area, based on features which can be found on the United States Geological Survey (U.S.G.S.) maps of the largest applicable scale and a copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked" (Q10,23).

<sup>201</sup> United States, in respect of American "viticultural areas" (Q10,23).

<sup>202</sup> United Kingdom, in respect of agricultural products or foodstuffs (Q23); United States: "evidence relating to the geographical features (climate, soil, elevation, physical features, and the like) which distinguish the viticultural features of the proposed area from surrounding areas" (Q10,23).

- (vii) the area determined by law or specific regulation<sup>204</sup>;
- (viii) in the case of geographical names traditionally used for foodstuffs, also the definition of the breeding area<sup>205</sup>;
- (d) evidence that the product originates in the area concerned in accordance with the definition of the IGO in question<sup>206</sup>;
  - (i) the name and head office of the undertaking or factory in the locality whose geographical name constitutes the IGO<sup>207</sup>;
  - (ii) location of the industrial establishment where the product covered by the IGO will be produced<sup>208</sup>;
  - (iii) a document attesting to the name of the applicant and the nature of its activity and/or certifying that the industrial establishment is situated within the territory concerned<sup>209</sup>;
- (e) a description of the product or products to be identified by the IGO applied for, as well as its or their characteristics<sup>210</sup>;
  - (i) the quality, reputation and/or other essential characteristics of the product(s)<sup>211</sup>;
  - (ii) technical information and documents explaining, for example, the physical, chemical, microbiological and/or organoleptic characteristics of the product including, if appropriate, the raw materials used for the production<sup>212</sup>;

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<sup>203</sup> Spain, specifying "climate, uniformity and fertility of the soil, homogeneity of the cultivation conditions, varieties or breeds, the uniformity of the analytical and organoleptic characteristics of the product originating in the area in question, the technical skill of the makers or processors and their observance of the traditional practices which have given the product its originality, and their location, marketing conditions and level of recognition and reputation in the market" (Q21).

<sup>204</sup> The European Communities has indicated that, in respect of wines, the authority lies in the competence of the member States, but these are obliged to respect the definition of specified regions, and the precise demarcation of these regions, for "quality wines" as stipulated in EC law (Q1,8,10,13,23); Hungary has indicated that, in respect of wines, the Ministry of Agriculture has authority to define the geographical area (Q13,21); United States, in respect of spirits (Q10,23).

<sup>205</sup> Hungary (Q21).

<sup>206</sup> Belgium (Q21); European Communities (Q10,23); Netherlands (Q21-24); Romania (Q21-24); Spain (Q23).

<sup>207</sup> Czech Republic (Q23); Slovak Republic: "trade name and head office of the factory ..." (Q21).

<sup>208</sup> Mexico (Reply 26).

<sup>209</sup> Czech Republic (Q23); Mexico (Reply 26). Hungary has indicated that the applicant may be asked to certify that it produces, processes or prepares the product in question in the defined area (Q23); the Slovak Republic has indicated that such a document could be an extract from the Companies Register, a statement of the Municipal Office, a statement of the respective central authority (e.g. Ministry of Agriculture, Ministry of Health) (Q21).

<sup>210</sup> Cuba: "proof of the relation between the applicant and the geographical area delimited by the appellation" (Q23); Ecuador (Q23); Poland (Q22-24); Romania (Q21-24); Uruguay (Q24); Venezuela (Q21,22). Bulgaria requires "the specific properties or peculiarities of the products" to be mentioned (Q23).

<sup>211</sup> Czech Republic: "quality or characteristics" (according to its comments on JOB(00)/5619, the preliminary version of the present summary paper, following the adoption of new legislation, i.e. Act 116/2000). Peru: "quality, reputation and other essential characteristics" (Q23). Slovak Republic: "quality and characteristics" (Q21):.

<sup>212</sup> Estonia (Q21-23); Belgium, in respect of agricultural products or foodstuffs other than wines or spirits (Q21); EC (Q10,23) and Spain (Q23,10), in respect of "quality wines" as stipulated in EC law; Hungary

- (iii) a list of raw materials and their source areas<sup>213</sup>;
- (iv) evidence or a certification that the products comply with the conditions specified in the product specification<sup>214</sup>;
- (f) a description of the method of obtaining the product and, if appropriate, the authentic local or regional methods<sup>215</sup>;
- (g) evidence of quality, reputation or other characteristics<sup>216</sup>;
  - (i) an explanatory note on qualitative characteristics<sup>217</sup>;
  - (ii) data to prove the reputation of the product<sup>218</sup>;
  - (iii) a description of the history of the name sought, its appropriateness and the traditional use of the name, locally or otherwise<sup>219</sup>;
  - (iv) details of the standards or regulations in the country of origin guaranteeing the authenticity of the product and identifying who has the right to use the IGO<sup>220</sup>;

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(Q21); Mexico: "a detailed description of the finished product or products to be covered by the appellation, including their characteristics, components, mode of extraction and production or preparation processes" (Replies 13,24,27); Morocco (Q19); Netherlands (Q21-24) and Spain (Q23), in respect of agricultural products or foodstuffs other than wines or spirits; Slovenia, in respect of agricultural products and foodstuffs, and of handicrafts (Q18); Turkey (Q23); United Kingdom, in respect of agricultural products or foodstuffs: "whether the product is produced, processed, prepared or its raw materials originate in the defined area and, if not, what other areas are involved" (Q23).

<sup>213</sup> United Kingdom, in respect of agricultural products or foodstuffs (Q23).

<sup>214</sup> Hungary, in respect of agricultural products or foodstuffs (Q21); Spain, in respect of wines or spirits, a statement showing that the requirements necessary to obtain a "denominación de origen" or a "denominación específica" have been met; in respect of other agricultural products or foodstuffs, a product specification drawn up by the applicants and endorsed by the Government must be submitted to the European Commission, together with all the documentation on which the decision to submit the application is based (Q23); Turkey (Q23).

<sup>215</sup> Hungary (Q21); Korea, in respect of agricultural and fisheries products and their processed products: "a production schedule" (Q23); Poland (Q22-24); Turkey: "production techniques of the product and, if relevant, the authentic and specific local techniques and conditions" (Q23). European Communities, in respect of "quality wines" as stipulated in EC law (Q10,23). Spain, in respect of wines and spirits (Q23). European Communities (Q10,23) and Belgium (Q21), Netherlands (Q21-24), Spain (Q23) and United Kingdom (Q22), under Regulation No. 2081/92 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs: "a description of the method of obtaining the agricultural product or foodstuff and, if appropriate, the authentic and unvarying local methods"; Slovenia, in respect of agricultural products and foodstuffs, and of handicrafts (Q18).

<sup>216</sup> Canada, in respect of a wine or a spirit (Q22-24).

<sup>217</sup> Korea, in respect of agricultural and fisheries products and their processed products (Q23).

<sup>218</sup> Korea, in respect of agricultural and fisheries products and their processed products (Q23).

<sup>219</sup> Australia, in respect of wine or grape products: "the existence in relation to the area of a word or expression to indicate that area, including any history relating to the word or expression; whether, and to what extent, the word or expression is known to wine retailers beyond the boundaries of the area; whether, and to what extent, the word or expression has been traditionally used in the area or elsewhere; and the appropriateness of the word or expression" (Q23) and, in more detail, (Q10 under (h)); Canada, in respect of a wine or a spirit: "may include, as annexes, extracts from laws, regulations or even descriptions thereof contained in wine or spirit encyclopaedias or other authoritative publications, if in the opinion of the responsible authority the description is accurate" (Q22-24); the United States, in respect of American viticultural areas: "evidence that the name is locally and/or nationally known as referring to the area specified" (Q10,23).

- (v) a statement to the effect that the interested party complies with the official quality standard, where one exists<sup>221</sup>;
- (vi) self-imposed quality criteria<sup>222</sup>;
- (vii) the details explaining the link between the product and the geographical environment or the geographical origin bearing out the fact that the specific quality, reputation or other characteristics of the product are attributable to that link<sup>223</sup>;
- (h) labelling details relating to the IGO<sup>224</sup>;
- (i) information detailing the inspection structure provided for<sup>225</sup>;
  - the name of the competent authority which sees to it that the product meets the requirements of the product dossier<sup>226</sup>;
- (j) the document appointing a representative, if any<sup>227</sup>;
- (k) evidence that the applicable fee has been paid<sup>228</sup>;
- (l) any other information required (e.g. by implementing regulations; by the competent office)<sup>229</sup>;

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<sup>220</sup> Canada, in respect of a wine or a spirit (Q22-24); Portugal: "the traditional conditions or regulations for use of the appellation or the indication" (Q23).

<sup>221</sup> Mexico: "when necessary to determine the relationship between the appellation and the product, an indication will be given of the official standards established by the Ministry of Trade and Industrial Development, to which the product, its mode of extraction, its preparation or production processes and its packaging will be subject" (Reply 13,26); the United Kingdom, in respect of agricultural products or foodstuffs: "whether the product and its specification are protected by any national or European certification schemes" (Q23).

<sup>222</sup> Korea, in respect of agricultural and fisheries products and their processed products (Q23).

<sup>223</sup> Estonia (Q21-23); Belgium, in respect of agricultural products and foodstuffs other than wines or spirits (Q21); Czech Republic: "all criteria contained in the definition of an appellation of origin are intimately linked to the geographical environment from which a product comes and must be described in the application for the registration" (Q21); European Communities (Q10,23); France: "any information tending to show that the application is well-founded and, in particular, the links with the place of origin, renown, reputation, qualities, and natural and human factors" (Q23); Hungary (Q21); Korea, in respect of agricultural and fisheries products and their processed products: "an explanatory note on the relationship between qualitative characteristics and geographical factors" (Q23); Mexico: "a detailed description of the relationship between the appellation, the product and the territory" (Reply 13); Netherlands: "information proving the product's relation with the geographical area" (Q21-24); Turkey (Q22) (implicitly); United Kingdom: "how the main characteristics are linked to the geographical area and influenced by its environment" (Q23).

<sup>224</sup> Belgium, in respect of agricultural products and foodstuffs other than wines or spirits (Q21); EC (Q10,23); Hungary (Q21); Netherlands (Q21-24); Poland (Q22-24); Slovenia, in respect of agricultural products and foodstuffs, and of handicrafts (Q18); Spain (Q23); Turkey: "information detailing the labelling, marking and means of using the registered designation of origin or geographical indication" (Q23); United Kingdom (Q22).

<sup>225</sup> Korea: "a quality control schedule" (Q23); Slovenia, in respect of agricultural products and foodstuffs, and of handicrafts (Q18); Turkey (Q23).

<sup>226</sup> Belgium, in respect of agricultural products and foodstuffs other than wines or spirits (Q21); European Communities (Q10,23); Netherlands (Q21-24); Spain (Q23); United Kingdom (Q23).

<sup>227</sup> Estonia (Q21-23); Czech Republic (Q23); Hungary (Q21); Mexico (Reply 26). Canada (Q22-24): "Canadian mailing name/address if responsible authority is outside Canada (representative for service)".

<sup>228</sup> Estonia (Q21-23); Czech Republic (Q23); Slovak Republic (Q21); Turkey (Q23).

- (m) any other information which the applicant considers necessary or pertinent.<sup>230</sup>
- (v) *Consultation and opposition procedures*

70. Members provide for a variety of procedures to attempt to ensure that the views and interests of all affected parties are taken into account in decisions on the recognition of IGOs. Some of these procedures involve consultation by the authorities concerned during the decision-making process, while others involve a more or less formal opposition procedure, which in some cases is pre-recognition and in other cases post-recognition.

71. Members providing information on consultation mechanisms have indicated, depending on the product and type of authorization sought, that public authorities or bodies and/or private institutions or bodies may have to be consulted.<sup>231</sup> The following have been explicitly mentioned: ministries<sup>232</sup>; regional or local governmental authorities<sup>233</sup>; universities<sup>234</sup>; independent public or

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<sup>229</sup> Belgium, in respect of agricultural products and foodstuffs other than wines or spirits (Q21); EC (Q10,23); Netherlands (Q21-24); Peru (Q23); Portugal (Q23); Romania (Q21-24); Spain (Q23); Turkey (Q23); Venezuela (Q22).

<sup>230</sup> Mexico (Replies 13,24).

<sup>231</sup> For example, in France, as mentioned in the section on the authorities involved, the National Institute of Appellations of Origin (INAO) and the National Joint-Trade Wines Office (ONIVINS) in their capacity as public institutions, the National Commission of Agricultural and Food Product Labels and Certificates (CNLC), an independent administrative authority, and the ministries concerned all contribute within their sphere of competence to the definition, by decree, of production areas, conditions of production and control requirements. The opinion of the *Conseil d'État*, the higher administrative jurisdiction, is required by the ministries concerned for the recognition by decree of an indication of geographical origin for a product other than an agricultural product or foodstuff. Various comment and public enquiry procedures are followed in connection with the recognition process. These enable the members of the trade to express their views (Q13,18,25). In Germany, specific wine-growing areas are laid down by Parliament in the German Wine Act. The areas cultivating *Landwein* (*vin de pays*) and areas cultivating table wines are laid down by ordinance of the Federal Ministry of Food, Agriculture and Forestry with the consent of the *Bundesrat*. The *Land* governments demarcate the viticultural regions by ordinance. The responsible *Land* ministries in each case demarcate the sites and areas and order their registration in the vineyard register. Applications for registrations of sites should be made by the local government of the region where the areas under vines are located. Owners and beneficiaries may, in principle, submit proposals to the local government regarding the names of sites. For giving advice to the local government, a site committee should be formed in the communities usually consisting of the Mayor as well as of persons representing viticulture and the wine trade. Applications for registrations of areas are to be made by the office of the county district commissioner (*Landratsamt*) or the administration of the town, constituting an administrative district of its own, responsible for the areas under vines. Viticulture and wine trade organizations are to be heard before the filing of applications. Before fixing sites and areas, the responsible *Land* minister hears an expert committee commenting on: - the equivalence and similarity of yields of a site; - the similarity of yields of an area, the traditional use of site and area names; - an economically sound demarcation of sites and areas maintaining the site-related character. In regard to spirits, in the event of several producers of spirit drinks in a certain region wishing to adopt an additional new geographical description into the national ordinance on spirit drinks, the competent Federal Ministry of Health initiates a legislative process and involves the other ministries concerned, the *Länder* which are responsible for enforcement, and would request the producer and consumer protection associations to deliver an opinion (Germany Q13, under (b) and Q17-27).

<sup>232</sup> Germany (see footnote 231 above).

<sup>233</sup> Germany (see footnote 231 above).

<sup>234</sup> Turkey (Q25).



private institutions or expert committees<sup>235</sup>; producer associations<sup>236</sup>; consumer protection associations.<sup>237</sup>

72. Some Members publish applications, or the essential elements of them, soon after they are submitted and provide a period of time for interested parties to submit comments or objections, or file opposition.<sup>238</sup> In some other Members a period of time to lodge such comments or objections, or file opposition, is provided after an initial determination on recognition of the IGO has been made and published.<sup>239</sup> Those Members who have provided information on this matter have indicated that there are few if any restrictions on the persons entitled to submit comments or objections, or file opposition.<sup>240</sup> The periods of time allowed for the submission of comments or objections, or file opposition, vary greatly in WTO Members, from 15 working days<sup>241</sup> to one year.<sup>242</sup> The submission of comments or objections, or the filing of opposition, is generally followed by a procedure involving further consideration of the question, further consultations and seeking of information, before a final decision is taken.<sup>243</sup> Some Members have indicated that this decision may itself be subject to appeal to an administrative tribunal.<sup>244</sup>

73. The grounds for an objection to recognition or for opposition that have been mentioned are:

- non-compliance with the definition/criteria for protection<sup>245</sup>;
- the applicant group of producers is not representative<sup>246</sup>;

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<sup>235</sup> France (see footnote 231 above); Turkey (Q25).

<sup>236</sup> Australia: the declared winemaker organization, the declared grape growers organization and any other organization or person the Geographical Indications Committee thinks appropriate (Q25).

<sup>237</sup> Germany, in respect of spirits (Q17-27).

<sup>238</sup> Cuba (Q25); Ecuador (Q25); European Communities, under Regulation No. 2081/92 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs (Q25); Mexico (Reply 28); Peru (Q25); Romania (Q25); Switzerland (Q25) and Liechtenstein (Q2), under the Swiss Ordinance concerning the Protection of Appellations of Origin and Geographical Indications with respect to Agricultural Products and Processed Agricultural Products; Turkey (Q25); United States (Q25).

<sup>239</sup> Australia, in respect of wine or grape products (Q25); Korea, in respect of agricultural and fisheries products and their processed products (Q23); New Zealand (Q25); Poland (Q25); Portugal (Q25); Spain (Q25).

<sup>240</sup> Cuba: "A holder of a prior industrial property right who considers himself affected by the application for registration may oppose recognition; similarly, any other interested person may submit comments relating to the application for registration" (Q26).

<sup>241</sup> New Zealand (Q25).

<sup>242</sup> Estonia (additionally, a "contestation of registration" granted under Section 9(2) of the Geographical Indication Protection Act "may be submitted during the term of the registration") (Q25); Belgium (Q25), Luxembourg (Q25), Netherlands (Q25), Spain (Q25) and United Kingdom (Q25), referring to EC Regulation No. 2081/92 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, indicated a period of time of six months.

<sup>243</sup> Cuba (Q25); As an example the procedures under EC Regulation 2081/92 referred to in the previous footnote can be mentioned. These provide for a period of 6 months after publication of an application by the Member State to the Commission for recognition of an IGO for an EC member State (or, through a member State, any legal or natural person who considers his/her legitimate interests to be damaged and resides or is established in that State) to oppose the recognition. Where the Commission finds an objection admissible, it asks the Member States concerned to seek agreement amongst themselves. If no agreement is reached, the Commission takes a decision, having regard to traditional fair practice and the actual likelihood of confusion. As regards Korea, see footnote 193 above.

<sup>244</sup> Australia (Q25); European Communities (Q47); France (Q25); Poland (Q25).

<sup>245</sup> European Communities, (Q25); Poland (Q25); Switzerland, in respect of agricultural products other than wines (Q25).

<sup>246</sup> Switzerland (Q25) and Liechtenstein (Q2), under the Swiss Ordinance concerning the Protection of Appellations of Origin and Geographical Indications with respect to Agricultural Products and Processed Agricultural Products.

- the proposed recognition of a name would jeopardize the existence of an entirely or partly identical name or trademark or the existence of products which are legally on the market<sup>247</sup>;
- the IGO misleads the public as to the geographical origin, the nature, the method of manufacture or the quality, reputation or other characteristic of the products concerned<sup>248</sup>;
- the name whose recognition is applied for is generic in nature<sup>249</sup>;
- the IGO is contrary to morality or public order<sup>250</sup>;
- injury to the legitimate interests of a third party.<sup>251</sup>

74. Some other Members have indicated that their recognition systems do not provide for an opposition mechanism as such.<sup>252</sup> However, some of these Members have indicated that their legal systems provide alternate means by which decisions on the recognition of IGOs can be contested, for example the regular normal forms of recourse against administrative decisions<sup>253</sup> and through invalidation or other court proceedings.<sup>254</sup>

(vi) *Foreign IGOs*

75. The information provided on the basic procedures by which protection can be obtained for foreign IGOs has been summarized in section III(i) above. This indicated that the two main procedures are through the conclusion of international agreements or through the use of the normal application procedure. With regard to the latter matter, some Members have indicated that they have a requirement that applicants that are legal entities or natural persons whose head office or domicile is not in their territory must be represented by a local authorized representative (e.g. an attorney at law or a patent agent).<sup>255</sup> Some Members also require that the applicant produce a certificate, issued by the competent authority in the country of origin and in the name of the applicant, showing that the IGO is recognized in its country of origin<sup>256</sup> and the date of its official recognition in that country.<sup>257</sup>

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<sup>247</sup> Switzerland (Q25) and Liechtenstein (Q2), under the Swiss Ordinance concerning the Protection of Appellations of Origin and Geographical Indications with respect to Agricultural Products and Processed Agricultural Products.

<sup>248</sup> Peru (Q26).

<sup>249</sup> Germany, in respect of spirits (Q17-27 under (c)); Switzerland (Q25) and Liechtenstein (Q2), under the Swiss Ordinance concerning the Protection of Appellations of Origin and Geographical Indications with respect to Agricultural Products and Processed Agricultural Products.

<sup>250</sup> Estonia (Q25).

<sup>251</sup> European Communities, in respect of wines, spirits and other agricultural products or foodstuffs (Q25,26); Spain (Q25).

<sup>252</sup> Bulgaria (Q25); Czech Republic (Q25); Hungary (Q25); Japan (Q25); Slovak Republic (Q25); United Kingdom, in respect of wines and spirits: "[...] there is no formal procedure. 'Geographical indications' are agreed through European Commission, European Council and WTO procedures when opportunities are provided for new indications to be challenged." (Q25).

<sup>253</sup> France (Q25); Slovenia (Q25).

<sup>254</sup> Slovak Republic (unfair competition action) (Q25).

<sup>255</sup> Czech Republic (Q27); Hungary (Q27); Poland (Q27).

<sup>256</sup> Canada: "a statement by the responsible authority that, to the best of its knowledge and belief: the laws, regulations or administrative practices in the country of origin provide the legal means to prevent the unauthorized use of the geographical indication and that, in fact, the laws, regulations or administrative practices are enforced in the country of origin; and the requirements for the protection of the geographical indication in the country of origin are equivalent to the requirements of Articles 23 and 24 for the TRIPS Agreement"(Q22-24); Cuba: "a certificate from the institution with which the geographical indication is

D. COSTS

76. Information provided by Members in response to the Checklist on the costs involved in registration procedures for geographical indications is contained in Table IV.

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registered in the country of origin proving that registration has been granted, its validity in that country and the applicant's right to use it" (Q22,23,27); Czech Republic (Q27); Estonia (Q21-23); Poland (Q27); Romania (Q16); Slovak Republic (Q15); Uruguay (Q23).  
<sup>257</sup> Canada (Q22-24).

**TABLE IV(A): RECOGNITION OF IGOs: INFORMATION PROVIDED BY MEMBERS ON COSTS**

Member	Recognition	Renewal	Authorization to Use an IGO
Australia	No fees	N.A.	N.A.
Bulgaria	Fees for registration and publication – State Gazette No. 53 of 4 July 1997	N.A.	Registration as user is subject to payment fees for registration and publication
Canada	Application fee - Can\$ 450.00 (US\$300)	N.A.	Matter for authority responsible for the IGO
Cuba	Both the application for and the granting of registration of a GI are subject to the payment of a fee.	\$360 – if submitted 6 months prior to the expiry date of registration. \$430 – is submitted within an additional 6 months after the expiry of the above period.	A document certifying the granting of the right to use a particular GI is issued upon payment of \$170.
Czech Rep.	Fee for filing application - CZK 4,000.00 (US\$100)	N.A.	Fee for registration of another user of a registered IGO – CZK 3,000 (US\$75)
Ecuador	As per Ministerial Agreement No. 0106 1997 <sup>A</sup>	No fees	As per Ministerial Agreement No. 0106 <sup>A</sup>
Estonia	Fee for filing application – EEK 1,600. Fee for the extension of the term for elimination of deficiencies in an application, or for the provision of explanations – EEK 400. Fee for amending registration data – EEK 500.	N.A.	No fees
EC/MS <sup>B</sup>	No fees	N.A.	No fees
Austria	No fees	N.A.	No fees
Belgium	No fees	N.A.	Fees fixed by Royal Decree
Denmark	No fees	N.A.	No fees
Finland	No fees	N.A.	N.A.
France	The trade makes financial contribution to the costs of applying and maintaining rights	N.A.	See under "Procedure for Recognition"
Germany		N.A.	N.A.
Greece	No fees	N.A.	No fees
Ireland		N.A.	No fees
Italy	Except usual administrative fees, no specific contributions linked to right to use IGO	N.A.	No fees
Luxembourg	No fees	N.A.	No fees
Netherlands	No fees	N.A.	No fees
Portugal	Application fees – Esc18,950 (US\$85) Maintenance fees – Esc14,650 (US\$65)	N.A.	See under "Procedure for Recognition"
Spain	No fees	N.A.	No fees, but there maybe parafiscal charges to maintain a Regulatory Authority <sup>C</sup>
Sweden	No fees	N.A.	No fees
UK	No fees for wines or spirits. For other products, applicants must meet the cost of inspections.		No fees for wines or spirits
Hong Kong, Ch			
Hungary	Registration fee – Ft 100.000. Transmission for international registration – Ft 10.000 (US\$35).	N.A.	Costs of examination of the product specification (agricultural products and foodstuffs)
Iceland	No fees	N.A.	No fees
Japan	No fees	N.A.	No fees
Korea	Application fee - 100,000 Won (US\$77).	N.A.	N.A.
Liechtenstein	No fees	N.A.	
Lithuania	N.A.	N.A.	N.A.
Mexico	As per Article 15 of the Decree establishing tariffs for the services provided by IMPI	As per Article 15b of the Decree establishing tariffs for the services provided by IMPI <sup>D</sup>	
Morocco <sup>E</sup>	No fees	No fees	No fees
New Zealand	Application fee for determination of IGO (Surveyor-General). Registration fee (Registrar	N.A.	N.A.

<sup>A</sup> A new schedule of fees is to be established pursuant to Article 368 of the Intellectual Property Act.

<sup>B</sup> Information reflected on this line (EC/MS) is limited to "the Community level".

<sup>C</sup> (a) A percentage (maximum 1 per cent) of the product of the number of hectares registered in the name of each interested party and the average value in pesetas of the yield of one hectare for the area and the previous season; (b) a percentage (maximum 1.5 per cent) of the value obtained by multiplying the average unit price of the protected product by the volume sold; (c) as a maximum, 100 pesetas for each certificate or invoice and twice the cost for each seal.

<sup>D</sup> Renewal of authorization to use every 10 years.

<sup>E</sup> The costs of analysing samples submitted to the official laboratory for analysis and chemical research in Casablanca are borne by the producer.

<sup>F</sup> Regulations establishing these fees not yet adopted. Additional information provided by New Zealand in its comments to JOB(00)/5619, the preliminary version of the present summary paper.

Member	Recognition	Renewal	Authorization to Use an IGO
	of Protected Geographical Indications). In addition to payment of prescribed fees, applicants will be required to pay the costs of publishing the application and reasonable costs of the Geographical Indications Committee in determining the application. <sup>F</sup>		
Norway	N.A.	N.A.	N.A.
Peru	Application fee (administrative charges)	No fees	Examination fee
Poland	Filing fee – PLN 200 / Maintenance fee-PLN 500	N.A.	No fees
Romania	Registration - 2,400,000 lei or \$400. Issue of a certificate of registration – 300,000 lei or \$50.	Renewal – 2,400,000 lei or \$400 <sup>D</sup>	
Slovak Rep.	Application fee - 2,000 Slovak crowns (US\$40)	N.A.	Fee for registration of another user – 2,000 Slovak crowns (for each user).
Slovenia	Application fee (agricultural products and foodstuffs, including wines)	N.A.	There are no specific fees for an application or authorisation to use a particular geographical indication. It is necessary to pay the costs of a required certification on the basis of a tariff.
Switzerland	No fees in respect of agricultural products and processed agricultural products other than wines).	N.A.	For wines and according to the canton, a fee is payable for monitoring. For other products, expenses incurred by a certification body
Turkey	Application fee – TL18,000,000 (US\$30).	No fee for renewal <sup>D</sup> . Fee for inspection	
USA	No fees (application American viticultural area)		
Uruguay	Application fee – 12 Adjustable Units for a single kind and 7 Adjustable Units for each additional kind.	No fee	In the case of a licence for use, this will be governed by the provisions of the civil law applicable to such contracts.
Venezuela	Fees as necessary for handling applications		

<sup>A</sup> A new schedule of fees is to be established pursuant to Article 368 of the Intellectual Property Act.

<sup>B</sup> Information reflected on this line (EC/MS) is limited to "the Community level".

<sup>C</sup> (a) A percentage (maximum 1 per cent) of the product of the number of hectares registered in the name of each interested party and the average value in pesetas of the yield of one hectare for the area and the previous season; (b) a percentage (maximum 1.5 per cent) of the value obtained by multiplying the average unit price of the protected product by the volume sold; (c) as a maximum, 100 pesetas for each certificate or invoice and twice the cost for each seal.

<sup>D</sup> Renewal of authorization to use every 10 years.

<sup>E</sup> The costs of analysing samples submitted to the official laboratory for analysis and chemical research in Casablanca are borne by the producer.

<sup>F</sup> Regulations establishing these fees not yet adopted. Additional information provided by New Zealand in its comments to JOB(00)/5619, the preliminary version of the present summary paper.

**TABLE IV(B): REGISTRATION UNDER TRADEMARK LAW:  
INFORMATION PROVIDED BY MEMBERS ON COSTS**

Member	Application Procedure	Renewal	Authorization to Use
Australia			
Bulgaria			
Canada			
Cuba			
Czech Rep.			
Ecuador			
Estonia			
EC/MS <sup>A</sup>			
Austria			
Belgium			
Denmark			
Finland			
France			
Germany	Fee for filing a collective mark (covering three classes of goods or services) – DM 1,500 (US\$690) plus DM 250 (US\$115) for every additional class of goods or services	Renewal fee <sup>a</sup> – DM 3,000 (US\$1380) (three classes of goods or services), plus DM 450 (US\$205) for every additional class	Fee – the same as for filing application for the collective mark
Greece			
Ireland	Registration fee - £200.00 (US\$230)	Renewal fee <sup>a</sup> - £200.00 (US\$230)	No fees
Italy			
Luxembourg			
Netherlands			
Portugal			
Spain			
Sweden			
UK	Application to register a trademark (covering one class of goods or services) - £200 (US\$300); fee for each additional class of goods or services; £50 (US\$75)	Renewal of trade mark registration <sup>a</sup> - £200 (US\$300); fee for each additional class of goods or services - £50 (US\$75); additional fee for late payment - £50 (US\$75)	The conditions of use, including fees, are a matter for the user and the owner of the mark
Hong Kong, Ch	Application fee - HK\$ 1,400 (US\$179) Registration fee - HK\$ 2,000 (US\$256)	Renewal fee - HK\$ 4100 (US\$525)	Whether a fee is charged for use of a certification mark depends on its owner and the regulations governing its use
Hungary			
Iceland			
Japan			
Korea			
Liechtenstein	Registration fee (for three classes) CHF 400.00 (US\$230), not including the costs of the publication	As in the Ordinance of 1 April 1997 regarding the Collection of Fees under the Trademark Act	
Lithuania			
Mexico			
Morocco			
New Zealand			
Norway			
Peru			
Poland			
Romania			
Slovak Rep.			
Slovenia			
Switzerland	If registered as an established mark (for two classes of products) – CHF 800 (US\$460)	Renewal fee (Article 10, LPM) <sup>a</sup>	No fees
Turkey			
USA	See 37 CFR §2.6(a)(1), et seq. or relevant State laws	"Reaffirmation" fee (between the 5 <sup>th</sup> and 6 <sup>th</sup> year) – US\$100 per international class. Renewal fee <sup>a</sup> - US\$300 per international class	Latest information can be checked on the Website of the US Patent and Trademark Office
Uruguay			
Venezuela			

<sup>A</sup> Information reflected on this line (EC/MS) is limited to "the Community level".

<sup>a</sup> Every ten years.

## V. ELIGIBLE/AUTHORIZED USERS AND MONITORING

77. This section discusses the following questions:

- who is entitled to use a protected IGO and any procedures to obtain such an entitlement;
- the duration of protection of IGOs and entitlements to use them as well as any arrangements regarding their cancellation or forfeiture; and
- arrangements for monitoring the use of geographical indications.

### A. LAWS FOCUSING ON BUSINESS PRACTICES

78. Even though not all Members have said so explicitly, the provisions in question stipulating protection of consumers or protection against unfair competition would appear to apply primarily whenever a not negligible part of the relevant sectors of the public in the country is likely to be misled as to the true origin of the goods or services.<sup>258</sup> Consequently, anyone whose use of an IGO is not likely to have that effect will be able to so use the IGO in question.

79. Laws focusing on business practices do not address the issue of the duration of the entitlement/authorization to use an IGO.

80. The information made available indicates that these laws do not apply differently in respect of foreigners<sup>259</sup>.

### B. TRADEMARK LAW

#### (a) Collective, guarantee or certification marks

81. In regard to the use of a collective, certification or guarantee mark, some Members have provided information on requirements to ensure that the right holder has effective control over the use made of the mark to ensure that the conditions of eligibility are complied with. Users of such marks must observe the regulations governing use of the mark required to be submitted as part of the registration procedure for these marks.<sup>260</sup> Those for a certification or guarantee mark establish the common characteristics<sup>261</sup> of the products or services certified/guaranteed by the mark and for effective monitoring of the use of the mark and appropriate penalties. The regulations for collective marks define the group of companies eligible to use the mark. One of these Members has indicated that these regulations must not be contrary to public order, morality or the law in force.<sup>262</sup> Some Members have pointed out that a geographical region or area can be defined by an association filing

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<sup>258</sup> Germany (Q30/31); see also Germany (Q1), in relation to Section 3 of the Unfair Competition Law and Section 17 of the Act on Foodstuffs and Commodities. Sweden: "the use of a specific indication of the geographical origin of a product or service depends on whether it is actually still false or misleading or not" (Q34).

<sup>259</sup> Lithuania (Q15). Additionally, Article 2.2 of the Lithuanian Law on Competition says that "[t]his Law shall also be applicable to the activity of undertakings registered beyond the territory of the Republic of Lithuania if said activity restricts competition in the domestic market of the Republic of Lithuania" (Q15).

<sup>260</sup> See section IV above.

<sup>261</sup> As regards the criteria used to determine these common characteristics, which establish the eligible users, see the information from Liechtenstein (Q12), Switzerland (Q17), the United Kingdom (Q10) and the United States (Q11) reflected in section III above.

<sup>262</sup> Switzerland (Q17).

for registration of a collective mark in the regulations governing its use.<sup>263</sup> Two of these Members have indicated that elements to be specified in these regulations must include, as part of the conditions of use of the collective mark, a provision to the effect that any person whose goods or services originate in the geographical area concerned and fulfill the conditions set out in the regulations shall be eligible to become a member of the association and shall be admitted to the group of persons having authority to use the mark.<sup>264</sup> Some Members have indicated that collective or certification marks can be licensed.<sup>265</sup> One has stated that this can only be done if it is authorized by the regulations governing the use of a collective mark.<sup>266</sup> One has pointed out in this connection that, as a guarantee mark is not used to distinguish one product or service from another, but to perform a guarantee function, it must be accessible to anyone who meets the conditions for use.<sup>267</sup>

82. Members have indicated that the owner of the mark is responsible for monitoring its use by eligible users and authorized licensees. Owners themselves or companies with which they have close economic ties may not be eligible to use the mark.<sup>268</sup> One Member has pointed out that monitoring may also be delegated to third parties.<sup>269</sup> One Member has indicated that marks are monitored by interested parties.<sup>270</sup> It has also been said that, if a collective mark is wrongfully used in a manner incompatible with the purpose of the association that owns the collective mark or with the regulations governing the use of the mark and the owner does not take reasonable steps to prevent such use, anybody can request the industrial property office to cancel the registration of the collective mark.<sup>271</sup>

83. Some Members have indicated that actual use of the mark is necessary to retain protection a third party being entitled to apply for revocation if there has been an uninterrupted period of five years of non-use<sup>272</sup> or if the mark has not been used within five years after registration.<sup>273</sup> One Member has indicated that holders of certification marks must file evidence of actual use after five and 10 years and every 10 years thereafter.<sup>274</sup> Another has stated that no further information needs to be submitted in renewal applications<sup>275</sup>. Another Member has stated that in its legislation the protection of guarantee and collective marks has, like any other trademarks, a duration of 10 years renewable<sup>276</sup>. As regards the duration of authorized use, no information has been provided that would indicate specific provisions in respect of collective, guarantee or certification marks registered in respect of an IGO.

84. The information made available does not show that the provisions of the laws in question apply differently in respect of foreign collective, guarantee or certification marks. Neither does it reveal that authorization is dependent upon protection in the country of origin.<sup>277</sup>

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<sup>263</sup> Germany (Q13); United States (Q10).

<sup>264</sup> Germany (Q17-27); Liechtenstein (Q12).

<sup>265</sup> Germany, provided the licensee abides by the regulations governing the use of the mark (Q2). Liechtenstein (Q42); Switzerland (Q42); United States (Q40).

<sup>266</sup> Germany (Q42).

<sup>267</sup> Liechtenstein (Q42).

<sup>268</sup> Switzerland, for guarantee marks (Q17).

<sup>269</sup> Liechtenstein (Q32).

<sup>270</sup> United Kingdom (Q32).

<sup>271</sup> Germany (Q32/33,37,42); Hong Kong, China (Q7,35).

<sup>272</sup> United Kingdom (Q34).

<sup>273</sup> Germany (Q34,35).

<sup>274</sup> United States (Q29).

<sup>275</sup> Germany (Q28-29).

<sup>276</sup> Switzerland (Q17).

<sup>277</sup> Germany (Q15,16).



(b) Individual trademarks

85. The information made available does not show specific provisions regarding the use of individual trademarks protecting IGOs.

C. SPECIAL PROTECTION

(a) IGOs protected without a recognition procedure

86. Some Members employing such systems of protection for IGOs have indicated that an IGO remains protected as long as the circles concerned, i.e. the relevant trade circles, consider it a reference to the geographical source of the product to which it relates or to the properties or quality of such products in relation to the source, as the case may be.<sup>278</sup> One Member has indicated that these IGOs can become generic; persons alleging this will have to prove it and, if there is any doubt, the term will be presumed to be an IGO.<sup>279</sup>

87. While there is, of course, no procedure for persons to obtain authorization to use an IGO under these systems, it has also been pointed out by some of the Members concerned that only those persons who produce or handle products with the characteristics that justify the protection of the IGO are entitled to use it.<sup>280</sup>

88. Two of the Members concerned have noted that associations, consumer organizations or groups can take responsibility for the monitoring and observance of the use of the IGO and any rules regarding production.<sup>281</sup>

(b) IGOs protected with a recognition procedure

(i) *Entitlement/authorization to use*

89. It would appear that in the Members who have supplied information, as a general rule all persons who meet the criteria for the use of a protected IGO are entitled to use it; that is to say persons meeting the origin criteria and any production/product requirements attached to the use of the IGO.<sup>282</sup> Under some systems, this entitlement flows automatically without the need for any further procedure to be met. In some others, an individual user must obtain specific authorization, generally from the same body that was responsible for the recognition of the IGO in question.<sup>283</sup> In some of these systems, before applicants are recognized as eligible/authorized users, they are required to obtain an attestation of the Ministry of Agriculture or another administrative body certifying, for example, that the application is justified or defining the geographical area to which the authorization

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<sup>278</sup> Germany, in relation to Section 126 et seq. of the Trade Mark Law (Q30/31) and in relation to Section 127(2) of the Trade Mark Law (Q1); Switzerland (Q8.1,10.1).

<sup>279</sup> Switzerland (Q31).

<sup>280</sup> Germany, in relation to paragraphs 2 and 3 of Section 127 of the Trade Mark Law (Q1,36); Liechtenstein (Q36); Switzerland (Q10.1,36).

<sup>281</sup> Liechtenstein (Q32); Switzerland (Q36,38).

<sup>282</sup> Australia, in respect of wine or grape products (Q36,37,40); EC (Q36); France (Q17,36); Germany (Q36); Hungary (Q36); Ireland (Q36); Italy (Q36); Morocco, in respect of wines ("any wine producer")(Q36); New Zealand (Q36); Poland: additionally, "any party, whose products satisfy the conditions for the use of that geographical indication (...) may also request the Patent Office to be entered in the Register of Geographical Indications as a party authorised to use it" (Q36); Portugal (Q36); Slovenia, in respect of agricultural products and foodstuffs, and of handicrafts (Q36); Spain, in respect of table wines (Q36,37); Switzerland (Q36); United Kingdom (Q36); Uruguay (Q36).

<sup>283</sup> Bulgaria (Q36,38); Czech Republic, except for the registered holder of the right (Q36); Germany, quality wines psr may only be used after the assignment of an inspection number within the framework of an official organoleptic examination (Q36); Hungary (Q36); Mexico (Reply 39); Peru (Q36,37); Slovak Republic (Q36,37); Spain, in respect of products other than table wines (Q36,37); Venezuela (Q36);

relates.<sup>284</sup> One Member has indicated that it requires a producer or manufacturer wanting to use a protected IGO to be a member of the corresponding commodity board.<sup>285</sup> In some Members employing systems for the recognition of IGOs, under which the producers themselves generally determine the product specification, the production requirements and the area of production, the entity which registers IGOs has no discretionary authority to determine whether the IGO should be recognized if the definitions and criteria laid down by the law are fulfilled,<sup>286</sup> not only those producer groups having obtained the registration can use the IGO, but also other persons or entities who meet the criteria for use of the IGO.<sup>287</sup> One of these Members would seem to require, however, that these other persons or entities join the producer group having obtained the registration.<sup>288</sup>

90. Some of the Members which have a procedure by which each user should obtain specific authorization have indicated that fees are payable by the user for such authorization.<sup>289</sup> Some other Members have indicated that use of a protected IGO may involve acceptance of monitoring and inspection arrangements and payment of associated fees.<sup>290</sup>

91. In regard to licensing, many Members have indicated that IGOs recognized under *sui generis* systems cannot be licensed<sup>291</sup> or that the law does not contain provisions for the licensing of IGOs<sup>292</sup>, one of them adding that licensing is contrary to the "philosophy" of the protection of IGOs.<sup>293</sup> A Member has also indicated that, given that titles in protected IGOs are not privately owned and that their use is subject to authorization by a public authority, the issue of licensing does not arise.<sup>294</sup> However, some other Members have indicated that IGOs can be licensed<sup>295</sup>, or that, since the law is silent on the subject of licensing of IGOs, nothing prevents licensing.<sup>296,297</sup>

(ii) *Duration of the entitlement/authorization to use*

92. Most Members have indicated that IGOs are protected within their territories without a fixed limitation in time and without being subject to renewal or reaffirmation.<sup>298</sup> However, some have

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<sup>284</sup> Belgium (Q38); Romania (Q13, 36).

<sup>285</sup> Netherlands (Q36).

<sup>286</sup> See section IV, paragraph 62, under (iii), above.

<sup>287</sup> Korea, in respect of agricultural and fisheries products and their processed products (Q36,37); Turkey (Q36,37).

<sup>288</sup> Korea (Q36,37).

<sup>289</sup> Bulgaria (Q38); Czech Republic (Q38); Mexico (Reply 41); Peru (Q38); Slovak Republic (Q38).

<sup>290</sup> Cuba (Q38); Spain (Q38); Switzerland (Q37,38); Turkey (Q38).

<sup>291</sup> Australia (Q42); Austria (Q42); Belgium (Q42); Cuba (Q42); Czech Republic (Q42); Estonia (Q42); France (Q42); Germany (Q42); Hungary (Q38,42); Italy (Q42); Liechtenstein (Q42); Poland (Q42); Portugal (Q42); Slovak Republic (Q42); Slovenia (Q42); Switzerland (Q42); United Kingdom (Q42); Romania has indicated that "the right to use an IGO may not be transferred".

<sup>292</sup> Bulgaria (Q42); Ireland "under EC Council Regulation 2081/92, it is interpreted that licences are allowed (within imposed conditions) in favour of producers who are not established in the area in question for stages other than production or transformation" (Q42); Korea (Q42); New Zealand "as the use of an IGO in relation to specified goods must be by someone in the geographical origin protected by the IGO, it is unlikely that an IGO could be licensed" (Q42); Spain (Q42); Venezuela (Q42).

<sup>293</sup> Switzerland (Q42).

<sup>294</sup> Peru (Q36,37,42). See also Mexico (Reply 45).

<sup>295</sup> Ecuador (Q42); Uruguay: "licences may be granted in response to the wish of the parties and in accordance with the relevant provisions of the civil law" (Q38,42).

<sup>296</sup> Canada (Q42).

<sup>297</sup> See also paragraph 66 above.

<sup>298</sup> Austria (Q28); Belgium (Q28,29); Bulgaria (Q28,29,35); Canada (Q28,29); Czech Republic (Q28); Estonia (Q28,29); EC (Q28,29); France (Q28,29); Greece (Q28,29); Hungary (Q28,29); Ireland (Q28,29); Italy (Q28,29); Japan (Q28,29); Korea (Q28,29); Luxembourg (Q28,29); Morocco, in respect of wines (Q28,29); New Zealand (Q28,29); Poland (Q28,29); Portugal (Q28); Romania (Q28); Slovak Republic

indicated that renewal or reaffirmation needs to be obtained every ten years<sup>299</sup>; this may be achieved by submission of the relevant application without further formalities<sup>300</sup>, by submission of inspection reports by the owner of the protected IGO<sup>301</sup>, or subject to a report from the ministry of agriculture confirming the preservation of the characteristics of the product.<sup>302</sup>

93. Most Members have indicated that their systems do not provide for use of the IGO as a condition of its continued protection.<sup>303</sup> However, other Members have indicated that, if a protected IGO is not used for a specified amount of years without justification, its protection is liable to be cancelled at the request of a party.<sup>304</sup> A Member has stated that, in its territory, protection lapses if an IGO has fallen into disuse, although no specific time-period for assessing this is set out in its legislation.<sup>305</sup> Another Member has indicated that, even though the matter is not specifically addressed, it considers that an IGO must be used, such use being assessed on a case-by-case basis.<sup>306</sup>

94. With regard to procedures for modifying or terminating a protected IGO, some Members have indicated that their systems do not provide for such procedures.<sup>307</sup> Some, however, have procedures by which termination or revocation of the protected IGO can be considered, either ex officio or on the basis of a request.<sup>308</sup> The main grounds mentioned are: termination of use, or renunciation, by all users<sup>309</sup>; that the conditions for the initial recognition of the IGO were not met<sup>310</sup>; that the conditions which warranted its protection have ceased to exist<sup>311</sup>; that the IGO is not used in accordance with the terms set out in the application<sup>312</sup>; and that the inspection or other authorities have established serious defects in relation to the product specification and the use of the IGO<sup>313</sup> which cannot be remedied in another way.<sup>314</sup> Some Members have pointed out that applications may be made by interested

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(Q28,29); Slovenia (Q28,29); Spain (Q28,29); Switzerland (Q28 under 1); Turkey (Q28); United Kingdom (Q28); United States, in respect of "viticultural regions" (Q28); Uruguay (28,29).

<sup>299</sup> Cuba (Q28); Ecuador (Q28); Romania (Q28); Turkey (Q29).

<sup>300</sup> Cuba (Q29); Ecuador (Q29).

<sup>301</sup> Turkey (Q29).

<sup>302</sup> Romania (Q29).

<sup>303</sup> Australia (Q31); Cuba (Q34); Czech Republic (Q30); Estonia (Q30/31,40); France (Q30); Hungary (Q30); Japan (Q30); Mexico (Reply 34); Morocco (Q30,31); Netherlands (Q30); New Zealand (Q30); Peru (Q30/31); Romania (Q30/31); Slovak Republic (Q30); Slovenia (Q30,31,34, 40,41); Spain (Q30); Switzerland (Q30); Turkey (Q30); United Kingdom (Q30); Uruguay (30,31).

<sup>304</sup> Ecuador: three consecutive years (Q31); Poland: five years, but this "shall not apply to indications, the protection of which follows from an international agreement" and "the burden of proof that the geographical indication is used or that the justified reasons for non-use thereof exist shall be on the holder of the right in registration" (Q30,31).

<sup>305</sup> Canada (Q30).

<sup>306</sup> European Communities, in respect of agricultural products and foodstuffs (Q30).

<sup>307</sup> Australia, in respect of wine or grape products (Q34); Netherlands (Q34); Spain, in respect of wines and spirits (Q34).

<sup>308</sup> Czech Republic (Q32); Cuba (Q35); Ecuador (Q34); Estonia (Q35); Hungary (Q33-35); New Zealand (Q35); Mexico (Reply 37); Poland (Q30,34/35); Slovak Republic (Q33-35); Turkey (Q34,35); United States (Q25,39,47); Uruguay (Q35); Venezuela (Q34,35).

<sup>309</sup> Bulgaria (Q35); Czech Republic (Q34); Korea, in respect of agricultural and fisheries products and their processed products (Q30,34); Poland (Q30,34/35); Slovak Republic (Q33); Uruguay (Q34).

<sup>310</sup> Czech Republic (Q34); Korea, in respect of agricultural and fisheries products and their processed products (Q30,34); Slovak Republic (Q33).

<sup>311</sup> Czech Republic (Q34); Ecuador (Q34); Hungary (Q34); Mexico (Reply 37); Morocco: "[s]hould the product no longer meet the established criteria for an appellation of origin for wines, the batches may be reclassified as common beverage wine (*vin ordinaire*) if the analysis shows that the wine is marketable, and at the request of the wine-producer" (Q34); Peru (Q28); Poland (Q30,34); Slovak Republic (Q33).

<sup>312</sup> Cuba (Q34).

<sup>313</sup> Slovenia (Q34); Peru (Q33).

<sup>314</sup> In respect of agricultural products and foodstuffs, Article 11 of EC Council Regulation 2081/92 stipulates that any member State may submit that a condition laid down in the product specification of an agricultural product or foodstuff covered by a protected name has not been met. The provision lays down a

members of the trade to have the production conditions and the production area attached to a recognized IGO modified under a procedure identical to the recognition procedure.<sup>315</sup> It has also been indicated that changes or deletions are carried out ex officio if the legal prerequisites no longer apply.<sup>316</sup> There are also Members where a change in the conditions on the basis of which an IGO was recognized is sufficient ground for cancellation of the IGO.<sup>317</sup>

95. In regard to the duration of the authorizations granted to individuals for use of an IGO, some of those Members which require such authorization provide that it needs to be renewed every ten years.<sup>318</sup> Most Members who have provided information on the subject have indicated that use is not a condition of the continued right of an individual to use a protected IGO.<sup>319</sup> One, however, has indicated that under its system of *denominaciones de origen* the authorization provided to an individual may lapse if it is not used.<sup>320</sup> Some Members have also provided information on procedures for the revocation of authorizations given to individuals to use a protected IGO, for example on the grounds that the conditions which justify such use have ceased to exist, that use is not in conformity with the criteria for use of the IGO or because of renunciation by the user.<sup>321</sup>

96. One Member has indicated that certain of these IGOs cannot be used as generic names and, once recognized, cannot become generic.<sup>322</sup> Another Member has indicated that, under its law, IGOs for viticultural products cannot become generic but, in respect of other products, transformation of an IGO into a generic is a ground for forfeiture.<sup>323</sup> One Member has indicated, with regard to an IGO registered as a trademark and becoming the generic name of certain goods or services, or registered fraudulently, that cancellation proceedings are available and are to be initiated by a third party.<sup>324</sup>

(iii) *Monitoring use*

97. The information made available shows that, in most Members, compliance with the requirements for use of a protected IGO is the subject of monitoring, usually by a public authority.<sup>325,326</sup> The authorities mentioned include:

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procedure under which the member State where the IGO originates shall examine the matter and take any measures it considers necessary but, in the event of repeated irregularities and the failure of the member States to come to an agreement, a duly substantiated application must be sent to the Commission. After examination, the Commission shall take the necessary steps, which may include cancellation of the registration of the IGO (Belgium Q35; Spain Q35; United Kingdom Q35); Hungary (Q25,34).

<sup>315</sup> France (Q34,35); Switzerland, in respect of agricultural products and processed agricultural products other than wines (Q35).

<sup>316</sup> Germany, in respect of wines (Q32/33 under (b)).

<sup>317</sup> Ecuador (Q34); Mexico (Replies 31,33).

<sup>318</sup> Cuba (Q29); Mexico (Reply 32); Peru (Q41); Romania (Q28,29); Venezuela (Q28,40).

<sup>319</sup> Bulgaria (Q40); Cuba (Q30); Czech Republic (Q40); Estonia (Q40); France (Q40); Mexico (Reply 43); New Zealand (Q30,40); United Kingdom, in respect of wines and spirits (Q40); Uruguay (Q40).

<sup>320</sup> Spain (Q40).

<sup>321</sup> Cuba (Q30); Czech Republic (Q34); Peru (Q35); Romania (Q32-35).

<sup>322</sup> Switzerland (Q31)

<sup>323</sup> Portugal, except for viticultural products (Q34).

<sup>324</sup> United States (Q30).

<sup>325</sup> Belgium has referred to Article 10 of EC Council Regulation 2081/92, which requires, in its Article 10, EC member States to establish an inspection structure comprising one or more designated inspection authorities and/or private bodies approved for that purpose by the member State and offering adequate guarantees of objectivity and impartiality with regard to all producers or processors subject to their control and having permanently at their disposal the qualified staff and resources necessary to carry out inspection of agricultural products and foodstuffs bearing a protected name. If a designated inspection authority and/or private body in a member State establishes that an agricultural product or foodstuff bearing a protected name of origin in that member State does not meet the criteria of the specification, they shall take the steps necessary to ensure that the Regulation is complied with (Q33); Ireland, in respect of agricultural products other than wines

- a specialized administrative or statutory body <sup>327</sup>;
- a Ministry <sup>328</sup>;
- the industrial property office <sup>329</sup>;
- other administrative authorities or public institutions <sup>330</sup>;
- accredited private or public certification bodies <sup>331</sup>;
- a regional or local governmental authority <sup>332</sup>;
- administrative authorities together with producer associations. <sup>333</sup>

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or spirits under EC Council Regulation 2081/92: "we have yet to have any product registered under this Regulation and monitoring in that area will depend on the product registered" (Q33).

<sup>326</sup> Slovenia, however, it has indicated that the associations of producers are responsible for monitoring the use of IGOs in respect of handicrafts (Q32).

<sup>327</sup> Australia, in respect of wine or grape products, Australian Wine and Brandy Corporation (Q33); Austria, in respect of wines: Federal Wine Control Authority (Q32); France: National Institute of Appellations of Origin (INAO), National Joint-Trade Wines Office (ONIVINS) and National Commission of Agricultural and Food Product Labels and Certificates (CNLC) (Q32); Germany, in respect of wines: the prosecution authorities and the customs authorities, in addition to the regional surveillance authorities (Q39 under (b)) and (Add.Q1 under (a)); Hungary, in respect of wines, the National Wine Qualifying Institute (Q32); Korea, in respect of agricultural and fisheries products and their processed products, the National Agricultural Products Quality Management Service (Q32,33); Morocco: "The National Wine Commission examines the applications and the information they contain so as to recommend the obtention of an appellation. For wines already in circulation in the trade, it is the anti-fraud services that recommend the obtention of an appellation" (Q32); Spain, in respect of quality wines produced in a specified region, spirit drinks with a "denominación específica" and the "denominaciones de origen" and "denominaciones específicas" of agricultural products or foodstuffs other than wines or spirits, there is in each case a Regulatory Authority ("Consejo Regulador") (Q32,33); United Kingdom: the Wine Standards Board monitors labelling at wholesale and import/export level for wines (Q33);.

<sup>328</sup> Greece: the Ministry of Agriculture's services at local or regional level (Q32); Ireland, in respect of wines: the Department of Agriculture and Food in conjunction with the Revenue Commissioners (Q33); Romania: Ministry of Agriculture and Food (Q32/33/34/35).

<sup>329</sup> Cuba (Q32,33); Ecuador (Q32); Mexico (Reply 35); Peru (Q32,33); Turkey: only in the context of examination of the inspection reports every ten years (Q33 in conjunction with Q29); Venezuela (Q32 in conjunction with Q18).

<sup>330</sup> Estonia (Q32); Finland: the Consumer Ombudsman and municipal consumer authorities (Q32); France: "control commissions", "public official monitoring services" (Q32); Germany, in respect of spirits: food inspection authorities (Q4/5/6 under (c) and Add.Q1 under (b)); Greece, in respect of wines: the State Chemical Laboratory and its regional branches (Q32); Japan, in respect of wines and spirits: the National Tax Administration (including Tax Bureau and Office) (Q32,33,35); Portugal (Q33); Slovenia: Agricultural inspection services, in respect of wine, and Inspectorate for Quality Control of Agricultural Products and Foodstuffs (Q32); Spain, in respect of "vinos de la tierra" and spirit drinks with "geographical designations", monitoring is carried out by the general governmental supervisory bodies (Q32,33).

<sup>331</sup> Finland: National Food Administration, National Product Control Agency for Welfare and Health (Q32); France (Q32); Switzerland, in respect of agricultural products and processed agricultural products other than wines (Q32-34).

<sup>332</sup> Australia, in respect of spirits: state government (Q33); Finland: Provincial State Offices, the municipal authorities primarily carrying out supervision in practice (Q32); Germany, in respect of wines: the Länder (Q33); Hungary, in respect of agricultural products and foodstuffs other than wines: the county veterinary and food inspection authorities (Q32-35); Poland: county centers for purchasing and processing of agriculture products, in respect of agriculture products and foodstuffs (Q32,33); Switzerland, in respect of wines: the cantons are responsible and, as a rule, a specialized commission is set up (Q32); United Kingdom: local governmental authorities monitor spirits and the retail sector for wines on behalf of the government (Q33).

<sup>333</sup> Belgium: private bodies and the economic inspection authority of the Ministry of Economic Affairs (Q32); Italy: authorities of the central and peripheral public administration together with sector committees and

98. Some Members have indicated that such monitoring takes the form of quality and quantity controls, for example through on-the-spot inspections of the production conditions and the products (analysis, tasting, labelling, packaging).<sup>334</sup> Some Members have indicated that users must ensure that the products in respect of which permission to use the protected IGO is being requested pass various tests based on chemical and organoleptic analyses.<sup>335</sup> The public surveillance authorities responsible for the monitoring may also have the authority, or duty, to initiate enforcement proceedings against improper users of the IGO<sup>336</sup>; there are also systems where they have to inform the public authorities responsible for initiating such action.<sup>337</sup> Some Members have described ex officio enforcement procedures which may imply active monitoring by the responsible enforcement authorities that an IGO is not used falsely, improperly or simply not in the same way, for example by checking at the time of renewal the information to be provided by the user with the conditions on which a required authorization of use was given.<sup>338</sup>

99. There are also systems which allow beneficiaries the opportunity to present evidence to the responsible public authority if they believe that the IGO is not being used properly by another beneficiary.<sup>339</sup>

(iv) *Foreign IGOs*

100. As reflected in sections III and IV above, some Members have provided information concerning the recognition of foreign IGOs in their territories, either by virtue of a bilateral or multilateral agreement or because the same procedure for recognition is applicable as applies in respect of the recognition of domestic IGOs. In some cases, specific information has been made available relevant to the use of foreign IGOs, in particular where the submission of a product specification is required as well as the establishment of inspection arrangements.<sup>340</sup> One Member has indicated that, in respect of spirits, different procedures apply to the monitoring at the border and on the domestic market.<sup>341</sup>

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the consortiums (Q32); Luxembourg: specific control commissions comprising public officials, traders and consumers and chaired by a public official (Q32).

<sup>334</sup> France (Q32,33); Germany, in respect of spirits (Q36); Poland: "county centres for purchasing and processing of agriculture products only check whether the products capable of being marked by a given geographical indication are so marked, but no particular legal procedures are stipulated for monitoring the use of geographical indications" (Q33); Portugal (Q33).

<sup>335</sup> Germany (Q17-27); Spain, in respect of quality wines produced in a specified region (Q36).

<sup>336</sup> Belgium (Q33).

<sup>337</sup> Austria (Q34); France (Q48); Morocco (Q33).

<sup>338</sup> Mexico (Replies 31,33,35) and Peru (Q28-35) have indicated that users are required to use IGOs exactly as they are protected and that the continued existence of the conditions on the basis of which this protection is recognized is monitored by the authority responsible for the recognition of IGOs.

<sup>339</sup> Belgium (Q34); Bulgaria (Q37 in conjunction with Q32,48); Germany, in respect of spirits (Add.Q1 under (b)); Korea (Q34,35); Mexico (Replies 33-38 and 42); Turkey (Q32,33); Venezuela (Q34,35,41).

<sup>340</sup> Czech Republic (Q15). European Communities, in respect of agricultural products and foodstuffs other than wines and spirits (EC Q27; Belgium Q15,27; Finland Q27; the Netherlands Q15,27; Spain Q15,27; and the United Kingdom Q27): Article 12 of EC Council Regulation 2081/92; in respect of wines and spirits, reference has been made to EC Council Regulations 822/87, 1576/89, 2048/89, 2392/89, 1601/91 and 3378/94 as well as Commission Regulation 3201/90 (EC Q15,47; Austria Q15,27; Greece Q2; Luxembourg Q16; Spain Q15,27; United Kingdom Q15). Romania (Q52); Slovak Republic (Q15,27); Turkey (Q15,27).

<sup>341</sup> Australia (Q34).

## **VI. PROTECTION AGAINST THOSE NOT ELIGIBLE/AUTHORIZED TO USE OR USING IMPROPERLY**

101. This section of the paper focuses on the different types of use of IGOs that can be prevented under the protection available under national law. Since the Checklist only contained one question specifically directed towards this issue (question 1 in IP/C/13/Add.1), a question not responded to by all Members who otherwise responded to the Checklist, the information available on this point is far from comprehensive. Nonetheless, this section seeks to put together such information as has been provided, frequently as a by-product of questions directed towards other issues.

102. The title of this section reflects a distinction apparent in the responses to the Checklist as between actions that can be taken against those who are not from within the area to which the IGO refers, and cannot qualify as eligible/authorized users, and actions against those who are eligible/authorized users but are using the IGO improperly. In the responses to the Checklist, the latter category of actions has been addressed mostly in connection with the subject of section V above and the information in question has therefore mainly been reflected in that section, in particular in relation to aspects concerning the monitoring of use by eligible/authorized users.

### **A. LAWS FOCUSING ON BUSINESS PRACTICES**

103. With regard to laws focusing on business practices of a general nature, the types of acts against which action can be taken indicated in the information provided include one or more of the following:

- acts contrary to "good practice" or "honest commercial practices".<sup>342</sup> In some cases, this is combined in the responses with one or more of the acts indicated below;
- conduct liable to mislead or deceive the public, including in regard to the origin and characteristics of goods and services.<sup>343</sup> In some cases, there are specific provisions relating to misleading advertising<sup>344</sup>;

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<sup>342</sup> Australia, according to the Trade Marks Act 1995, the Trade Practices Act 1974, the Commerce Trade Descriptions Act 1905, the common law tort of passing off, the state and territory Food Acts (Q4); Czech Republic, according to the Commercial Code (Q1); Finland, according to the Consumer Protection Act (No. 38/1978) (Q1); Germany, according to Section 3 of the Unfair Competition Act, and to Section 17, paragraph 1, No 5 of the Act on Foodstuffs and Commodities (Q1); Norway, according to Section 1 of the Marketing Act (Q1); Slovak Republic, according to the Commercial Code (Q1); Switzerland, according to the Federal Law on Unfair Competition (Switzerland's comments on JOB(00)/5619, the preliminary version of the present summary paper); Turkey, according to the Turkish Competition Code (1956) (Q47).

<sup>343</sup> Australia, according to the Trade Marks Act 1995, the Trade Practices Act 1974, the Commerce Trade Descriptions Act 1905, the common law tort of passing off, the state and territory Food Acts (Q4); Bulgaria, according to the Bulgarian Unfair Competition Law (Q1); Canada, according to the Trade Marks Act (Q1) and Article 1457 of the Civil Code of Quebec (Q5); Czech Republic, according to the Commercial Code (Q1); Denmark, according to the Danish Food, etc. Act No. 310 of 6 June 1973 (Q2); European Communities, according to Article 2(a)(I) of the Council Directive No. 79/112/EEC of 18 December 1978, that prohibition applies to origin or provenance referring to third countries as well (Q1); France, according to Article L 217-6 of the Consumer Code (Q1,15); Germany, according to Section 3 of the Unfair Competition Act, and to Section 17, paragraph 1, No 5 of the Act on Foodstuffs and Commodities (Q1,2,3); Iceland, according to Article 11 of the Icelandic Food Act, No. 93 of 28 June 1995 (Q2); Japan, according to the Unfair Competition Prevention Law (Q1); Luxembourg, according to the Law of 27 September 1986 as amended by the Law of 14 May 1992 (Q34); Mexico, according to Article 213 of the Intellectual Property Act (Reply 1); New Zealand, according to Section 9 of the Fair Trading Act (Q1/2/3); Norway, according to Section 1 of the Marketing Act (Q1); Slovak Republic, according to the Commercial Code (Q1); Spain, according to Article 11.1(e) of Law 32/88 on Trademarks and Article 2 of Directive 79/112/EEC (Q15); Sweden, according to the Swedish Marketing Act of 17 April 1995 (Q8); Switzerland, according to the Federal Law on Unfair

- false or incorrect claims, including in regard to the origin and characteristics of goods and services<sup>345</sup>;
- trading on the reputation or goodwill of the goods or services of another person, resulting in damage to the latter<sup>346</sup>; non-authorized use of reputation or goodwill,<sup>347</sup> including where the true origin of the goods has been stated or is used with words like "kind", "type", "style", "imitation".<sup>348</sup>

104. It has been indicated that the protection available against conduct liable to mislead or deceive the public with respect to the origin of the goods does not apply to acts of indicating or using a common name or a commonly-used indication in a normal manner.<sup>349</sup>

## B. TRADEMARK LAW

105. Virtually no information has been provided on the rights conferred by collective, certification or guarantee marks or individual trademarks where they might protect IGOs, except by some Members in respect of limitations to these rights so that third parties can use, in the course of trade, the geographical signs in question in accordance with honest practices in industrial or commercial matters.<sup>350</sup>

## C. SPECIAL PROTECTION

106. In general, it would appear that the protection conferred by special means of protection is stronger than that under laws focusing on business practices and regular trademark protection, including in respect of collective, certification and guarantee marks. A range of unauthorized uses of IGOs that can be objected to have been indicated, with some systems providing for more than one. These include:

- Use of a recognized IGO by a person not eligible/authorized to use it, without any test as to the nature of that use.<sup>351</sup> In some cases, it is specifically indicated that the right to prevent such use applies even if the actual origin is indicated or if the geographical

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Competition (Switzerland's comments on JOB(00)/5619, the preliminary version of the present summary paper); Turkey, according to Article 4 of the Consumer Protection Act and the Turkish Competition Code (1956) (Q47).

<sup>344</sup> Denmark, according to the Danish Marketing Practices Act, No. 428 of 1 June 1994 (Q4,15); Finland, according to the Consumer Protection Act, No. 38/1978 (Q1); France, according to Article L 121-1 of the Consumer Code (Q1,27); Iceland, according to Article 21 of the Icelandic Competition Act, No. 8 of 9 July 1993 (Q4 and Add.Q1); Korea, according to Article 2(1)(iv) of the Unfair Competition Prevention and Trade Secret Protection Act as well as Article 3 of the Fair Labelling and Advertising Act (Q1); Netherlands, according to the Civil Code, regardless of whether the indication is protected in the country of origin or not (Q1,16); Switzerland, according to the Federal Law on Unfair Competition and the Federal Law on Foodstuffs and Objects on Everyday Use (Switzerland's comments on JOB(00)/5619, the preliminary version of the present summary paper); Turkey, according to Article 16 of the Consumer Protection Act (1995) (Q47).

<sup>345</sup> Australia, according to the Trade Marks Act 1995, the Trade Practices Act 1974, the Commerce Trade Descriptions Act 1905, the common law tort of passing off, the state and territory Food Acts (Q4); Hong Kong, China, according to the Trade Descriptions Ordinance and the common law of passing off (Q4); Korea, according to the Unfair Labelling and Advertising Act (Q1); Lithuania (Q4,8); Morocco (Q2).

<sup>346</sup> Canada, according to the common law action for passing off (Q5).

<sup>347</sup> Canada, according to Article 1457 of the Civil Code of Quebec (Q5).

<sup>348</sup> Hong Kong, China (Q4), according to the common law of passing off.

<sup>349</sup> Japan, while indicating that this exception does not include acts of using or indicating the names of a place of origin of grape products that have become common names (Q1).

<sup>350</sup> See paragraph 23 above.

<sup>351</sup> Bulgaria (Q47); Canada (Q4); Ecuador (Q1,45); France (Q27); Mexico (Reply 1); Slovak Republic (Q1); Venezuela (Q1).



indication is used in a translation or together, with delocalising expressions like "method", "type", "style", or "imitation".<sup>352</sup>

- Use which is "false", "incorrect", or "does not correspond to the place specified".<sup>353</sup>  
In some replies, it is made clear that delocalising terms of the sort referred to in the first indent cannot justify such unauthorized use.<sup>354</sup>
- Use which might mislead, deceive or create a false impression regarding the geographical origin of the products.<sup>355</sup> Once again, in some systems it is made clear that this right exists even if the IGO is accompanied by qualifying terms of the sort referred to above.<sup>356</sup> In some cases, this right is additional to that mentioned in the second indent, operating even if the use of the IGO is factually correct but nevertheless liable to mislead.
- Misuse, imitation or evocation, even with delocalising qualifiers.<sup>357</sup>

107. Some laws also contain provisions which address particular types of use, including advertising<sup>358</sup>; labelling<sup>359</sup>; the affixation of false IGOs<sup>360</sup>; the removal of genuine IGOs<sup>361</sup>; and the manufacture, offering for sale and sale under an IGO of products which do not meet the requirements for use of that IGO.<sup>362</sup>

108. The protection referred to above provides protection against products which do not come from the area indicated by the IGO. Some of these provisions also provide protection against the use of IGOs on products which, while originating in the indicated area, do not meet the production/product requirements on which the use of the IGO is conditional. Some replies have also referred to provisions which address more specifically this latter aspect.<sup>363</sup>

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<sup>352</sup> Estonia (Add.Q1); Canada (Q4); Mexico (Reply 1); New Zealand (Q4); Peru (Q1 and Add.Q1); Poland (Add.Q1).

<sup>353</sup> European Communities, in respect of wines (Q1); Japan (Q1 and Add.Q1); Morocco (Add.Q1); Norway (Q1); Romania (Add.Q1); Slovenia (Add.Q1); Spain (Q1); Sweden (Q14); United States, under ATF regulation (Q1).

<sup>354</sup> European Communities, in respect of wines and spirits (Q1); Hungary (Add.Q1); Japan (Q1 and Add.Q1); Morocco (Add.Q1); Norway (Q1); Romania (Add.Q1); Sweden (Q14).

<sup>355</sup> Cuba (Q47); European Communities, in respect of wines (Q1); Finland (Q14); Germany, under the Wine Act (Add.Q1); Iceland (Add.Q1); Morocco (Add.Q1); Sweden (Q14); Turkey (Q4); United States, under ATF regulations (Q1).

<sup>356</sup> European Communities, in respect of wines (Q1); Germany, under the Wine Act (Add.Q1); Morocco (Add.Q1); Sweden (Q14); Turkey (Q4).

<sup>357</sup> Bulgaria (Add.Q1); Czech Republic (Add.Q1); European Communities, in respect of agricultural products and foodstuffs other than wines and spirits (United Kingdom Add.Q1; Ireland Add.Q1); France (Add.Q1); Slovak Republic (Q1); Switzerland (Add.Q1).

<sup>358</sup> Germany, in respect of wines (Add.Q1); United States (Q1).

<sup>359</sup> Slovenia: "Labelling and other elements relating to the marketing of agricultural products or foodstuffs may not verbally, illustratively or in any other way, mislead the consumer with regard to geographical denomination" (Q46); United States (Q1).

<sup>360</sup> France (Q27); Korea (Q47); Turkey (Q51).

<sup>361</sup> Turkey (Q51).

<sup>362</sup> Belgium (Q1); France (Q27); Luxembourg (Q32,34); Slovenia, in respect of "geographical denominations" (Q46).

<sup>363</sup> Peru (Q47); Romania (Q32/33/34/35); United States, regarding requirements on origin of grapes (Q9,10).

109. Some Members have indicated that under their systems protection is accorded not only against unauthorized or improper use of protected IGOs but also against claiming or creating the impression that a term is a protected IGO when it is not.<sup>364</sup>

110. In respect of systems which provide special protection to IGOs for products, or products and services, in general and without requiring any prior recognition procedure, the protection would appear to be linked to the requirement that such IGOs must have acquired a particular reputation or degree of public recognition. The protection is thus not only against use that would mislead the public as to the origin and characteristics of the products and/or services, but also against damage to or exploitation of such reputation, irrespective of whether the public is misled.<sup>365</sup> Another Member has indicated that the test of whether the renown of a recognized IGO is misappropriated or lessened is applied when determining whether action can be taken against the use of that IGO on products other than those in regard to which it is recognized.<sup>366</sup>

111. In regard to homonymous IGOs, under one system, by way of exception to the general rule that a recognized IGO can only be used to designate products coming from the region to which the name had been assigned, imported wines may bear the same IGO in the case where it is used in accordance with traditional and consistent usage, on condition that its use is governed by rules in the country concerned and with due regard to the practical risk of confusion.<sup>367</sup> Under another system, while homonymous IGOs of third countries cannot be recognized, use may be authorized if the country of origin is clearly and visibly indicated on the label.<sup>368</sup> Other Members have also referred to the possibility of conditions being attached to the use of homonymous IGOs.<sup>369</sup>

112. Other exceptions to the normal scope of protection that have been indicated include:

- use of IGOs in direct conjunction with an adjective indicating the true place of production<sup>370</sup>;
- the use of an IGO if it is considered to have become generic<sup>371</sup>;
- allowing the use of a protected IGO if the goods were produced, or being produced, before the recognition of the protected IGO, or the goods were declared to be specified goods<sup>372</sup>;
- transitional provisions<sup>373</sup>;

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<sup>364</sup> Bulgaria (Q47); Turkey (Q51).

<sup>365</sup> Germany (Q1).

<sup>366</sup> France (Q27); Peru (Q2,8).

<sup>367</sup> European Communities, in respect of wines (Q14).

<sup>368</sup> The European Communities, in respect of agricultural products and foodstuffs other than wines and spirits (Q14).

<sup>369</sup> Cuba (Q14); New Zealand (Q14); Poland, in respect of wines and beers (Q14).

<sup>370</sup> United States, ATF regulation for spirits. The United States states that BATF applies this rule in a manner authorized by and consistent with Article 24 of the TRIPS Agreement (Q1).

<sup>371</sup> United States, ATF regulation for spirits. The United States states that BATF applies this rule in a manner authorized by and consistent with Article 24 of the TRIPS Agreement (Q1).

<sup>372</sup> New Zealand (Q43).

<sup>373</sup> In Switzerland, in the context of the Ordinance on Protected Appellations of Origin and Protected Geographical Indications (as amended with effect from 1 January 2000), agricultural products and processed agricultural products other than wines using an appellation of origin or geographical indication may be manufactured, packaged and labelled in accordance with the old law for five years from the date of publication of the registration. They may be marketed for three years from that date. Such transitional provisions are also to be found in the bilateral treaties which Switzerland has concluded with certain countries (Q43 and Switzerland's comments on JOB(00)/5619, the preliminary version of the summary paper); In Poland, under

- use which pre-dates 15 April 1994, (date of adoption of the WTO Agreement), either in good faith or for a period of at least 10 years.<sup>374</sup>

See also section VIII on the relationship to trademarks for information on exceptions to the scope of protection in regard to pre-existing trademarks.

113. Some Members have indicated that their systems do not provide for any "grandfather" provision of the sort found in Article 24.4 of the TRIPS Agreement.<sup>375</sup> Some have indicated that this issue has not arisen in implementing practice until now.<sup>376</sup> One has indicated that the matter can be addressed in specific regulations.<sup>377</sup>

114. One Member has indicated that the provision of Article 24.4 has been reproduced verbatim in a law applicable in its territory.<sup>378</sup>

## VII. ENFORCEMENT

115. This section considers in turn enforcement procedures under laws focusing on business practices, protection under trademark laws and under special protection regimes as they relate to actions against the misuse of IGOs. In each sub-section, the paper looks at the persons entitled to initiate enforcement procedures, the authorities responsible for the conduct of enforcement proceedings and the remedies available. In the final two sub-sections a few remarks are made in regard to the enforcement of foreign IGOs and the costs in proceedings.

### A. LAWS FOCUSING ON BUSINESS PRACTICES

#### (a) Persons entitled to initiate enforcement procedures

##### (i) *Ex officio action*

116. Procedures for the enforcement of laws focusing on business practices can frequently be initiated by public or administrative authorities, either spontaneously or on the basis of a complaint brought to their attention. In a number of Members, such action may result from the monitoring that such authorities have a mandate to undertake with regard to trade practices, consumer protection, market control or food inspection, which can cover the use of IGOs.<sup>379</sup>

117. The following types of public entities or bodies have been indicated as entitled to initiate procedures:

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Article 186 of the Industrial Property Law, "any parties who, while operating on a given territory, earlier used a geographical indication in good faith, and whose products do not satisfy the requirements for the grant of a right in registration, may continue to use that indication, however for no longer than one year counted from the date of the grant of the right in registration" (Q36,43).

<sup>374</sup> Cuba, in respect of wines and spirits (Q43); Estonia (Q43); Japan (Q43); Turkey (Q43); Uruguay (Q43).

<sup>375</sup> Bulgaria (Q43); EC (Q43); Finland (Q43); France (Q43); Greece (Q43); Hungary (Q43); Morocco (Q43); Portugal (Q43); Slovak Republic (Q43); Slovenia (Q43); Spain (Q43); Sweden (Q43); Venezuela (Q43).

<sup>376</sup> Australia (Q43); Czech Rep. (Q43); Slovak Rep. (Q43).

<sup>377</sup> Germany (Q43).

<sup>378</sup> Peru (Q43).

<sup>379</sup> Belgium (Q33); Finland (Q32,33); France (Q48); United Kingdom (Q47).

- a ministry<sup>380</sup>;
- the Ombudsman<sup>381</sup>;
- competition authorities<sup>382</sup>;
- another administrative authority, for example in charge of the protection of consumers or food production or control.<sup>383</sup>

118. In regard to the initiation of criminal procedures, it would appear that it is normally the public prosecutor who takes such action<sup>384</sup>, whether on the basis of a complaint, at the request of an administrative body responsible for the area in question or spontaneously. In some cases, other administrative bodies may themselves be able to initiate criminal proceedings.<sup>385</sup> One Member has said that violations of IGOs which constitute criminal offences are generally prosecuted upon request unless there is a particular public interest necessitating an ex officio action by the prosecution authorities.<sup>386</sup>

(ii) *Private right of action*

119. It would appear that in general legal proceedings to enforce laws focusing on business practices can be initiated by private parties. In the replies the following private parties have been mentioned:

- such as "anyone", "any party" or "any person".<sup>387</sup> It has been indicated that the initiator must be a natural or legal person.<sup>388</sup> In some cases it has been made clear that the person must be an interested party or have a claim that his/her interests have been affected<sup>389</sup>;

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<sup>380</sup> Belgium: the economic inspection authority of the Ministry of Economic Affairs, the Ministry of Economy or agency responsible (Q32,33); Turkey: Ministry of Industry and Trade (Q47).

<sup>381</sup> Denmark (Q48); Finland (Q32,47-49); Norway (Q47-51); Sweden (Q48,Annex). In some countries the ombudsman is entitled to issue orders and, if not they are not followed, to bring the case to a court. See sub-section A(b) on competent authorities for further details.

<sup>382</sup> Australia: Australian Competition and Consumer Commission (Q39); Iceland: the Competition Authorities (Q48).

<sup>383</sup> Finland: National Food Administration, National Product Control Agency for Welfare and Health, and provincial State Offices (Q32); Netherlands: the Health Protection Inspectorate (Government Food Inspection Service) (Q47); Norway: Market Council (Q47-51); United Kingdom: Local weights and measures authorities (Q47).

<sup>384</sup> Australia: breaches under the Trade Practices Act and the Fair Trading Acts are prosecuted through the Department of Public Prosecution (Q51); Czech Republic: only by the prosecuting counsel (Q51); Denmark: Public Prosecutor (Danish Food, etc. Act) (Q47,48); France: public prosecution in the framework of the Consumer Code is initiated both by the administrative authorities and the State prosecutor (Q48).

<sup>385</sup> Australia: in the field of spirits, under the Food Acts of the states/territories, the authority responsible for enforcement of the Act is authorized to initiate criminal prosecutions (Q51); France (Q48).

<sup>386</sup> Germany (Q51).

<sup>387</sup> Denmark (Q48); Iceland (Q48); Netherlands (Q48).

<sup>388</sup> France (Q48).

<sup>389</sup> Australia: "a wide range of interested parties" (Q48); Finland (Q47-49); Hong Kong, China: "the proprietor" of the IGO under the law of passing off (Q48); Japan (Q48); Korea (Q47,48); Liechtenstein (Q47); Lithuania (Q48); New Zealand (Q48); Norway (Q47-51); Poland (Q48); Portugal (Q48); Switzerland (Q47).

- those representing producer or business interests, such as competitors<sup>390</sup>, producers<sup>391</sup>, a professional group<sup>392</sup>, undertakings<sup>393</sup>, trade or business associations<sup>394</sup> or chambers of industry and commerce or craft chambers<sup>395</sup>;
- those representing consumer interests such as individual consumers or customers<sup>396</sup> or consumer associations.<sup>397</sup>

120. As indicated in the footnotes, in some Members persons falling in more than one of the above categories may have standing, depending on the law in question.

(b) Authorities responsible for enforcement proceedings

121. It would appear that the normal court procedures also apply to the judicial enforcement of laws focusing on business practices as they relate to IGOs, and most replies indicate the competent courts.<sup>398</sup>

122. In some Members administrative bodies have the authority to conduct enforcement proceedings, receiving complaints, investigating them and, if they are found justifiable, deciding on appropriate remedies. Such administrative authorities may be the Ombudsman<sup>399</sup>, another administrative body<sup>400</sup> or a Minister.<sup>401</sup> Administrative remedies are subject to appeal to a judicial body, and proceedings may have to be brought before such a body for their enforcement.

(c) Remedies

123. Most replies which have described civil judicial procedures have indicated the existence of remedies. Not all of them have listed the types of remedies. When information has been made available, the following have been mentioned: injunctions (e.g. for preventing, prohibiting or

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<sup>390</sup> Austria (Q48); Slovak Republic (Q1).

<sup>391</sup> Austria (Q48).

<sup>392</sup> Luxembourg (Q34).

<sup>393</sup> Lithuania (Q47).

<sup>394</sup> Austria (Q48); Germany: associations who market goods or services of the same or similar type on the same market, associations having as one of their purposes the repression of unfair competition (Q32/33); Switzerland (Q48), Liechtenstein (Q47): associations whose rules or regulations authorize them to protect the economic interests of their members.

<sup>395</sup> Germany (Q32/33).

<sup>396</sup> Liechtenstein: customers whose economic interests are threatened or infringed by an act of unfair competition (Q48); Switzerland (Q47).

<sup>397</sup> France (Q48); Liechtenstein (Q47); Luxembourg (Q34); Switzerland (Q47): organizations of national or regional importance with a statutory duty to protect the consumer, according to the Law on Unfair Competition.

<sup>398</sup> Australia, for passing off action, Magistrates Court (first instance); under the Trade Practices Act, Federal Court; under the state Fair Trading Acts, Supreme Court (first instance) (Q49); Canada: ordinary courts (Q47); Denmark: courts of law (Q47,49); Finland: Market Court (Q47-49); France: ordinary courts (civil and criminal) (Q27); Germany, court of justice (Q39); Hong Kong, China: Court of First Instance (Q49); Iceland: courts of law (Q49); Japan: courts in civil cases; courts and investigating authorities (police), in criminal cases (Q49); Lithuania: local courts of general jurisdiction (Q49); Luxembourg: district court sitting in commercial matters (Q34); New Zealand, Fair Trading Act: High Court of New Zealand (Q49); Portugal (Q1,51); Sweden: Stockholm City Court (first instance), Market Court (appeal) (Q49).

<sup>399</sup> Denmark (Q48,49); Finland (Q47-49); Norway (Q47-51); Sweden (Annex).

<sup>400</sup> Australia: Australian Competition and Consumer Commission (Q39); Bulgaria: Competition Protection Committee (Q49); Iceland: the Competition Authorities (Q48,49); Lithuania: The Competition Council, which "investigates acts of unfair competition only in such cases when the acts infringe interests of a number of entities or consumers" (Q47,48,49); Netherlands: The Health Protection Inspectorate (Government Food Inspection Service) (Q47); Norway: The Market Council (Q47-51).

<sup>401</sup> Turkey (Q47).

suspending an act of unfair competition or an act likely to cause misleading with respect, for example, to the place of origin)<sup>402</sup>; provisional measures<sup>403</sup>; damages<sup>404</sup>; confiscation<sup>405</sup>; destruction of the goods involved in the act of unfair competition<sup>406</sup>; removal of facilities used during an act of unfair competition<sup>407</sup>; posting up or publication of the decision<sup>408</sup>; imposition of the obligation to make one or several statements of a certain content or form, denying the previously submitted incorrect information or giving explanations as to the identity of the undertaking or its goods<sup>409</sup>; and reduction in the price, annulment of contracts.<sup>410</sup>

124. In some Members, remedies may be ordered as a result of administrative procedures. These include: orders to stop infringements<sup>411</sup>; orders to give adequate information to the consumer<sup>412</sup>; and fines.<sup>413</sup>

125. Not all those Members in which criminal proceedings are possible have provided details of remedies. Some have referred back to the checklist of issues on enforcement or have referred to general legal instruments like the criminal codes.<sup>414</sup> Fines and/or imprisonment seem to be the most frequent sanctions whenever available in the responding Members. The following types of sanctions have been found in the replies: fines<sup>415</sup> or imprisonment<sup>416</sup> or both<sup>417</sup>; damages (or criminal indemnification)<sup>418</sup>; confiscation or "deprivation of goods"<sup>419</sup>; deprivation of rights<sup>420</sup>; temporary or permanent closure of business; and disqualification for the pursuit of the trade.

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<sup>402</sup> Finland (orders) (Q47-49); Germany (Q47/48); Japan (Q47); Korea (Q47); Luxembourg (Q34); New Zealand (Q47); Sweden (prohibition orders) (Annex).

<sup>403</sup> Finland (interim orders) (Q47-49); Liechtenstein (Q47); Norway (Q47-51); Sweden (interim decisions) (Annex); Switzerland (Q47).

<sup>404</sup> Finland (Q47); Germany (Q47-48); Japan (Q47) and Korea (Q47), for infringements committed intentionally or negligently; Liechtenstein (Q47); Lithuania (Q48); Norway (Q47-51); Switzerland (Q47); Turkey (Q47).

<sup>405</sup> Liechtenstein (Q47).

<sup>406</sup> Korea (Q47); Lithuania (Q48).

<sup>407</sup> Korea (Q47); Lithuania (Q48).

<sup>408</sup> Luxembourg (Q34); Switzerland (Q47).

<sup>409</sup> Lithuania (Q48).

<sup>410</sup> Turkey: in cases involving the consumers (Q47).

<sup>411</sup> Finland: order by the Ombudsman (Q47-49); Korea (Q47).

<sup>412</sup> Sweden: order by the Ombudsman (Annex); Korea (Q47).

<sup>413</sup> Korea, surcharge impose by the Fair Trade Commission (Q47); Netherlands (Q47); Turkey (Q47).

<sup>414</sup> Czech Republic (Q47); Hungary (Q51).

<sup>415</sup> Norway, for negligent but not wilful violations (Q47-51).

<sup>416</sup> Hungary, for felony (Q51).

<sup>417</sup> Denmark: fines or detention under the Marketing Practices Act; under the Danish Food, etc. Act: fine, detention without trial or imprisonment (Q51); Germany: fine and/or imprisonment (Q51); Hong Kong, China under the Trade Descriptions Ordinance: fine and imprisonment (Q51); Japan: fines or imprisonment under the Unfair Competition Prevention Law (Q51); Iceland: under the Competition Act, fines, punitive custody or imprisonment; under the general penal Act: fines may be adjudged concurrently with custody and imprisonment (Q51); Liechtenstein: imprisonment or fine; when the offender is making a business out of it: imprisonment and fine (Q47); Norway: wilful violation of provisions of the Marketing Act is punishable by fines or imprisonment (Q47-51); Switzerland: on complaint, imprisonment or fine under law on unfair competition and law on foodstuffs (Q47).

<sup>418</sup> France (Q48); Sweden provides for a market disruption fee against violations of the Marketing Act; the reply indicates that it is not strictly speaking a criminal sanction but produces the same effect (Q51).

<sup>419</sup> Liechtenstein (Q47); Switzerland (Q47).

<sup>420</sup> Iceland (under the General Penal Act) (Q51).

## B. TRADEMARK LAW

### (a) Protection of IGOs as collective, guarantee or certification marks

126. It would appear that the initiation of enforcement procedures, normally depends on private actions. The persons indicated as entitled to take such action include: the aggrieved person<sup>421</sup>; any interested person or anyone who demonstrates a legal interest<sup>422</sup>; any infringed party<sup>423</sup>; any person or entity<sup>424</sup>; the IGO owner or beneficiary<sup>425</sup>; trade, professional and business associations<sup>426</sup>; and consumer associations.<sup>427</sup> In some Members, the authorized users of such mark (members of the association) may bring action provided certain conditions are fulfilled (e.g. with the consent of the proprietor).<sup>428</sup> It has also been mentioned that, under certain circumstances, licensees of the owner may be entitled to seek enforcement.<sup>429</sup> To the extent that the monitoring of the use of collective, guarantee and certification marks has been addressed, it would appear that it is generally undertaken by the proprietor, or private bodies on his behalf.<sup>430</sup> In general, if the proprietor does not take the necessary steps to prevent the collective mark from being wrongfully used in a manner incompatible with the purposes of the association or the regulations/specification governing the use of the mark, anybody may request the cancellation of the registration. One Member has indicated that the rules submitted to the trademark office in the application for a collective mark must indicate the rights and obligations of the parties concerned in the event of infringement of the mark.<sup>431</sup>

127. It would appear that, in those Members who have referred to this form of protection, the normal judicial enforcement procedures and remedies applicable to trademarks are generally available.<sup>432</sup> In regard to administrative procedures, the possibility of seeking and obtaining action by the customs administration to prevent the importation (and/or exportation and/or transit) of infringing goods has been mentioned.<sup>433</sup>

128. With regard to civil judicial remedies, the following have been mentioned: injunctions<sup>434</sup>; monetary damages<sup>435</sup>; order to reveal the source of objects illegally bearing an IGO<sup>436</sup>; confiscation<sup>437</sup>; destruction<sup>438</sup>; provisional measures<sup>439</sup>; publication of judgments.<sup>440</sup> Some Members have also provided information on criminal sanctions available. These include: imprisonment and/or

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<sup>421</sup> Australia (Q49); United States (Q39).

<sup>422</sup> Switzerland (Q48); United States (Q39).

<sup>423</sup> Switzerland (Q48).

<sup>424</sup> Denmark: any person or entity (Danish Trade Marks Act) (Q48); Iceland (Q48).

<sup>425</sup> Germany (Q47/48); Hong Kong, China (Q48).

<sup>426</sup> Germany (Q47/48); Liechtenstein (if so authorized by their statutes) (Q47); Switzerland (Q48).

<sup>427</sup> Germany (Q47/48); Liechtenstein (if so authorized by their statutes) (Q47); Switzerland (Q48).

<sup>428</sup> Germany (Q47/48).

<sup>429</sup> United States (Q48).

<sup>430</sup> Germany, (Q32/33); Switzerland (Q32); United Kingdom: "trademarks are not monitored by any one entity, simply by interested parties" (Q32).

<sup>431</sup> Germany (Q17-27).

<sup>432</sup> Denmark: courts of law (Q49); Germany: civil chambers of the Regional Courts (*Landgericht*) have exclusive jurisdiction for litigation regarding IGOs, regardless of the value in dispute. Most *Länder* have concentrated such litigation with one regional court (Q49); United Kingdom: civil courts (Q39,47).

<sup>433</sup> Germany: for import, export and in transit goods (Q47/48); Switzerland, which also extend border measures to exported goods but not goods in transit (Q47); United States: importation (Q49).

<sup>434</sup> Canada (Q39); Liechtenstein (Q47); Switzerland (Q47).

<sup>435</sup> Canada (Q39).

<sup>436</sup> Liechtenstein (Q47); Switzerland (Q47).

<sup>437</sup> Liechtenstein (Q47); Switzerland (Q47).

<sup>438</sup> Liechtenstein (Q47); Switzerland (Q47).

<sup>439</sup> Liechtenstein (Q47); Switzerland (Q47).

<sup>440</sup> Liechtenstein (Q47); Switzerland (Q47).

finer or other measures such as deprivation of goods, disqualification, closure of trade.<sup>441</sup> The main administrative measures that have been referred to are those taken at the border.

(b) Protection of IGOs as individual trademarks

129. Where information has been provided, it would appear that the usual means of recourse in respect of trademark infringements are available – civil and criminal procedures and action at the border with the assistance of the customs administration.<sup>442</sup>

C. SPECIAL PROTECTION

(a) Persons entitled to initiate enforcement procedures

(i) *Ex officio action*

130. Some Members have indicated that enforcement proceedings regarding the misuse of IGOs protected under special legislation may be initiated *ex officio*.<sup>443</sup> In some cases, this may be as a result of the monitoring activities of the administrative bodies which have been referred to in Section V above, with actions taken either by the monitoring body itself or by another public authority on its request. Actions may also be initiated *ex officio* on the basis of a complaint.<sup>444</sup> It would appear that *ex officio* action is stressed in particular in those countries where IGOs are owned by the state, although direct recourse by private parties may also be possible.<sup>445</sup>

131. *Ex officio* action may also be taken to initiate criminal procedures.<sup>446</sup> One Member has indicated that, if the alleged infringer is not making a business of his infringing activity, such action will be initiated on a complaint, otherwise the authorities will take action spontaneously.<sup>447</sup>

(ii) *Private right of action*

132. In regard to private rights of action, the categories referred to in sub-section A(a)(ii) above concerning laws focusing on business practices can also be identified: namely, first, a broad definition of interested parties<sup>448</sup>; second, producers, persons representing producer or business

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<sup>441</sup> Austria: fines for infringements of IGOs protected as collective marks (Q51); Bulgaria: deprivation on behalf of the state of goods on the basis of a penal injunction issued by the president of the Patent Office (Q49); United Kingdom (Q51).

<sup>442</sup> Hong Kong, China (Q48); United States (Q39,49).

<sup>443</sup> Australia, in respect of wine or grape products, the Australian Wine and Brandy Corporation (Q48) and, in respect of spirits other than wine or grape products, the relevant authorities such as the Australian Quarantine Inspection Service (Q33); Belgium, economic inspection authority (Q33); Cuba (Q35,46); Germany, in respect of wines: officials of the competent surveillance authorities, including the wine inspectors; in case of imminent danger, also all other police officers (Q49); Ireland: authorized officers appointed by the Minister under relevant statutory instruments (Q48); Korea, in respect of agricultural and fisheries products and their processed products, the National Agricultural Products Quality Management Service (Q48); Romania: Ministry of Agriculture and Food (Q48).

<sup>444</sup> Australia (Q33); in Austria (Q33), Belgium (Q34), European Communities (Q47), France (Q47) and the United Kingdom (Q47), complaints can be filed with administrative authorities such as the Ministry of Agriculture, the Ministry of Economy, another public institution, or a local council; Mexico (Replies 52,53,55).

<sup>445</sup> Ecuador (Q48); Mexico (Reply 55); Peru (Q48).

<sup>446</sup> Czech Republic, the prosecuting council who is obliged to prosecute all criminal acts he/she is aware of (Q51); the public prosecutor or police in Belgium, Germany, France, Italy, Portugal and Spain (EC Q47).

<sup>447</sup> Switzerland (Q47).

<sup>448</sup> Cuba (Q35,46); Estonia (Q48); European Communities (Q47); France (Q48); Greece (Q33); Peru (Q34); Romania (Q48); Switzerland (Q48).



interests<sup>449</sup>; and, third, those representing consumer interests.<sup>450</sup> However, in regard to special protection it would seem that there is more emphasis on producer interests, even if this is not necessarily exclusive. Some Members have only referred to authorized/registered users or proprietors of recognized IGOs as having a right of action.<sup>451</sup>

(b) Authorities responsible for enforcement proceedings

(i) *Administrative procedures*

133. In some Members, administrative procedures exist for the enforcement of special protection of IGOs, either exclusively or in addition to other procedures.<sup>452</sup> In some Members, the Ombudsman or the Ministry of Agriculture or another public body may have the authority to receive complaints, investigate them and issue remedial orders. Enforcement of such orders may depend on such bodies bringing the case to the public prosecutor. It has been indicated that any action by such administrative authorities may be appealed to the Minister and to administrative courts.<sup>453</sup> In regard to its law providing special protection for IGOs for wines and spirits, the only enforcement procedure that one Member has indicated is the authority of the Finance Minister to order manufacturers or sellers to observe the standard in question.<sup>454</sup> Other Members, one of which only in regard to wines and spirits, have also referred to an exclusively administrative mechanism, but subject to judicial review.<sup>455</sup> Reference has also been made to the applicability of border enforcement procedures.<sup>456</sup> Certain administrative authorities may also have a mediatory role in seeking to resolve disputes without the formal recourse to legal procedures<sup>457</sup> or play an investigatory or advisory role in the proceedings conducted by other bodies.<sup>458</sup>

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<sup>449</sup> France (Q27,48); Italy (Q48); Liechtenstein (Q48); Switzerland: in the context of the Law on the Protection of Trademarks and Indications of Source (Q48); Turkey (Q48,51).

<sup>450</sup> Australia (Q48); Liechtenstein (Q48); Switzerland: in the context of the Law on the Protection of Trademarks and Indications of Source (Q47); Turkey (Q48,51).

<sup>451</sup> Czech Republic (Q48); Hungary (Q1,48); Korea, in respect of agricultural and fisheries products and their processed products (Q48); Morocco (Q47,48); Poland (Q48); Slovak Republic (Q48); Slovenia (Q48); United States (Q48); Uruguay (Q48).

<sup>452</sup> Australia, for spirits, Administrative Appeals Board (Q49); Cuba: Cuban Industrial Property Office, "although appeals against its rulings may be made through the judicial system" (Q48,49); Mexico, IMPI (Reply 53); Peru, INDECOPI Distinguishing Signs Office (Q33,49); Uruguay: "[r]ights are enforced by means of administrative proceedings before the National Directorate of Industrial Property, an application for annulment before the Administrative Tribunal, and civil and criminal proceedings before the competent courts" (Q47,49).

<sup>453</sup> European Communities, referring to practices in some EC member States (Q47).

<sup>454</sup> Japan (Q47).

<sup>455</sup> Peru: "The decisions of the second administrative tribunal (INDECOPI Tribunal for the Defence of Competition and Intellectual Property) may be challenged judicially" (Q49). United States: "Complaints related to the misuse of a geographical indication in labels or advertising of wines and distilled spirits are resolved by ATF. An aggrieved party may file a complaint alleging misuse of a geographical indication with ATF. ATF will investigate the matter, and will give all interested parties an opportunity to present evidence in support of their positions. Based on evidence presented, ATF will make a determination as to whether the geographical indication has been misused. This approach enables ATF to evaluate the use of a particular designation of geographic significance and determine on a case-by-case basis whether the use of such designation is in accordance with the laws, regulations and obligations of the United States. In addition, ATF actions are subject to judicial review in federal courts" (Q47).

<sup>456</sup> Hungary (Q48); Switzerland in regard to its Law on the Protection of Trademarks and Indications of Source (Q47,49).

<sup>457</sup> In Australia, under its legislation on wines and brandy, dispute resolution in the first instance is through discussion with the Australian Wine and Brandy Corporation representatives (Q49). This may also be the case for the Ombudsman in some countries.

<sup>458</sup> Mexico, IMPI in criminal proceedings (Reply 55).

(ii) *Judicial procedures*

134. In general, action may be brought before the civil courts and, in some cases, criminal ones as well.<sup>459</sup> Some countries have indicated that criminal proceedings are not available.<sup>460</sup> In some Members, the applicability of criminal procedures depends on the wilfulness and/or scale of the contested act.

(c) Remedies

135. The main civil remedies that have been referred to are injunctions<sup>461</sup> and damages.<sup>462</sup> Declaratory judgements<sup>463</sup>, orders to disclose the source of goods<sup>464</sup>, confiscation and destruction<sup>465</sup>, seizure of revenues<sup>466</sup> and the publication of judgements<sup>467</sup> have also been mentioned. Some Members have also referred to provisional measures or interim injunctions.<sup>468</sup> Criminal penalties generally consist of imprisonment and/or fines.<sup>469</sup> As regards administrative procedures, the main remedies indicated are orders to stop the infringement and/or to give adequate information to the consumer<sup>470</sup>, fines<sup>471</sup>, increased supervision<sup>472</sup> and publication of disciplinary decisions.<sup>473</sup>

D. FOREIGN IGOs

136. Little information has been provided specifically on the use of enforcement mechanisms in respect of foreign IGOs. It will be recalled that earlier sections of this note, notably section III, have discussed the extent to which laws apply equally to foreign IGOs, the extent to which protection is dependent on recognition in the country of origin and the way in which foreign IGOs can obtain recognition where necessary. Some Members have specifically indicated that rights in foreign IGOs, where they exist in their jurisdictions, are enforceable by foreign nationals.<sup>474</sup> One Member has

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<sup>459</sup> Australia (Q49); in Belgium, France, Italy and Spain (EC Q47); Czech Republic: civil courts (Regional Courts and the Municipal Court in Prague) as well as criminal procedure initiated by the prosecuting counsel (Q49,51); Ecuador: district intellectual property courts and for criminal offences, criminal courts (Q49); Estonia (Q49,51); Hungary: Metropolitan Court and for appeal, the Supreme Court for civil cases; for criminal procedures: local court and in second instance, county courts (Q49); Mexico (Reply 55); Morocco: commercial courts in respect of civil and criminal proceedings under law 17/97 on the Protection of Industrial Property (Q49,51). In respect of wines, the "entity empowered to rule on the rights attached to appellations of origin is the National Wine Commission. In criminal actions, it is the court of first instance in the place of residence of the wine-maker that is competent to rule on any disputes over rights to appellations of origin for wines (Q49); Poland: Civil regional courts decide infringement cases (Q49); Portugal (Q51); Slovenia: District Court of Ljubljana (Q49,51); Switzerland (Q47); Uruguay (Q47,49).

<sup>460</sup> Canada (Q51); New Zealand (Q51); Peru (Q51).

<sup>461</sup> Australia (Q48); Canada (Q47); European Communities (Q47); New Zealand (Q47).

<sup>462</sup> Canada (Q47); European Communities (Q47).

<sup>463</sup> Switzerland (Q47).

<sup>464</sup> Switzerland (Q47).

<sup>465</sup> Bulgaria: deprivation of goods, imported or produced in Bulgaria (Q47); Switzerland (Q47).

<sup>466</sup> Belgium (Q34,49).

<sup>467</sup> Switzerland (Q47).

<sup>468</sup> Australia (Q48); Belgium (Q34,49).

<sup>469</sup> Bulgaria (Q47); Germany Q51 (EC Q47); Hungary (Q51); Korea, in respect of agricultural and fisheries products and their processed products (47,51); Morocco (Q51); Poland (Q51); Romania (Q51); Spain Q51 (EC,Q47); Switzerland (Q47); United States (Q51).

<sup>470</sup> As stated earlier, it has been indicated that the enforcement of such remedies may be through the initiation of courts proceedings by the public prosecutor (EC Q47).

<sup>471</sup> Germany (Q51); Japan (Q51); Netherlands (Q51); Turkey (Q47).

<sup>472</sup> Netherlands (Q51).

<sup>473</sup> Netherlands (Q51).

<sup>474</sup> Australia has indicated that "for goods other than wine, and services, there is no provision under any of the cited legislation (Australian Wine and Brandy Corporation Act 1980, Trade Practices Act 1974, Australian Food Standards Code Spirit Standard and state and territory Fair Trading Acts) which restricts the

indicated that in its law relating to IGOs for wines the standing of foreign nationals and organizations to institute proceedings under certain provisions of the Act may depend on the conclusion of an agreement with the country of those persons or organizations.<sup>475</sup> Another Member has addressed the question of the extent to which foreign governments may have standing to initiate enforcement procedures, indicating that in general it is unlikely that national governments from WTO Members may have standing to file complaints.<sup>476</sup>

#### E. COSTS

137. Not all the replies have provided information on the costs involved in proceedings, some referring to the information provided in their responses to the Checklist of Issues on Enforcement (document IP/C/5). Among the replies, some are very detailed and contain for example a schedule of court fees.<sup>477</sup> Some other just mention the legal text on fees/costs or the type of fees/costs.<sup>478</sup>

138. When the replies contain information on costs, the following main features can be drawn. Fees seem to be required in all civil procedures described. The normal court costs for civil procedures seem to apply to disputes relating to IGOs.<sup>479</sup> For example, costs for actions before a court are determined according to the same rules as for other rights in civil proceedings in accordance to the value of the case in dispute<sup>480</sup>, the duration of the dispute, in particular the number and duration of the court hearings<sup>481</sup> or in accordance with the complexity of the litigation.<sup>482</sup> The level of the fees may also depend on the level of superiority of the court and the type of action brought.<sup>483</sup> Other costs have been mentioned (costs for experts and fees paid to witnesses).<sup>484</sup> It has also been reported that the losing party may have to bear the costs of the winning party, which could include lawyer's fees.<sup>485</sup>

139. It would appear that actions initiated ex officio do not incur costs for private parties<sup>486</sup>. The same seems to apply, at least in some cases, when disputes are brought before an administrative body.<sup>487</sup>

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right of foreign nationals to take action under these acts to enforce protection of geographical indications" (Q15); France has stated that "any foreigner who is the owner of intellectual property rights protected in France may have them enforced in any court, in accordance with the same rules of attribution of jurisdiction" (Q27).

<sup>475</sup> Australia (Q48).

<sup>476</sup> European Communities, referring to the situation in its member States and indicating that only Italy provides for such a possibility (Q47).

<sup>477</sup> Canada has given a detailed schedule of fees in the superior court of each province (Q49); Germany (Q49); Liechtenstein gave detailed information on the costs of lawyers and courts expenses (Q49).

<sup>478</sup> Cuba (Q49); Czech Republic: judicial fees (Q49); Hungary (Q49); Uruguay: "fee and taxes" (Q49).

<sup>479</sup> Italy: "specific fees are not foreseen, but only the normal court costs" (Q49).

<sup>480</sup> Germany (Q49); Liechtenstein (Q49).

<sup>481</sup> Liechtenstein (Q19).

<sup>482</sup> United States (Q49).

<sup>483</sup> Australia (Q49).

<sup>484</sup> Estonia: in relation to criminal proceedings (Q49); Liechtenstein (Q49).

<sup>485</sup> Finland: for actions before the Market Court: the plaintiff is responsible for the disbursement of the trial fee (Q47-49); Germany (Q49).

<sup>486</sup> Hungary (Q49); Turkey: however the "convict should pay the expenses at the end of the procedure" (Act of criminal procedure) (Q49).

<sup>487</sup> Australia (Q49); Denmark (Q48-49); Finland (Q47-49).

## VIII. RELATIONSHIP TO TRADEMARKS

### A. PROTECTION AGAINST REGISTRATION OF IGOs AS TRADEMARKS

140. Virtually all Members who responded to the questionnaires indicated that their legal systems provide some form of protection against the registration as trademarks of signs containing or consisting of IGOs, including through the subsequent invalidation of trademarks incorrectly registered. Viewed from the perspective of which IGOs can benefit from such protection, the following categories can be identified:

- (a) In many countries, any IGO can benefit from such protection, pursuant to the general criteria for the registrability of trademarks. For example, many Members have indicated that the registration of such a trademark will be refused if it is likely to confuse, deceive or mislead the public as to the geographical origin or the identity of the goods to which it applies or would involve unfair exploitation of its reputation and renown.<sup>488</sup> A sign containing or consisting of an IGO may also fail to satisfy the criteria that a trademark must be distinctive because the IGO serves to describe the origin, nature or quality of goods.<sup>489</sup>

In some countries, any IGO may benefit from protection against registration as a trademark without having to satisfy the above tests provided that the sign for which trademark registration is sought consists exclusively of a protected geographical indication or of an indication which may serve, in trade, to designate the geographical origin of goods.<sup>490</sup> Some Members have indicated that such signs are considered to be inherently non-distinctive.<sup>491</sup>

In respect of each of the above situations, there are in some countries exceptions for circumstances where the sign in question has acquired distinctiveness through use<sup>492</sup>, is fanciful<sup>493</sup>, is inherently capable of distinguishing the applicant's goods<sup>494</sup>, or in the case of foreign geographical names, has been registered in the country of origin and does not mislead the public as to the origin of the products or services.<sup>495</sup> In some countries, a mark which contains as one of its elements an IGO may nevertheless be

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<sup>488</sup> Australia (Q46); Bulgaria (Add.Q4); Cuba (Q44); Czech Republic (Add.Q4); Estonia (Q44); European Communities (Q44); Finland (Q44-46); France (Q44,46); Germany (Q44-46); Greece (Add.Q4); Hong Kong, China (Q4,6); Hungary (Add.Q4); Japan, in respect of wines and spirits (Q1); Korea (Q1); Liechtenstein (Q44); Lithuania (Q4,44); Morocco, under Article 135(c) of Law 17/97 on the Protection of Industrial Property (Q44,45,46); Mexico (Replies 6 and 49); New Zealand (Q46); Norway (Q1); Peru (Q2,7); Poland (Q44); Romania (Add.Q4); Slovak Republic (Q7); Spain (Q44); Switzerland (Q44); United Kingdom (Add.Q4); United States (Q1 unless the mark was registered or required distinctiveness or was in lawful use prior to 8 December 1993); Venezuela (Add.Q4).

<sup>489</sup> Australia (Q46); Korea (Q1); Morocco, under Article 134(b) of Law 17/97 on the Protection of Industrial Property (Q44);

<sup>490</sup> Cuba (Q44); Czech Republic (Q44); Denmark (Q44); Estonia (Q44); European Communities (Q44,46); France (Q46); Germany (Q7); Iceland (Q44); Korea (Q1); Netherlands (Q44-46); Peru (Q2,7); Spain (Q7,44); Turkey (Q44/45/46); Uruguay: "[d]omestic legislation does not allow the registration of appellations of origin as trademarks. However, indications of source may be registered as trademarks provided that their use is not liable to create confusion regarding the origin, source, qualities or characteristics of the goods or services for which the trademark is used" (Q44,46).

<sup>491</sup> France (Q46); Switzerland (Q44).

<sup>492</sup> Denmark (Q44); Germany (Q7); Iceland (Q44).

<sup>493</sup> Switzerland (Q21).

<sup>494</sup> Australia (Q46).

<sup>495</sup> Liechtenstein (Q27); Switzerland (Q27,44).

registerable if the use of the mark is limited to goods originating in the area designated by the IGO<sup>496</sup> or the applicant resides in that area.<sup>497</sup>

It would appear that if a trademark was registered inconsistently with the above provisions or has ceased to be consistent with them, its registration may be susceptible to revocation, invalidation or cancellation.

- (b) Many countries have special regimes for certain IGOs which provide protection against the registration as trademarks of signs which consist of or comprise the IGOs in question without the need to consider the sorts of tests referred to in subparagraph (a) above.<sup>498</sup> In some countries, the coverage of IGOs which benefit corresponds to that of the special means for the protection of IGOs applicable in those countries and the IGO in question must have the status of a recognized IGO in that country.<sup>499</sup> For others, it would seem that this protection is available in respect of IGOs for the products concerned without such a status having to be established.<sup>500</sup> Some Members have indicated that they are planning to introduce such provisions in respect of wines and spirits.<sup>501</sup> In some cases this protection appears to apply both to products coming from the area designated by the IGO and those not so coming<sup>502</sup>, while in others it is limited to products which do not come from the geographical area designated by the IGO.<sup>503</sup>

It has also been pointed out that, where trademark registration will be refused for signs which reproduce, imitate or contain an "appellation of origin" that is protected with respect to the same products, this may also be the case where use of such a trademark could lead to confusion or mistaken association with the "appellation of origin" or involve unfair exploitation of its renown.<sup>504</sup>

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<sup>496</sup> Australia (Q46); Denmark (Q44). Hong Kong, China: "Some applicants from other countries have made applications to Hong Kong, China for ordinary trademarks which incorporate 'geographical indications'. [...] The Registrar of Trademarks does not reject such marks, provided there is a distinctive element in the mark. In these cases, the Registrar requires that part of the mark which is a 'geographical indication' to be disclaimed and may also impose a condition of origin (so as to avoid deception). For example, "Courvoisier Le Cognac de Napoleon" should be used only on Cognac brandy produced in France; and "Champagne de Venoge" shall be used only on champagne produced in Epernay, France.

<sup>497</sup> Denmark (Q44); Iceland (Q44).

<sup>498</sup> Australia (Q46); Bulgaria (Q46); Canada (Q46); European Communities (Q44); Hungary (Q7); Japan (Q1); Korea (Q7,Add.Q4); Norway, in respect of wines and spirits (Q1); Peru (Q7); Poland (Q7,Add.Q4); Romania (Add.Q4); Slovak Republic (Q7); Sweden (Q44); Switzerland (Q27); United States (Q1) (if first used by the trademark applicant on or after 1 January 1996); Uruguay, in respect of appellations of origin (Q44). The Czech Republic indicated in its comments on JOB(00)/5619, the preliminary version of the summary paper that, following the adoption of new legislation, i.e. Act 116/2000, it now has such provisions in respect of wines and spirits.

<sup>499</sup> Canada (Q46); European Communities (Q44); Finland (Q44-46); France (Q46); Hungary (Q7); Japan (Q1,46); New Zealand (Q46); Peru (Q2,7); Venezuela (Add.Q4). New Zealand clarified in its comments on JOB(00)/5619, the preliminary version of the present summary paper, that this special protection is in addition to the protection afforded to the general protection referred to in paragraph 140(a) above.

<sup>500</sup> The European Communities, in respect of wines and spirits, under the Community Trademark Regulation (Q44); France (Q46); Lithuania, in respect of wines and spirits (Q4,44, Add.Q1); United States (Q1).

<sup>501</sup> Netherlands, in respect of the Benelux Trademark Law (Q44-46). The Czech Republic has indicated in its comments on JOB(00)/5619, the preliminary version of the present summary paper, that this protection has meanwhile been introduced.

<sup>502</sup> Canada (Q46); France (Q46); New Zealand (Q46).

<sup>503</sup> Japan (Q1); Norway (Q1); Slovak Republic (Q7); United States (Q1).

<sup>504</sup> Peru (Q2,7).

141. On the whole, Members have not indicated definitions of IGOs that are used under their trademark laws for the purpose of their protection against registration as trademarks. However, a few definitions used for this purpose have been provided or referred to.<sup>505</sup>

142. On the whole, no information has been provided on procedures that have to be met for an IGO to be eligible for this sort of protection. However, one Member has indicated that its industrial property office designates national IGOs for wines and spirits that will benefit from this protection. This Member has stated that such designation is to be awarded to manufacturers of wines or spirits that have filed applications and that no procedures exist for filing an opposition to such a designation. While IGOs of other WTO Members are not so designated, they are also eligible for the same protection. This protection is also accorded by this Member to "appellations of origin" for wines and spirits that are registered under the Lisbon Agreement, it being noteworthy that the Member in question is not party to the Lisbon Agreement.<sup>506</sup>

143. In regard to the question of the extent to which "indirect" IGOs might benefit from protection against registration as trademarks, relatively little explicit information has been provided. However, one Member has indicated that a term that does not identify a geographic place is unlikely to be considered a "geographical indication" for the purposes of refusal to register.<sup>507</sup> Another has stated that the provisions of the trademark law in this respect apply to both "direct" and "indirect" geographical indications.<sup>508</sup> Some other Members have indicated that this form of protection can apply against the registration as trademarks of signs which "evoke" recognized IGOs.<sup>509</sup>

144. In the information that has been given, the following procedures for preventing registration of IGOs as trademarks have been referred to:

- ex officio action by the intellectual property office to refuse the registration<sup>510</sup>;
- opposition procedures following publication of the application by the intellectual property office<sup>511</sup>;
- post-registration procedures to have the registration invalidated, cancelled, removed or amended.<sup>512</sup>

145. The information provided indicates that, in general, opposition to trademark registrations is administrative (i.e. before the intellectual property office) whereas the cancellation of a registered trademark is generally initiated before a court, although in some countries administrative action may

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<sup>505</sup> Australia: definition of "geographical indication" in its Trade Marks Act 1995 (Q8); Japan: definition of "origin" in the Trademark Examination Guidelines (Q8); Lithuania, definition of "geographical indication" in its Law on Trademarks (Q4,44); United Kingdom, detailed guidance is provided in the Trade Marks Registry Work Manual for trademark examiners on the acceptability of geographical indications for registration as trademarks (Q8,10); United States: definition used in the Trademark Manual of Examining Procedure (Q8).

<sup>506</sup> Japan (Q1): "unless those international registrations have been [...] hampered due to any inevitable reasons."

<sup>507</sup> United States (Q8).

<sup>508</sup> Germany (Q7).

<sup>509</sup> The European Communities, in respect of agricultural products and foodstuffs other than wines and spirits (Q7); Hungary (Q7).

<sup>510</sup> Australia (Q19,46); Denmark (Q47,48); Hong Kong, China: unless there is a distinctive element in the mark (Q6); Iceland (Q48); Japan (Q1); Korea (Q46); United Kingdom (Q44).

<sup>511</sup> Australia (Q46,49); Hong Kong, China (Q6); United States (Q25).

<sup>512</sup> Australia (Q46); Cuba (Q46); European Communities (Q44); Finland (Q44-46); Germany (Q7); Hong Kong, China (Q6); Korea (Q46); Lithuania (Q47); United States (Q25).

also be possible.<sup>513</sup> It has been indicated that decisions of the intellectual property office can be appealed to a court.<sup>514</sup>

146. Although not all Members that have provided information have explicitly addressed this point, it would seem that, in general, protection against registration as a trademark of the sort described in paragraph 140(a) is available to foreign IGOs on the same basis as to national IGOs and without any specific requirement that the IGO be protected as a geographical indication in the country of origin.<sup>515</sup> In regard to the product-specific protection of the sort described in paragraph 140(b) above, it will be noted that in some countries an IGO must have been duly recognized as a protected IGO to be eligible for such protection. One Member has indicated that non-use of an IGO for the designated goods in the country of origin can constitute a defence in a proceeding opposing registration of a trademark on the ground that it contains or consists of a geographical indication.<sup>516</sup>

## B. POSSIBLE CONFLICTS

147. Not all Members have provided information about how possible conflicts between simultaneous applications for a trademark registration and recognition of an IGO or between a prior trademark right and an application for recognition of an IGO are handled. Some have done so in general terms, for example referring to the priority of the rights in conflict<sup>517</sup> or the better and/or prior right.<sup>518</sup>

### (a) Simultaneous applications

148. The provisions referred to in sub-section A above would appear to apply generally to applications for the registration as trademarks of signs which consist of or comprise IGOs which are already protected in the country in question. Some information has been provided about the way in which conflicting applications for trademarks and IGOs are handled. Under one system, any trademark application of this sort which is submitted after the date of publication of the IGO for possible objections to its recognition shall be refused and, if the trademark was registered after that date of publication, it will be invalidated.<sup>519</sup> Another Member has indicated that the priority date of the applications is used.<sup>520</sup>

### (b) Prior trademark rights

149. In some Members, it would seem that applications for recognition of an IGO which conflicts with a pre-existing trademark will be refused on that ground.<sup>521</sup> One Member has indicated that this

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<sup>513</sup> Iceland (Q47); Lithuania (Q46); Norway (Q47-51); United States: opposition and cancellation are administrative under the USPTO; cancellation may also be initiated before a judiciary body (Q25).

<sup>514</sup> Australia (Q49); Cuba (Q49); Lithuania (Q47).

<sup>515</sup> This is explicitly confirmed by Germany (Q7); the United States (Q15,16).

<sup>516</sup> Australia (Q16).

<sup>517</sup> Germany (Q44-46).

<sup>518</sup> Peru (Q44/45/46); Slovenia has referred to the conflict between the prior right to an IGO and an application for the registration of a sign as mark, in which case the latter shall not be eligible for registration unless the owner of the earlier right gives his express consent to the registration of the sign (Article 44(1)(f) of the Industrial Property Act) (Q46).

<sup>519</sup> European Communities in respect of agricultural products and foodstuffs other than wines and spirits (Q44); see also Belgium (Q44).

<sup>520</sup> Estonia (Q44-45); Hungary (Q44-45). While these dates are used, which prevails depends on substantive rules, which are indicated in the subsequent paragraphs of the note.

<sup>521</sup> Australia, unless the trademark owner gives permission (Q45); Poland, unless he surrenders his right". However, such surrender "shall not be required, where in the application of the geographical indication for registration, filed in agreement with the holder of the trademark registration, the latter is mentioned among the parties authorised to use that indication and the maintenance of his right is not supposed to entail excessive restrictions on freedom to use the geographical indication by other authorised parties" (Q44); In Romania, an

rule applies where the IGO for which recognition is sought is identical to an earlier trademark and is to be used with respect to identical goods.<sup>522</sup> Another has indicated that the extent to which the trademark is well-known in the country will be taken into account in assessing the scope of the conflict.<sup>523</sup>

150. However, it would seem that in some Members an IGO can be recognized where it conflicts with a pre-existing trademark. The following ways of handling such conflicts have been indicated:

- *The degree to which the trademark is long standing.*<sup>524</sup>
- *Liability to mislead the consumer.* Under this criterion, an IGO is not recognized where, in the light of a trademark's reputation, renown and the length of time it has been used, registration is liable to mislead the consumer as to the true identity of the product.<sup>525</sup>
- *Reputation, and use that would be detrimental to or take unfair advantage of the distinctive character of the trademark.* One Member has indicated that recognition of an IGO will be refused, with respect to dissimilar goods, where an earlier trademark has a reputation in the country where the use of the later sign would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trademark.<sup>526</sup>
- *Coexistence.* Some Members have indicated that, in some circumstances, recognition of an IGO can coexist with continued use of a pre-existing trademark, or at least the information contained in it. In some cases, prior registration, application or use of the trademark in good faith is a condition<sup>527</sup> and, in others, eligibility to use the IGO is a condition.<sup>528</sup>
- *Procedures for the resolution of conflicts regarding prior trademark rights.* As indicated in Section IV above, some recognition procedures provide for an opposition procedure, whereby a party with a conflicting prior trademark<sup>529</sup> or prior industrial

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application for registration of an IGO which is opposed on the grounds that it conflicts with a previously protected industrial property right will be refused if the opposition is found justified (Q43).

<sup>522</sup> Hungary (Q44-45).

<sup>523</sup> Australia (Q45).

<sup>524</sup> France (Q44) and Spain (Q44): under the European Community wine regulations, the right to a brand name for a wine which contains the name of a specified region is preserved if that brand name corresponds to the identity of its original holder and if it was registered at least 25 years before the official recognition of the geographical indication and has actually been used since then without interruption.

<sup>525</sup> European Communities, in respect of agricultural products and foodstuffs (Q44); Switzerland (Q44); Hungary, where identical or similar signs and identical or similar goods are involved (Q44-45); Slovenia, under Article 56(d) of the Industrial Property Act (Q46); Turkey (Q44/45/46).

<sup>526</sup> Hungary (Q44-45).

<sup>527</sup> In the European Communities, in respect of agricultural products and foodstuffs other than wines and spirits, use of a trademark registered in good faith before the date on which application for registration of an IGO is lodged may continue notwithstanding the registration of the IGO, where no grounds for invalidity or revocation associated with the risk of the consumer being deceived exist (Q44); in New Zealand, the use of trademarks registered or applied for before the IGO in question became recognized in respect of the same goods is grand-fathered, provided the trademark was registered, applied for or used in good faith before the date of recognition of the IGO (Q46); Slovenia (Q44); in Turkey, only if the trademark was registered or rights in its use were acquired before the IGO became protected in its country of origin or before the date of the Turkish Decree Law containing this provision (Q44-46).

<sup>528</sup> In Switzerland, for agricultural products, the holder of a pre-existing mark may continue to use it provided the holder meets the criteria for the use of the IGO (Q44).

<sup>529</sup> Netherlands – referring to an EC regulation (Q43,44-46); Switzerland (Q44).



property right<sup>530</sup> can object to the proposed registration of an IGO. Another Member has referred to a cancellation procedure after recognition of an IGO, if it conflicts with an earlier trademark, other industrial property right or copyright.<sup>531</sup>

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<sup>530</sup> Romania (Q43,44/45/46).

<sup>531</sup> Hungary (Q44-46).

## ANNEX A

### EXAMPLES OF IGOS PROVIDED BY MEMBERS IN RESPONSE TO QUESTION 6 OF DOCUMENT IP/C/13

<i>Member</i>	<i>Examples</i>	<i>Means of Protection</i> <b>A. Laws on Business Practices</b> <b>B. Trademark Law</b> <b>C. Special Protection</b>
<b>AUSTRALIA</b>		
<b>Wines</b>	"Adelaide Hills", "Langhorne Creek", "Mc Laren Vale", "Great Southern", "Orange", "Hilltops"	C. Register of Protected Names, in accordance with the AWBC Act
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>		
<b>BULGARIA</b>		
<b>Wines</b>	"Traminer from Khan Kroum", "Merlou from Sakar"	C. Law on Trademarks and Industrial Designs
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>	"Bulgarian yoghurt"	C. Law on Trademarks and Industrial Designs
<b>Other Products and Services</b>		
<b>CANADA</b>		
<b>Wines</b>	"Fraser Valley", "Okanagan Valley", "Similkameen Valley", "Vancouver Island"	C. Protected list of geographical indications, according to the Trade-marks Act
<b>Spirits</b>	"Canadian Rye Whisky", "Canadian Whisky"	C. Protected list of geographical indications, according to the Trade-marks Act
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>		
<b>CUBA</b>		
<b>Wines</b>		
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>	18 appellations of origin relating to tobacco and 1 relating to mineral water	C. Protection granted before the application of Decree-law N.228 on geographical indications. Special Provisions 3 and 4 of those regulations maintain the protection afforded to the appellation of origin already registered.
<b>Other Products and Services</b>	1 appellation of origin relating to peloids (medicinal muds)	
<b>CZECH REPUBLIC</b>		
<b>Wines</b>	"Pálavské bílé", "Pavlovické ohnivé", "Slovácký rubín"	C. Register of appellations of origin of products, according to the Law No. 159/1973
<b>Spirits</b>	"Prostějovická starorežná", "Slovácká borovička", "Karlovarská hořká", "Bohemia sekt rosé"	C. Register of appellations of origin of products, according to the Law No. 159/1973
<b>Other Foodstuffs and Agricultural Products</b>	"Plzeňské pivo" (Pilsen Beer), "Budějovické pivo" (Budweis Beer), "Žatecký chmel český" (Saaz Hops), "Tršický chmel moravský", "Úštěcký chmel – český" (Auscha Hops), "Třeboňský kapr"	C. Register of appellations of origin of products, according to the Law No. 159/1973
<b>Other Products and Services</b>	"Jablonecká bižuterie" (Jablonec)	C. Register of appellations of origin of

<i>Member</i>	<i>Examples</i>	<i>Means of Protection</i> <b>A. Laws on Business Practices</b> <b>B. Trademark Law</b> <b>C. Special Protection</b>
	Jewellery), "Český křišťál" (Bohemia Crystal), "Vamberská krajka" (Lace of Vamberk).	products, according to the Law No. 159/1973
<b>ECUADOR</b>		
<b>Wines</b>		
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>		
<b>ESTONIA</b>		
<b>Wines</b>		
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>		
<b>EUROPEAN COMMUNITIES AND THEIR MEMBER STATES</b>		
<b>Wines</b>	"Champagne", "Sherry", "Porto", "Chianti", "Samos", "Rheinhessen", "Moselle luxembourgeoise", "Mittelburgenland"	<b>C.</b> As a first step, recognised geographical indications at the level of a Member State; subsequently recognised at a Community level, according to the Regulations (EEC) No. 823/87 and 2392/89
<b>Spirits</b>	"Cognac", "Brandy de Jerez", "Grappa di Barolo", "Berliner Kummel", "Genièvre Flandres Artois", "Scotch Whisky", "Irish Whiskey", "Tsikoudia from Crete"	<b>C.</b> Regulation (EEC) No. 1576/89
<b>Other Foodstuffs and Agricultural Products</b>	"Scottish beef", "Cabrales", "Roquefort", "Gorgonzola", "Azeite de Moura", "Olive de Kalamata", "Opperdoezer Ronde", "Wachauer Marille", "Danablu", "Lübecker Marzipan", "Svecia", "Queijo do Pico", "Coquille Saint-Jacques des Côtes-d'Armor", "Jamón de Huelva", "Lammefjordsgulerod"	<b>C.</b> Regulation (EEC) No. 2081/92 (simplified and normal procedures)
<b>Other Products and Services</b>		
<b>AUSTRIA</b>		
<b>Wines</b>	Quality wines: "Wachau", "kamptal", "Neusiedler See", "Weststeiermark"	<b>C.</b> Austrian Wine Law 1985
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>	"Wachauer Marille", "Steirisches Kürbiskernöl", "Tiroler Graukäse", "Gailtaler Almkäse", "Vorarlberger Bergkäse"	<b>C.</b> Regulation (EC) No. 2081/92
<b>Other Products and Services</b>		
<b>BELGIUM</b>		
<b>Wines</b>		
<b>Spirits</b>	"Hasseltse jenever" (juniper-flavoured spirit drink)	<b>C.</b> Regulation (EC) No. 1576/89
<b>Other Foodstuffs and Agricultural Products</b>	PDOS: "Fromage de Herve", "Beurre d'Ardenne" PGI: "Jambon d'Ardenne"	<b>C.</b> Royal and Ministerial Decrees
<b>Other Products and Services</b>		

<i>Member</i>	<i>Examples</i>	<i>Means of Protection</i> <b>A. Laws on Business Practices</b> <b>B. Trademark Law</b> <b>C. Special Protection</b>
<b>DENMARK</b>		
<b>Wines</b>		
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>	Danish tomatoes	<b>A.</b> Danish Competition Law (provision of prohibition against misleading advertising)
<b>Other Products and Services</b>		
<b>FINLAND</b>		
<b>Wines</b>		
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>	"Lapin puikula-peruna" (name of a potato brand originating from the Lapland region)	<b>C.</b> Regulation (EC) No. 2081/92
<b>Other Products and Services</b>		
<b>FRANCE</b>		
<b>Wines</b>	"Chateaufort du Pape"	<b>C.</b> Decree of 2 November 1966 (Appellation d'Origine contrôlée – AOC)
	"Southern French wines"	<b>C.</b> Decree of 15 October 1987
<b>Spirits</b>	"Cognac"	<b>C.</b> Decree of 15 May 1935 (AOC)
<b>Other Foodstuffs and Agricultural Products</b>	"Beaufort" (AOC), "Tomme de Savoie" (IGP), "Nyons olive oil" and "Nyons black olives" (AOC), "Landes yellow chicken" (IGP), "Lautrec pink garlic" (IGP)	<b>C.</b> Decrees and Orders
<b>Other Products and Services</b>	"Tahiti Monoi" (AOC)	<b>C.</b> Decree of 1 April 1992
<b>GERMANY</b>		
<b>Wines</b>		
<b>Spirits</b>	"Korn", "Kornbrand"	<b>C.</b> Regulation (EC) No. 1576/89
	"Steinhäger", "Schwarzwälder Kirschwasser"	<b>C.</b> German definitions of spirits drinks (written summary of the generally accepted view on the composition and labelling of the individual categories of spirit drinks, which the German spirit drinks industry has elaborated in agreement with business circles and consumers)
	"Pfälzer Weinbrand"	<b>A.</b> Act on Foodstuffs and Commodities
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>		
<b>GREECE</b>		
<b>Wines</b>	"Nemea", "Mandeneia", "Peza", "Archanes", "Samos", "Mavrodafni from Patras", "Retsina from Attiki", "local wine from Macedonia", "Santorini", "Zitsa"	<b>C.</b> Registered according to Regulations (EEC) No. 2247/73 and 2392/89
<b>Spirits</b>	"Tsikoudia from Creta", "Tsipouro from Macedonia", "Brandy from Attiki", "Brandy from Peloponnesos"	<b>C.</b> Regulation (EEC) No. 1576/89
<b>Other Foodstuffs and Agricultural Products</b>	<u>Cheeses</u> : "Katiki Domokou", "Manouri", "Kefalograviera", "Graviera Naxou"; <u>Olive oils</u> : "Thasos", "Lakonia",	<b>C.</b> Regulation (EC) No. 2081/92

<i>Member</i>	<i>Examples</i>	<i>Means of Protection</i> <b>A. Laws on Business Practices</b> <b>B. Trademark Law</b> <b>C. Special Protection</b>
	"Preveza", "Kranidi Argolidas", "Chania from Creta"; <u>Table olives</u> : "Kalamatas", "Conservilia Amfissas", "Throuba Thasou"; <u>Fruits and vegetables</u> : "kiwi fruit from Sperchios", "apples from Zagora of Pelion", "dried figs from Kymi", "eggplant Tsakoniki from Lonidion", "pistachios from Aegina", "orange from Maleme of Chanea"; <u>Other</u> : "honey from Menalon"	
<b>Other Products and Services</b>		
<b>IRELAND</b>		
<b>Wines</b>		
<b>Spirits</b>	"Irish whiskey", "Irish cream liqueur"	<b>C.</b> Regulation (EEC) No. 1576/89
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>		
<b>ITALY</b>		
<b>Wines</b>	"Molise" (DOC)	<b>C.</b> Law 164 of 10 February 1992
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>	"Tuscany" (olive oil, DOC)	<b>C.</b> Law 169 of 5 February 1992, concerning the controlled designations of origin of olive oils
<b>Other Products and Services</b>		
<b>LUXEMBOURG</b>		
<b>Wines</b>	"Marque nationale luxembourgeoise": "vins mousseux", "vins", "Crémant de Luxembourg"	<b>C.</b> Regulations of the Government, Grand-Ducal Regulation of 13 November 1998, under the Regulation (EEC) No. 823/97
<b>Spirits</b>	"Marque nationale luxembourgeoise": eau-de-vie de pommes, de poires, de kirsch, de quetsch, de mirabelle, de prunelles, de marc, de seigle	<b>C.</b> Regulations of the Government, under the Regulation (EEC) No. 1576/89
<b>Other Foodstuffs and Agricultural Products</b>	"Marque nationale grand-duché de Luxembourg": "viande de porc", "salaisons fumées", "miel luxembourgeois", "beurre rose"	<b>C.</b> Regulations of the Government
<b>Other Products and Services</b>		
<b>NETHERLANDS</b>		
<b>Wines</b>	"Made in Holland"	<b>A/B.</b> Dutch Advertising Code, Benelux Trademark Law <b>C.</b> Agriculture quality regulations and regulations adopted under the Industrial Organisation Act
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>		
<b>PORTUGAL</b>		
<b>Wines</b>	"Vinho Regional Alentejo"	<b>C.</b> Decree-Law 429/86 of 29 December
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>	"Cabrito da Gralheira", "Citirinos do Algarve", "Azeites do Norte Alentejano"	<b>C.</b> Regulation (EC) No. 2081/92
<b>Other Products and Services</b>		

<i>Member</i>	<i>Examples</i>	<i>Means of Protection</i> <b>A. Laws on Business Practices</b> <b>B. Trademark Law</b> <b>C. Special Protection</b>
<b>SPAIN</b>		
<b>Wines</b>	<u>"Quality wines produced in a specified region"</u> : "Jerez-Xeres-Sherry", "Manzanilla Sanlucar de Barremeda", "Malaga", "Montilla-Moriles", "Rioja", "Ribera del Duero"	<b>C.</b> First approval by the corresponding Autonomous Community, then ratification by the Spanish State; recognition at Community level under Regulation (EEC) No. 823/87, and protection under Regulations (EEC) No. 823/87 and 2392/89
	<u>Vinos de la tierra</u> : "Medina del Campo", "Ribera del Arlanza", "Manchuela", "Cebreros"	<b>C.</b> Approval by the corresponding Autonomous Community, based on Regulations (EEC) No. 822/87 and 2392/89
<b>Spirits</b>	"Brandy de Jerez", "Pacahran Navarro", "Orujo de Galicia", "Chinchon", "Palo de Mallorca"	<b>C.</b> Regulation (EEC) No. 1576/89
<b>Other Foodstuffs and Agricultural Products</b>	"Manchego" (cheese), "Baena", "Guijuelo", "Alcarria" (honey), "Navarre" (asparagus), "Huelva" (ham), "Gallega veal", "Almagro" (aubergine)	<b>C.</b> Simplified and normal procedure under Regulation (EC) No. 2081/92
<b>Other Products and Services</b>		
<b>SWEDEN</b>		
<b>Wines</b>		
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>		
<b>UNITED KINGDOM</b>		
<b>Wines</b>	"Champagne"	<b>A.</b> Common law tort of passing off
<b>Spirits</b>	"Scotch Whisky"	<b>A.</b> Common law tort of passing off
<b>Other Foodstuffs and Agricultural Products</b>	"Swiss chocolate"	<b>A.</b> Common law tort of passing off
	"Stilton" (cheese)	<b>B.</b> Trade Marks Act 1994 (certification/collective marks)
	<u>"Protected designations of origin"</u> : "Beacon Fell traditional Lancashire cheese", "Bonchester cheese", "Buxton blue", "Dovedale cheese", "Single Gloucester", "Swaledale cheese"/"Swaledale ewes' cheese", "White Stilton cheese"/"Blue Stilton cheese", "West Country Farmhouse Cheddar cheese", "Orkney beef", "Orkney lamb", "Shetland lamb", "Jersey Royal potatoes", "Cornish clotted cream"; <u>"Protected geographical indications"</u> : "Newcastle brown ale", "Kentish ale" and "Kentish strong ale", "Rutland bitter", "gloucestershire cider/perry", "Herefordshire cider/perry", "Worcestershire cider/perry", "Teviotdale cheese", "Whitstable oysters", "Scotch beef", "Scotch lamb"	<b>C.</b> Regulation (EC) No. 2081/92
<b>Other Products and Services</b>	"Shetland" (wool)	<b>B.</b> Trade Marks Act 1994 (certification/collective marks)
<b>HONG KONG, CHINA</b>		
<b>Wines</b>	"Champagne"	<b>B.</b> Trade Marks Ordinance (Cap. 43)

<i>Member</i>	<i>Examples</i>	<i>Means of Protection</i> <b>A. Laws on Business Practices</b> <b>B. Trademark Law</b> <b>C. Special Protection</b>
<b>Spirits</b>	"Cognac"	(an IGO can be part of a trademark, but has to be disclaimed and/or registration of the trademark will be subject to the condition that the products on which it is used originate in the area of the IGO)
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>		
HUNGARY		
<b>Wines</b>	"Eger" (wine)	<b>C.</b> Pending application under the Act on the Protection of Trademarks and Geographical Indications
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>	"Szatmar" (plum)	<b>C.</b> Pending application under the Act on the Protection of Trademarks and Geographical Indications
<b>Other Products and Services</b>		
ICELAND		
<b>Wines</b>		
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>		
JAPAN		
<b>Wines</b>		
<b>Spirits</b>	"IKI", "KUMA", "RYUKYU"	<b>B/C.</b> Trademark Law, Law concerning Liquor Business Association and Measures for Securing Revenue from Liquor Tax (and Cabinet Order implementing that law), and Standard for indication relevant to geographical indication
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>		
KOREA		
<b>Wines</b>		
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>		
LIECHTENSTEIN		
<b>Wines</b>		
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>	"Malbuner" (meat products)	<b>C.</b> Trademark Act 1996 (Law Regarding the Protection of Trademarks and Geographical Indications)
<b>Other Products and Services</b>	"Balzers" (high technology enterprise)	<b>C.</b> Trademark Act 1996 (Law Regarding the Protection of Trademarks and Geographical Indications)
LITHUANIA		
<b>Wines</b>		
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>		
MEXICO		
<b>Wines</b>		

<i>Member</i>	<i>Examples</i>	<i>Means of Protection</i> <b>A. Laws on Business Practices</b> <b>B. Trademark Law</b> <b>C. Special Protection</b>
<b>Spirits</b>	"Tequila", "Mezcal"	<b>C.</b> Declarations of Protection issued by the Mexican Industrial Property Institute (IMPI) in accordance with the Industrial Property Act 1991
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>	"Olinala", "Talavera" (handicrafts)	<b>C.</b> Declarations of Protection issued by the Mexican Industrial Property Institute (IMPI) in accordance with the Industrial Property Act 1991
MOROCCO		
<b>Wines</b>	"Les coteaux de l'Atlas"	<b>A/C.</b> Registered "appellation of origin" by Order n.1957-98 of 8 October by the Ministry of Agriculture, Rural Development and Sea Fisheries. This appellation is protected specifically by Law 17-97 on the protection of Industrial Property and Law 13-83 concerning the Repression of Merchandise Fraud.
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>		
NEW ZEALAND		
<b>Wines</b>	"New Zealand" (being the North Island, South Island, Chatham Islands); every region of New Zealand	<b>C.</b> Geographical Indications Act 1994
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>		
NORWAY		
<b>Wines</b>		
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>	No good such examples from case law. ("Hardanger" might be a protected name.)	<b>B.</b> The word "Harding" is registered as a trademark for lifeboats in plastic, whereas a minority of the Appeal Board of the Patent Office would refuse registration, <i>inter alia</i> , because the word by some would be understood as a reference to the region of "Hardanger"
PERU		
<b>Wines</b>		
<b>Spirits</b>	"Pisco" (grape brandy)	<b>A/C.</b> Unfair Competition Act, Industrial Property Act, Decision 486 of the Commission of the Cartagena Agreement (Andean Community)
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>		
POLAND		
<b>Wines</b>		
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>		



<i>Member</i>	<i>Examples</i>	<i>Means of Protection</i> <b>A. Laws on Business Practices</b> <b>B. Trademark Law</b> <b>C. Special Protection</b>
<b>ROMANIA</b>		
<b>Wines</b>	"Cotnari", "Murfatlar"	C. Registration under the Law on Trademarks and Geographical Indications 1998
<b>Spirits</b>	"Panciu", "Murfatlar"	C. Registration under the Law on Trademarks and Geographical Indications 1998
<b>Other Foodstuffs and Agricultural Products</b>	"Dobrogea" (dairy products)	C. Registration under the Law on Trademarks and Geographical Indications 1998
<b>Other Products and Services</b>		
<b>SLOVAK REPUBLIC<sup>532</sup></b>		
<b>Wines</b>	Grinavské; Limbašské červené; Sobranecká sľňava; Modranské; Levická frankovka; Svätopeterský rizling; Karpatská perla	C. Registration under the Law on the Protection of Appellations of Origin 1973
<b>Spirits</b>	Trenčianská borovička "JUNIPERUS"; Bošácka slivovica	
<b>Other Foodstuffs and Agricultural Products</b>	"Korytnická minerálna voda" (mineral water); "Liptovská bryndza" (spread cheese); "Slovenský oštiepok" (cheese); "Urpín" (beer); "Gemer" (beer); "Martinský zdroj" (beer)	C. Registration under the Law on the Protection of Appellations of Origin 1973
<b>Other Products and Services</b>	"Modranská majolika" (hand-painted pottery), "Piešťanské bahno" (healing mud)	C. Registration under the Law on the Protection of Appellations of Origin 1973
<b>SLOVENIA</b>		
<b>Wines</b>		
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>		
<b>SWITZERLAND</b>		
<b>Wines</b>	Communal appellations: "Féchy", "Auvernier", "Malans"; Cantonal appellations: "Fendant du Valais", "Perlan de Genève"; Descriptions (indications of source): "Chasselas romand", "Otschweitzer Riesling and Sylvaner"	C. Decree on Viticulture, and Ordinance on Wine (entry into force 1 January 1999)
<b>Spirits</b>	"Abricotine du Valais"	C. Pending application for registration under the Ordinance on PAOs and PGIs of 28 May 1997
<b>Other Foodstuffs and Agricultural Products</b>	"Gruyère" (cheese), "viande des Grisons" (dried meat)	C. Pending applications for registration under the Ordinance on PAOs and PGIs of 28 May 1997
	"Swiss" for chocolate; all the names of agricultural products for which no registration application has been made and accepted	C. Law on the Protection of Trademarks and Indications of Source (LPM) 1992

<sup>532</sup> Additional examples to those reflected in JOB(00)/5619, the preliminary version of the present summary paper, were provided by the Slovak Republic in its comments to that preliminary version.

<i>Member</i>	<i>Examples</i>	<i>Means of Protection</i> <b>A. Laws on Business Practices</b> <b>B. Trademark Law</b> <b>C. Special Protection</b>
<b>Other Products and Services</b>	indirect indications of source, such as "Mont Cervin"("Matterhorn")	<b>C. Law on the Protection of Trademarks and Indications of Source (LPM) 1992</b>
	"Swiss made" or "Geneva" for watches	<b>C. Ordinance on the Use of the Designation "Swiss" for Watches of 23 December 1971, under the Law on the Protection of Trademarks and Indications of Source (LPM) 1992</b>
<b>TURKEY</b>		
<b>Wines</b>		
<b>Spirits</b>	"TÜRK RAKISI"	<b>C. Decree-Law No. 555 on Geographical Signs Protection in Turkey</b>
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>	Hand-made carpets: "HEREKE silk", "HEREKE silk-wool", "HEREKE wool", "SIMAV", "BUNYAN", "SIVAS", "TAŞPINAR", "KARS", "TÜRKMEN", "PAZIRIK", "YUNTDAGI", "SÜMER KARS", "KULA", "BERGAMA", "MILAS", "DÖŞEME ALTI", "YAĞCIBEDİR", "YAHYALI", "ÇANAKKALE", "GÖRDES", "İNCE ISPARTA (HASGÜL)"; Kilims: "JIRKAN KİLİMİ", "EŞME-YÖRÜK KİLİMİ", "SÜPER İNCE KİLİM"	<b>C. Decree-Law No. 555 on Geographical Signs Protection in Turkey</b>
<b>UNITED STATES</b>		
<b>Wines</b>	Certification mark: "NAPA VALLEY RESERVE" and Design (still wines and sparkling wines)	<b>B. Trademark Act 1946</b>
	Recognized viticulture area: "OHIO RIVER VALLEY"	<b>C. Federal Alcohol Administration Act, Bureau of Alcohol, Tobacco, and Firearms (ATF) regulations (27 C.F.R. §9.78)</b>
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>	Certification marks: "IDAHO" (potatoes and onions), "REAL CALIFORNIA CHEESE" and Design, "PRIDE OF NEW YORK" and Design (agricultural products which are product or processed in New York)	<b>B. Trademark Act 1946</b>
<b>Other Products and Services</b>		
<b>URUGUAY</b>		
<b>Wines</b>		
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>		
<b>VENEZUELA</b>		
<b>Wines</b>		
<b>Spirits</b>		
<b>Other Foodstuffs and Agricultural Products</b>		
<b>Other Products and Services</b>		

## ANNEX B

### SPECIAL DEFINITIONS OF IGOS

#### Denominación de origen

A *denominación de origen* is a geographical name of a region, district, place or locality used to designate a product from that area having distinctive qualities and characteristics due mainly to the natural environment and to its preparation and cultivation; it is considered to be used to designate a product originating in that area if it is permanently in wide circulation and well-known on the domestic market or has at least achieved a considerable reputation on a regional scale or a developed market abroad.<sup>533</sup>

#### Agricultural and Food Product Labels and Certificates<sup>534</sup>

The use of a label can be authorized for a foodstuff or agricultural product which has a distinct set of properties and specific, pre-defined characteristics which result, by virtue of the specific conditions of production (e.g. due to the origin of raw material or the place of production), in a product with of a higher quality that distinguishes the product from other products on the market of the same kind.

Certification is provided for in case an agricultural product or foodstuff conforms to specific characteristics or pre-defined rules with respect to its production, processing, or preparation for consumer purposes.

#### Denominación Específica<sup>535</sup>

The term *denominación específica* is a description applicable to an agricultural product or foodstuff other than wine, which has distinctive qualities among products of the same kind due to its raw material base, environment or methods of production.<sup>536</sup>

#### Quality Wines Produced in Specified Regions<sup>537</sup>

"Specified region" is defined as a wine-growing area or combination of wine-growing areas which produces wine possessing special quality characteristics and whose name is used to designate them.

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<sup>533</sup> Spain, in respect of wines, spirits and other agricultural products and foodstuffs (Q8). A similar definition applies in France (see footnote 33 above) for the protection of IGOs for any agricultural product or foodstuff, raw or processed, by an *appellation d'origine contrôlée* (together with product and production requirements) (Q1 – the reference to Articles L 115-1 to 26 of the Consumer Code, in particular Article L 115-5).

<sup>534</sup> France. These agricultural labels and certificates cannot be used for products benefiting from an appellation of origin, nor for quality wines produced in a specified region or *vins de pays* (Q8 – the reference to Article L 115-26 of the Consumer Code).

<sup>535</sup> Spain (Q8).

<sup>536</sup> The definition is contained in Article 3 of Royal Decree 1573/1985, of Spain regulating generic and specific names of food products (Q8).

<sup>537</sup> EC (Q1,8,10); Greece (Q1,8); and Spain (Q8,10). Each member State follows its own criteria in the application of this definition, but must take into account at least the following: demarcation of the area of production; vine varieties; cultivation methods; wine-making methods; minimum alcoholic strength by volume; yield per hectare; and analysis and assessment of organoleptic characteristics.

### Table Wines

Table wine designated with a geographical unit is defined as a small locality or group of such localities, a local administrative area or part thereof, a wine-group sub-region or part thereof or a region other than a specified region and meeting certain product/production requirements.<sup>538</sup>

The use of a geographical ascription for designating table wine may be made conditional, in particular, on the wine having been produced wholly from certain clearly specified wine varieties and coming exclusively from the territory, precisely demarcated, whose name it bears.<sup>539</sup>

### Viticultural Areas and Appellations of Origin (for Wines)<sup>540</sup>

Viticultural areas and appellations of origin are defined in terms of both geographic boundaries and the percentage of wine derived from fruit or agricultural products grown within those boundaries.

### Appellation d'Origine (for Wines)<sup>541</sup>

This term identifies grapes, musts or wines of recognized quality from a geographically defined area such as a canton, cantonal region, commune, locality, *château* or *domaine* which meet certain defined product/production requirements. Wines with an *appellation d'origine* may only come from grapes harvested in the geographical area concerned which fulfil the conditions specified for category 1 (natural minimum sugar content by batch and limited production per unit area).<sup>542</sup>

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<sup>538</sup> EC (Q8): "particularly as regards vine varieties, minimum natural alcoholic strength by volume and organoleptic characteristics (Article 4(1) and (3) of Council Regulation 2392/89)."

<sup>539</sup> EC (Q8). In this regard France has referred to Article 5 of Decree No. 68-807, under which wines can only be sold as *Vin de pays*, followed by the name of a *département*, if they have been produced in that *département* and need the product/production requirements defined by Decree; and only as *vin de pays* followed by the name of a specific production zone – which could be *département* – if they have been produced in that zone and meet the product/production requirements defined by Decree (Q8). In Germany the term *Landwein* can be used to indicate the origin of the wine corresponding to a specific geographical unit defined by Law as an area cultivating *Landwein* (Q4/5/6,8,Add.Q2). In Spain the term *Vino de la tierra* is applicable to table wines from certain wine-growing areas by whose name it must be accompanied and which meet certain defined product/production requirements, in particular with respect to varieties, alcoholic strength, volatile acidity and sulphur dioxide (Q8).

<sup>540</sup> United States (Add.Q2). In order to qualify for an appellation of origin, at least 75 per cent of the wine must be derived from fruit or agricultural products grown in the appellation area which is a political subdivision. For a viticultural area, 85 per cent of the grapes must come from the named area. However, refinements of the term "appellation" can vary by State. For example, in order to use an appellation on a wine from Oregon, 100 per cent of the grapes used to make the wine must be grown in the named area. In regard to the establishment of American viticultural areas, the criteria required include: evidence that the name of the viticultural area is locally and/or nationally known as referring to the area specified; historical or current evidence for the boundaries of the area; evidence relating to the geographical features (climate, soil, elevation, physical features and the like) which distinguish the area's viticultural features from surrounding areas (Q10,Add.Q2).

<sup>541</sup> Switzerland (Q8).

<sup>542</sup> Category 1 (per cent Brix): 14.8 per cent (white varieties), 15.8 per cent (red varieties); category 2 (per cent Brix): 14.4 per cent (white varieties), 15.2 per cent (red varieties).

*Appellation d'Origine Contrôlée (for Wines)*<sup>543</sup>

This term identifies grapes, musts and wines of recognized quality which fulfil the conditions laid down for an *appellation d'origine* and, moreover, meet the additional product/production requirements established by the canton.<sup>544</sup>

*Appellation d'Origine Contrôlée (A.O.C.) (for Wines)*<sup>545</sup>

This term identifies wines produced, transformed and elaborated within a defined geographical area under requirements specified by law, such as the use of consistently used wine-making techniques and methods of cultivation in keeping with local usage.

*Indication de Provenance/Herkunftsbezeichnung (for Wines)*<sup>546</sup>

This term identifies grapes, musts and wines from a geographically defined area, i.e. the name of the region, or part thereof if it extends over more than one canton, or a traditional designation that refers to a geographical area. Products with an *indication de provenance/Herkunftsbezeichnung* may only come from grapes harvested in the geographical area concerned which fulfil the conditions laid down for category 2 (minimum natural sugar content by batch lower than for category 1).<sup>547</sup>

*Geographical Designations (for Spirits)*<sup>548</sup>

These geographical designations are reserved for spirit drinks in the case of which the production stage during which they acquired their character and definitive qualities took place in the geographical area indicated.

*Geographical Indication (for Wine or Grape Products)*

A word or expression used in the description and presentation of the wine to indicate the country, region or locality in which the wine originated.<sup>549</sup>

*Geographical Indication (for Specified Goods)*<sup>550</sup>

A description or presentation used to indicate the geographical origin for goods. "Geographical origin" means any country, region, locality or linear feature.

*Indication of Source for Any Good or Service*<sup>551</sup>

Any reference, direct or indirect, to the geographical source of products or services, including references to property or quality in relation to the source. Geographical names or signs which are not

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<sup>543</sup> Switzerland: "an *appellation d'origine contrôlée* cannot at the same time be an *appellation d'origine*" (Q8).

<sup>544</sup> Switzerland (Q8): "including at least the following: delimitation of the wine-growing area; varieties; methods of cultivation; minimum natural sugar content; maximum yield per unit area; vinification methods; analysis and organoleptic examination."

<sup>545</sup> Morocco (Q8).

<sup>546</sup> Switzerland (Q8).

<sup>547</sup> Category 1 (per cent Brix): 14.8 per cent (white varieties), 15.8 per cent (red varieties); category 2 (per cent Brix): 14.4 per cent (white varieties), 15.2 per cent (red varieties).

<sup>548</sup> EC (Q8); Germany (Add.Q2); Spain (Q8).

<sup>549</sup> Australia – one of alternative definitions (Q8).

<sup>550</sup> New Zealand (Q8). The classes of goods to be covered have yet to be defined (Q1,2,3).

<sup>551</sup> Switzerland (Q8); Liechtenstein (Q8).

considered by the circles concerned to be a reference to the source of products or services are not indications of source.

Indication of Source (Goods and Services)

A name, expression, image or sign that indicates or evokes a particular country, region, locality or place.<sup>552</sup>

Reserved Descriptions (for Spirits)<sup>553</sup>

- (1) Indications of geographical origin consisting of or containing the name of an actually existing city, region or state;
- (2) indirect traditional indications of geographical origin, the use of which is, by legal provision, exclusively reserved for products from a specific region, because the products in question are traditionally produced only in these regions.

Protected Geographical Origin (for Wines)<sup>554</sup>

A term which may only be used for quality wines, provided that the grapes and wine are produced in a territory identical with or contained within a single viticulture district.

Recognised Geographical Indication (for Wines)<sup>555</sup>

A term which applies to land wines made from grapes produced in a particular viticulture region or an area contained within it.

Recognised Traditional Denomination (for Wines)<sup>556</sup>

The right to use that term for wines must be supported by a study, prepared beforehand, which defines the geographical territory and characteristics of wine, and substantiates the use of traditional denominations. The study is to be prepared by the producers involved and shall be certified by the Minister of Agriculture.

Geographical Indication (for Agricultural Products and Foodstuffs)<sup>557</sup>

The term shall be the name of a geographical region, in exceptional cases, a country, used to describe an agricultural product or a foodstuff, and the production and/or processing and/or market preparation of which take place in the defined geographical area. The geographical indication may be used for an agricultural product or a foodstuff:- originating in a certain geographical region, and which possesses a specific quality, reputation or other characteristics attributable to a certain geographical region.

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<sup>552</sup> Peru, under Title XII of Decision 486 of the Commission of the Cartagena Agreement (Q2,3,8,Add.Q2/3).

<sup>553</sup> Germany (Q4/5/6, 8, 9 and 10).

<sup>554</sup> Slovenia, under Article 4 of the Wine and other Grape and Wine Products Act (Q8).

<sup>555</sup> Slovenia, under Article 4 of the Wine and other Grape and Wine Products Act (Q8).

<sup>556</sup> Slovenia, under Article 4 of the Wine and other Grape and Wine Products Act (Q8).

<sup>557</sup> Slovenia, under Article 46 of the Agriculture Act (Q8).

*Designation of Origin (for Agricultural Products and Foodstuffs)*<sup>558</sup>

The term shall be the name of a geographical region, in exceptional cases, a country, used to describe an agricultural product or a foodstuff originating exclusively in a certain geographical region, where the raw materials of the products concerned come from the same geographical area.

*Indication de Provenance (for Goods and Services)*<sup>559</sup>

An expression or sign used to indicate that a product or service comes from a country or group of countries, or from a region or specific place.

*Appellation d'origine (for Goods and Services)*<sup>560</sup>

The geographical name of a country, region or locality used to designate a product originating therein whose quality, reputation or other specified characteristics are exclusively or essentially attributable to the geographical environment, including natural and human factors.

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<sup>558</sup> Slovenia, under the Agriculture Act (Q8).

<sup>559</sup> Morocco, under Article 180 of Law No. 17/97 (Q8).

<sup>560</sup> Morocco, under Article 181 of Law No. 17/97 (Q8).