

DECISION

No 1705 of 29 December 2008

ON APPROVING THE REGULATION “ON THE REGISTRATION OF GEOGRAPHICAL INDICATIONS”

Pursuant to Article 100 of the Constitution and Articles 177, 180, 182 and 202 of the Law No 9947 of 7 July 2008, "On Industrial Property", upon the proposal of the Minister of Economy, Trade and Energy, the Council of Ministers

DECIDED:

1. To approve the regulation “On the Registration of Geographical Indications” according to the text attached with this decision.
2. To designate the Directorate General of Patents and Trademark for the implementation of this decision.
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3. Order No 5 of 5 December 1994 of the Committee of Science and Technology, “Rules on Appellations of Origin,” is repealed. This decision shall enter into force after publication in the Official Journal.

PRIME MINISTER
Sali Berisha

REGULATION FOR THE REGISTRATION OF GEOGRAPHICAL INDICATIONS

CHAPTER I GENERAL PROVISIONS

1. Purpose

1.1 The purpose of this regulation is to define the rules and procedures with respect to:

- a) filing of applications for the registration of geographical indications with the Directorate General of Patents and Trademarks (DGPT) and their examination by DGPT;
- b) filing and examination of oppositions related to geographical indications from the DGPT Board of Appeals;
- c) publication of data related to the geographical indications by DGPT in the Industrial Property Gazette.

2. Definitions

2.1 For the purpose of this regulation, the following terms mean:

- a) Appellation of origin means the name of a country, region or locality which serves to distinguish the products originating from that place, the qualities and the reputation or other characteristics of which are result of the geographical environment, natural and human factors or of the production, processing and preparation of the products in that particular geographical area.

b) Geographical indication means the name of a country, region or locality which serves to determine the products originating from that place, the quality, reputation and the characteristics of which are the attributes of this geographical origin.

c) The Law means Law No 9947 of 7 July 2008, "On Industrial Property".

3. General principles

3.1 Any legal or natural person who produces, processes or prepares the product in a certain geographic area, for the distinction of which is used the geographical indication, shall have the right to apply to DGPT for the registration of the geographical indication.

3.2 DGPT shall PPM examine the filed applications and issues the notifications and other acts in accordance with the provisions of the Law and of this regulation.

3.3 The actions of DGPT with respect to such applications are exclusively based on documents in writing. Applications and any other documents which are submitted to DGPT shall be in print and in the Albanian language.

3.4 DGPT shall establish and manage the electronic database, which stores all the actions performed with respect to the geographical indications.

4. Types of applications

4.1 The types of applications that may be filed with DGPT with respect to geographical indications are:

a) Application for the registration of the geographical indication through FTG1 form (Annex 1 of the regulation);

b) Application for the change of name of the owner of the geographical indication through FTG2 form (Annex 1 of the regulation);

c) Application for the change of address of the owner of geographical indication, through FTG3 form (Annex 1 of the regulation);

ç) Application for surrender of the registered geographical indication through the FTG4 form (Annex 1 of the regulation);

d) Application for the opposition against the registration of a published geographical indication through FTG5 form (Annex 1 of the regulation);

dh) Application for the appeal against the DGPT decision on the refusal of application through FTG6 form (Annex 1 of the regulation).

CHAPTER II

APPLICATION FOR THE REGISTRATION OF GEOGRAPHICAL INDICATION

1. Application filing

1.1 The application for the registration of the geographical indication shall be filed through the FTG1 form, which shall be signed by the applicant or his representative and shall be submitted to the DGPT protocol office. The FTG1 form may also be sent to DGPT by mail or via fax by the applicant or his representative. In the case of filing via fax, the applicant shall submit to DGPT within one month from the date of fax submission the original of the document, otherwise the application shall be considered unfiled.

1.2 The application file shall contain the list of the filed documents (file index), which shall be signed by the applicant or his representative.

1.3 The application for the registration of the geographical indication shall be filed with respect to a single product.

1.4 On the day of receipt of FTG1 form for the registration of a geographical indication, the DGPT Protocol Office shall note down on the form the filing date and hour of the application and the number of such application.

2. Essential elements of an application

2.1 According to Article 182 of the Law, the application for the registration of the geographical indications shall contain:

a) FTG1 form signed by the applicant or his representative, which shall contain mainly the data on the name and address of the applicant, the geographical indication, specification of the product to which the geographical indication will be applied, and the definition of the boundaries of the geographically locality where the product is produced or processed;

b) document proving the payment of the filing fee;

c) a report about the particularities and characteristics of the goods and their connection with the geographically environment and geographically origin;

ç) a document issued by the respective authority, according to the respective laws, which defines the boundaries of the geographical area where the product is produced or processed;

d) document issued by the respective authority, according to the respective laws, which defines the features and characteristics of the product, and the connection between the features of the product with the geographical environment or the geographical origin, according to Article 177(2) of the Law;

dh) a document issued by the local authorities which certifies the production activity conducted by the applicant in the given geographical region;

e) where the applicant is a foreign legal or natural person, a document that certifies the registration of the geographical indication, which shall be translated in the Albanian language and shall be notarized;

ë) in the case of food or agricultural products, a document issued by the respective authority, which certifies that the product meets all the criteria of quality, provided for by the relevant legislation into force;

f) power of attorney, if the application is filed by the applicant representative. The power of attorney shall contain the signature of the applicant and, if the applicant is a legal person, his stamp.

CHAPTER III

FORMAL EXAMINATION OF APPLICATION FOR THE REGISTRATION OF GEOGRAPHICAL INDICATIONS

1. Order and terms of application examination

1.1 Applications for the registration of geographical indications shall be examined by DGPT in order of submission.

1.2 An application shall be examined out of order, if there is any conflict with respect to the infringement of the rights of geographical indication. The examiner shall perform the examination out of order after the filing of a request in writing by the applicant and against payment of the respective fee.

1.3 The examination of the geographical indication shall be made within three months from the filing date. Within such period, the examiner shall determine whether the application meets the requirements of Article 182 of the Law and of Chapter II, point 2 of this regulation.

2. Examination of the application and recognition of the filing date

2.1 If the application meets all the requirements of Article 182 of the Law and of Chapter II, point 2 of this regulation, DGPT shall record the application for the registration of the geographical indications, recognizing the filing date as the recording date of the application.

2.2 If the application fails to meet all the requirements of Article 182 of the Law and of Chapter II, point 2 of this regulation, DGPT shall notify the applicant to make the completions within three months from the date of notification. The term for the submission of completions may be extended with up to one additional month, if the applicant submits a request in writing based on reasonable motives and subject to the respective fee. In any case, the request for the extension of the term shall be submitted to DGPT prior to the expiration of the three-month term established for the completion of the application.

2.3 Where the applicant makes the required completions within due time, DGPT shall record the application and shall issue the recording certificate to the applicant within three months from the date in which the applicant completes his application, recognizing the date of submission as the recording date of the application.

2.4 If the missing components of an application consist in the name and address of the applicant, the geographical indication, the product for which the indication is registered or with failure to pay the filing fee, the recording date shall be that of completion of such missing elements. In the case where the shortcomings in respect to the above elements consist in such errors that do not prejudice the essence of such elements, the recording date shall be the filing date of the application with DGPT.

2.5 If the applicant fails to make the completions within the established term, DGPT shall refuse the request for the registration of the geographical indication and shall issue to the applicant the notification on the refusal of the application.

3. Recording certificate

3.1 The recording certificate shall contain the following data:

- a) description of geographical indication;
- b) name and address of the applicant;
- c) date of recording and number of request;
- ç) the product the geographical indication of which is protected.

CHAPTER IV EXAMINATION OF APPLICATION IN RESPECT TO THE GROUNDS OF REFUSAL OF THE GEOGRAPHICAL INDICATION

1. Examination in respect to the absolute grounds for refusal

1.1 Upon recognition of the filing date, the examiner shall, within three months from the issuance of the record certificate, examine as to whether the application is in conformity with the requirements of Article 180, letters “a” and “b” of the Law.

1.2 In the course of examination, DPGT may ask the applicant by a notification in writing to provide additional documents. The applicant shall submit the required documents to DGPT within 2 months from the notification date, otherwise the request shall be finally refused and the applicant shall be notified on the refusal by a notification in writing, which contains also the grounds for the refusal of the application.

1.3 Where the examination of the application finds that the application is not in conformity with Article 180, letters “a” and “b” of the Law, DGPT shall refuse such application and notifies the applicant in writing, providing the grounds for refusal.

2. Registration of geographical indications

2.1 If, within three months from the day of publication of the application, no opposition has been filed with by third parties against the registration of geographical indications, the DGPT shall issue a notification for the payment of the registration fee and shall require from the applicant to make the payment one month from the date of receipt of the notification and submit copy of the respective document to DGPT.

2.2 If the applicant fails to pay the registration fee within the established term, DGPT shall refuse the application and notify the applicant accordingly in writing.

2.3 When the applicant pays the registration fee within the established term, DGPT shall register the geographical indication in the respective register and shall issue the registration certificate within three months from the fee payment date.

2.4 DGPT shall publish the registered geographical indication in the Industrial Property Gazette.

3. Data contained in the registration certificate of the geographical indication

3.1 The registration certificate of the geographical indication shall contain:

- a) description of geographical indication;
- b) name and address of the owner of geographical indication;
- c) number of the request and number of registration;

ç) filing date and registration date;

d) the product for which the geographical indication is registered.

4. Changes to or withdrawal of application

4.1 Where, in the course of examination of the application for the registration of a geographical indication, a change of name and/or address of the applicant has taken place, DGPT, following submission of the respective form, the documents proving the above change and the payment of the designated fee by the applicant, shall register the new data of the indication in the register of geographical indications, without changing the filing date of the application.

4.2 The applicant is entitled to withdraw from the application for the registration of a geographical indication by a request in writing, for as long as he is not yet registered in the register of geographical indications. Upon submission of such a request, the application shall be considered withdrawn.

CHAPTER V PUBLICATIONS IN THE INDUSTRIAL PROPERTY GAZETTE

1. Types of publications

1.1 DGPT shall publish in the Industrial Property Gazette data on the application for the registration of the geographical indication, its registration, changes to the name and/or address of the owner of geographical indication, revocation and repeal of the geographical indication.

2. Publication of applications and registrations of geographical indications

2.1 Data published in the Gazette with respect to the application are as follows:

a) number of request;

b) recording date;

c) name and address of the applicant;

ç) description of geographical indication; d) the product for which the geographical indication is protected.

2.2 Data published in the Gazette with respect to the registration of the geographical indication are:

a) number of request and number of registration;

b) filing date;

c) name and address of the applicant;

ç) description of the geographical indication;

d) product which geographical indication is protected.

CHAPTER VI
OPPOSITION OF THE REGISTRATION OF GEOGRAPHICAL INDICATION

1. Filing of the opposition

1.1 Opposition against an application for the registration of a published geographical indication may be filed with DGPT within three months from the date of publication on the grounds provided for by Article 180, letter "c" and "ç" of the Law or on any other legal grounds by submitting the following documents:

- a) FTG5 form for the opposition against the registration of the geographical indication;
- b) the document showing the payment of the opposition fee.

1.2 The opposition shall also be accompanied by the following documents:

- a) power of attorney in the case where the opposition is filed by the representative of the opponent;
- b) documents providing the grounds for the claim.

2. Examination of the opposition by the Board of Appeals

2.1 DGPT Board of Appeals shall examine the opposition and take the respective decision within three months from its filing.

2.2 Where the opposition fails to meet the requirements provided by point 1.1 of this chapter, the Board of Appeals shall consider the opposition as unfiled and shall notify the applicant accordingly in writing.

2.3 If the opposition fails to meet the requirements provided by point 1.2 of this chapter, the Board of Appeals shall ask the opponent by a notification in writing to complete such opposition within 30 days from the day of notification, otherwise the opposition shall be considered as unfiled.

2.4 If the opposition meets all the requirements of point 1 of this chapter, the Board of Appeals shall admit the opposition for examination and shall notify in writing the applicant of the geographical indication against which the opposition is filed, requesting him to submit his claims in writing with respect to the opposition and any other additional document supporting such claims within one month from the day of notification.

2.5 In the course of examination, the Board of Appeals is entitled to request the parties in writing to provide additional materials and documents within one month from the notification date.

2.6 The Board of Appeals shall take the respective decision with regard to the opposition and shall inform the parties accordingly in writing. The decision of the Board of Appeals is subject of appeal to the court within 30 days from the receipt of the notification.

3. Processing of the application following the decision on the opposition

3.1 In the case where the Board of Appeals decides to reject the opposition and the decision is not appealed to court, a copy of the Board decision shall be included in the application file for the registration of the geographical indication and the examiner continues with the registration procedure, in conformity with the provisions of the Law and of this regulation.

3.2 If the Board of Appeals decides to uphold the opposition and the decision is not appealed to the court, a copy of the Board decision shall be included in the application file for the registration of the geographical indication and the examiner shall issue the notification on the refusal of the registration.

3.3 In the case where the decision of the Board of Appeals on the opposition to the registration of a geographical indication is appealed to court, a copy of the final decision shall be included in the application file and DGPT shall either refuse or register the geographical indication, in compliance with the court decision.

CHAPTER VII CHANGE OF NAME AND/OR ADDRESS OF THE OWNER OF GEOGRAPHICAL INDICATION

1. Filing of the application

1.1 The owner of a geographical indication may require the change of the name and/or his address in the register of geographical indications. The application for the change of name shall be filed with DGPT through the FTG2 form, whereas the application for the change of address shall be filed with through FTG3 form.

1.2 Together with the application, the applicant shall submit the following document:

- a) the document showing the payment of the designated fee;
- b) power of attorney, where the application is filed by the representative of the owner of the geographical indication;
- c) in the case where the change of name is required, the document certifying such change.

2. Examination of the application by DGPT

2.1 DGPT shall examine the application for the change of name or address as to whether it is in conformity with the provisions of point 1 of this chapter and, if there are missing components, notifies the applicant to make the appropriate completions within three months from the notification date, otherwise the application shall be refused.

2.2 DGPT shall register the change of name or the address of the owner of the geographical indication in the register of geographical indications and shall notify the applicant on the registration of such change within six months from the date where the application meets all the requirements of point 1 of this chapter. The change shall be published in the Industrial Property Gazette.

CHAPTER VIII REGISTRATION OF SURRENDER OF GEOGRAPHICAL INDICATION

1. Filing of the application

1.1 The application for the registration of surrender from the geographical application shall be filed with DGPT by the owner of the geographical indication through the FTG4 form.

1.2 Together with the form, the applicant shall also submit the following documents:

- a) the document showing the payment of the designated fee;

b) power of attorney, if the application is filed by the representative of the owner of the geographical indication.

2. Examination of the application by DGPT

2.1 DGPT shall examine the application for surrender as to whether it is in compliance with the requirements of point 1 of this Chapter and if it is incomplete, it shall notify the applicant to make the appropriate completions within three months from the notification date, otherwise the application shall be refused.

2.2 DGPT shall register the surrender from the geographical indication in the register of geographical indications within six months from the date where the application meets all the requirements of point 1 of this chapter. The surrender shall be published in the Industrial Property Gazette.

CHAPTER IX APPEALS AT THE BOARD OF APPEALS

1. Filing of an appeal

1.1 Within two months from the date of filing an application, the applicant shall have the right to appeal the DGPT decision at the Board of Appeals, filing with DGPT:

- a) the FTG6 appeal form, which is signed by the applicant or his representative;
- b) the document showing the payment of the designated fee;
- c) power of attorney if the appeal is filed by the representative of the applicant.

2. Examination of the appeal by DGPT Board of Appeals

2.1 The Board of Appeals shall examine in advance as to whether the appeal meets the requirements of point 1.1 of this chapter and, if such requirements are not met, the Board of Appeals shall notify the submitter of the appeal that his application is considered as unfiled.

2.2 Where the application for appeal meets the requirements of point 1 of this chapter, the Board of Appeals shall review the request for appeal within three months from the date of filing and shall inform the submitter of the appeal on the respective decision. The submitter of the appeal is entitled to appeal to court the decision of the Board of Appeals, which is taken on the basis of Article 180, letter "a" and "b" of the Law. The decisions of the Board with respect to other appeals provided by this regulation and by the Law shall be final.

2.3 In the course of examination, the Board of Appeals shall ask the submitter of the appeal against the decision to provide additional materials and documents within one month from the notification date.

3. Processing of the application following the decision on the appeal

3.1 In the case where the Board of Appeals decides to uphold the appeal and the decision is not appealed to court, a copy of the Board decision shall be included in the application file for the registration of the geographical indication and the examiner continues with the procedure of registration of such indication, in accordance with the provisions of the Law and of this regulation.

3.2 In the case where the Board of Appeals decides to overturn the appeal and the decision is not appealed to court, a copy of the Board decision shall be included in the application file for the registration of the geographical indication and the refusal shall be final.

3.3 In the case where the Board decision is appealed to court, a copy of the final court decision is included in the application file for the registration of the geographical indication and DGPT shall either refuse or register such indication in accordance with the court decision.

CHAPTER X OTHER DOCUMENTS ISSUED BY DGPT WITH RESPECT TO GEOGRAPHICAL INDICATIONS

1. Extracts and investigations issued from the register of geographical indications

1.1 According to Article 192, paragraph 2 and Article 194 of the Law, DGPT shall issue extracts of the register of geographical indications, as well as answers to the applications for investigation.

1.2 The application for a register extract with respect to a registered geographical indication shall be filed with DGPT in writing and shall also be followed by the document showing the payment of the designated fee, otherwise the application shall be considered as unfiled. The extract of the register issued by DGPT shall contain all data related to the geographical indication and the history of the changes it has been subject to.

1.3 The application for the investigation of a geographical indication shall be filed with DGPT in writing and shall be followed by the document showing the payment of the designated fee, otherwise the application shall be considered as unfiled. DGPT shall notify the applicant in writing on the result of the investigation.

2. Duplicates and the priority document

2.1 The owner of a registered geographical indication is entitled to require a duplicate of the registration certificate or of the other notifications issued by DGPT for the registration of the changes in the register of geographical indications. The application shall be filed in writing and shall be followed by the document showing the payment of the designated fee, as well as by the power of attorney, if the application is filed by the representative of the owner of the geographical indication, otherwise it shall be considered as unfiled.

3. Correction of acts by DGPT

3.1 In the case where DGPT issues acts that contain errors or inaccuracies, which do not result from the applicant or the owner of the geographical indication, DGPT shall correct them based on a request in writing submitted by the applicant or the owner of a geographical indication. DGPT shall re-issue the corrected act, after the submission by the applicant or owner of the geographical indication of the original act which requires correction. DGPT shall reflect the correction in the register of geographical indications and shall publish such correction in the Industrial Property Gazette.
