

The Georgia-Ukraine Bilateral Agreement on GIs for Wines, Alcoholic Drinks and Mineral Waters

Comments by FAO Legal Office

The agreement lays a solid basis for “mutual recognition” of names, and cooperation in this area. However, it also presented a good opportunity for provisions on “mutual protection” which, although it has been missed in the case of Ukraine. Future agreements could be more useful in the long-run if beefed up with more provisions aimed at mutual protection of names.

One fundamental shortcoming in the agreement with Ukraine, which should be rectified for future agreements, is that it did not mention or in any way deal with the issue of enforcement. I would urge them to include another substantive provision, preferably after Article 2 stating as follows:

Each Contracting Party shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines, alcoholic drinks and mineral waters for products not originating in the place indicated by the geographical indication in question.

The agreement also leaves a vacuum: it does not answer the question whether the parties will be obliged to apply mutual recognition in circumstances where the true origin of the product in question is indicated or the geographical indication is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation”, “method” or the like. A provision should be added stating:

The protection provided for in Article 2 also applies to names even where the true origin of the wine is indicated or the geographical indication or traditional expression is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation”, “method” or the like.

The sensitive question of what to do with trademarks containing Geographical Indications could also be dealt with in the following language:

The registration of a trade mark for wines, alcoholic drinks and mineral waters which contains or consists of a geographical indication identifying a wine, alcoholic drink or mineral water shall be refused, or if domestic legislation so permits and at the request of an interested party be invalidated, with respect to such wines, alcoholic drinks or mineral waters not originating in the place indicated by the geographical indication.

In Article 5, it is not clear whether the Competent Authority is to be responsible simply for the notification or for the overall *enforcement* of the agreement. In the case of the Australia-EU Wine Agreement for example, the competent authorities are also responsible for overall enforcement of the agreement. I propose:

The Contracting Parties shall maintain direct contact on all matters relating to the implementation and enforcement of this Agreement, through their respective Competent Authorities.