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**General Council  
Trade Negotiations Committee  
Council for Trade-Related Aspects  
of Intellectual Property Rights  
Special Session**

Original: English

## **GEOGRAPHICAL INDICATIONS**

### Communication from the European Communities

The following communication, dated 13 June 2005, is being circulated to the General Council, to the TNC and to the Special Session of the Council for TRIPS at the request of the Delegation of the European Commission.

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#### **I. INTRODUCTION**

Attached is a proposal for amending Section 3 of the TRIPS Agreement with a view to extending the regime of protection today available for geographical indications on wines and spirits to geographical indications on all products ("extension"). In addition, a proposal for the inclusion of an annex to the TRIPS Agreement establishing a multilateral system of notification and registration of geographical indications (GIs) is also attached. Achieving substantial results on these issues remains a priority for the EC in the DDA.

This new proposal maintains the level of ambition of the EC as regards both "extension" and the multilateral register of GIs, as contained in particular in the proposals in documents IP/C/W/107/Rev.1 (on the GI register) and IP/C/W/353 (on "extension"). However, some new provisions have been added to meet some of the concerns expressed by other Members when discussing the GI register regarding the rules that would be applicable to trademarks, as well as regarding the issue of costs of the register. On the latter question, a proposal for a system of financing the multilateral register has been included.

The proposal is balanced; while seeking that the benefits of geographical indications extend beyond the nations of the world that produce wines and spirits to cover all of them, it also provides for new mechanisms explicitly designed to allow third countries leeway to protect trademarks, plant varieties and animal breeds, as well as to grandfather certain uses of names under which companies have made and sold products using names that are protected as geographical indications elsewhere.

The attached documents are based upon the text of TRIPS Agreement itself, the draft text on "extension" that was attached to document TN/C/W/14, and JOB(03)/75.

## II. THE AMENDMENTS REGARDING "EXTENSION"

As far as "extension" is concerned, the modifications that concern Article 23 of the TRIPS Agreement are self-explanatory. They simply seek to extend their scope to geographical indications for all products. In a nutshell, the obligation to provide the legal means to interested parties to prevent certain types of imitations (Article 23.1), as well as the obligation to refuse or invalidate trademarks including geographical indications (Article 23.2) are extended to any situation in which the trademark or the imitation concerns a product of the same kind as the one protected by the geographical indication. In addition, the provision on homonymous (Article 23.3) would also apply to geographical indications on all products.

Developing countries would find this proposal more tailored to their needs since it covers geographical indications on other products like coffee, rice, and teas. Furthermore, it advances a protection system that is easy to apply. It is sufficient to determine whether the good has the origin referred to by the geographical indications. The suggested changes are important given that the current system cannot be used by poor producers as it requires costly evidence (e.g. consumer surveys) that the public is misled.

Furthermore, we advance a number of proposals regarding the exceptions of Article 24 of the TRIPS Agreement.

Firstly, the reference to "Article 23" in Article 24.1 TRIPS is redundant, given that all products would enjoy the additional protection of Article 23 of the TRIPS Agreement. This is why it is submitted that such reference be removed.

Secondly, the date to which Article 24.3 refers should be supplemented in order to take account of new developments in GI protection at the national level between the entry into force of the TRIPS Agreement and the date on which the TRIPS Agreement will be amended.

Thirdly and more importantly, the grand-fathering clause of Article 24.4 TRIPS would have a second paragraph to cover other products. It should be noted that this provision is designed to give comfort to those countries that claim that "extension" would have costs to local producers. The practical effect of this provision is to allow those producers to carry on with their activities and remain unaffected by the application of Section 3 of the TRIPS Agreement. This provision, however, does not preclude that a given geographical indication be protected; it only forbids geographical indications protection to prejudice the use of such indication the territory of a third country in the circumstances prescribed by that provision.

Fourthly, it is proposed to add a sentence to Article 24.5 TRIPS to ensure that the effects of "extension" do not prejudice the registration, validity and use of trademarks that were to remain unprejudiced under Article 22.3, because they would not mislead the consumer as to the origin of the product, but would be undermined under new Article 23.2 of the TRIPS Agreement.

The two provisions above exclude a number of business activities from the effects of "extension" without completely denying protection to GIs. These two provisions are clear evidence that GI proponents are genuinely attempting to offer comfort to WTO Members that have raised reservations regarding GIs.

Fifthly, a new sentence has been added to Article 24.6 TRIPS to provide for the possibility to WTO Members not to grant protection when a geographical indication coincides with plant varieties and animal breeds, as instances that are similar to "grape varieties", currently included in Article 24.6.

Here again, GI proponents are reaching out to meet the concerns of other WTO Members. Indeed, the current proposals, along with the existing possibility not to protect geographical indications that have become generic terms (Article 24.6 TRIPS, first paragraph), should be providing a sufficient level of comfort to GI opponents. It is hard to imagine a current use of a GI of a given country by a producer of another that would not fall in one of the three aforementioned situations.

### **III. THE AMENDMENTS REGARDING THE "MULTILATERAL REGISTER"**

With respect to the annex on the multilateral register, the current proposal largely results from the deletion from JOB(03)75 of the options that did not reflect the EC proposal. It should also be noted that, given that the multilateral register would be opened to geographical indications on all products, references to wines and spirits (e.g. paragraph 2.1(a) and paragraph 2.2(e)), as well as the provision of Article 23.4 of the TRIPS Agreement, are to be removed.

Consistent with the objective pursued in the "extension" negotiations, the proposal for a "multilateral register" seeks to alleviate the costs of all producers seeking protection worldwide by allowing them to gain legal standing in third countries via a centralised procedure. This would obviously help developing country producers in particular, who have less resources to invest in asserting such protection internationally.

At the same time, also, this proposal also aims at meeting the demands of those WTO Members who have expressed concerns over geographical indications. Firstly, this proposal preserves each WTO Member's prerogative to determine whether a certain sign, indication or geographical name does indeed meet the TRIPS definition of a geographical indication (paragraph 3.2(a)). In addition, this proposal is consistent with the TRIPS principle that only geographical indications that are protected in the country of origin are *prima facie* entitled to protection (paragraph 8.1). For instance, and contrary to what some have argued, terms such as "Mozzarella", "Camembert", "Cream Cheese", "Spanish onions" or "Pizza" are not currently protected as geographical indications in the EC or elsewhere and are therefore not entitled to protection in third countries under TRIPS rules.

The proposal also incorporates a mechanism that ensures that it is the notifying country the one supporting some of the cost of examination at the national level, as well as the appropriate share of the cost of the multilateral register itself. This is important since it ensures that the thrust of costs that the system may generate will be covered by the WTO Members that notify GIs into the system.

Some other minor changes concern, *inter alia*, the following:

(1) Clarifying that the notification of bilateral deals is "for information purposes" only and not any hidden attempt to multilateralize bilateral protection.

(2) Replacing "another" by "its" in paragraph 3.2 to align the provision to the principle of territoriality.

Furthermore, in light of the clarifications brought to light by the recent panel report on DS174/290, there is no longer any reason to exclude trademark provisions from those whose application shall be facilitated by the multilateral register. On the contrary, the EU's year 2000 proposal was based on the interpretation that TRIPS Agreement rendered co-existence compulsory. On that basis, a geographical indication would always be able to be protected and, more importantly, used, in any WTO Member. The panel report in DS174/290 has determined that certain validly protected trademarks (namely those that fall under Article 24.5 TRIPS) can impede the use of GIs (when the use engenders one of the situations of Article 16 TRIPS and the use of a GI does not fall

under an existing national provision implementing Article 17 TRIPS, if existing at all). Therefore, there are instances in which, under the current EU proposal, countries could give the appearance that a certain GI would be protectable in their territory, where, in fact, conflicting trademarks could in practice result in a GI not being allowed to be used in the course of trade.

It is for this reason that we propose, in paragraph 3.3, that countries, if requested to do so by the notifying WTO Member, provide for information relating to prior trademarks that contain or consist of a GI. This information is necessary in order to ensure that right holders of geographical indications have a clear view as to where the protection of a geographical indication may not result in an undisrupted use of such indication by the geographical indication right holder in the course of trade in WTO countries bound by Section 3 of Part II of the TRIPS Agreement.

As a corollary of this provision, it is proposed that the administering body transmits this information to the notifying WTO Member under paragraph 2.6. Likewise, a new paragraph 10 renders obligatory to have a focal point for retransmissions of such notifications, so that the administering body knows to whom the notifications should be transmitted.

Nevertheless, the practical effect of this provision would be seriously curtailed and, to some extent, devoid of purpose, by the fact that it only covers existing trademarks and does not give any tool to the right holder of the geographical indication to facilitate the defence of its rights vis-à-vis attempts to register new trademarks. This is why it is proposed in new paragraphs 4(c) and 5(b), that WTO Members, if requested to do so, monitor the applications for conflicting trademarks with already registered - at the WTO level - geographical indications. This would give the opportunity to the right holder of a geographical indication to take action (e.g. via a domestic opposition procedure, for example) and avoid a future conflict.

The mechanism of examination is aimed at facilitating the implementation of Section 3 of Part II of the TRIPS Agreement, in particular providing a time-frame where countries can exercise their prerogative to make a final determination as to whether a certain notified term is a GI (and, therefore, is not a generic) or vice-versa. This final determination provides certainty to notifying WTO Members. Yet, this is not to entail that those who have been using such GIs for non-originating products in circumstances that have been grand-fathered need to stop their use. On the contrary, recourse to Articles 24.5 and 24.6 continues to be possible under national law (paragraph 3.2).

The cost relating to these obligations, as well as the general functioning of the system, would be supported largely by the applicants that notify GIs into the multilateral register. The draft treaty text provides for a system of fees which allows a WTO Member to recoup the costs incurred in complying with the obligations regarding trademarks, through a system of fees to be paid by the notifying WTO Members. This mechanism, included in paragraph 9.4 et seq., is self-explanatory and, largely inspired by the existing system embodied in the Madrid Protocol for the international registration of trademarks, divides fees among:

(1) A basic fee: to cover the administrative functioning of the system, including setting up costs;

(2) An individual fee: to cover the upon-request obligations to monitor past or future trademarks.

Finally, it should be noted that paragraph 3.4 is slightly modified to clarify that the negotiation is a possibility given to the notifying Member, but not an automatic consequence, in line with Article 24.1 of the TRIPS Agreement.

#### IV. CONCLUSION

To summarize, the current proposal combines a simplified, more effective level of protection for all GIs alike, on the one hand, with a set of limitations and guarantees that are designed to dispel any fears that the GI protection level in the TRIPS Agreement is extended beyond what is foreseen in Article 23 TRIPS. It clarifies the level of ambition of the EU in the area of TRIPS with respect to geographical indications, on the one hand, and of making a honest, balanced proposal that provides for a number of flexibilities that ensure that the effects of "extension" are forward looking and, therefore, minimize to the extent possible, any detrimental economic effect on countries that have developed economic activities on the basis of names and signs protected as GIs in other WTO Members.

The objectives of both "extension" and the "multilateral register" are rather modest from an EU point of view and are likely to benefit, in particular, the developing world. Indeed, Europe has experienced more than any other WTO Member the effect of the lack of an appropriate GI protection over the years and many of its GIs are now claimed to be generic terms or otherwise fall under some of the "exceptions" of Articles 24.4 to 24.6 TRIPS. This is not yet the case for many of the GIs of developing countries, only they are more likely to benefit from a better GI regime.

GI proponents are reaching out to those who have expressed reservations. We expect others to act in good faith and contribute to the debate proposing amendments to the text proposed or otherwise presenting an alternative text.

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**DRAFT TEXT FOR THE MODIFICATIONS OF SECTION 3 OF THE TRIPS AGREEMENT  
ON GEOGRAPHICAL INDICATIONS TO TAKE ACCOUNT OF EXTENSION AND FOR  
THE INCLUSION OF AN ANNEX ESTABLISHING A MULTILATERAL SYSTEM OF  
NOTIFICATION AND REGISTRATION OF GEOGRAPHICAL INDICATIONS**

*Hereby the parties agree to modify the TRIPS Agreement as follows:*

**SECTION 3: GEOGRAPHICAL INDICATIONS**

**Article 22**

Protection of Geographical Indications

1. Geographical indications are, for the purposes of this Agreement, 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.
2. In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:
  - (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;
  - (b) any use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention (1967).
3. A Member shall, *ex officio* if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.

4. The protection under paragraphs 1, 2 and 3 shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

## **Article 23**

### Additional Protection for Geographical Indications

1. Each Member shall provide the legal means for interested parties to prevent use of a geographical indication for goods which are identified by the geographical indication, if such goods do not originate in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.<sup>4</sup>

2. The registration of a trademark for goods which contains or consists of a geographical indication identifying such goods shall be refused or invalidated, *ex officio* if a Member's legislation so permits or at the request of an interested party, with respect to such goods not having this origin.

3. In the case of homonymous geographical indications, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

4. In order to facilitate the protection of geographical indications, a multilateral system of notification and registration of geographical indications eligible for protection in those Members participating in the system shall be established in accordance with the Annex.

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<sup>4</sup> Notwithstanding the first sentence of Article 42, Members may, with respect to these obligations, instead provide for enforcement by administrative action.

## **Article 24**

### **Exceptions**

1. Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, Members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.

2. The Council for TRIPS shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of the WTO Agreement. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council, which, at the request of a Member, shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section.

3. In implementing this Section, a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement. In implementing any amendments to this Section, a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the amendment to the TRIPS Agreement.

4. Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (a) for at least 10 years preceding 15 April 1994 or (b) in good faith preceding that date. Without prejudice to Article 22 of the TRIPS Agreement, a Member shall not be required solely on the basis of Article 23 of the TRIPS Agreement to prevent continued and similar use of a particular geographical indication of another Member identifying goods other than wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory

of that Member either (a) for at least 10 years preceding [the date of signature of the amendment to the TRIPS Agreement] or (b) in good faith preceding that date.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

- (a) before the date of application of these provisions in that Member as defined in Part VI; or
- (b) before the geographical indication is protected in its country of origin;

measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication. However, the date under (a) above shall be that of the application of the entry into force of the amendment to the TRIPS Agreement, where the trademark concerns products other than wines and spirits and its registration, validity or use is prejudiced by the application of Article 23.2 of the TRIPS Agreement but not by the application of Article 22.3 of the TRIPS Agreement.

6. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to plants or animals for which the relevant indication is identical with the name of a plant variety or animal breed existing in the territory of that Member as of the date of entry into force of the WTO Agreement, as amended.

7. A Member may provide that any request made under this Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Member or after the date of registration of

the trademark in that Member provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Member, provided that the geographical indication is not used or registered in bad faith.

8. The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

9. There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

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ANNEX

Multilateral System of Notification and Registration of Geographical Indications

**1. Participation**

Each WTO Member may elect to participate by notifying geographical indications into the multilateral system of notification and registration of geographical indications ("the system") established by this [instrument] by [action to be taken]...<sup>1</sup> ("the participating Member"). Members that do not notify geographical indications into the system will be deemed to be "non-participating Members".

**2. Notification**

*Substantive conditions*

2.1 Each participating Member shall be entitled to notify to the [body administering the system] (the "administering body") each geographical indication which:

- (a) meets the definition of a geographical indication specified in paragraph 1 of Article 22 of the TRIPS Agreement; and
- (b) is protected in its territory and has not fallen into disuse in that territory.

*Contents of the notification*

2.2 The notification shall include:

- (a) the geographical indication itself in the language or languages in which it is protected in its country of origin and, where the geographical indication is in characters other than Latin characters, a transliteration into Latin characters using the phonetics of the language in which the notification is made;

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<sup>1</sup> The procedure relating to participation will depend on the legal form of the multilateral system.

- (b) any available translation of the geographical indication itself into the language in which the notification is made if the language or languages in which the geographical indication is protected in the country of origin is not one of the languages referred to in paragraph 2.4 below;
- (c) a reference to the legal instrument by which the geographical indication is protected in the notifying Member, for example the relevant national or regional legislative or administrative text or the relevant judicial decision, including, where applicable, the registration number of the geographical indication in the notifying Member; where the text of the legal instrument in question has already been notified to the WTO and circulated as a TRIPS Council document, reference shall be made to the relevant TRIPS Council document;
- (d) where available, the date on which the geographical indication first received protection in the Member making the notification (the "notifying Member") and, if applicable, any date for the expiration of the protection currently accorded; and
- (e) the geographical area from which the good must originate in order to be eligible to be identified by the geographical indication.

2.3 The notification may also include any other information that the notifying Member considers might be useful in facilitating protection of the geographical indication, such as:

- (a) suggested translations of the geographical indication in languages other than the language or languages referred to in paragraph 2.2(a) and 2.2(b) above;
- (b) information on the natural or legal persons that have, according to the law of the notifying Member, the right to use the geographical indication; these natural or legal persons may be designated collectively or, where collective designation is not possible, by name;
- (c) any bilateral, regional and/or multilateral agreement under which the geographical indication is protected, for information purposes.

*Language of the notification*

2.4 The notification shall be made in English, French or Spanish. The notification, with the exception of the geographical indication itself, shall be translated by the administering body into the other two languages.

*Form of the notification*

2.5 Notifications shall be made on the basis of a format to be adopted by the Council for TRIPS prior to the entry into operation of the system. The format of the notification shall be such as to limit notifications, wherever possible, to no longer than two pages, not counting any attached or cross-referenced texts. The [committee responsible for managing the system] shall have the authority to modify this format as it considers appropriate.

*Circulation to Members and publication of notification*

2.6. The administering body shall, immediately after receipt of a notification, circulate it to all Members and publish it on the Internet. The administering body shall also transmit any notification regarding trademarks which contain or consist of a notified geographical indications, pursuant to paragraphs 3.3, 4(c) and 5(b) below.

### **3. Registration**

3.1 The administering body shall register notified geographical indications on the Register of Geographical Indications ("the Register") in accordance with the following procedures:

3.2 Any Member may, within 18 months from the date on which the notification was circulated and published, lodge a reservation with the administering body to the effect that it considers the notified geographical indication not to be eligible for protection in its territory for any of the grounds mentioned in this paragraph or that it has serious doubts in such respect. The reservation shall identify the applicable ground or grounds and be duly substantiated. A reservation may be based on any of the following grounds:

- (a) the notified geographical indication does not meet the definition of a geographical indication specified in paragraph 1 of Article 22 of the TRIPS Agreement;
- (b) the notified geographical indication, although literally true as to the territory, region or locality in which the goods identified by it originate, falsely represents to the public that the goods originate in its territory, as provided for in paragraph 4 of Article 22 of the TRIPS Agreement;
- (c) the notified geographical indication is identical with the term customary in common language as the common name for a wine or spirit in the territory of the Member lodging the reservation ("the challenging Member") or, with respect to products of the vine, with the customary name of a grape variety existing in the territory of the challenging Member as of the date of entry into force of the WTO Agreement, or, with respect to plants or animals, with the name of a plant variety or animal breed existing in the territory of that Member as of the date of entry into force of the WTO Agreement as amended, as provided for in paragraph 6 of Article 24 of the TRIPS Agreement.

Articles 24.4 and 24.5 of the TRIPS Agreement cannot form the basis of a reservation but may be invoked under domestic law at any time if the legislation so permits.

3.3. For information purposes only, if so requested by a participating Member filing a notification, a WTO Member will also notify the existence, if any, of a trademark that contains or consists of the notified geographical indication.

3.4 Where a reservation has been lodged in respect of a notified geographical indication within the 18-month period referred to in paragraph 3.2 above, the notifying Member and the challenging Member shall, before the expiry of that period, enter into negotiations aimed at resolving the disagreement if so requested by the notifying country, in line with Article 24.1 of the TRIPS Agreement.

- 3.5 (a) The administering body shall, at the expiry of the 18-month period referred to in paragraph 3.2 above, register the notified geographical indication on the Register.
- (b) To the extent that a reservation lodged in respect of that geographical indication has not been withdrawn by the challenging Member at the time of registration, the registration shall be accompanied by an annotation referring to the reservation.
- (c) Where the reservation is withdrawn by the challenging Member after the geographical indication has been registered, the administering body shall record the withdrawal on the Register.

*Form of the Register and contents of registration*

3.6 The Register shall take the form of a searchable on-line database, freely accessible to all Members and to the public.

3.7 The registration of a geographical indication shall consist of the recording of:

- (a) the geographical indication itself, as notified under paragraph 2.2(a) above, together with any translation submitted under paragraph 2.2(b) or paragraph 2.3(a) above;
- (b) the notifying Member;
- (c) the reference to the legal instrument referred to in paragraph 2.2(c) above;
- (d) any date(s) indicated under paragraph 2.2(d) above;
- (e) a reference to the document containing the notification of the geographical indication;
- (f) any annotations relating to reservations lodged in respect of the geographical indication; and
- (g) any other information that the [committee responsible for managing the system] may decide to include in the registration.

#### **4. Legal effects in participating Members**

Each participating Member which has not lodged a reservation in respect of a notified geographical indication within the 18-month period referred to in paragraph 3.2 above, or which has withdrawn such a reservation, shall:

- (a) subject to subparagraph (b) below, provide the legal means for interested parties to use the registration of the geographical indication as a rebuttable presumption of the eligibility for protection of that geographical indication;
- (b) not refuse protection of the registered geographical indication on any of the grounds referred to in paragraph 3.2(a), (b) and (c) above;
- (c) notify the [administering body] of any applications for trademark registration that contain or consist of a geographical indication that has been registered or applied for, if the notifying participating Member has required so.

#### **5. Legal effects in non-participating Members**

Each non-participating Member which has not lodged a reservation in respect of a notified geographical indication within the 18-month period referred to in paragraph 3.2 above, or which has withdrawn such a reservation, shall

- (a) not refuse protection of the registered geographical indication for any of the grounds referred to in paragraph 3.2(a), (b) and (c) above;
- (b) notify the [administering body] of any applications for trademark registration that contain or consist of a geographical indication that has been registered or applied for, if the notifying participating Member has required so.

#### **6. Legal effects in least-developed country Members**

With respect to any least-developed country Member, any legal effect referred to in paragraphs 4 and 5 above shall only become applicable when that Member is required to apply the provisions of Section 3 of Part II of the TRIPS Agreement.

## **7. Modifications of notifications and registrations**

Each participating Member may, at any time, notify the modification of a notification it has made earlier of a geographical indication. The provisions of paragraphs 2 to 6 above shall apply to the notification of such modifications.

## **8. Withdrawals**

8.1 Each participating Member may, at any time, withdraw a notification it has made earlier of a geographical indication. If the geographical indication ceases to fulfil the conditions for protection, including the requirement that a geographical indication be protected in the territory of the notifying Member and has not fallen into disuse in that territory (Article 24.9 of the TRIPS Agreement), the notifying Member shall withdraw the relevant notification. Any withdrawal shall be notified to the administering body.

8.2 The administering body shall, immediately after receipt of the notification of withdrawal of a notification of a geographical indication by a Member, circulate the notification of withdrawal to all Members and publish it on the Internet. Any registration of the geographical indication shall be cancelled from the Register.

## **9. Fees and costs**

9.1 Each notification of a geographical indication or of the modification of that notification shall be subject to the payment of a fee. However, any participating least-developed country Member shall be exempted from the payment of such fees.

9.2 The amounts of the fees shall be fixed by the [committee responsible for managing the system] so as to cover all the expenses incurred by the administering body in connection with the administration of the system.

9.3 The initial cost of setting up and administering the multilateral system shall be borne by the central budget of the administering body and subsequently reimbursed from the fees.

9.4 The participating Member may fix, at its own discretion, and collect, for its own benefit, a fee which it may require from the applicant for multilateral registration or from the holder of the

multilateral registration in connection with the filing of the multilateral application [or the renewal of the multilateral registration].

9.5. The registration of a geographical indication shall be subject to the advance payment of a multilateral fee which shall include,

- (i) a basic fee;
- (ii) an individual fee.

9.6. The basic fee shall cover the costs described in paragraphs 9.2 and 9.3.

9.7. The individual fee shall cover the costs incurred by WTO Members requested to provide, for a given application,

(a) the information indicated in paragraph 3.3 in a manner that would cover but not exceed the cost for a given Member to produce a search report indicating whether there are any trademarks containing or consisting of a notified geographical indication.

(b) the information regarding the monitoring regarding conflicting trademark applications subsequent to the registration of a geographical indication pursuant to paragraph 4(c) and 5(b) above.

9.8. WTO Members shall notify the national component of the individual fee which it wishes to receive, amount which may be changed later but may not be higher than the equivalent of the amount which the relevant administration of the WTO Member would be entitled to receive from a national applicant in the framework of a domestic procedure, where such an individual fee is payable. The notification of a national component should be based on a duly substantiated statement.

9.9. For each individual application, the WTO Secretariat will calculate the addition of 9.5(i) and (ii) above and indicate it to the applicant. The applicant WTO Member will pay those fees in advance.

9.10. WTO Members shall commit to provide trade-related technical assistance to developing and least-developed countries with a view to enabling them to profit and actively participate in the system.

**10. Contact point**

Each Member shall notify to the administering body a contact point at the national level, from which other Members can obtain clarifications or further information on geographical indications notified by that Member. The administering body shall circulate the notification to all Members and publish it on the Internet.

**11. [Committee responsible for managing the system]**

**12. [Administering body]**

**13. [Withdrawals from the system]**

**14. [Review by competent committee]**

**15. [Date of entry into operation]**

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