

**DRAFT TEXT OF MULTILATERAL SYSTEM OF NOTIFICATION
AND REGISTRATION OF GEOGRAPHICAL INDICATIONS
FOR WINES AND SPIRITS**

Note by the Chairman

Attached is a draft legal instrument for the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits. This text is being circulated by the Chairman on his own responsibility and without prejudice to the position of any delegation. Its purpose is to facilitate the final phase of the negotiations on this matter aimed at developing an instrument that can be agreed at the Fifth Session of the Ministerial Conference.

It will be noted that the text contains three types of provision:

- Those on which only a single set of draft provisions have been put forward. Such language should of course not be taken to imply any degree of acceptance on the part of participants in the Special Session. Rather, it is put forward for their consideration with a view to advancing the process.
- Those where options have been put forward reflecting different views of delegations in the Special Session. It is hoped that participants will, through negotiation, be able to narrow their differences so as to move towards a single text on these matters.
- Those elements, such as institutional arrangements and final provisions (including administering body, committee responsible for managing the system, legal form of the instrument, etc.), which are merely flagged in the text and which will need further discussion. Some of these matters may depend on the decisions taken regarding the substance of the system to be established. If a system with a challenge mechanism were to be agreed, it might also be necessary to consider ways of limiting the number of notifications in a given time-period to manageable amounts and of providing for special challenge arrangements for Members joining the system after it has entered into operation.

A specific point which has been raised and which is not directly referred to in the text concerns "traditional expressions". Since this is a term which does not have any established meaning in WTO or other multilateral law and seems to derive essentially from the legislation of one Member, it may be difficult to address it directly in the instrument to be negotiated. One way in which this matter might be approached is through a statement by the Member concerned regarding its intentions which could be put on record at the time of the adoption of the instrument.

... ..

Having regard to paragraph 4 of Article 23 of the TRIPS Agreement, which provides that "in order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system";

Having regard to paragraph 18 of the Doha Ministerial Declaration (WT/MIN(01)/DEC/1), which states that "with a view to completing the work started in the Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS) on the implementation of Article 23.4, Ministers agree to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference";

Noting that the purpose of the multilateral system of notification and registration of geographical indications for wines and spirits shall be to facilitate the obtaining of the level of protection which is provided for in the TRIPS Agreement for geographical indications and not to increase that level of protection;

Noting that the system shall not prejudice any right already afforded to a Member under the provisions of the TRIPS Agreement to the protection of its geographical indications for wines and spirits;

Recognizing that, as provided for in paragraph 1 of Article 1 of the TRIPS Agreement, Members are free to determine the appropriate method of implementing the provisions of that Agreement within their own legal system and practice;

[*Noting* that differences regarding the eligibility of geographical indications for protection are for Members' courts and authorities to settle in accordance with the applicable law, either in the participating Member having notified the geographical indication or in the participating Member where protection is claimed;]

Having regard to the special needs of the least-developed country Members and the provisions of paragraph 1 of Article 66 of the TRIPS Agreement;

Hereby ... as follows:

1. Participation

Each WTO Member may elect to participate in the multilateral system of notification and registration of geographical indications for wines and spirits ("the system") established by this [instrument] by [action to be taken]...¹ ("the participating Member").

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) identifies a wine or a spirit;
- (b) meets the definition of a geographical indication specified in paragraph 1 of Article 22 of the TRIPS Agreement; and
- (c) 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;

¹ 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 wine or spirit 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.

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.

3. Registration

[Option A:

3.1 The administering body shall, immediately after receipt of the notification, register the notified geographical indication on the Register of Geographical Indications for Wines and Spirits ("the Register").]

[Option B:

3.1.1 Any Member may, within 18 months from the date on which the notification was circulated and published, lodge a challenge 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 paragraph 3.1.2 below or that it has serious doubts in such respect. The challenge shall identify the applicable ground or grounds.

3.1.2 A challenge 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 another 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 challenge ("the challenging Member") or 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, as provided for in paragraph 6 of Article 24 of the TRIPS Agreement;
- (d) [Option B1: no text] [Option B2: the notified geographical indication has been used in the territory of the challenging Member by any of its nationals or domiciliaries as provided for in paragraph 4 of Article 24 of the TRIPS Agreement;]
- (e) [Option B1: no text] [Option B2: the notified geographical indication is identical with, or similar to, a trademark which has been applied for or registered in good faith, or to which rights have been acquired through use in good faith as provided for in paragraph 5 of Article 24 of the TRIPS Agreement.]

3.1.3 Where a challenge has been lodged in respect of a notified geographical indication within the 18-month period referred to in paragraph 3.1.1 above, the notifying Member and the challenging Member shall, before the expiry of that period, enter into negotiations aimed at resolving the disagreement.

[Option B1:

3.1.4 (a) The administering body shall, at the expiry of the 18-month period referred to in paragraph 3.1.1 above, register the notified geographical indication on the Register.

- (b) To the extent that a challenge 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 challenge.
- (c) Where the challenge is withdrawn by the challenging Member after the geographical indication has been registered, the administering body shall record the withdrawal on the Register.]

[Option B2:

- 3.1.4 (a) Where, by the expiry of the 18-month period referred to in paragraph 3.1.1 above, no challenge has been lodged in respect of a notified geographical indication or any challenges lodged have been withdrawn, the administering body shall, at the expiry of the said period, register the geographical indication on the Register.
- (b) Where a challenge has been lodged in respect of a notified geographical indication within the 18-month period referred to in paragraph 3.1.1 above and the negotiations referred to in paragraph 3.1.3 above do not result in a withdrawal of the challenge within that period, the notification and the challenge shall be submitted to multilateral arbitration.
 - (c) Where the multilateral arbitration referred to in subparagraph (b) above results in a decision against the validity of the challenge, the administering body shall register the geographical indication on the Register.
 - (d) Where the multilateral arbitration referred to in subparagraph (b) above results in a decision upholding the validity of the challenge, the administering body shall:
 - (i) if the challenge was based on any of the grounds referred to in paragraph 3.1.2(a) or (b) above, communicate the decision to all Members and not enter the geographical indication on the Register;

- (ii) if the challenge was based on any of the grounds referred to in paragraph 3.1.2(c), (d) and (e) above, register the geographical indication on the Register together with an annotation referring to the challenge and to the decision.]]

Form of the Register and contents of registration

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

3.3 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 challenges 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

[Option A:

Each participating Member shall consult, along with other sources of information, the Register when making decisions regarding recognition and protection of geographical indications for wines and spirits in accordance with its law and shall take into account information obtained from the Register in making such decisions.]

[[Option B1:

Each participating Member which has not lodged a challenge in respect of a notified geographical indication within the 18-month period referred to in paragraph 3.1.1 above, or which has withdrawn such a challenge, 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 3.1.2(a), (b) and (c) above.]

[Option B2:

- (a) Each participating Member shall provide the legal means for interested parties to use the registration of a geographical indication as a rebuttable presumption that the geographical indication meets the definition of a geographical indication specified in paragraph 1 of Article 22 of the TRIPS Agreement and is not ineligible for protection by virtue of paragraph 4 of Article 22 of the TRIPS Agreement;
- (b) Each participating Member not mentioned in an annotation referred to in paragraph 3.1.4(d)(ii) above shall provide the legal means for interested parties to use the registration of a geographical indication as a rebuttable presumption that the geographical indication does not fall under any of the exceptions referred to in paragraphs 4, 5 and 6 of Article 24 of the TRIPS Agreement.]]

5. Legal effects in non-participating Members

[Option A:

Each non-participating Member shall be encouraged, but shall not be obliged, to refer, along with other sources of information, to the Register in making decisions under its law involving recognition or protection of geographical indications for wines and spirits in order to ensure that such decisions are based on the most complete information available.]

[[Option B1:

Each non-participating Member which has not lodged a challenge in respect of a notified geographical indication within the 18-month period referred to in paragraph 3.1.1 above, or which has withdrawn such a challenge, shall not refuse protection of the registered geographical indication for any of the grounds referred to in paragraph 3.1.2(a), (b) and (c) above.]

]Option B2:

- (a) Each non-participating Member shall provide the legal means for interested parties to use the registration of a geographical indication as a rebuttable presumption that the geographical indication meets the definition of a geographical indication specified in paragraph 1 of Article 22 of the TRIPS Agreement and is not ineligible for protection by virtue of paragraph 4 of Article 22 of the TRIPS Agreement.
- (b) Each non-participating Member not mentioned in an annotation referred to in paragraph 3.1.4(d)(ii) above shall provide the legal means for interested parties to use the registration of a geographical indication as a rebuttable presumption that the geographical indication does not fall under any of the exceptions referred to in paragraphs 4, 5 and 6 of Article 24 of the TRIPS Agreement.]]

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.

10. Contact point

10.1 Each participating 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.

10.2 Each non-participating Member may, if it so wishes, notify to the administering body a contact point at the national level. 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]
