

PROPOSAL FOR A MULTILATERAL SYSTEM FOR NOTIFICATION AND REGISTRATION OF GEOGRAPHICAL INDICATIONS FOR WINES AND SPIRITS BASED ON ARTICLE 23.4 OF THE TRIPS AGREEMENT.

Communication from Argentina, Australia, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Namibia, New Zealand, Philippines, Chinese Taipei, and the United States

With a view to achieving the Special Session Chair's suggested target date for submission of main proposals for the multilateral system for the notification and registration of geographical indications for wine and spirits eligible for protection in participating WTO Members' territories in accordance with Article 23.4 of the TRIPS Agreement (multilateral system), the Singapore Ministerial Declaration, and paragraph 18 of the Doha Declaration¹ of November 2001², Argentina, Australia, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Namibia, New Zealand, Philippines, Chinese Taipei, and the United States propose the following multilateral system.

Introduction

Ministers, in paragraph 18 of the Doha Ministerial Declaration, directed the TRIPS Council to negotiate, by the Fifth Ministerial Conference, as provided for in TRIPS Article 23.4, on the establishment of a multilateral system of notification and registration for geographical indications for wines and spirits.

During the discussions in the TRIPS Council under Article 23.4 prior to the Doha Ministerial Conference and in the Special Sessions of the TRIPS Council held since then, a number of delegations have emphasized that the purpose of any system established under Article 23.4 is to "facilitate" the protection of geographical indications rather than to ensure protection for particular indications.³

Recognizing that not all WTO Members produce wines and spirits for export, these delegations have expressed the view that the system developed by the TRIPS Council should not create new obligations or otherwise alter the rights and obligations of Members under Section 3 of Part II of the TRIPS Agreement. In particular, these delegations recognize the need for a system that

¹ Paragraph 18 of the Doha Declaration extends the scope of the multilateral system to geographical indications for spirits.

² WT/MIN(01)/DEC/1

³ Article 23.4 states: "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."

accommodates the various systems currently used by WTO Members to protect geographical indications. They further believe that the system of notification and registration should not impose undue burdens or costs on the WTO Secretariat. They also believe that, consistent with the mandate of Article 23.4, that the system should be voluntary. Finally, recognizing in particular the needs of developing and least developed countries, they believe that any system of notification and registration for geographical indications must be non-burdensome for the WTO Members choosing to participate.

The Mandate

Article 23.4 of the TRIPS Agreement calls for negotiations to be undertaken in the TRIPS Council for “*the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in the Members participating in the system*”. The paragraph makes clear that the purpose of the system is to facilitate the protection of geographical indications for wines under Section 3 of Part II of the TRIPS Agreement.

The Singapore Ministerial Declaration included “spirits” in the scope of preliminary work relevant to a notification and registration system for spirits.

Paragraph 18 of the Doha Declaration mandates the scope and coverage of the multilateral system. It confines the scope and coverage of the multilateral system envisaged under Article 23.4 to geographical indications for wines and spirits eligible for protection in those Members participating in the system.

The reference in paragraph 18 of the Doha Declaration to the TRIPS Council “*completing the work started.... on the implementation of Article 23.4.....*” confirms the intention of Ministers’ that, with the exception of geographical indications for spirits, the multilateral system be otherwise established in accordance with the mandate provided in Article 23.4.

How the Proposed System Meets the Mandate

We believe that this proposal describes a multilateral system that fulfils each of the criteria the above mentioned delegations identified as appropriate for the system of notification and registration of geographical indications for wines and spirits to be negotiated under Article 23.4 and adheres to the Ministerial mandate.

- The proposed system will not impose substantive obligations regarding protection of geographical indications beyond those currently set out in Section 3 of Part II of the TRIPS Agreement with regard to wines and spirits. Nothing in this proposal prejudices any of the rights of Members as enshrined in the TRIPS Agreement.
- The proposed system will be adaptable to the various regimes of WTO Members for protection of geographical indications for wines and spirits where those regimes are consistent with the TRIPS Agreement. The TRIPS Agreement makes clear, in Article 1, that WTO Members are free to determine the appropriate method of implementing the provisions of this Section of the Agreement within their own legal system and

practice. The responses to the questions issued under Article 24.2 of the TRIPS Agreement show the mechanisms used by Members for the purposes of implementation. The mechanisms include: various systems of registration or recognition for geographical indications, trademark law registration, including the use of certification marks, consumer protection legislation, for example legislation relating to unfair competition, alcohol beverage labeling laws, and relevant case law.

- The proposed system will “facilitate the protection of” geographical indications for wines and spirits for Members choosing to participate in the system. The proposed system does this by providing an uncomplicated and efficient system for notification and registration of the geographical indications for wines and spirits that are recognized in the national systems of individual WTO Members. All WTO Members will be provided with the notifications made by individual WTO Members and updated copies of the World Trade Organization Multilateral System of Geographical Indications for Wines and Spirits (“the Multilateral System for Wines and Spirits”). This information will then be readily available to all WTO Members, who choose to participate in the system, for use in their decision-making processes relating to the protection of geographical indications for wines and spirits.
- The proposed system will allow participating WTO Members and others to notify information regarding their domestic geographical indications for wines and spirits without undue cost or complexity and to use the information submitted without undue burden or cost. Its provisions directly address the practical aspects of facilitating the protection of geographical indications for wines and spirits for all Members of the WTO to whom participation in the system is of interest. For this reason, the system is deliberately designed to be simple and to rely, as much as possible, on procedures familiar to all Members, such as the system of notification.
- The proposed system will allow voluntary participation, as reflected by the words in Article 23.4, “in those Members participating in the system.” A WTO Member is not required to participate in this system to obtain full protection under the TRIPS Agreement for its geographical indications for wines and spirits. The system will not prejudice Members who due to their own domestic circumstances choose not to participate.
- The proposed system will be negotiated with all the Members of the TRIPS Council, under the mandate provided in the TRIPS Agreement and it will be administered, in an efficient and not costly way by the World Trade Organization. Information relating to the system of notification and registration will be available to all WTO Members in a transparent manner without undue administrative burdens and costs on the WTO Secretariat.
- The proposed system is entirely voluntary and would not impose undue burdens, thus satisfying the needs for special and differential treatment measures for developing and least developed countries. For the purposes of the proposed system, this would be a self-regulating special and differential treatment mechanism for developing countries

and least developed countries that are concerned about their ability to participate in the system (bearing in mind that least developed countries are not presently required to implement a system of protection for GIs).

**Multilateral System for Notification and Registration
Of Geographical Indications
Established under Article 23.4 of the TRIPS Agreement**

1. Notification

WTO Members wishing to participate in the system will submit³ to the Secretariat a list of domestic geographical indications for wines and spirits recognized as eligible for protection under their national legislation indicating for each indication the date on which recognition was granted by the notifying Member and the date, if any, on which protection will expire.

In the interests of transparency and to ease use of the information by WTO Members participating in multilateral agreements for the protection of geographical indications for wines and spirits, those WTO Members participating in such agreements must indicate the agreements under which each of the notified geographical indications is protected.

Subsequently, Members participating in the system will notify only additional domestic geographical indications for wines and spirits recognized as eligible for protection under their national legislation and will withdraw the notification of any previously notified geographical indication for wine or spirits no longer recognized as eligible for such protection under their national legislation.

WTO Members may decide to participate or discontinue participation in the system at any time by withdrawing their notifications.

2. Registration

Following receipt of notifications from participating Members, the Secretariat shall compile a list on behalf of all WTO Members in the form of a searchable database of all notified geographical indications for wines and spirits. This database shall be known as the World Trade Organization Geographical Indications Multilateral System for Wines and Spirits (the “Multilateral System for Wines and Spirits”). The Multilateral System for Wines and Spirits shall include: the geographical indication for the wine or the spirit that has been notified, the WTO Member who made the notification, the date on which the indication was protected by the notifying Member; the expiration date of this protection, if any, in the notifying Member and any agreement for geographical indications for wines and spirits under which the indication is protected. In accordance with Article 23.3, the same or similar geographical indication for wines and spirits may be submitted by more than one WTO Member, provided the geographical indication is

³ The format for submissions shall be established through negotiations or, if the WTO Members so agree, by the Secretariat.

recognized by each notifying WTO Member in accordance with its national regime for protecting geographical indications for wines and spirits.

Copies of the registered geographical indications for wines and spirits shall be distributed to all WTO Members. To ensure maximum transparency, the Secretariat shall, in addition to distributing copies of the lists to WTO Members, make the lists accessible, in searchable form, on the WTO's Internet Web Site (www.wto.org).

After the initial notification, the WTO Secretariat shall revise the database of notified geographical indications for wines and spirits, adding or deleting indications in accordance with WTO Members' notifications or a request for removal received from the WTO Member who originally made the notification.

Decisions to grant protection for geographical indications for wines and spirits shall occur at the national level. If any WTO Member objects to the registration of a geographical indication for wines or spirits notified by another Member, the former may oppose the recognition of that geographical indication in accordance with the laws of the notifying Member.

If an opposition is successful, the notifying Member shall request that the Secretariat remove the registration of the challenged indication from the Multilateral System for Wines and Spirits. The registration for that indication shall be removed from the Multilateral System and shall not be included in any updated lists circulated to Members.

3. Legal Effects under National Legislation

WTO Members choosing to participate in the system will commit to consult, along with other sources of information, the WTO Geographical Indications Multilateral System for Wines and Spirits when making decisions regarding recognition and protection of geographical indications for wines and spirits in accordance with their national legislation. Information obtained from the WTO Multilateral System for Wines and Spirits would be taken into account in making those decisions in accordance with that national legislation. This proposal does not affect the applicability of Article 24 of the TRIPS Agreement; all Article 24 exceptions to protection would remain in force under national law.

WTO Members not participating in the system will be encouraged to refer to the WTO Multilateral System for Wines and Spirits, along with other sources of information, in making decisions under their national legislation 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. However, this system would not give rise to specific obligations for Members that decide not to participate. Members are therefore free to consider their own capacity to take on obligations emanating from participating in the proposed system.

Any geographical indication for wines or spirits established in accordance with national legislation is entitled to protection under Section 3 of Part II of the TRIPS Agreement, whether or not it is registered in the WTO database.

4. **Voluntary Participation**

Participation in this system is voluntary. Furthermore, the system will not prejudice or affect the protection already contained in Section 3 of Part II of the TRIPS Agreement for geographical indications for those Members choosing not to participate. Requiring participation would increase TRIPS obligations for WTO Members outside a full trade round and would be contrary to Article 23.4 of the TRIPS Agreement. A voluntary participation system fully adheres to the mandate in paragraph 18 of the Ministerial Declaration

This system satisfies the need for special or differential treatment measures for least developed and developing countries because it is entirely voluntary.

5. **Monitoring the System**

The TRIPS Council shall examine the operation of the multilateral system for notification and registration of geographical indications for wines and spirits four years after its establishment to evaluate its effectiveness in facilitating protection of Members' geographical indications for wines and spirits in accordance with Section 3 of Part II of the TRIPS Agreement. This examination shall not constitute a renegotiation of the system.