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PROPOSED DRAFT TRIPS COUNCIL DECISION ON THE ESTABLISHMENT OF A MULTILATERAL SYSTEM OF NOTIFICATION AND REGISTRATION OF GEOGRAPHICAL INDICATIONS FOR WINES AND SPIRITS

Submission by Argentina, Australia, Canada, Chile, Costa Rica, Dominican Republic,
Ecuador, El Salvador, Guatemala, Honduras, Japan, Korea, Mexico, New Zealand,
Nicaragua, Paraguay, the Separate Customs Territory of
Taiwan, Penghu, Kinmen and Matsu, South Africa
and the United States

Revision

The following submission, dated 9 March 2005, from the Delegations of Argentina, Australia, Canada, Chile, Ecuador, Mexico, New Zealand and the United States was circulated as an advance copy to the Special Session of the Council for TRIPS at its meeting of 11 March 2005. At that meeting, the Delegations of the Dominican Republic, El Salvador, Honduras and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu requested that their names be added as co-sponsors. Subsequently, the Delegations of Costa Rica, Guatemala, Japan, Korea, Nicaragua and Paraguay requested that their names be added as co-sponsors. On 14 July 2008 the co-sponsors requested that the document be issued as a revision in order to reflect subsequently-added co-sponsors. On 23 July, South Africa requested that it be added as co-sponsor of the proposal. On 3 March, the co-sponsors requested the document be issued as a revision in order to reflect new preamble text on Special & Differential Treatment (S&DT), additional provisions related to S&DT, and to correspond with the formatting utilised in the draft consolidated negotiating text circulated at the twenty-eighth session of the TRIPS Council in Special Session. It should be understood that this revision 3 is intended to reflect changes made by Joint Proposal proponents during the informal drafting group process. The Joint Proposal co-sponsors remain committed to the negotiating process established by the Chair and the overall effort to produce a single consensus text.

Further to the Joint Proposal (TN/IP/W/5, 23 October 2002) and the Question and Answer Communication on the Joint Proposal (TN/IP/W/9, 13 April 2004), the following draft TRIPS Council Decision sets out in draft legal form a means by which WTO Members could implement the mandate from TRIPS Article 23.4 and Paragraph 18 of the Doha Ministerial Declaration. In that light, this text proposes the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits that facilitates the protection of wines and spirits GIs through a system that is voluntary, that preserves the existing balance of rights and obligations in the TRIPS Agreement, that preserves the territoriality of intellectual property rights for geographical indications, and that allows WTO Members to continue to determine for themselves the appropriate method of implementing the provisions of the TRIPS Agreement within their own legal system and practice.

**Proposed Draft TRIPS Council Decision on the Establishment of a
Multilateral System of Notification and Registration of
Geographical Indications for Wines and Spirits**

The Council for Trade-Related Aspects of Intellectual Property Rights ("the Council for TRIPS")

Having regard to paragraph 4 of Article 23 of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("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, we [Ministers] agree to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits;

Noting that the purpose of the multilateral system of notification and registration of geographical indications for wines and spirits shall be to facilitate the protection of these geographical indications, consistent with Part II, Section 3 of the TRIPS Agreement;

Noting that the system shall not confer any rights with respect to the geographical indications registered in the system;

Noting that the system shall not prejudice any rights or obligations of a Member under the TRIPS Agreement;

Recognizing that, as provided for in paragraph 1 of Article 1 of the TRIPS Agreement, each Member is free to determine the appropriate method of implementing the provisions of that Agreement within its own legal system and practice, and that systems for protecting geographical indications include: trademark law, including collective, guarantee or certification marks, specific protection systems for geographical indications, and other relevant laws such as those pertaining to unfair competition and consumer protection.

Recognizing the role of provisions for special and differential treatment in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, and that any assistance that may be provided with regard to the implementation of the multilateral system of notification and registration of geographical indications for wines and spirits should be appropriately targeted to achieve the objective of that system.

Decides as follows:

X.1 Establishment of the System

A multilateral system for the notification and registration of geographical indications for wines and spirits ("the System") is hereby established.

A. Participation

A.1 In accordance with paragraph 4 of Article 23 of the TRIPS Agreement, participation in the System established in this Decision is strictly voluntary, and no Member shall be required to participate.

A.2 In order to participate in the System, a Member shall make a written notification to the WTO Secretariat of its intention to participate.

B. Notification

B.1 Each Participating Member may notify to the WTO any geographical indication that identifies a wine or a spirit originating in that Member's territory.

B.2 The notification shall:

- (a) identify the notifying Member;
- (b) identify the geographical indication as it appears on wine or spirit goods in the territory of the notifying Member;
- (c) identify the territory, region or locality of the notifying Member from which the wine or spirit bearing the notified geographical indication is identified as originating;
- (d) when the geographical indication is in characters other than Latin characters, include, for information purposes only, a transliteration into Latin characters of the geographical indication using the phonetics of the language in which the notification is made ("transliteration"); and
- (e) specify whether the indication refers to a wine or spirit.

B.3 The notification may also include:

- (a) information concerning the date on which the geographical indication received protection in the territory of the notifying Member and the date, if any, on which protection will expire; and
- (b) information concerning how the notified geographical indication is protected in the territory of the notifying Member.

B.4 The notifications of each geographical indication shall be made on the basis of a standard form to be adopted by the TRIPS Council prior to the entry into operation of the System.

C. Registration on the Database

C.1 The WTO Secretariat shall, following receipt of the notification, register the notified geographical indication on the Database of Geographical Indications for Wines and Spirits ("the Database").

C.2 The registration of a geographical indication on the Database shall consist of the recording of the information provided under paragraph B.2.

C.3 The Database shall be searchable on-line, free of charge, accessible to all WTO Members and the public, and provide a means to access the original notifications.

C.4 With the exception of each notified geographical indication itself and, as applicable, its transliteration, the Database shall be available in all three WTO languages.

C.5 Each Participating Member may, at any time, submit to the WTO amended notifications of geographical indications. The provisions of paragraphs concerning "Notifications" (B1 and B2) and "Registration on the Database" (C1 to C4) above shall apply to amended notifications.

C.6 Each Participating Member may, at any time, withdraw a notification it has made earlier of a geographical indication. Any withdrawal shall be notified to the WTO Secretariat in writing.

C.7 The previously-registered geographical indication for which the notification of withdrawal was made shall thereupon be removed from the Database.

D. Consequences of Registration

D.1 Each Participating Member commits to ensure that its procedures include the provision to consult the Database when making decisions regarding registration or protection of trademarks and geographical indications for wines and spirits in accordance with its domestic law.

D.2 Members who choose not to participate are encouraged, but are not obliged, to consult the Database in making decisions under their domestic law involving registration or protection of trademarks and geographical indications for wines and spirits.

E. Special and Differential Treatment

Transitional time-periods

E.1 Participating developing country Members shall not be required to apply paragraph E above, the provisions of the multilateral system of notification and registration of geographical indications for wines and spirits ("the System"), for a period of [X] years following the date of the commencement of its participation in accordance with the written notification to the WTO Secretariat of its intention to participate pursuant to paragraph A.2 above.

E.2 In the case of a participating least-developed country LDC member this period is established at [X + Y] years following the date of the commencement of its participation in accordance with the written notification to the WTO Secretariat of its intention to participate pursuant to paragraph A.2 above.

E.3 A participating LDC Member may request before the end of the period referred to in paragraph E.2, an extension of that period. In that case, the Council for TRIPS shall, upon duly motivated request by a participating LDC Member, accord extensions of this period.

Technical Assistance

E.4 With a view to assisting interested developing country Members, in particular LDC Members, in implementing the provisions of the System, participating developed country Members, shall provide, on request and on mutually agreed terms and conditions, financial and/or technical assistance. Such assistance may also be provided during the transitional time period referred to in paragraphs E.1 to E.3 above.

E.5 The financial and/or technical assistance regarding the implementation of the provisions of the System may include, inter alia, institutional capacity building programmes to assist Members in conducting the notification activities described in paragraph B above, and in consulting the Database, as provided in paragraph D above. The assistance may entail activities such as, inter alia, training of personnel, cooperation based on best practices and experiences, and advice regarding the development of appropriate administrative procedures.

F. Termination of Participation

F.1 A Member may also terminate, at any time, its participation in the System. Any termination shall be notified to the WTO Secretariat in writing. Once a Member has terminated its participation in the System, all geographical indications previously notified by that Member shall be removed from the Database.

G. Contact point

G.1 Each Participating Member shall notify to the WTO a contact point, from which further information on geographical indications notified by that Member can be obtained. The WTO Secretariat shall publish the contact points in the Database.

H. Date of entry into operation
