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[PURSUANT TO TRIPS AGREEMENT ARTICLE 23.4 A MULTILATERAL SYSTEM OF NOTIFICATION AND REGISTRATION OF GEOGRAPHICAL INDICATIONS FOR WINES AND SPIRITS ELIGIBLE FOR PROTECTION IN THOSE MEMBERS PARTICIPATING IN THE SYSTEM]¹⁷

[MULTILATERAL SYSTEM OF NOTIFICATION AND REGISTRATION OF GEOGRAPHICAL INDICATIONS]^{EU, BRA, CH, TUR, CHN, ACP, IND}

[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.]^{JP}

A. PARTICIPATION

A.1 [In accordance with paragraph 4 of Article 23 of the TRIPS Agreement,]^{JP}
[p]^{HKC,CH,EU} participation in the System [established in this Decision]^{JP} [is [strictly]^{JP}
voluntary]^{JP,HKC} [[which]^{HKC} means [that:]^{HKC}

(a)^{HKC,CH,EU} [, and no]^{JP} [each WTO]^{CH,EU} Member(s)^{HKC} [shall be [free]^{HKC} [required]^{JP} to
participate [and]^{HKC}]^{JP,HKC} [[may]^{CH,EU} notify GIs]^{HKC,CH,EU} [protected in their territories]^{HKC}
[as provided in paragraph B.1]^{CH,EU}.

[(b) [Each WTO Member shall have]^{CH,EU} [T]^{HKC,IND} [t]^{CH,EU} he obligation to give legal effect to
registrations under the system [will only be binding upon Members choosing to participate in
the system]^{HKC,IND} [as provided in D.1]^{CH,EU}]^{HKC,IND,CH,EU}

[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.]^{JP}

B. NOTIFICATION

B.1 Each [participating]^{JP,HKC,IND} WTO Member may notify to the WTO [Secretariat]^{EU} any
[domestic]^{HKC} geographical indication [that identifies a wine or a spirit]^{JP,HKC} [[as]^{EU} defined in Article
22.1 TRIPS,]^{EU,BRA,CHN,CH,TUR} [which is]^{EU} originating [and protected]^{EU,BRA,CHN,CH,HKC} in that Member's
territory [under their domestic legislation, judicial decisions or administrative measures]^{HKC}.

B.2 The notification shall:

- (a) identify the geographical indication [as it appears on wine or spirit goods in the territory of the
notifying Member;]^{JP} [itself in the language or languages in which it is protected in its country of
origin;]^{EU,CH}
- [(b) identify the details of the geographical indication (the name, quality, reputation or other
characteristics, and goods indicated by the geographical indication).]^{HKC}
- (c) identify the notifying Member;
- (d) 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;]^{JP} [in which the good
originates;]^{EU,TUR,CH}
- (e) [identify the name and contact details of the owner of the geographical indication].]^{HKC}
- (f) when the geographical indication [for a wine or a spirit]^{JP} 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");
- (g) specify [whether the indication refers to a wine or spirit.]^{JP} [the type of goods which is identified
by the geographical indication].]^{EU,TUR}

- (h) [include a reference to the text of the legal instrument implementing TRIPS, or to the TRIPS Council document if the text of the legal instrument implementing TRIPS has already been notified to the WTO; and if provided for by domestic legislation, a reference to the legal means by which the geographical indication is protected in the notifying Member, for example the relevant national or regional legislative or administrative texts or the relevant judicial decision, including, where applicable, the registration number of the geographical indication in the notifying Member.]^{EU}

[The relevant domestic legislation or judicial decisions protecting the geographical indication in the territory of the notifying Participating Member.

Or:

A statement executed under seal by the government of the notifying Member to the effect that the geographical indication:

- (i) conforms with the definition in Article 22.1 of the TRIPS Agreement;
 - (ii) is protected by law and has not fallen into disuse in the territory of the notifying Participating Member; and
 - (iii) a statement by the government of the notifying Participating Member that the geographical indication is for wines and/or spirits.]^{HKC}
- (i) [indicate, where available, the date on which the geographical indication first received protection in the originating Member and, if applicable, any date of expiration [of the protection currently accorded]^{EU} [under the domestic legislation or judicial decisions or administrative measures]^{HKC, EU, HKC}
- (j) [include the requisite fee.]^{HKC}

B.3 The notification may also include:

- [(a) information concerning the date on which the geographical indication for a wine or a spirit 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 for a wine or a spirit is protected in the territory of the notifying Member.]^{JP}
- [(c) available translations of the geographical indication in languages other than the language or languages referred to in paragraph B.2(a);
- (d) an indication of any bilateral, regional or multilateral agreement under which the geographical indication is protected.]^{EU, TUR}

B.4 The notifications of each geographical indication [for a wine or a spirit]^{JP} 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.

B.5 Notifications may be made at any time. However, the WTO Secretariat may fix the maximum number of applications to be processed each year, having regard to the administrative capacity and resources constraints of the WTO Secretariat.]^{HKC}

¹ The user-pays principle applies. The system will be run on a full-cost recovery basis. Consideration might be given to special and differential treatment in this regard for least-developed country Members and developing country Members.

B.6 [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 WTO Secretariat into the two other languages.]^{EU}

C. REGISTRATION

C.1 After receiving notifications from Participating Members, the WTO Secretariat shall undertake formality examination of the notifications and ensure that documents submitted are in order. The examination process does not involve substantive examination.

C.2 The WTO Secretariat may require the notifying Participating Member to rectify any deficiency if it considers the documentation submitted fails to meet the stipulated minimum formal requirements.]^{HKC}

C.3 [Once]^{HKC} [t]^{HKC} [T]^{JP,EU} he WTO Secretariat [is satisfied that the formalities and documents submitted are in order and the requisite fee has been paid, the geographical indications]^{HKC} shall[, as soon as practicable after receipt of the notification, [circulate it to all Members, publish it on the Internet and]^{EU} register]^{JP,EU} [record]^{HKC} the notified geographical indication on the [Database]^{JP} [Register]^{EU, HKC} of Geographical Indications [for Wines and Spirits ("the Database").]^{JP} [("the Register")]^{EU}

[For each geographical indication recorded on the Register, the WTO Secretariat shall, as soon as practicable, issue an official copy of the Certificate of Registration to the relevant Participating Member. Certificates of Registration may be issued in electronic form.]^{HKC}

C.4 The registration of a Geographical Indication [for a wine or spirit on the Database]^{JP} shall consist of the recording of the information provided under paragraph[s]^{EU} B.2² [and B.3]^{EU} [and contain the following information in respect of each registered geographical indication:

- (a) A statement to the effect that the date of notification and registration shall not be taken as providing evidence of priority between conflicting claims in respect of identical or similar geographical indications.
- (b) The date of registration.
- (c) The serial number of registration]^{HKC}.

C.5 [The Database]^{JP} [The Register]^{EU, HKC} shall [[be]^{JP} [take the form of a]^{EU} searchable on-line [database]^{EU}, [free of charge]^{JP}, [freely]^{EU} accessible to all WTO Members and [to]^{JP}]^{JP,EU} [be made available on the WTO Internet website for access and search by]^{HKC} the public, and provide a means to access the original notifications.

[With the exception of each notified geographical indication itself and, as applicable, its transliteration, the Database shall be available in all three WTO languages.]^{JP}

[The WTO Secretariat shall notify the Participating Members of any new or amended registrations. The WTO Secretariat shall also distribute a copy of the Register to every Participating Member on an annual basis. This may be done by electronic means.]^{HKC}

C.6 UPDATING OF THE MULTILATERAL REGISTER

- (a) Initial registrations shall be valid for a period of 10 years. Subject to the payment of a specified fee, Participating Members may submit a request to the WTO Secretariat for the

² (JP Note: Reference should correspond to provisions enumerated in paragraph 3.2 of TN/IP/W/10).

renewal of registrations. Each renewed term shall be a further period of 10 years, and there shall be no limit on the number of times renewals can be made.

- (b) Participating Members requesting renewal of a geographical indication on the Register shall submit the information set out in paragraph B.2 above, subject to any factual changes that have occurred since the original registration or subsequent amendment. Such applications shall be subject to a formality examination.³^{HKC}
- (c) Each [Participating]^{JP, HKC} WTO Member [shall]^{HKC} [may]^{JP, EU}, [at any time]^{JP, EU} [as soon as practicable]^{HKC}, [submit to the WTO amended notifications of geographical indications]^{JP} [notify]^{HKC, EU} [the WTO Secretariat of any amendments or corrections to the registrations on the Register]^{HKC} [the modification of a notification of a registered geographical indication]^{EU}. [The provisions of paragraphs [concerning "Notification" (B.1 and B.2) and "Registration on the Database: General Procedures" (C.3, C.4, C.6) above]^{JP} [related to notification, registration and effect of registration]^{EU} shall apply to [amended notifications]^{JP} [the notification of such modifications to it]^{EU, JP, EU} [The WTO Secretariat shall allow such amendments or corrections to the registrations if it is satisfied that the notification is in order and a specified fee has been paid.]^{HKC}
- [(d) The WTO Secretariat shall be responsible for the compilation, maintenance and updating of the Register.]^{HKC}
- [(e) [A notifying]^{EU} [Each Participating]^{JP} Member may, at any time, [notify to the WTO Secretariat the withdrawal of]^{EU} [withdraw]^{JP} a notification [it has made earlier]^{JP} of a [registered]^{EU} geographical indication. [Any withdrawal shall be notified to the WTO Secretariat in writing.]^{JP} [Upon receipt of the notification of withdrawal of a notification of a registered geographical indication, the WTO Secretariat]^{EU} [The previously-registered geographical indication for which the notification of withdrawal was made]^{JP} shall [circulate the notification of withdrawal to all Members and publish it on the Internet and remove the registered geographical indication from the register]^{EU} [thereupon be removed from the Database without undue delay]^{JP, JP, EU}
- [(f) If a registered geographical indication is no longer protected [or has fallen into disuse]^{HKC} in the [territory of the notifying Member]^{EU} [country of origin]^{HKC}, the [Participating]^{HKC} [notifying]^{EU} Member [who submitted the original application]^{HKC} shall notify [to]^{EU} the WTO Secretariat [the withdrawal of the relevant notification]^{EU} [and such geographical indications shall be removed from the Register accordingly]^{HKC, HKC, EU}
- [(g) Any Participating Member may notify the WTO Secretariat that a registered geographical indication is refused protection by the courts, tribunal or administrative bodies in its country or territory on grounds permitted under Articles 22 to 24 of the TRIPS Agreement. The WTO Secretariat shall, as soon as possible, upon receipt of such a notice, transmit it to the Participating Member who submitted the original application and, at the same time, record the refusal in the Register together with the reasons for refusal.]^{HKC}

D. [LEGAL EFFECTS]^{EU} CONSEQUENCES OF REGISTRATION

[D.1 The Certificate of Registration (or such copies of the Certification as domestic laws may permit) shall be proof of inclusion of the relevant geographical indication in the Register of Geographical Indications in any domestic courts, tribunals or administrative bodies of the

³ The recordal procedure is aimed at enhancing transparency. The decision of the domestic courts, tribunals or administrative bodies to refuse protection of a registered geographical indication shall only have binding effect within its territory.

Participating Members in any judicial, quasi-judicial or administrative proceedings related to the geographical indication.]^{HKC}

[D.1 Each [Participating]^{JP,IND} WTO Member [commits to ensure]^{JP} [shall provide]^{EU} that [its procedures include the provision to]^{JP} [domestic authorities shall]^{EU} consult the [Database]^{JP} [Register and take its information into account]^{EU} when making decisions regarding registration and/or protection of trademarks and geographical indications [for wines and spirits]^{JP} in accordance with its [laws and regulations.]^{JP} [domestic procedures:]^{EU}]^{JP,EU} [To enable developing countries, and least-developed countries in particular, make a decision or consult the database adequate and effective technical assistance shall be provided.]^{NIG,IND}

- [[(a) in the framework of these domestic procedures and in the absence of proof to the contrary in the course of these procedures,]^{EU} [D.2 Registration of an indication on]^{HKC} the Register shall be considered as a prima facie evidence [to prove:]^{HKC}]^{HKC,EU}
- [(a) ownership of the indication;]^{HKC}
- [[(b)]^{HKC} that [, in that Member,]^{EU} [in the notifying Member]^{IND} the registered geographical indication satisfies the definition of "geographical indication" laid down in Article 22.1 of the TRIPS Agreement; [and]^{HKC}]^{HKC,EC}
- [(b) in the framework of these domestic procedures, domestic authorities shall consider assertions of genericness as laid down in Article 24.6 TRIPS only if these are substantiated.]^{EU}
- [(c) that the indication is protected in the country of origin (i.e. Article 24.9 of the TRIPS Agreement does not apply)

in any domestic courts, tribunals or administrative bodies of the Participating Members in any judicial, quasi-judicial or administrative proceedings related to the geographical indication. The issues will be deemed to have been proved unless evidence to the contrary is produced by the other party to the proceedings. In effect, a rebuttable presumption is created in relation to the above three issues.⁴

D.3 Members may further provide, if their legal system so permits, that costs may be awarded against the party who has unsuccessfully challenged the prima facie evidence.⁵

D.4 For the avoidance of doubt:

- (a) A Participating Member may refuse protection of a geographical indication in accordance with its domestic laws, if any of the grounds or exceptions under Articles 22 to 24 of the TRIPS Agreement is found to be applicable by its domestic courts, tribunals or administrative bodies having regard to the relevant local circumstances.
- (b) Decisions of the domestic courts, tribunals or administrative bodies of Participating Members shall only have territorial effect.
- (c) The admittance of the prima facie evidence is not intended to affect the operation of other presumptions which may be applicable under domestic laws.]^{HKC}

⁴ For jurisdictions where there is a distinction between legal burden and evidential burden of proof, the proposed legal tool will shift the evidential burden of proof on issues (a)-(c) mentioned in this paragraph.

⁵ Such a provision may help to deter potential abuse of the right to challenge the prima facie evidence on the basis of a Certificate Registration.

[D.5 Members who choose not to participate are encouraged, but are not obliged, to consult the Database in making decisions under their laws and regulations involving registration or protection of trademarks and geographical indications for wines and spirits.]^{JP}

E. FEES AND COSTS

Costs relating to operating the system

E.1 [The cost of setting up and administering the Register shall be borne by the central budget of the WTO Secretariat.]^{EU}

Fees

[E.2 Under B.2 (i), C.6 (a) and (c) the registration is subject to the payment of the requisite fee. The user-pays principle applies. The system will be run on a full-cost recovery basis.]^{HKC}

F. SPECIAL AND DIFFERENTIAL TREATMENT

[Transitional time-periods]^{JP}

[F.1 [A] AG,LDC,BRA,CHN,IND [Participating]^{JP} developing country Member[s]^{JP} [is entitled to delay]^{AG,LDC,BRA,CHN,IND} [shall not be required to apply paragraph D.1⁷ of the provisions of the multilateral system of notification and registration of geographical indications for wines and spirits ("the System")]^{JP} for a period of [10] AG,LDC,BRA,CHN,IND [X]^{JP} years[, as from the date of entry into force of the amendment to the TRIPS Agreement,]^{AG,LDC,BRA,CHN,IND} [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.2⁸]^{JP} [the application of the provisions contained in Article D (legal effects/consequences of registration) of this Annex.]]^{AG,LDC,BRA,CHN,IND}

F.2 [In the case of a participating]^{JP} [A] AG,LDC,BRA,CHN,IND least-developed country Member [is entitled to delay for a] AG,LDC,BRA,CHN,IND [this]^{JP} period [is established at]^{JP} [of 20] AG,LDC,BRA,CHN,IND [X-Y]^{JP} years[, as from the date of entry into force of the amendment to the TRIPS Agreement,]^{AG,LDC,BRA,CHN,IND} [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.2⁹]^{JP} the application of the provisions contained in Article D (legal effects/consequences of registration) of this Annex]^{AG,LDC,BRA,CHN,IND} [A participating least-developed country Member may request before the end of the period referred to in paragraph [F.2] an extension of that period. In that case, the Council for TRIPS shall, upon duly motivated request by a participating least-developed country Member, accord extensions of this period.]^{JP}

[F.3 Developing country Members and least-developed country Members shall be exempted from the registration fees as defined in Article E (fees and costs).]^{AG,LDC,BRA,CHN,IND}

[Technical Assistance]^{JP}

[F.4 Upon their request, developing country Members and least-developed country Members shall be assisted by the WTO Secretariat in translating into one of the language referred to in Article B.7 of this Annex, where applicable, the notification or modification of notification of a geographical indication.]^{AG,LDC,BRA,CHN,IND}

⁶ A preliminary assessment on the costs for operating the proposed system is attached at the Annex.

⁷ Para. 5 of TN/IP/W/10.Rev.2.

⁸ Para. 2.2 of TN/IP/W/10.Rev.2.

⁹ Para. 2.2 of TN/IP/W/10.Rev.2.

F.5 [In order to facilitate the participation in, and implementation]^{AG,LDC,BRA,CHN,IND} [With a view to assisting interested developing country Members, in particular least developed country Members, in implementing the provisions]^{JP} of [the]^{AG,LDC,BRA,CHN,IND} [multilateral system]^{AG,LDC,BRA,CHN,IND} [System]^{JP} [of notification and registration of geographical indications]^{AG,LDC,BRA,CHN,IND}, [participating]^{JP} developed country Members shall provide, [according to Article 67 of the TRIPS Agreement,]^{AG,LDC,BRA,CHN,IND} [on request and on mutually agreed terms and conditions,]^{JP} [technical and/or financial]^{AG,LDC,BRA,CHN,IND,JP} assistance [to developing country Members and least-developed country Members]^{AG,LDC,BRA,CHN,IND}. [Such assistance may also be provided during the transitional time period referred to in paragraphs F.1 and F.2.]^{JP} [The WTO Secretariat shall enhance its cooperation with other relevant international organizations, with a view to making technical assistance and capacity building as effective and operational as possible.]^{AG,LDC,BRA,CHN,IND,JP}

[F.6 The technical and/or financial 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 Article B¹⁰, and in consulting the Database; as provided in paragraph D.1¹¹. 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.]^{JP}

[G. REVIEW

G.1 The notification and registration system shall be subject to review after [four] years from establishment of the system. In particular, the question of scope of participation should be re-visited as part of the review.]^{HKC}

[H. TERMINATION OF PARTICIPATION

H.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.]^{JP}

J. CONTACT POINT

J.1 Each [Participating]^{JP,HKC} Member shall notify to the WTO a contact point¹², [and/or details of the office competent to receive correspondence from the WTO Secretariat.]^{HKC} from which further information on geographical indications [for wines and spirits]^{JP} notified by that Member can be obtained. The WTO Secretariat shall publish the contact points [in the Database]^{JP} [in the Register]^{EU}.

¹⁰ Para. 3 of TN/IP/W/10.Rev.2.

¹¹ Para. 5 of TN/IP/W/10.Rev.2.

¹² The EU, JP and HKC agree to deal with the functions of a Contact Point in a separate paragraph towards the end of the text.

[ANNEX

GEOGRAPHICAL INDICATIONS REGISTRY FOR WINES AND SPIRITS APPROXIMATE COSTING

The model put forward by Hong Kong, China in this paper is based on formality examination by the WTO Secretariat (or a similar body) in Geneva, and no multilateral opposition proceedings.

Hong Kong, China has had experience of operating a Designs Registry based on formality examinations. The examination of applications for registered designs in Hong Kong, China is a little more complex than the formality examination proposed in this paper, because design registration must include examination of claims for priority under the Paris Convention. This step would not be applicable to geographical indications.

For the purpose of costing, we have assumed:

- a maximum capacity of 10,000 registered geographical indications;
- the workflow is 1,000 applications per year;
- registrations must be renewed after 10 years;
- 53 per cent of all registered geographical indications are renewed (based on HK Designs Registry experience);
- 10 per cent of registrations are amended or records changed in 10 years (based on HK Designs Registry experience);
- all computer equipment will be written down in 10 years, but, in effect, equipment could be renewed after five years at minimal cost if the system specification is unchanged;
- HK costs have been converted to US dollars at HK\$7.8 = US\$1.0, and a cost-of-living index has been applied to adjust to Swiss cost factors. The cost in US dollars reflects Hong Kong, China labour and overhead costs.

Based on our experience, two full-time university graduate staff are required to carry out the formality examinations, supported by a small clerical staff together with overheads and accommodation. On this basis, we estimate the cost of establishing a computer system and secure Internet server with requisite software (modeled on the electronic processing system of the HK Designs Registry which was launched in 2004) to support the register will be US\$208,381. The annual recurrent cost would be in the region of US\$405,778. Based on these figures, the cost of registering an individual geographical indication would be around US\$103.^{HKC}