

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

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

Draft Composite Text

The attached Draft Composite Text is without prejudice to Members' positions on the overall outcome of the negotiations. Members are working on the understanding that nothing is agreed until everything is agreed, and that Members may revert to any issue of the text at any time. The paper exclusively reflects the text that has emanated from Members in the small group consultations.¹

¹ The abbreviations used in the attached paper correspond to the following Members: ACP = ACP Group; AG = African Group; BAR = Barbados; BRA = Brazil; CAN = Canada; CH = Switzerland; CHN = China; COL = Colombia; CUB = Cuba; EU = European Union; HKC = Hong Kong, China; IND = India; JP = Joint Proposal Group; LDC = LDC Group; MAL = Malaysia; NIG = Nigeria; SG = Singapore; TUR = Turkey.

**[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]^{JP,SG,BRA}**

**[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 [domestic]^{HKC} laws such as those pertaining to unfair competition and consumer protection[, as well as judicial decisions or administrative measures]^{HKC};

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,HKC}

[X.2 SCOPE AND COVERAGE

This system applies to wines falling under heading 22.04, and to spirits falling under heading 22.08, of the International Convention on the Harmonized Commodity, Description and Coding System ("Harmonized System"), done at Brussels on 14 June 1983.]^{CAN}

A. PARTICIPATION

A.1 [In accordance with paragraph 4 of Article 23 of the TRIPS Agreement,]^{JP,SG} participation in the System [[established in this Decision]^{JP,SG} is voluntary and no Member shall be required to participate.]^{JP,HKC,SG,IND,BRA}

[Participation in the system means:

- (a) Each WTO Member [shall be free to participate and]^{HKC} may notify geographical indications as provided in Section B.]^{CH,EU,HKC}
- (b) [Each WTO Member shall consult the Register as provided in Section E.]^{CH,EU} [The obligation to give legal effect to registrations under the system will only be binding upon Members choosing to participate in the system.]^{HKC,IND,BRA}

[A.2 In order to participate in the System, a Member shall make a written notification to the WTO through the WTO Secretariat of its intention to participate.]^{JP,CUB}

B. NOTIFICATION

B.1 Each [participating]^{JP,HKC,IND,SG,BRA,CUB} WTO Member may notify to the WTO [[through the WTO]^{JP} Secretariat]^{EU,JP} any geographical indication [that identifies a wine or a spirit]^{JP,HKC,SG,CUB} [as defined in Article 22.1 of the TRIPS Agreement, which is]^{EU,BRA,CHN,CH,TUR} originating and protected in that Member's territory.

B.2 The notification shall:

- (a) identify the geographical indication [as it appears on the wine or spirit in the territory of the notifying Member;]^{JP,SG,CUB} [itself in the language or languages in which it is protected in its country of origin;]^{EU,CH,BAR}
- [(b) identify the quality, reputation or other characteristic which is essentially attributable to the geographical origin [of the wine or spirit indicated by the geographical indication in question]^{SG} [and whether the characteristics are due to climate, terrain, human resources or other factors]^{CUB};^{MAL,HKC,SG,CUB}
- (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,CUB} [in which the good originates]^{EU,TUR,CH};

- (e) identify the name and contact details of interested parties who may enforce the protection of the geographical indication including the holder, the administrator or geographical indication authority of the geographical indication;^{HKC,COL}
- (f) when the geographical indication [for a wine or a spirit]^{JP,SG,BRA} 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,SG,HKC,BRA} [the type of goods which is identified by the geographical indication]^{EU,TUR};
- (h) [include a reference to the relevant domestic legislation or judicial decisions or other legal means protecting geographical indications in the territory of the notifying Member, and if available domestically a reference to the specific legal instrument protecting the notified geographical indication in the territory of the notifying Member]^{EU,HKC} [; 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,HKC}
- [(j) include the requisite fee.²]^{HKC,BRA}

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.]^P
- [(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}

² 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.4 The notifications of each geographical indication [for a wine or a spirit]^{JP,SG,BRA} shall be made on the basis of a standard form to be adopted by the Council for TRIPS 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}

B.6 The notification shall be made in English, French or Spanish [with the exception of the geographical indication itself which shall be notified in accordance with paragraph B.2(a)]^{JP}. The notification, with the exception of the geographical indication itself, shall be translated by the WTO Secretariat into the two other languages.

[C. SECRETARIAT]

C.1 The WTO Secretariat shall manage the system and be responsible for the compilation, maintenance and updating of the Register.

C.2 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.3 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}

D. REGISTRATION

D.1 The WTO Secretariat[, once it is satisfied that the formalities and documents submitted are in order and the requisite fee has been paid,]^{HKC} shall, as soon as practicable after receipt of the notification, [conduct a formality examination and then]^{CHN} [circulate³ it to all Members and]^{EU,CHN} register the notified geographical indication on the [Database]^{JP} [Register]^{EU,HKC} of Geographical Indications [for Wines and Spirits ("the Database")]^{JP} [("the Register")]^{EU} [within X days]^{COL}.

[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}

D.2 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.2⁴ [and B.3]^{EU} [and contain the following information in respect of each registered geographical indication:

(a) The date of registration.

(b) The serial number of registration]^{HKC}.

³ The format for circulation (paper and/or electronic) is to be determined.

⁴ JP Note: Reference should correspond to provisions enumerated in paragraph B.2 of TN/IP/W/10/Rev.4.

D.3 (a) The [Database shall be]^{JP} [Register shall take the form of a database that is]^{EU} searchable on-line, readily accessible and free of charge to all WTO Members and to the public, and provide a means to access the original notifications.

(b) [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}

D.4 UPDATING [THE DATABASE]^{JP} [OF THE MULTILATERAL REGISTER]^{EU}

[(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 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.]^{HKC,BRA}

(c) Each [notifying]^{EU,CH} [participating]^{JP,HKC,SG,BRA} Member may, at any time submit amendments to a notification of a registered geographical indication. The provisions of Sections [...] ⁵ shall apply to amended notifications. [Corrections shall be notified promptly.]^{HKC,BAR}

(d) Each [notifying]^{EU} [participating]^{JP,SG,BRA} Member may at any time notify to the WTO Secretariat in writing the withdrawal of its notification of a registered geographical indication. Upon receipt of the notification of withdrawal of a notification of a registered geographical indication, the WTO Secretariat shall [circulate the notification⁶ of withdrawal to all Members and]^{EU} and update the [Database]^{JP} [Register]^{EU} by removing⁷ the registered geographical indication and recording⁸ the withdrawal of the notification.

[(e) If a registered geographical indication is no longer protected or has fallen into disuse in the notifying Member's territory, that Member shall [notify the end of that protection]^{COL} [promptly request the withdrawal of its notification in accordance with paragraph D.4(d) above.]^{HKC,BRA} -HKC-COL,BRA

[(f) 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.]^{9, HKC,BRA}

⁵ The exact extent of this reference remains to be determined.

⁶ The format for circulation (paper and/or electronic) is to be determined.

⁷ Barbados' suggestion: "by placing the withdrawn notification in the section of the Database/Register on withdrawn notifications."

⁸ Barbados' suggestion: "by placing the withdrawn notification in the section of the Database/Register on withdrawn notifications."

⁹ 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.

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

[E.1 Each [participating]^{JP,IND,SG,BRA,CUB} WTO Member [commits to ensure]^{JP,BRA} [shall provide]^{EU} [may provide]^{CHN} that [its procedures include the provision to]^{JP,BRA} [domestic authorities [shall]^{EU} [may]^{CHN,EU,CHN} 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,SG,BRA} in accordance with its [laws and regulations]^{JP,BRA,COL} [and]^{COL} [domestic procedures]^{EU,COL}.]^{JP,EU,COL}

[[In the framework of these domestic procedures and in the absence of proof to the contrary in the course of these procedures,]^{EU} [Registration of an indication on]^{HKC} the Register shall be considered as a prima facie evidence]^{HKC,EU}

[(a) ~~of the holder or geographical indication authority of the~~ of interested parties who may enforce the protection of the geographical indication;]^{HKC}

[[~~(b)~~]^{HKC} that in the [notifying]^{IND} Member [that consults the Register]^{EU} the registered geographical indication satisfies the definition of "geographical indication" laid down in Article 22.1 of the TRIPS Agreement; [and]^{HKC}]^{HKC,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.^{10, HKC}

[In the framework of these domestic procedures, domestic authorities shall consider assertions of genericness as laid down in Article 24.6 of the TRIPS Agreement only if these are substantiated.]^{EU}

[E.2 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,BAR,BRA,COL}
- [(d) 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.]^{HKC,BAR,BRA,COL,CUB, HKC,BAR,BRA,COL}

¹⁰ 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.

[E.3 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,SG,CUB}

F. FEES AND COSTS

[F.1 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,BRA,SG}

G. SPECIAL AND DIFFERENTIAL TREATMENT

Transitional time-periods

G.1 A [participating]^{JP,IND,SG,BRA} developing country Member shall not be required to apply the provisions in paragraph E [1]^{JP} of the multilateral system of notification and registration of geographical indications [for wines and spirits]^{JP} ["the System"]^{AG,LDC,BRA,CHN,IND,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 of the TRIPS Agreement]^{AG,LDC,BRA,CHN,IND,CUB} [receipt by the WTO Secretariat of the written notification pursuant to paragraph A.2.]^{JP}.

G.2 A [participating]^{JP,IND,SG,BRA} least-developed country Member shall not be required to apply the provisions in paragraph E [1]^{JP} of the multilateral system of notification and registration of geographical indications [for wines and spirits]^{JP} ["the System"]^{AG,LDC,BRA,CHN,IND,JP,CUB} for a period of [20]^{AG,LDC,BRA,CHN,IND} [X+Y]^{JP} years, as from the date of [entry into force of the amendment of the TRIPS Agreement]^{AG,LDC,BRA,CHN,IND} [receipt by the WTO Secretariat of the written notification pursuant to paragraph A.2.]^{JP}. The [Council for TRIPS]^{JP} shall, upon [duly motivated]^{JP} request by a [participating]^{JP} least-developed country Member, accord extensions of this period.

[G.3 [Participating]^{CUB} [D][d]eveloping country Members and least-developed country Members shall be exempted from the registration fees as defined in Section F (fees and costs).]^{AG,LDC,BRA,CHN,IND,CUB}

Technical assistance

[G.4 Upon their request, [participating]^{CUB} developing country Members and least-developed country Members shall be assisted by the WTO Secretariat in translating into one of the languages referred to in paragraph B.6 of this Annex, where applicable, the notification or modification of notification of a geographical indication.]^{AG,LDC,BRA,CHN,IND,CUB}

G.5 In order to facilitate the [participation in, and]^{AG,LDC,BRA,CHN,IND} implementation of the System [by interested developing country Members, in particular least-developed country Members, 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]^{JP} financial assistance to [interested]^{JP} developing country Members and least-developed country Members. Such assistance may also be provided during the transitional time period referred to in paragraphs G.1 and G.2. [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}

[G.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 Section B¹¹, and in consulting the Database, as provided in paragraph E.1¹². 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}

[H. REVIEW

H.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}

[I. TERMINATION OF PARTICIPATION

I.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, the WTO Secretariat shall update the Database to record the withdrawal of the Member's previously notified geographical indications in accordance with paragraph D.4(d).]^{JP,SG,CUB}

J. CONTACT POINT

J.1 Each [participating]^{JP,HKC,SG} Member [shall]^{EU,HKC,JP,CH} [may]^{CHN} notify to the WTO a contact point from which further information on geographical indications [for wines and spirits]^{JP,SG} notified by that Member can be obtained. The WTO Secretariat shall publish the contact points in the [Database]^{JP} [Register]^{EU}.

¹¹ JP Note: Section B of TN/IP/W/10/Rev.4.

¹² JP Note: Paragraph E.1 of TN/IP/W/10/Rev.4.