

**Statement by Switzerland on Issues related to the extension of the protection of geographical indications provided for in Article 23 to products other than wines and spirits**

Thank you for the floor, Mr. Chair.

The Swiss delegation would like to thank Sri Lanka for its statement recalling the key elements of the discussion on the extension of protection of geographical indications we have had so far in this Council. Switzerland fully supports what has been said by Sri Lanka.

In today's globalised trade and economy, it is important that not only wines and spirits but all products can benefit from geographical indications equally through an adequate and effective protection when being traded internationally. If it is possible to prevent the use of the indication "*Australian Shiraz*" for a wine produced in France and so labelled, why should it then not also be possible to prevent the abuse of geographical indications such as "*Café de Colombia produced in Turkey*" or "*New Zealand Mineral Water*" (provided that such an indication fulfils the criteria set out in TRIPS 22.1) for a water not originating from New Zealand.

The goal of extension is very simple. It is to assure that geographical indications for products other than wines and spirits benefit from the same effective protection as geographical indications for wines and spirits do.

With the extension of the protection of Article 23.1 to products other than wines and spirits, the use of geographical indications in expressions such as "*cacao de Chuao, made in Canada*" will be as illegitimate as "*Spanish Tequila*". With an extended protection, the geographical indication "*Chuao*" could be used only for cacao actually coming from the region of Chuao in Venezuela. Just as the designation "*Tequila*" is reserved exclusively for a special kind of spirit originating from Mexico – due to the protection granted by Article 23.1 TRIPS Agreement.

An extended protection will also prevent geographical indications to become in the future generic terms.

When advocating extension, we are looking for a balanced solution similar to the one for wines and spirits. This means exceptions similar to the ones provided for in

Article 24 TRIPS Agreement will also have to be taken into consideration in the discussion on the extension of protection to other products than wines and spirits.

Both, rights to use a specific indication for a specific good which have been acquired in good faith and over a long time, and what is considered to be a generic term, should not be prejudiced by extension.

The improper use of geographical indications made possible by the insufficient protection provided currently under Article 22 TRIPS Agreement results in the on-going process of geographical indications first to become renowned – a fact of which every producer is proud – but through frequent misuse for other products - such indications become generic – something of which I have never heard of a producer being happy about. The current protection for geographical indications other than wines and spirits does not adequately take into account the investments made by local producers to develop through the years a technique to produce products of quality which have special and unique qualities given to them by their geographical origin including natural and human factors. The role of the human know how and efforts which are often necessary to achieve and bring out a distinctive quality in a product are key for a geographical indication to become reputed. Geographical indications are one strategy of product differentiation, one of the most important and popular business strategies in today's globalised trade and economy. It should only be allowed to use them on products actually originating from the place indicated by the geographical indication.

It seems, however, that some delegations in this Council still have some misconceptions as to what 'extension' actually tries to achieve and that they believe it would have implications it actually does not have:

- First of all, it must be recalled that, unlike Article 22, Article 23 does not require evidence of the public being misled or the presence of an act of unfair competition in order to prevent the use of a geographical indication in respect of a product from a place other than the indicated region. With 'extension', the same will apply for geographical indications for products other than wines and spirits as well.
- Extending the protection provided in Article 23 TRIPS Agreement to other products would therefore not involve the creation of a new protection mechanism

as is often raised in opposition to extension.

- As with geographical indications for wines and spirits today, the authorities in charge of determining whether the use of a geographical indication for a particular good is legitimate, would simply have to examine whether the product actually originates from the place indicated by the geographical indication. The question would be decided on the basis of objective, foreseeable criteria (i. e. whether the product does actually originate from the place as indicated by the geographical indication used on that product). This would clearly facilitate the procedures of enforcing the protection of geographical indications and result in a reduction of the workload of judicial and administrative authorities as well as cost advantages for the enforcement of geographical indications against misuse in general. It also facilitated Members' obligation to implement the obligation resulting from Section 3 of the TRIPS Agreement, since they would have to provide only for one, coherent level of protection for geographical indications in their national legislation.
- As regards various other questions raised again by some delegates, we would like to draw their attention again to the three communications in documents IP/C/W/204, 247 and 308 which were tabled in this Council – the answers are there!

Finally, concerning the statement made in an earlier intervention this morning by Australia, that developing countries and least-developed countries have nothing to gain from 'extension', I would like to quote from an article written by the Australian Professor Michael Blakeney in the Journal of World Intellectual Property (September 2001, Vol. 4 No. 5) to oppose this statement. He writes:

"... . The subject of geographical indications is of particular interest to developing countries because of the importance to those countries of the remunerative marketing of their agricultural production. The expansion of the full scope of the TRIPS geographical indications regime to those products is an effective demonstration of the relevance of the Agreement to their economic circumstances. Resistance to this extension may communicate an unfortunate message to those countries about the political 'realpolitik' of the international intellectual property regime." (end of quote)

Mr. Chair, the extension of protection will lead, for the use of geographical indications, to genuinely equitable conditions for all products and will promote traditional methods of production and processing, thereby contributing to WTO Members economic development and improved consumer information. With extension, the advantages of an effective protection for their geographical indications would accrue not as today only for WTO Members producing wines or spirits, but equally to all WTO Members.

Therefore, geographical indications - and 'extension' with it – is neither a north-south, nor a north-north, nor a south-south issue – it is, remarkably enough, an issue in the interest of all WTO Members. Those of you who have doubts on this just should ask their home-market producers of products having a precise geographical origin and a reputation as a result of that place of origin.

Last, but not least, Mr Chair, I would like to draw the delegations attention to the fact that geographical indications are currently considered to lend one possible tool to and for the protection of traditional knowledge and genetic resources, examples to cite are ample: One could think of "*kava*", "*Rooibos tea*", "*neem*", "*Mexican enola beans*", "*Peruvian yacon*" and "*Andean nuna beans*".

For all the above-mentioned reasons, the TRIPS Council needs to proceed without any further delay to work out the legal modalities necessary to eliminate the existing deficiencies in the TRIPS Agreement in the field of the protection of geographical indications with a view to reach a mutually agreeable solution.

Thank you!