

WORLD TRADE ORGANIZATION

RESTRICTED

IP/C/W/204/Rev.1

2 October 2000

(00-4005)

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

Original: English

**COMMUNICATION FROM BULGARIA, THE CZECH REPUBLIC, EGYPT, ICELAND,
INDIA, KENYA, LIECHTENSTEIN, PAKISTAN, SLOVENIA, SRI LANKA,
SWITZERLAND AND TURKEY**

Revision

The Secretariat has received the attached paper, by means of a communication dated 15 September 2000, from Bulgaria, the Czech Republic, Iceland, India, Liechtenstein, Slovenia, Sri Lanka, Switzerland and Turkey with the request that it be circulated to Members. At the TRIPS Council meeting of 21 and 22 September 2000, Egypt, Kenya and Pakistan requested their delegations to be reflected as co-sponsors, as well.¹

¹ The incomplete reference to Article 24.2 of the TRIPS Agreement in paragraphs 3 and 9 of the paper attached to document IP/C/W/204 has been corrected in the present document.

WORK ON ISSUES RELEVANT TO THE PROTECTION OF GEOGRAPHICAL INDICATIONS

IMPLEMENTATION OF ARTICLE 24.1 – EXTENSION OF ADDITIONAL PROTECTION FOR GEOGRAPHICAL INDICATIONS TO PRODUCTS OTHER THAN WINES AND SPIRITS

Introduction and objective

1. The introduction of Section 3 of Part II of the TRIPS Agreement during the Uruguay Round gives evidence of the importance Members attach to the protection of geographical indications. At that time, however, it was decided to limit additional (or so-called "absolute") protection to wines and spirits, despite the insistence of a number of countries that such protection include other products as well. The issue of an enlarged scope of protection was left open to be dealt with at a later date.

2. Geographical indications have considerable potential for commercial use; something which has been neglected for a long time. Since the adoption of the TRIPS Agreement, awareness of the need for extending additional protection to products other than wines and spirits has been steadily growing among developing and developed countries alike, and with it, awareness of the need for more efficient protection of geographical indications. On the global market, geographical indications have become an invaluable marketing tool in trade. Their role in identifying commercial, national, regional or local characteristics is an asset for all countries, and in particular for those which rely on the added value given to goods by nature and/or man. A high and effective protection of geographical indications is a corollary of the efforts to liberalize trade in all sectors in order to foster the exchange of goods with higher added value.

3. In 1996, the TRIPS Council identified in the TRIPS Agreement three built-in agenda items concerning geographical indications: Article 23.4, Article 24.1 and Article 24.2.² Furthermore, the Council agreed that a review of the application of the provisions of the Section on Geographical Indications conducted under the latter provision permitted inputs from delegations on the issue of scope of the additional protection.³ The Czech Republic, India and Switzerland had addressed the matter of extension in their respective communications in 1997.⁴ Without repeating what was stated in the three communications, we would like to confirm our support for what is said therein. Moreover, a large number of other countries have registered, both in the TRIPS Council and in preparations for the Seattle Ministerial Conference, their strong interest in extending the additional protection to other products. However, the matter of extension has not been discussed separately by the TRIPS Council to date.

4. The following Communication is intended as a contribution to the Council's decisions mentioned in paragraph 3 and an impetus to the debate on the issue of extension. Its objective is to clarify on the basis of the existing framework why the issue of extending the scope of additional protection to products other than wines and spirits has to be part of the Council's built-in agenda of negotiations on issues relevant to the protection of geographical indications. Bulgaria, the Czech Republic, Iceland, India, Liechtenstein, Slovenia, Sri Lanka, Switzerland and Turkey reserve the right to make further amendments or additions to this communication at a future Council meeting, especially regarding the question of how to proceed in this matter in the TRIPS Council.

² Report (1996) of the Council for TRIPS, IP/C/8, paragraphs 26 to 28.

³ Ibid., paragraph 34.

⁴ Communication from the Czech Republic of 28 July 1997 (Job No. 4486, 4 August 1997); communication from India (Job No. 5023, 16 September 1997); communication from Switzerland of 15 July 1997 (Job No. 4152, 31 July 1997).

Section 3 of Part II of the TRIPS Agreement

5. Section 3 of Part II of the TRIPS Agreement provides for two different levels of protection for geographical indications. First, the general standards of protection that must be available for all geographical indications against misleading and unfair practices. Second, the additional or "absolute" protection which must be accorded to geographical indications for wines and spirits. Under the provisions of the latter, there is, among other elements enhancing the protection, no need to prove that the public is misled or that there is unfair competition.

6. This differential treatment of geographical indications can only be explained in the light of the negotiations of the Uruguay Round. The relevant TRIPS provisions are the result of trade-offs which were specific to the circumstances prevailing at the time of the Uruguay Round negotiations, in particular during the Brussels Ministerial Conference (1990). This was, to some extent, due to the link at that time between the negotiations on geographical indications and the negotiations on agriculture.

7. There is no systematic or logical explanation for the distinction made in Section 3 of Part II of the TRIPS Agreement. This distinction ignores that geographical indications for categories of goods other than wines and spirits are equally important for trade. The economic and political significance of geographical indications is growing as increasing quality awareness and higher quality requirements promote the demand for products of a specific geographical origin. The added value to exported goods increases the chances for such legitimate goods to reach the market which is part of the global vision for a multilateral trading system. That is why, since the end of the Uruguay Round, the awareness of the need for an extension of additional protection to products other than wines and spirits has continuously increased and spread among Members.

8. Since not all issues relevant to the protection of geographical indications were settled in the Uruguay Round, the built-in agenda of the TRIPS Agreement provides for the basis for further negotiations on increasing the protection of geographical indications.

The TRIPS built-in agenda on geographical indications

9. In 1996, the TRIPS Council identified three built-in agenda items of the TRIPS Agreement: Article 23.4; Article 24.1; and Article 24.2.⁵

(a) Article 23.4

10. This communication is not dealing with the built-in issue of the establishment of a multilateral system of notification and registration of geographical indications under Article 23.4 for wines and spirits. Nevertheless, Bulgaria, the Czech Republic, Iceland, India, Liechtenstein, Slovenia, Sri Lanka, Switzerland and Turkey are seizing this opportunity to stress the importance they attach to the negotiations in this area.

(b) Article 24.1

11. This provision requires that Members enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. This sentence, in our understanding, *inter alia*, forms the basis for negotiations to extend the additional protection of Article 23 to products other than wines and spirits.

12. It appears that some Members have a different reading of this sentence. They claim that the built-in mandate should only cover an increase or extension of the protection of individual

⁵ Report (1996) of the Council for TRIPS, IP/C/8, paragraphs 26 to 28.

geographical indications for wines and spirits. In our view, such an interpretation of Article 24.1 is too narrow. It would be illogical to limit the mandated negotiations to an improvement of protection of geographical indications for wines and spirits because they already benefit from the additional protection under Article 23. Moreover, such an approach would add to the imbalances already existing in Section 3 which is not consistent with the spirit and basic objectives of the TRIPS Agreement. In order to address all issues left for further clarification and improvement by the Uruguay Round compromise, the negotiations required by the built-in agenda of Article 24.1 should include not only the question of additional protection for geographical indications for wines and spirits and/or of mitigating the exceptions to protection contained in paragraphs 4 to 8 of Article 24, but should also deal with the issue of increasing the protection of individual geographical indications to products other than wines and spirits. In other words, the provisions of Article 24.1 are of general application to all products and the reference to Article 23 does not relate to products contained therein but to a means of additional protection to be provided. An additional argument for this interpretation of Article 24.1 can be found in the inherent structure of Section 3 of Part II. The title of Article 23 clearly denotes this provision to deal exclusively with geographical indications for wines and spirits. Article 24, however, is not limited to wines and spirits, except where the provisions explicitly mention so in the text.

(c) Article 24.2

13. Article 24.2 contains three additional elements which support the view of extending the additional protection of Article 23 to products other than wines and spirits in the built-in negotiations.

14. Firstly, the first sentence of paragraph 2 mandates the Council to review the application of the provisions of Section 3 on geographical indications. Apart from the fact that any review of the application of provisions might lead to an improvement and an increase of the protection granted by the provisions under review, the TRIPS Council reported to the 1996 Ministerial Conference in Singapore explicitly "...that a review of the application of the provisions of the Section on Geographical Indications as provided for in Article 24.2...permits inputs from delegations on the issue of scope...".⁶ The same statement can be found in the Background Paper to the General Council's Special Session on Implementation.⁷

15. Secondly, Article 24.2 provides in its second sentence that any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council.

16. Thirdly, the last sentence of paragraph 2 mandates the Council to take such action as may be agreed to facilitate the operation and further the objectives of this Section.

The possible procedure for the negotiations on the built-in agenda elements

17. Instead of dealing with each item of the built-in agenda on geographical indications separately, it was, *inter alia*, advocated at the Council Meeting of June 2000 to examine them concomitantly. Such a global (or so-called "basket") approach offers the advantage that Members with a stake in the negotiations could introduce all interests relevant to the built-in work and discuss them in a global and balanced manner. This approach takes into consideration the fact that the different questions the TRIPS Council has to deal with under Section 3 of Part II are intertwined.

18. As mentioned in paragraph 6 of this document, an important argument for the outcome of the negotiations on geographical indications in the Uruguay Round was the link made at the time with the negotiations on agriculture. This link is still relevant for some Members and could guide us in our future work.

⁶ Document IP/C/8, paragraph 34.

⁷ Document JOB(00)/4217, page 4, paragraph 5.

Conclusion

19. For all of the arguments set out above, Bulgaria, the Czech Republic, Iceland, India, Liechtenstein, Slovenia, Sri Lanka, Switzerland and Turkey take the view that the negotiations of the TRIPS Council on the issue of extension of additional protection to products other than wines and spirits are an integral part of the built-in agenda of the TRIPS Agreement. Accordingly, the built-in negotiations of the TRIPS Council on issues relevant to the protection of geographical indications should also include the issue of extension of additional protection to products other than wines and spirits. Only by doing this, can an overall satisfactory solution in the field of geographical indications be found which is in line with the spirit and the objectives of the TRIPS Agreement and to the benefit of all Members.
