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1 ARTICLE 23

1.1 Text of Article 23

Article 23

Additional Protection for Geographical Indications for Wines and Spirits

1. Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.⁴

(footnote original)⁴ Notwithstanding the first sentence of Article 42, Members may, with respect to these obligations, instead provide for enforcement by administrative action.

2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, *ex officio* if a Member's legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.

3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

4. 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.

1.2 Article 23.1

1. In *EC – Trademarks and Geographical Indications*, the Panel recognized that the rights provided for in Article 23.1 and 16.1 could lead to a conflict between private parties but considered that the treaty provisions themselves did not conflict.¹

1.3 Article 23.2

2. In *EC – Trademarks and Geographical Indications*, the Panel found that Article 23.2 can resolve conflicts between GIs and later trademarks, but not prior trademarks:

¹ Panel Reports, *EC – Trademarks and Geographical Indications (US)*, paras. 7.623-7.624; *EC – Trademarks and Geographical Indications (Australia)*, paras. 7.623-7.624.

"The Panel agrees that Articles 22.3 and 23.2 can resolve conflicts with *later* trademarks but they do not resolve conflicts with prior trademarks that meet the conditions set out in Article 24.5."²

1.4 Relationship with other provisions of the TRIPS Agreement

3. In *EC – Trademarks and Geographical Indications*, the Panel discussed the relationship between Article 23.1, 23.2 and Article 24.5. See also the Section on Article 24.

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² Panel Reports, *EC – Trademarks and Geographical Indications (US)*, para. 7.622; *EC – Trademarks and Geographical Indications (Australia)*, para. 7.622.