

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

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

Report by the Chairman, Ambassador Darlington Mwape (Zambia)  
to the Trade Negotiations Committee

1. This report on the negotiations on the establishment of a multilateral system of notification and registration of geographical indications (GIs) for wines and spirits ("Register") is submitted on my own responsibility and is without prejudice to the positions of delegations and to the outcome of the negotiations.

**I. STATUS OF WORK**

2. The mandate of the Special Session is set out in the first sentence of paragraph 18 of the Doha Ministerial Declaration (WT/MIN(01)/DEC/1), which reads as follows:

"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 agree to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference."

3. The mandate refers to the work already under way in the Council for TRIPS on the basis of Article 23.4 of the TRIPS Agreement, which provides that:

"[i]n 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."

4. In paragraph 29 of the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC), Ministers "agreed to intensify [the negotiations] in order to complete them within the overall time-frame for the conclusion of the negotiations that were foreseen in the Doha Ministerial Declaration".

5. As mentioned in my last report to the Trade Negotiations Committee (TNC), contained in document TN/IP/20 of 22 March 2010, and repeated at each meeting, whether formal or informal, the specific negotiating mandate of the Special Session is limited to the negotiations of a Register of GIs for wines and spirits, and other TRIPS-related issues are being handled in another context and at a different level. The issue of linkages is clearly outside the purview of the mandate of the Special Session of the Council for TRIPS as recalled in paragraph 2 above. While I may not be able to prevent delegations from making linkages in their interventions, my task as Chair has been to

repeatedly remind Members of the limited mandate of the Special Session. Whilst respecting Members' strong desire to use a Member-driven approach in the work of this negotiating group, it is my firm intention to keep this mandate in strict conformity with paragraph 18, first sentence, of the Doha Ministerial Declaration, and hence make use of the prerogative accorded by this clear mandate.

6. The report contained in TN/IP/20 and its annexes, TN/IP/18 and TN/IP/19, has usefully served as a framework for continuing and guiding the discussions of the Special Session. Since my report in TN/IP/20, I have held a number of meetings in various formats, keeping in mind the need for transparency and inclusiveness, including by maintaining a consistent flow of information and opportunities to consult more widely through open-ended informal and formal sessions.

7. The three main proposals that have been discussed remain on the table<sup>1</sup>, even while providing substantial input to the most recent textual negotiations. The Special Session's most recent work could be described as a two stage process: (1) from March to October 2010; and (2) from November 2010 to the date of this report.

8. During the first stage, i.e. from March to October 2010, this negotiating group based its work on the so-called "3-4-5" approach. "Three" stands for the three clusters of issues identified by the then Chair of the Special Session, Ambassador Manzoor Ahmad (see paragraph 6 of TN/IP/20). "Four" stands for the four questions posed by my predecessor as Chair, Ambassador Trevor Clarke, regarding legal effects/consequences of registration, participation and special and differential treatment, and "five" stands for the "five guiding principles for future work" he had suggested (see paragraphs 7 and 8 of TN/IP/20). With a view to facilitating discussions by keeping them in a structured and focused frame, as well as avoiding a rhetorical repetition of long well-known points and positions on the merits of each proposal, I further developed in June 2010 two sub-questions to my predecessor's questions on legal effects.<sup>2</sup> These sub-questions focused on national systems, and recognized the value of past explanations and clarifications by several delegations regarding how they would implement their own proposals and other Members' proposals. Replies to the two

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<sup>1</sup> Document TN/IP/W/8, tabled in April 2003, contains the proposal by Hong Kong, China. Document TN/IP/W/10, tabled in March 2005, contains the "joint proposal" and has been last revised to reflect additional co-sponsors. The list of Members currently co-sponsoring TN/IP/W/10/Rev.4, dated 31 March 2011, is as follows: Argentina, Australia, Canada, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Israel, Japan, Korea, Mexico, New Zealand, Nicaragua, Paraguay, South Africa, Chinese Taipei and the United States ("Joint Proposal Group"). Document TN/C/W/52, dated 19 July 2008, and its addenda 1-3 contain a proposal for "Draft Modalities for TRIPS Related Issues", co-sponsored by Albania, Brazil, China, Colombia, Croatia, Ecuador, the European Communities, Georgia, Iceland, India, Indonesia, the Kyrgyz Republic, Liechtenstein, Moldova, the Former Yugoslav Republic of Macedonia, Pakistan, Peru, Sri Lanka, Switzerland, Thailand, Turkey, the ACP Group and the African Group. Under the sub-heading "GI-Register: draft Modality text", paras. 1-3 of document TN/C/W/52 specifically address the issues relating to the "Register" of geographical indications for wines and spirits. Paragraph 9 of TN/C/W/52 refers to special and differential treatment.

<sup>2</sup> The two sub-questions faxed on 4 June 2010 read as follows:

- "1. When making decisions regarding the protection of geographical indications and trademarks, what sources of information are the relevant national agencies currently legally obliged to take into account and what sanction is available if they fail to do so? Are additional sources of information that become newly available automatically covered by such a legal obligation?
2. In national proceedings regarding the protection of geographical indications and trademarks, what level of substantiation is currently required to raise the issue of genericness of a term and who bears the burden of proving genericness or non-genericness:
  - a. during an application process for protection of a term?
  - b. if a protected term is challenged?"

sub-questions are now on the record of the Special Session, and have considerably enriched our collective understanding about how registration system would work and have thus assisted the negotiations. The description of current practices provided a concrete grounding for our work, clarifying that in certain instances covered by the two sub-questions domestic laws and practices did not profoundly differ across national systems. The scope and inclusiveness of engagement was enhanced further in this phase, as the number has grown of delegations actively participating in the substantive technical debate.

9. While this phase was productive and informative, it did not resolve the two key issues that continue to divide Members, namely legal effects/consequences of registration and participation, the former remaining, in my view, the major stumbling block.

10. The second stage, the preparations for which started in November/December 2010, was part of an overall process regarding the Doha Round with the objective of accelerating work in order to develop texts in all negotiating groups by the first quarter of 2011. After having consulted delegations, I circulated on 13 December a work programme of consultations for the period from 14 January to 4 March. Thereafter and again in pace with the other negotiating groups, I proposed a similar work programme from 15 March to 19 April 2011.

11. For this second stage, I suggested a list of the six "Possible Elements for Developing Texts" for the future Register, which were:

1. Notification
2. Registration
3. Legal Effects / Consequences of Registration
4. Fees and Costs
5. Special and Differential Treatment
6. Participation

12. Based on this "3-4-5-6" approach, Members agreed to negotiate text according to the following methodology:

- With regard to the organization of meetings, we began with informal group consultations. Mindful of the delicate balance between focus and inclusiveness, between group consultations and open-ended meetings, I have kept all Members informed through open-ended meetings.<sup>3</sup>
- For the composition of the drafting group, I applied the formula that Members themselves have chosen to use in the so-called "small brainstorming" group that had met outside the WTO in 2010. That formula, to me, was a balanced representation of the two sides to which I have made a slight modification, by including Hong Kong, China as a third proponent. Reflecting the progress of work and the continued interest of Members, participation in the drafting group was widened in March 2010.<sup>4</sup>

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<sup>3</sup> The open-ended meetings were held on 13 and 27 January, 11 February and 18-19 April 2011, and the Special Session held its 28<sup>th</sup> meeting on 3 March 2011. Excerpts of the Chairman's statements made at all these meetings have been put on the WTO website and the composite texts of the elements for a register were circulated to the whole WTO membership, either by fax or as a room document. On 11 April, a draft composite text was circulated as JOB/IP/3.

<sup>4</sup> The delegations originally invited to this small drafting group were: Argentina, Australia, Brazil, Canada, Chile, China, the European Union, Hong Kong, China, India, Japan, Kenya (for the African Group, with Nigeria as TRIPS focal point), Mauritius (for the ACP Group), New Zealand, Peru, South Africa, Switzerland, Turkey and the United States. In March 2011, the group was enlarged to include: Bangladesh (for

- I asked that the drafting group not merely work on text, but also act as an information conduit for other Members and endeavour to reach across the two sides of the debate to develop textual proposals. I gather that, in response to my appeal to ease the inevitable pressure on the composition of the informal drafting group, participating delegations had kept informed those supporters of their proposals, and tried to reflect, as necessary, the nuances and positions expressed by the supporters in the various sessions of the small drafting group. In the light of my plea that delegations cooperate across both sides of the debate, I welcomed the fact that several delegations came forward with textual proposals or comments, e.g. on special and differential treatment.
- With regard to the text which the group was mandated to work on, my working principle was that a negotiating text should, as much as possible, emerge from Members themselves, in line with the general directions laid out for this phase of the overall negotiations.
- The group worked on negotiating text element by element. The various textual proposals submitted before a certain deadline were collated into a "composite text" before meetings, and further supplemented, complemented or amended by textual comments during the drafting sessions. We had read-through sessions aimed at reducing differences to the extent possible. The technique employed was transparent in the sense that delegations could see the collated texts on screen and make corrections. We proceeded with the clear understanding that the text was work in progress, that it was without prejudice to Members' positions on the overall outcome of the negotiations, and that Members could revert to any issue of the text at any time.
- Members had detailed exchanges on the exact operation of the system as proposed by the different groups or individual delegations. It was my impression that the merit of discussing the operation of the Register on the basis of textual proposals was most evident in these discussions. Members were able to identify their different views and interpretations in relation to concrete parts of the text, and although not all of this thinking process is reflected in the current document, I sense that the differences were beginning to crystallize around a number of identifiable formulations.

13. The work of the drafting group was confronted by a fundamental, systemic and mandate-related concern, relating to the product coverage of the register, namely whether it would include GIs for products other than wines and spirits. As Chairman of a negotiating group with a clear mandate, I continued to stress the precise perimeter of the zone from which the final product had to emerge, any other matter having to be resolved at a different and higher level. In spite of my continuing emphasis on the mandate of the Special Session, this issue was debated repeatedly, with strong views being expressed on this point.

14. Working under the structure of the six elements the small drafting group developed a single draft composite text on the Register that was circulated as JOB/IP/3 on 11 April 2011. This draft composite text was examined by the wider membership at an open-ended meeting on 18-19 April. In that meeting, delegations who had participated in the drafting group explained the various proposed wordings and other delegations had their positions reflected in the text. Changes resulting from this open-ended drafting meeting were included in the Draft Composite Text which was last circulated as JOB/IP/3/Rev.1 on 20 April 2011.

15. The Draft Composite Text circulated as JOB/IP/3/Rev.1 reflects the text that has emanated from Members in the small group consultations and at the open-ended informal consultations. It 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.

16. Despite the fact that this text does reflect the current state of negotiations in this negotiating group and represents significant progress since my last report in TN/IP/20, views differ on whether or not it could be forwarded to the TNC by Easter 2011, and on whether and how the negotiating mandate should be accurately reflected in the Draft Composite Text. I have made strenuous attempts to resolve this and have offered to use my prerogative as Chair to improve textual compliance with the Special Session of the Council for TRIPS mandate. However, Members have been unable to engage constructively on this question and have instead insisted that the purely bottom-up and Member-driven nature of the text be scrupulously respected at this time.

17. Both sides, therefore, appear to prefer that the Draft Composite Text remain untouched at this point in time. Using my prerogative as Chair, I am therefore attaching the current Draft Composite Text in document JOB/IP/3/Rev.1 to this report to the TNC, in compliance with the agreement by all Members in the TNC of 30 November 2010 that all negotiating groups should develop texts by Easter 2011. I hold the view – after having given careful consideration to the arguments on both sides – that it is not prejudicial to the outcome of this negotiation or to any delegation's position if this text is attached as the factual representation of the state-of-play in this negotiating group with all the caveats mentioned above and on the cover page of the attached JOB/IP/3/Rev.1.

## **II. REMARKS AND NEXT STEPS**

18. I would like to thank all delegations for their co-operation and engagement. I sense that, beyond tactics and strategies, all delegations have made a genuine effort to find common language while defending their interests. The devil being in the details, I do believe that working on treaty-language formulations regarding the structure, operation and implications of the Register has – for the first time – helped all delegations to have a clearer view of each other's positions, proposals and wordings.

19. While I am aware that there still is a long way to go, I do believe that the Draft Composite Text as reflected in JOB/IP/3/Rev.1 provides a good basis on which to continue negotiations towards a multilateral system of notification and registration for geographical indications for wines and spirits.

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JOB/IP/3/Rev.1

## ATTACHMENT

**JOB/IP/3/Rev.1**  
**Council for Trade-Related Aspects**  
**of Intellectual Property Rights**  
**Special Session**

20 April 2011

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

#### Draft Composite Text

#### Revision

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 text that has emanated from Members.<sup>1</sup>

While the negotiating mandate for the Special Session of the Council for TRIPS is clearly limited to establishing a system for notification and registration of geographical indications for wines and spirits, Members' views continue to diverge on how and whether this mandate should be correctly reflected in the Draft Composite Text. Despite my repeated attempts and suggestions on how to resolve this issue in the text, Members have been unable to engage constructively on this question and have instead insisted that the purely bottom-up and Member-driven nature of the text be scrupulously respected at this time.

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<sup>1</sup> 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.

JOB/IP/3/Rev.1

**[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]<sup>JP,SG,BRA,CUB</sup>**

**[MULTILATERAL SYSTEM OF NOTIFICATION AND REGISTRATION  
OF GEOGRAPHICAL INDICATIONS]<sup>EU,CH,TUR,CHN,ACP,IND</sup>**

[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 ("the 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]<sup>HKC</sup> laws such as those pertaining to unfair competition and consumer protection[, as well as judicial decisions or administrative measures]<sup>HKC</sup>;

*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.]<sup>JP,HKC</sup>

## **[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.]<sup>CAN</sup>

## **A. PARTICIPATION**

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

[Participation in the system means:

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

**[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.]<sup>JP,CUB,HKC</sup>

## **B. NOTIFICATION**

**B.1** Each [participating]<sup>JP,HKC,IND,SG,BRA,CUB</sup> WTO Member may notify to the WTO [through the WTO]<sup>JP</sup> Secretariat any geographical indication [that identifies a wine or a spirit]<sup>JP,HKC,SG,CUB</sup> [as defined in Article 22.1 of the TRIPS Agreement, which is]<sup>EU,CHN,CH,TUR,HKC</sup> 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;]<sup>JP,SG,CUB</sup> [itself in the language or languages in which it is protected in its country of origin;]<sup>EU,CH,BAR</sup>
- [(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 [and whether the characteristics are due to climate, terrain, human resources or other factors]<sup>CUB,;MAL,HKC,SG,CUB</sup>
- (c) identify the notifying Member;

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- (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]<sup>JP,CUB</sup> [in which the good originates]<sup>EU,TUR,CH</sup>;
- [(e) identify the name and contact details of interested parties who may enforce the protection of the geographical indication including the administrator of the geographical indication;]<sup>HKC,COL</sup>
- (f) when the geographical indication [for a wine or a spirit]<sup>JP,SG,BRA</sup> 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]<sup>JP,SG,HKC,BRA</sup> [the type of goods which is identified by the geographical indication]<sup>EU,TUR</sup>;
- (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]<sup>EU,HKC</sup> [; 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]<sup>HKC</sup>;
- [(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;]<sup>EU,HKC</sup>
- [(j) include the requisite fee.<sup>2</sup>]<sup>HKC,BRA</sup>

**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.]<sup>JP</sup>

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<sup>2</sup> 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.

- [(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.]<sup>EU,TUR</sup>

**B.4** The notifications of each geographical indication [for a wine or a spirit]<sup>JP,SG,BRA</sup> 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.]<sup>HKC</sup>

**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)]<sup>JP</sup>. 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.]<sup>HKC</sup>

## **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,]<sup>HKC</sup> shall, as soon as practicable after receipt of the notification, [circulate<sup>3</sup> it to all Members and]<sup>EU</sup> register the notified geographical indication on the [Database]<sup>JP</sup>[Register]<sup>EU,HKC</sup> of Geographical Indications [for Wines and Spirits ("the Database")]<sup>JP</sup> [("the Register")]<sup>EU</sup> [within X days]<sup>COL</sup>.

[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.]<sup>HKC</sup>

**D.2** The registration of a Geographical Indication [for a wine or spirit on the Database]<sup>JP</sup> shall consist of the recording of the information provided under paragraph[s]<sup>EU</sup> B.2<sup>4</sup> [and B.3]<sup>EU</sup> [and contain the following information in respect of each registered geographical indication:

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

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

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- (a) The date of registration.
- (b) The serial number of registration]<sup>HKC</sup>.

- D.3**
- (a) The [Database shall be]<sup>JP</sup> [Register shall take the form of a database that is]<sup>EU</sup> 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.]<sup>JP</sup>

**D.4 UPDATING [THE DATABASE]<sup>JP</sup> [OF THE MULTILATERAL REGISTER]<sup>EU</sup>**

- [(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.]<sup>HKC,BRA</sup>
- (c) Each [notifying]<sup>EU,CH</sup>[participating]<sup>JP,HKC,SG,BRA</sup> Member may, at any time submit amendments to a notification of a registered geographical indication. The provisions of Sections [...] <sup>5</sup> shall apply to amended notifications. [Corrections shall be notified promptly.]<sup>HKC,BAR</sup>
- (d) Each [notifying]<sup>EU</sup> [participating]<sup>JP,SG,BRA</sup> 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 notification<sup>6</sup> of withdrawal to all Members and]<sup>EU</sup> update the [Database]<sup>JP</sup> [Register]<sup>EU</sup> by removing<sup>7</sup> the registered geographical indication and recording<sup>8</sup> 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]<sup>COL</sup> [promptly request the withdrawal of its notification in accordance with paragraph D.4(d) above.]<sup>HKC,BRA</sup>]<sup>HKC,COL,BRA</sup>

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<sup>5</sup> The exact extent of this reference remains to be determined.

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

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

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

- [(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.]<sup>9</sup><sub>HKC,BRA</sub>

**E. [LEGAL EFFECTS/]<sup>EU</sup> CONSEQUENCES OF REGISTRATION**

[E.1 Each [participating]<sup>JP,IND,SG,BRA,CUB</sup> WTO Member [commits to ensure]<sup>JP,BRA</sup> [shall provide]<sup>EU</sup> that [its procedures include the provision to]<sup>JP,BRA</sup> [domestic authorities shall]<sup>EU</sup> consult the [Database]<sup>JP</sup> [Register and take its information into account]<sup>EU</sup> when making decisions regarding registration and/or protection of trademarks and geographical indications [for wines and spirits]<sup>JP,SG,BRA</sup> in accordance with its [laws and regulations]<sup>JP,BRA,COL</sup> [and]<sup>COL</sup> [domestic procedures]<sup>EU,COL</sup>.]<sup>JP,EU,COL</sup>

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

- [(a) of interested parties who may enforce the protection of the geographical indication;]<sup>HKC</sup>

[[<sup>HKC</sup>(b)]<sup>HKC</sup> that in the [notifying]<sup>IND</sup> Member [that consults the Register]<sup>EU</sup> the registered geographical indication satisfies the definition of "geographical indication" laid down in Article 22.1 of the TRIPS Agreement; [and]<sup>HKC</sup>]<sup>HKC,EU</sup>

- [(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.<sup>10</sup><sub>HKC</sub>

[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.]<sup>EU</sup>

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<sup>9</sup> 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.

<sup>10</sup> 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.

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[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.]<sup>HKC,BAR,BRA,COL</sup>
- [(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.]<sup>HKC,BAR,BRA,COL,CUB</sup>

[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.]<sup>JP,SG,CUB</sup>

## 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.]<sup>HKC,BRA,SG</sup>

## G. SPECIAL AND DIFFERENTIAL TREATMENT

### Transitional time-periods

**G.1** A [participating]<sup>JP,IND,SG,BRA</sup> developing country Member shall not be required to apply the provisions in paragraph E [.1]<sup>JP</sup> of the multilateral system of notification and registration of geographical indications [for wines and spirits]<sup>JP</sup> [("the System")]<sup>AG,LDC,BRA,CHN,IND,JP</sup> for a period of [10]<sup>AG,LDC,BRA,CHN,IND</sup> [X]<sup>JP</sup> years, as from the date of [entry into force of the amendment of the TRIPS Agreement]<sup>AG,LDC,BRA,CHN,IND,CUB</sup> [receipt by the WTO Secretariat of the written notification pursuant to paragraph A.2.]<sup>JP</sup>.

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

[G.3 [Participating]<sup>CUB</sup> [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).]<sup>AG,LDC,BRA,CHN,IND,CUB</sup>

## Technical assistance

[G.4 Upon their request, [participating]<sup>CUB</sup> 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.]<sup>AG,LDC,BRA,CHN,IND,CUB</sup>

G.5 In order to facilitate the [participation in, and]<sup>AG,LDC,BRA,CHN,IND</sup> implementation of the System [by interested developing country Members, in particular least developed country Members, participating]<sup>JP</sup> developed country Members shall provide, [according to Article 67 of the TRIPS Agreement,]<sup>AG,LDC,BRA,CHN,IND</sup> [on request and on mutually agreed terms and conditions,]<sup>JP</sup> technical and[/or]<sup>JP</sup> financial assistance to [interested]<sup>JP</sup> 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.]<sup>AG,LDC,BRA,CHN,IND</sup>

[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 B<sup>11</sup>, and in consulting the Database, as provided in paragraph E.1<sup>12</sup>. 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.]<sup>JP,HKC</sup>

## [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.]<sup>HKC</sup>

## [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).]<sup>JP,SG,CUB,HKC</sup>

## J. CONTACT POINT

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

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

<sup>12</sup> JP Note: Para. E.1 of TN/IP/W/10/Rev.4.