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4. The protection under paragraphs 1, 2 and 3 shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another

provide for the protection of GIs. ³ Australia's claim does not appear to concern the protection of GIs, but rather the protection of other subject matter against the protection of GIs. Therefore, it does not disclose a cause of action under Article 22.2." ⁴

1.3.1.2 "Members"

4. In EC – Trademarks and Geographical Indications (US), the Panel found that the EC Regulation at issue did not implement Article 22.2 but did not consider that this necessarily meant that the European Communities had failed to implement Article 22.2:

"Turning to the Regulation, we note that it makes protection available, in the sense that it provides legal means to protect GIs. However, those legal means have not been provided to interested parties with respect to GIs located in a third country, including a WTO Member, that does not satisfy the equivalence and reciprocity conditions, and the government of which does not examine and transmit an application. These interested parties include persons who are 'nationals of other Members' within the meaning of Article 1.3 of the TRIPS Agreement. Further, to the extent that the legal means may be provided to interested parties with respect to such GIs, the Regulation alone does not provide them, because protection is contingent on satisfaction of conditions and execution of certain functions by governments of third countries. Therefore, the Panel concludes that the United States has made a prima facie case in support of its claim that the Regulation does not make available the legal means to interested parties in accordance with Article 22.2 of the TRIPS Agreement.

However, the obligation under Article 22.2 is placed on the European Communities, not on the Regulation. The TRIPS Agreement creates positive obligations in Parts II and III to accord protection according to certain minimum standards, in addition to the prohibitions against discrimination found in the basic principles under Part I. In accordance with Article 1.1, the European Communities is free to determine the appropriate method of implementing the provisions of the Agreement within its own legal system and practice. It is not obliged to ensure that this particular Regulation implements Article 22.2 where it has other measures that do so." ⁵

5. The Panel noted that there were alternative measures under which the European Communities potentially implemented its obligations under Article 22.2 and, in the circumstances, did not find that the European Communities had failed to implement those obligations:

"Nevertheless, the United States chose to challenge only the Regulation, as amended, and its related implementing and enforcement measures. It has not demonstrated that these alternative measures, which lie outside the Panel's terms of reference, are inadequate to provide GI protection to for interested parties nationals of other Members as required under Article 22.2 of the TRIPS Agreement. Therefore, it has not presented sufficient evidence to raise a presumption that the European Communities (as opposed to the Regulation) does not implement its obligations under Article 22.2. Accordingly, the Panel concludes that, with respect to the equivalence and reciprocity conditions and the examination and transmission of applications under the Regulation, the United States has not made a prima facie case that the European Communities has failed to implement its obligation under Article 22.2 of the TRIPS Agreement." ⁶

1.3.1.3 "interested parties"

6. In EC – Trademarks and Geographical Indications (US), the Panel explained that the obligation in Article 22.2 is to provide certain legal means to "interested parties" who are nationals of other Members in accordance with the criteria referred to in Article 1.3:

³ (footnote original) Consequently, whilst Article 22.4 provides for protection against GIs, it only applies to the protection of other GIs.

⁴ Panel Report, EC – Trademarks and Geographical Indications (Australia), para. 7.714. See also Panel Report, Australia – Tobacco Plain Packaging, para. 7.2845.

⁵ Panel Report, EC – Trademarks and Geographical Indications (US), paras. 7.745 -7.746

⁶ Panel Report, EC – Trademarks and Geographical Indications (US), para. 7.751.

"Article 1.3 provides that ' Members shall accord the treatment provided for in this Agreement to the nationals of other Members '. That includes the protection provided for in Article 22.2, which obliges Members to provide legal means for interested parties'. The interested parties must qualify as 'nationals of other Members ' in accordance with the criteria referred to in Article 1.3. These persons can be private parties, which is reflected in the fourth recital of the preamble to the agreement, which reads ' [r]ecognizing that intellectual property rights are private rights '.

Therefore, in order to determine whether the European Communities has implemented its obligation owed to other Members in Article 22.2, the Panel must examine whether it has provided the legal means required by that provision for interested parties who are nationals of other Members."⁷

7. With respect to the meaning of the term "interested party" as used in Article 22, in EC – Trademarks and Geographical Indications (US) the Panel found that the provision regarding persons who may be deemed an "interested party" under Article 10(2) of the Paris Convention (1967) did not set out a criterion for eligibility for protection for the purposes of the TRIPS Agreement although it may provide guidance on the interpretation of Articles 22 and 23 of the TRIPS Agreement:

"The Panel accepts that an 'interested party ' is a person who is entitled to receive protection under Articles 22 and 23 of the TRIPS Agreement. However, in the Panel's view, Article 10(2) of the Paris Convention (1967) does not set out a criterion for eligibility for protection. Article 10(2) is a deeming provision for the term ' interested party ' used in Article 9(3) of the Paris Convention (1967), as made applicable under Article 10(1). Once a person has qualified as a national, Article 10(2) may provide guidance on whether that person may be treated as an interested party for the purposes of Articles 22 and 23 of the TRIPS Agreement."⁸

1.3.2 No right of objection in Article 22.2

8. In EC – Trademarks and Geographical Indications, the Panel rejected arguments in support of a claim under Article 22.2 that an EC Regulation failed to provide a right of objection to the registration of a GI:

"Article 22.2 does not provide for a right of objection to the registration of a GI. Although Article 15.5 provides for a right of objection to registration of a trademark, no provision in Part II of the TRIPS Agreement provides for objections to the registration of a GI.

Therefore, the Panel rejects the United States' arguments in support of this claim insofar as they relate to objections to GI registration, including objections by trademark owners.

There are provisions

1.3.3 Article 22.2(b)

1.3.3.1 "an act of unfair competition"

9. The Panel in *Australia – Tobacco Plain Packaging* recalled that paragraph 2 of Article 10bis of the Paris Convention (1967) defines an act of unfair competition as "[a]ny act of competition

