

**WORLD TRADE
ORGANIZATION**

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- (ii) according to Article 1.1 of the TRIPS Agreement, WTO Members shall be free to determine the appropriate method of implementing the provisions of the Agreement within their own legal system and practice;
- (iii) intellectual property rights are essentially territorial in nature;
- (iv) the system to be established shall not impose additional substantive legal obligations or confer additional legal rights on Members which are beyond the TRIPS Agreement; and
- (v) the establishment and maintenance of the system shall not impose undue financial and administrative burdens on Members choosing to participate in the system.

III. FEATURES AND LEGAL EFFECT

4. The following is an outline of the features and legal effect of the proposed system:

- (i) The multilateral system involves only a formality examination of the geographical indication subject to notification. Provided that basic information identifying the geographical indication, its ownership, and the basis on which it is claimed to be protected in the country of origin is submitted to the responsible authority, the indication will be entered on the register.
- (ii) The system does not deal with competing claims for geographical indications. This will continue to be dealt with under domestic laws.¹
- (iii) The costs of operating the system will be shared between participating Members on the basis of numbers of notifications.
- (iv) Registration should be accepted by participating Members' domestic courts, tribunals or administrative bodies as prima facie evidence of: (a) ownership; (b) that the indication is within the definition of "geographical indications" under Article 22.1 of the TRIPS Agreement; and (c) that it is protected in the country of origin. The intention is that the issues will be deemed to have been proved unless evidence to the

courts, tribunals or administrative bodies of participating Members shall only have territorial effect.

- (viii) The system should be entirely voluntary at the outset. The question of scope of participation should be re-visited after the system has been up and running for [four] years.

5. Annex A sets out the detailed mechanism. A preliminary assessment on the costs for operating the proposed system is attached at Annex B.

- (f) Any commencement or expiry date of protection under the relevant domestic legislation, administrative measures or judicial decisions of the notifying Member.
- (g) The requisite fee.³

3. Notifications may be made at any time. However, the administering body may fix the maximum number of applications to be processed each year, having regard to the administrative capacity and resources constraints of the administering body.

B. REGISTRATION

1. After receiving notifications from Participating Members, the administering body shall undertake formality examination of the notifications and ensure that documents submitted are in order. The examination process does not involve substantive examination.

2. The administering body may require the notifying Participating Member to rectify any deficiency if it considers the documentation submitted fails to meet the stipulated minimum formal requirements.

3. Once the administering body is satisfied that the formalities and documents submitted are in order and the requisite fee has been paid, the geographical indications shall be recorded in the Register of Geographical Indications. For each geographical indication recorded on the Register, the administering body shall, as soon as practicable, issue an official copy of the Certificate of Registration to the relevant Participating Member. Certificates of Registration may be issued in electronic form.

4. The Register of Geographical Indications shall contain the following information in respect of each registered geographical indication:

- (a) The name of the geographical indication.
- (b) The place or area, other quality, reputation or characteristics, and the goods indicated by the geographical indication.
- (c) The name and contact details of the owner of the geographical indication.
- (d) The Participating Member making the notification.
- (e) Details of the office competent to receive correspondence from the administering body.
- (f) The relevant statement executed under seal by the government of the notifying Participating Member (as in A.2.(e) above) or the relevant domestic legislation, judicial decisions or administrative measures protecting the geographical indication.
- (g) Any commencement or expiry date of protection under the domestic legislation, administrative measures or judicial decisions of the notifying Participating Member.
- (h) A statement to the effect that 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.

³ 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.

2. Registration of an indication on the Register shall be admitted as prima facie evidence to prove:

- (a) ownership of the indication;
- (b) that the indication satisfies the definition in Article 22.1 of the TRIPS Agreement as a geographical indication; and
- (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.⁵

3. Any of the facts intended to be proved by the prima facie evidence in paragraph D.2 above may be rebutted by evidence to the contrary. Members may further provide, if their legal system so permits, that costs may be awarded against the party who has unsuccessfully challenged the prima facie evidence.⁶

4. 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.

E. PARTICIPATION

Participation in the system is voluntary which means that:

1. Members should be free to participate and notify GIs protected in their territories.
2. The obligation to give legal effect to registrations under the system will only be binding upon Members choosing to participate in the system.

F. REVIEW

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.

⁵ 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.

⁶ Such a provision may help to deter potential abuse of the right to challenge the prima facie evidence on the basis of a Certificate Registration.

