

# **Selected TRIPS Provisions of Interest to Egypt**

*Assistance for Trade Reform Project*

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# Selected TRIPS Provisions of Interest to Egypt

The TRIPS Agreement contains provisions that are likely to be of interest to Egypt because they represent changes in law and practice, could affect Egypt's domestic economy or international trade, or are part of an agenda for negotiations. Interest in provisions will vary from time to time as particular issues assume greater or lesser importance, and as WTO members introduce issues for consideration by the TRIPS Council or in a Ministerial Conference.

## TRIPS Issues Related to Egypt's IPR Code

TRIPS Article 63<sup>1</sup> requires WTO members to notify the Council about TRIPS laws and regulations pertaining to the availability, scope, acquisition, enforcement, and prevention of the abuse of intellectual property rights. Upon written request, each WTO member must supply to any other member information on laws, regulations, and final judicial decisions, and administrative rulings of general application on these topics. A member may also request such information about a specific judicial decision, administrative ruling, or bilateral agreement that it believes affects its rights under the TRIPS Agreement. In addition, TRIPS Articles 1.3<sup>2</sup> and 3.1<sup>3</sup> permit WTO members

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<sup>1</sup> TRIPS Article 63 requires in pertinent part:

1. Laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by a Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them. Agreements concerning the subject matter of this Agreement which are in force between the government or a governmental agency of a Member and the government or a governmental agency of another Member shall also be published.
2. Members shall notify the laws and regulations referred to in paragraph 1 to the Council for TRIPS in order to assist that Council in its review of the operation of this Agreement. The Council shall attempt to minimize the burden on Members in carrying out this obligation and may decide to waive the obligation to notify such laws and regulations directly to the Council if consultations with WIPO on the establishment of a common register containing these laws and regulations are successful. The Council shall also consider in this connection any action required regarding notifications pursuant to the obligations under this Agreement stemming from the provisions of Article 6*ter* of the Paris Convention (1967).
3. Each Member shall be prepared to supply, in response to a written request from another Member, information of the sort referred to in paragraph 1. A Member, having reason to believe that a specific judicial decision or administrative ruling or bilateral agreement in the area of intellectual property rights affects its rights under this Agreement, may also request in writing to be given access to or be informed in sufficient detail of such specific judicial decisions or administrative rulings or bilateral agreements.

<sup>2</sup> TRIPS Article 1.3 provides in pertinent part, "Any Member availing itself of the possibilities provided in paragraph 3 of Article 5 or paragraph 2 of Article 6 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for Trade-Related Aspects of Intellectual Property Rights (the 'Council for TRIPS')."'

to take advantage of certain rights under other international conventions provided that the TRIPS Council is notified of such decisions within the specified time.

On June 2, 2002, President Mubarak signed into law a new IPR Code intended to update Egypt's intellectual property system and make it TRIPS-consistent. The TRIPS Council must be notified of this law.

The normal procedure following such notification is for various WTO members to review the law and raise questions on any provision that appears to violate the TRIPS Agreement, or in case of omissions, on how that requirement will be met in the territory of the notifying member. This review is an ongoing process. Developed countries were required to provide notification of their laws one year after the effective date of the TRIPS Agreement, and the review at that time was highly specific. Egypt must therefore notify the TRIPS Council of Law No. 82/2002 and can expect detailed questions on the language of text that implements various TRIPS provisions, any apparent deviations from the language of the TRIPS Agreement, and any omissions from the text of Law No. 82/2002, including those aspects of enforcement that are treated in the civil law. Egypt's representatives who will respond to questions should therefore be familiar with the provisions of Law No. 82/2002 and the issues it raises.

Issues most likely to be raised will concern provisions that are unclear or that may not be consistent with the TRIPS Agreement. Among such issues are the following:

- Article 2(5) appears to exclude subject matter that should be protected – organs, tissues, viable cells, DNA, genome and natural and biological matters – in violation of TRIPS Article 27.
- The compulsory license provisions for patents are extensive – certainly among the most extensive in the world – and do not conform to all the limitations required under the TRIPS Agreement. A refusal to license is treated as a *per se* monopolistic act, thereby creating a situation where any patent owner's rights can be the subject of a compulsory license merely by exercising those rights. In addition, there is an apparent requirement for manufacture in Egypt. At the same time, procedures for obtaining a license are difficult, requiring the concurrence of more than one minister.
- The compulsory license provision for copyright does not exclude the possibility of a compulsory license for cinematographic works, whereas the Berne Convention prohibits such licenses.
- The compulsory license provision for industrial designs, for which there is no conceivable policy reason, was apparently included on the basis of an incorrect reading of the law of Finland.
- Egypt has made extensive use of exceptions, exclusions, and limitations. In most cases, TRIPS enumerates specific instances in which these may be invoked and limits others to "certain special cases which do not conflict with a normal exploitation" of the intellectual property. Egypt has also adopted extensive use of "exhaustion" principles. It is likely that all these provisions will be reviewed carefully to determine whether they conflict with any provisions of the TRIPS Agreement or constitute more than a special case or conflict with a normal

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<sup>3</sup> TRIPS Article 3.1 provides in pertinent part, "Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS."

exploitation of the invention. In some cases where exceptions are contingent on some event, such as having notified the TRIPS Council of a reservations, review will determine whether such contingencies have been complied with.

- Various provisions will also be reviewed for consistency with the Paris Convention and Berne Conventions.

Although these issues are of greatest concern, numerous others may be cited. WTO members will scrutinize any provision in Law No. 82/2002 that appears to add requirements to those stated in the TRIPS Agreement for protection of intellectual property and at any provision that appears to derogate from the protection mandated by TRIPS, either in a technical manner or as a matter of substance. In a number of instances the law appears to require more elements than listed in the TRIPS Agreement. For example, the requirement for obtaining exclusive marketing rights includes elements not specified in the TRIPS Agreement, and the industrial designs law forbids registration of a design that incorporates a registered or well-known mark. In such cases, the issue may well turn on whether such points actually represent distinct requirements or are merely, for example, explicit statements of implied requirements or are necessary to reconcile overlapping provisions. For any distinct requirement, and for any apparent derogation from the rights specified in TRIPS, the Government of Egypt should be prepared to point to a specific TRIPS provision in support of the requirement or derogation of rights.

In addition to scrutinizing provisions that conflict with the TRIPS Agreement, reviewers will address omissions, such as the failure to state explicitly that the trademark owner has the right to oppose cancellation or the requirement that the nature of goods cannot form an obstacle to registration. In several cases, the law does not specifically enumerate the rights of owners of various types of intellectual property.

Egypt will have a limited period of time to respond to detailed technical questions from other WTO members. If these questions are not answered to the satisfaction of the members, it is possible that issues with Law No. 82/2002 will become the subject of a dispute. In that case, Egypt will need to present a reasoned defense. In addition to the expense of responding to such a proceeding is the risk that that a panel will find in favor of the complainant. If the dispute is resolved in favor of a complainant, the respondent is invited to change its law within a set period, after which the complainant is permitted to invoke trade remedies to offset its losses due to the TRIPS violation.

**Recommendation.** The organization responsible for defending Egypt's law before the TRIPS Council and among other WTO members should develop a table comparing each provision of the law with each provision of the TRIPS Agreement and for each difference provide an explanation if possible. Because Egypt's efforts to strengthen its intellectual property system may be a factor in negotiations, the CD/WTO should also be able to point to recent improvements in Egypt's intellectual property system. These are summarized in Appendix A.

Although this is a substantial undertaking, it will greatly simplify the task of responding to reviewers. In most cases, it will be useful to seek advice and counsel from other persons, such as the drafters of the law and the government organization responsible for implementing it. In some cases, an appropriate response may be simply that the language is equivalent in its effect. In other

cases, it may be that a needed provision is found elsewhere in Egyptian law, or that the issue is addressed in implementing regulations or by decree. Finally, it appears that there will be instances in which discrepancies are genuine violations of TRIPS, and Egypt will need to begin amending its new IPR Code or determining that it is willing to grant compensation for the violation.

## TRIPS Issues Related to Practice

The TRIPS Agreement relates not only to law but to practice. That is, it is not sufficient that the law contain certain provisions: those provisions must be implemented in a manner that is TRIPS-consistent. This consideration can be important both for the functioning of the industrial property offices and for enforcement.

TRIPS provisions that relate to the application of the law include TRIPS Article 3<sup>4</sup> concerning national treatment, TRIPS Article 4<sup>5</sup> concerning most-favored nation treatment, Part IV<sup>6</sup> concerning the acquisition and maintenance of intellectual property rights and related *inter partes* procedures, and Part III<sup>7</sup> concerning enforcement of intellectual property rights.

**Recommendation.** If and when issues arise, a response should be developed after consultation with the concerned agency. Administrative agencies dealing with intellectual property are listed in Appendix B. Complaints concerning a lack of protection of intellectual property rights will likely be communicated through the TRIPS Contact Point established in accordance with TRIPS Article 69.

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<sup>4</sup> TRIPS Article 3 provides in pertinent part, " Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property" subject to certain specified exceptions that must be notified to the TRIPS Council. A footnote specifies that "[f]or the purposes of Articles 3 and 4, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Agreement."

<sup>5</sup> TRIPS Article 4 specifies in pertinent part that "[w]ith regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members." Certain exemptions are provided.

<sup>6</sup> TRIPS Article 62.2 provides in pertinent part that, procedures and formalities for the acquisition of intellectual property rights must be reasonable and consistent with the provisions of the TRIPS Agreement; that where the acquisition of an intellectual property right is subject to the right being granted or registered, the procedures must permit the granting or registration of the right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection; and that procedures concerning the acquisition or maintenance of intellectual property rights and, where a Member's law provides for such procedures, administrative revocation and *inter partes* procedures such as opposition, revocation and cancellation, must comply with the requirements of Article 41.3 and .41.4, that is, the procedures must be fair and equitable, not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays, decisions on the merits of a case shall preferably be in writing and reasoned and shall be made available at least to the parties to the proceeding without undue delay and shall be based only on evidence in respect of which parties were offered the opportunity to be heard.

<sup>7</sup> Part III of the TRIPS Agreement contains a number of specific provisions concerning enforcement. In addition, it requires as a general matter that enforcement procedures must be available so as to permit effective action against any act of infringement of intellectual property rights covered by the TRIPS Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse. Procedures concerning the enforcement of intellectual property rights must be fair and equitable and must not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays. Civil judicial procedures for enforcement of intellectual property rights must be fair and equitable, provide for adequate written notice to defendants and the right to substantiate claims and present evidence, and not impose overly burdensome requirements concerning mandatory personal appearances.

## TRIPS Issues That May Affect Egypt's Domestic Economy or International Trade

Enactment of the new IPR Code was delayed because of controversy over anticipated effects on Egypt's domestic economy. Debate centered primarily on fears that improved enforcement and extending patent protection to food and pharmaceutical chemical products would raise prices. As such issues arise, the CD/WTO needs to be able to identify them and to develop a cogent and factually based statement of policy considerations and likely effects of proposed courses of action. To accomplish this, it is important to develop reliable and accurate sources of information that can help the Department project likely effects for Egypt.

### Issues in Ongoing Negotiations

The TRIPS Agreement contains several provisions that defer issues to further negotiation or call for further action. These include the protection of geographical indications; possible extension of the transition period for least-developed nations; and implementation issues following the expiration of the transition period for developing countries, and in light of any developments that might warrant modification of the Agreement. Certain other issues were brought up for discussion in the Doha Ministerial. These included

- Examination of issues concerning non-violation complaints;<sup>8</sup>
- Putting in place a mechanism for ensuring monitoring and full enforcement of the provisions of TRIPS Article 66.2, obligating developed countries to offer incentives to enterprises and institutions in their territories in order to promote and encourage technology transfer to least-developed country members so they can create a sound and viable technological base;
- Review of the implementation of the TRIPS Agreement under Article 71.1 and the work foreseen pursuant to paragraph 12 of this Declaration, to examine, *inter alia*, the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore, and other relevant new developments that members raise pursuant to Article 71.1;<sup>9</sup>
- Searching for an expeditious solution to enable least-developed members with insufficient or no capacities in the pharmaceutical sector to make effective use of compulsory licensing;<sup>10</sup> and
- An extension of the time for least developed WTO members to implement certain obligations as to pharmaceutical products.<sup>11</sup>

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<sup>8</sup> The Decision on Implementation-Related Issues and Concerns provided, *inter alia*, that "The TRIPS Council is directed to continue its examination of the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 and make recommendations to the Fifth Session of the Ministerial Conference."

<sup>9</sup> Ministerial Declaration, paragraph 19.

<sup>10</sup> Declaration on the TRIPS Agreement and Public Health, paragraph 6.

<sup>11</sup> *Op. cit.* at paragraph 7.

## NON-VIOLATION COMPLAINTS

The Doha Decision on Implementation-Related Issues and Concerns directed the TRIPS Council “to continue its examination of the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 and make recommendations to the Fifth Session of the Ministerial Conference. It is agreed that, in the meantime, Members will not initiate such complaints under the TRIPS Agreement.” This action re-instituted the moratorium provided in TRIPS Article 64<sup>12</sup> on complaints under subparagraphs 1(b) and 1(c) of GATT 1994 Article XXIII. It did not address complaints brought under subparagraph 1(a) of GATT 1994 Article XXIII.

Subparagraph 1(a) of GATT 1994 Article XXIII addresses “violation complaints,” that is, complaints regarding direct violations of the terms of the Agreement. Subparagraphs 1(b) and 1(c) address “non-violation complaints,” that is, complaints based on non-tariff barriers or policy measures that negate negotiated concessions but do not directly violate the terms of the agreement. Thus, this action of Doha did not remove the possibility of bringing a complaint that a country has enacted a law or regulation or taken other action that directly violates the TRIPS Agreement. A number of such complaints have been brought and probably will continue to be brought under WTO dispute procedures. It does limit complaints, for the time being, to direct violations, although the door is left open to consider expanding the types of complaints that would be entertained.

## GEOGRAPHICAL INDICATIONS

Geographical indications identify a good as originating in the territory of a member, or a region or locality in that territory, where the quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin.<sup>13</sup> WTO members are obligated under TRIPS Article 22 to protect geographical indications by providing a legal means for interested parties to prevent the misleading use of such indications and to prevent any use that constitutes an act of unfair competition within the meaning of Paris Convention Article 10*bis*. WTO members must also refuse or invalidate registration of a trademark that contains or consists of a geographical indication of such a nature as to mislead the public as to the true place of origin. This protection must be available where the indicator is true but misleading. Such a situation could arise, for example, because some geographical names occur in more than one place, (e.g., Cairo, Egypt and Cairo, Illinois, USA, or Alexandria, Egypt, and Alexandria, Virginia, USA) and goods from one of those places may have characteristics entitling them to the protection of geographical indications, while goods made in other places of the same name might lack those characteristics.

TRIPS Article 23 mandates even more stringent protection for geographical indications concerning wines and spirits. Article 23 requires members to provide a legal means to prevent the use of a geographical indication identifying wines or spirits for wines or spirits not originating in the place indicated by the geographical indication even where the true origin of the goods is indicated or the

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<sup>12</sup> TRIPS Article 64.2 provides, “Subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 shall not apply to the settlement of disputes under this Agreement for a period of five years from the date of entry into force of the WTO Agreement.”

<sup>13</sup> TRIPS Article 22.1.

geographical indication is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like. WTO members are also directed to determine the practical conditions under which homonymous indications—that is, indications that sound alike—will be distinguished from each other, taking into account the need to ensure equitable treatment of producers and the need to ensure that consumers are not misled.

At present, there is no multilateral system by which countries can notify other countries that a geographical term should be protected as a geographical indication. TRIPS Article 23<sup>14</sup> requires the TRIPS Council to undertake negotiations concerning the establishment of a multilateral system of notification for geographical indications for wines. TRIPS Article 24<sup>15</sup> calls for similar negotiations to increase the protection of individual geographical indications. This is often discussed as extending the higher level of protection for geographical indications for wines and spirits to geographical indications for other types of products.

These requirements have generated several issues for discussion in the TRIPS Council:

- What form should the multilateral system of notification take, and what would be the effect of the notification?
- Should that system apply only to wines, or should it apply to other spirits or even other types of products?
- Should the higher level of protection for wines and spirits extend to other types of products?

Selections from various WTO news items that discuss these issues are presented in Appendix C.

## TRANSITION PERIOD FOR LEAST-DEVELOPED NATIONS

TRIPS Article 66.1 gives least-developed WTO members a period of ten years from the date of application of the TRIPS Agreement to implement most requirements of the Agreement and directs the TRIPS Council to consider extensions of that period upon a duly motivated request by a least-developed member. At Doha, the Declaration on the TRIPS Agreement and Public Health provided that least-developed country members would not be obligated to implement patent protection for pharmaceutical products until January 1, 2016, and reserved the possibility least-developed members might seek further extensions.

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<sup>14</sup>TRIPS Article 23.4 provides: 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.

<sup>15</sup>TRIPS Article 24 provides, in pertinent part,

1. Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, Members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.
2. The Council for TRIPS shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of the WTO Agreement. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council, which, at the request of a Member, shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section.....

In addition to issues specified in the TRIPS Agreement, the Doha Ministerial addressed several other issues of concern to WTO members. One issue is the “relationship between the TRIPS Agreement and the Convention on Biodiversity, the protection of traditional knowledge and folklore, and other relevant new developments raised by Members pursuant to Article 71.1”<sup>16</sup> This issue calls for study but is not yet the subject of negotiations. Another issue is the recognition “that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement.” The TRIPS Council was instructed “to find an expeditious solution to this problem and to report to the General Council before the end of 2002.”<sup>17</sup> Although these issues are at an early stage of development, it would be wise for Egypt to study them, as the studies may result in recommendations.

Finally, the subject matter for negotiations is not closed. The CD/WTO should consider carefully whether it may be appropriate to develop proposals from time to time for submission to the TRIPS Council and consideration by the WTO.

## **Ideas on How Best to Coordinate Work for Other Ministries Responsible for IPR**

Several ministries in the Government of Egypt share responsibility for implementing various provisions of the TRIPS Agreement. Among these are

- Ministry of Higher Education and Scientific Research – Patents and some parts of undisclosed information
- Ministry of Supply and Internal Trade – Trademarks and industrial designs and the registration of business names, and seizure of mislabeled or infringing goods
- Ministry of Culture and Ministry of Information – Copyright
- Ministry of Agriculture and Land Reclamation – Plant variety protection
- Ministry of Higher Education and Scientific Research and Ministry of Health and Population – Exclusive marketing rights
- Ministry of Health and Population – Protection of test data
- Ministry of Justice – Judicial enforcement
- Ministry of Interior – Criminal enforcement
- Ministry of Foreign Trade and Ministry of Finance – Border measures.

TRIPS issues may thus involve information from one or more of these organizations. When intellectual property issues arise in discussions led by the Ministry of Foreign Trade (MOFT), Egypt’s interests are best represented if persons preparing background materials for the Minister

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<sup>16</sup> Ministerial Declaration, paragraph 19.

<sup>17</sup> Declaration on the TRIPS Agreement and Public Health, paragraph 6.

have access to information and positions from the organization responsible for a particular issue. It is best if this coordination is done on a continuing basis so that the Ministry has the information it needs to formulate and negotiate trade relations with other countries.

The following ideas were developed after discussion with CD/WTO IPR staff:

- Arrange to tour industrial property offices and be briefed on their operations.
- Organize and maintain a list of contacts in the responsible ministries. The list presented in Appendix B is a good start.
- Consider consultations with private sector sources that can offer information needed by the MOFT. Occasional workshops, conferences, or roundtable discussions may be an appropriate way to establish lines of communication. Industry groups might be persuaded to organize and bear the cost of such events.
- Establish informal relationships with appropriate individuals in the responsible ministries.
- Arrange meetings with individuals who can provide needed information. These meetings might be on a regular basis or as needed.
- Exchange email addresses and telephone numbers with the responsible individuals.
- Consider posting information through a website to be organized by the ATR Project.
- Maintain channels of communication with the TRIPS Contact Point.

# Appendix A. Recent Accomplishments in Egypt's IPR System

The adoption of a new IPR Code addressed areas in which Egypt's Law No. 82/2002 made a number of changes in prior practice, including the following:

- Adoption of patent protection for pharmaceutical and food chemical products and for microorganisms that will take effect on January 1, 2005 (Article 4 of the Promulgation together with Article 2 of the Code, and Article 43 specifying the mailbox), to implement TRIPS Articles 27 and 65.2.
- Patent term of 20 years from filing (Article 9) as required by TRIPS Article 33; this had been in effect by the Patent Office since January 1, 2000.
- Stronger requirements for the disclosure of inventions (Article 13), including best mode, as required by TRIPS Article 29.
- Exclusive marketing rights (Article 44) substantially as required by TRIPS Article 69.9.
- Protection for schematic designs of integrated circuits (Articles 45 *et seq.*) as required by TRIPS Part II Section 6.
- Strengthened protection for undisclosed information, expanding protection beyond disclosures in breach of contract (Articles 55 *et seq.*) as required by TRIPS Part II Section 7.
- An obligation for government officials to protect test data submitted as a condition of marketing approval against disclosure and unfair commercial use (Articles 56 and 57) which is required by TRIPS Article 39.3.
- A broad, TRIPS-consistent definition of a mark (Article 63) as provided by TRIPS Article 15.
- A requirement of use to maintain registration of a mark (Article 65), which should permit the cancellation of pirate registrations, consistent with TRIPS Article 19.
- Protection for well-known marks (Article 68) as required by TRIPS Article 16.2.
- Protection for collective marks (Article 69) as required by Paris Convention Article 7*bis*, which is made a TRIPS requirement by TRIPS Article 2, and for certification marks (Article 70).

- The ability to transfer a mark without transfer of the business with which it is associated (Article 87) as required by TRIPS Article 21.
- Prohibitions on certain types of unfair competition related to labeling (Articles 100 *et seq.*).
- Protection for geographical indications (Articles 104 *et seq.*) as required by TRIPS Part II Section 3.
- Greater authority for the court to provide for provisional measures, (Articles 113 *et seq.*) required by TRIPS Part III.
- Protection of industrial designs made contingent on novelty, and examination provided (Articles 119 *et seq.*) consistent with TRIPS Article 25.
- A term of ten years, plus one five-year extension, for industrial designs (Article 126) consistent with TRIPS Article 26.
- A statement of the rights of industrial design owners (Article 127) consistent with TRIPS Article 26.
- A definition of copyright that includes derivative works and an expanded list of types of works (Article 140), required by the Berne Convention which is made applicable to WTO Members by TRIPS Article 9.
- Recognition of related rights of producers, performers, and broadcasters (several articles) as required by TRIPS Part II Section 1.
- Limits on the personal copying exception in cases of computer programs (Article 171), required by TRIPS Articles 10 and 13.
- Detailed enforcement provisions for copyright (Articles 179-181), required by TRIPS Part III. and
- Protection for plant varieties (Section IV of the Code) as required by TRIPS Article 28.3.

In addition to improvements in its law, Egypt has undertaken administrative measures to implement the TRIPS Agreement. It has established a Contact Point Office, as provided by TRIPS Article 69, and implemented exclusive marketing rights as provided by TRIPS Article 70. Industrial property offices have adopted guidelines to promote transparency and consistency in patenting inventions and registering trademarks and industrial designs. And the Government has undertaken improvements in the industrial property offices to support the strengthened intellectual property system.

Egypt is also making serious efforts to improve enforcement of intellectual property rights:

- The Ministry of Culture's copyright inspectors and Ministry of Interior police undertook more than 5,800 enforcement actions in 1999, resulting in the seizure of more than 850,000 items, nearly double the number seized in 1997.
- Criminal enforcement more than doubled 1999, both in absolute numbers of actions and in the percentage of cases where criminal prosecution is sought.
- Enforcement is emphasizing seizing items used in the production of pirated works.

- Egyptian courts have begun to hand down heavier penalties for copyright infringement, as shown by two recent cases handing down six-month prison terms (the maximum penalty).
- The Government of Egypt is also working to reduce copyright piracy through other channels, such as a recent agreement with Microsoft to legalize software in the Government and in educational institutions.

# Appendix B. Intellectual Property Administrative Office Contacts

## Ministry of Supply and Internal Trade

### Commercial Registry Administration

Mr. Medhat Abdel Hay, Chairman

Telephone: 788 6015

Fax: 788 6018

### Trademark Office

Mr. Mohamed Abdel Aal, Director

Telephone: 788 6015

Fax: 788 6018

## Ministry of Higher Education and Scientific Research

### Academy of Scientific Research

Prof. Dr. Fawzy El-Refaie, Vice President

Telephone: 792 1323- 792 1324

### Patent Office

Eng. Tahany Ibrahim Osman, Head of the Patent Office

Telephone: 792 1291

### The Cabinet Information and Decision Support Center (IDSC)

Eng. Rafaat Radwan, Director

Telephone: 792 9292

Dr. Abou El-Fettouh Salam, Legal Consultant

## Ministry of Foreign Trade

### TRIPS Contact Point Office

Mr. Fahkr El-Din Abou El-Ezz, Director of the Contact Point Office and  
Chairman of the General Authority for Export and Import Control

Telephone: 575 6130 – 575 6095

## **Ministry of Culture**

### **Copyright Protection Office**

Dr. Ahmed Khalifa, Director

Telephone: 347 0019

### **General Organization for Censorship of Artistic Works**

Dr. Madkour Thabit, Chairman

Telephone: 738 1674

Fax: 736 9479

### **General Organization for Books and National Documents**

Prof. Dr. Saleh Fadel, Chairman

Telephone: 575 1078-575 0856-

575 2883-575 0886

Dr. Galal Gandour, Director of the Books Sector

Telephone: 575 1078- 575 0856-

575 2883- 575 0886

Ms. Shafky, Head of the Registration, Filing and Supplying Section

# Appendix C. WTO Press Releases on Geographical Indications

The following WTO news items cover TRIPS developments and discussions related to geographical indications. They can be found at

[http://www.wto.int/english/news\\_e/news\\_e.htm#archives](http://www.wto.int/english/news_e/news_e.htm#archives).

WTO NEWS: 1998 NEWS ITEMS

TRIPS Council 1-2 December 1998

## Discussion develops on geographical indication

### Relevant background information:

During its 1-2 December meeting, the body administering the WTO's intellectual property agreement, the [Council on Trade-Related Aspects of Intellectual Property Rights \(TRIPS\)](#), discussed at some length a proposed international register of geographical indications.

The focus of the discussion was a proposal from the European Union for a multilateral system for registering geographical indications – the use of place names or words associated with a place to identify the origin, type and quality of a product. Among the issues debated was whether negotiations on setting up the system should concentrate on wines or include spirits and other products.

The TRIPS Council also started preparations for a review of a provision (Article 27.3(b)) of the TRIPS Agreement that allows countries to exempt certain plant or animal inventions from patentability.

And it took first steps to prepare its contribution to WTO work on electronic commerce and trade facilitation.

### Geographical indications

The EU's proposal comes under an article (23.4) of the TRIPS Agreement which says WTO members will negotiate a multilateral system for notifying and registering protected geographical indications for wines. (The article does not deal with the separate issue of negotiating enhanced protection for geographical indications.)

It proposes including spirits, with the possibility of adding other products at a later stage. Participation (submitting names for registration) would be voluntary. However, products accepted for registration would be protected in all WTO member countries, although the method each country uses would follow its existing practice – there would be no need to change countries' laws, the EU says.

Countries could oppose registration, for example on the grounds that the name in question is used so commonly that it has become a generic term. Only countries successfully opposing registration would be exempt from having to protect the geographical indication, the EU's proposal says.

The purpose is "transparency and clarity", the EU stressed. The debate covered the following issues:

#### Existing laws: vastly different approaches

Countries differ considerably in the way their laws handle geographical indications. This is reflected in responses from countries now implementing the TRIPS Agreement – mainly developed countries—to a WTO questionnaire.

Some have specific geographical indications laws. Others use trademark law, consumer protection law, marketing law or common law or combinations of these.

Some have formal lists of registered geographical indications. Others do not, preferring to rely on court case histories (based on criteria such as consumer protection) to identify where problems have arisen and been sorted out.

Some only recognize place names. Others accept other names that are associated with a place.

As a result, the criteria for providing protection also differ.

## Scope – wines alone, or spirits and other products as well?

In the meeting, a number of countries cautioned against being over-ambitious. They included the United States, Australia, Japan, Republic of Korea, Canada, Chile and Hong Kong.

Some said the new multilateral system should not increase countries' burdens and obligations, pointing out that under the EU's proposal each country would have to scrutinize every name submitted for registration. Others emphasized the fact that the agreement only obliges countries to negotiate a system for wines.

Countries in favour of including other products included Iceland (for fish), Czech Republic, Morocco (food and handicrafts), India (expressing in general, a "strong interest"), Venezuela (crafts and industrial products), Cuba (agricultural and other products), Turkey and Nigeria.

### Voluntary participation:

Art 23.4 speaks of voluntary participation. Some countries questioned whether the EU's interpretation of "voluntary" is correct when all WTO members would be required to protect names accepted for registration.

### Administration and disputes:

Several countries wanted to know more about these, for example who would judge whether a name can be registered and whether disputes would be handled in the WTO's Dispute Settlement Body. The EU said these and other details would have to be worked out as discussions about the proposal progress.

The United States said it would shortly table its own proposal.

### What products?

*Examples of some geographical indications that are protected in some developed countries:*

#### Bulgaria

192 local appellations of origin registered, e.g. Bulgarian yoghurt, Traminer from Khan Kroum (wine), Merlou from Sakar (wine)

#### Canada

Canadian Rye Whisky, Canadian Whisky, Fraser Valley, Okanagan Valley, Similkameen Valley, Vancouver Island

#### Czech Republic

**Beers:** Pilsen, Budweis

**Others:** various vines, liqueurs, Saaz hops, Auscha hops, Jablonec jewellery, Bohemia crystal, Vamberk lace

#### European

#### Union

**Wines:** Champagne, Sherry, Porto, Chianti, Samos, Rheinhessen, Moselle Luxembourgeoise, Mittleburgenland

**Spirits:** Cognac, Brandy de Jerez, Grappa di Barolo, Berliner Kümmel, Genièvre Flandres Artois, Scotch Whisky, Irish Whiskey, Tsikoudia (from Crete)

**Other products:** Newcastle brown ale, Kentish ale, Kentish strong ale, Rutland bitter, Gloucestershire/Herefordshire/Worcestershire cider/perry, Scottish beef, Orkney beef, Orkney lamb, Jersey Royal potatoes, Cornish Clotted Cream, Cabrales, Roquefort, Gorgonzola, Aziete de Moura, Olive de Kalamata, Opperdoezer Ronde, Wachauer Marille, Danablu, Lübecker Marzipan, Svecia, Queijo do Pico, Coquille Saint-Jacques des Côtes-d'Amour, Jamón de Huelva, Lammefjordsgulerod

#### Hungary

Eger (wine), Szatmar (plum)

#### Liechtenstein

Malbuner (meat products), Balzer (Hi-tech products)

## TRIPS Council 17 February 1999

US, Japan submit proposal on geographical indications

A new proposal from the United States and Japan on geographical indications was discussed in the [Council on Trade-Related Aspects of Intellectual Property Rights \(TRIPS\)](#), the body administering the WTO's intellectual property agreement, on 17 February 1999.

### Geographical indications



The US-Japanese joint proposal on a multilateral system for notifying and registering geographical indications ([see box](#)) is the second to be submitted to the TRIPS Council. The first, discussed at [previous meetings](#), came from the European Union.

The proposal: The new proposal says countries' participation in the system would be voluntary. They would tell the WTO which geographical indications they are protecting domestically. For each of these they would explain what the terms of protection are under their laws – for example whether there is an expiry date, and if so when – and whether the protection comes under an international agreement.

The WTO would publish a list of these reported geographical indications together with relevant details. When WTO member countries consider registering geographical indications domestically, they would agree "to refer to" the multilateral list. Domestic decisions on providing protection for the listed geographical indications would take into account the fact that they were on the list – some countries' laws might say how geographical indications on the multilateral list should be treated.

If anyone wants to challenge the protection given to a geographical indication in a particular country, the challenge would have to be made within that country's domestic system, according to the US-Japan proposal.

Background – EU proposal: Under the EU's proposal, participation – submitting names for registration – would also be voluntary. However, products accepted for registration would be

#### Geographical indications ...

... the use of place names, or words associated with a place, to identify the origin, type and quality of a product.

The proposals being discussed under Article 23.4 of the TRIPS Agreement are for a multilateral system for notifying and registering protected geographical indications for wines and spirits. Some countries want the system to cover only wines, some say it should be extended to include other products.

Article 23.4, the basis for these proposals, does not deal with the separate issue of negotiating enhanced protection for geographical indications.

protected in all WTO member countries, although the method each country uses would follow its existing practice — there would be no need for a substantial change in countries' laws.

The EU's proposal says countries could oppose registration, for example on the grounds that the name in question is used so commonly that it has become a generic term. Only countries successfully opposing registration would be exempt from having to protect the geographical indication, it says.

Support for new proposal — 'TRIPS-plus?': The United States and Japan described their joint proposal as one that imposes no new obligations, burdens or costs on members and only place a minimal burden on the WTO Secretariat. The proposed system would also take account of the wide range of different methods countries use to protect geographical indications.

Canada, Australia, Argentina, Brazil, New Zealand, Bolivia and Chile were among the countries supporting approach of the new proposal on these grounds. Some described it as not being "TRIPS-plus". They and other speakers stressed that they had only just received the proposal and needed more time to look at the details.

New Zealand, Chile and the Rep of Korea said that the proposed system should not be extended to spirits. Venezuela, Mexico, India, Switzerland, Cuba, Egypt, South Africa, Malaysia, Indonesia, the Philippines and Thailand said they preferred to see other products included in addition to wines and spirits.

EU comment and support — 'value-added?': The European Union said that its own proposal meets all the criteria highlighted by the US and Japan. It commented that the US-Japan proposal amounts to little more than the creation of a database that would contribute little to task the protection of geographical indications.

Some countries said that so far they prefer the EU proposal because it offers "added value" to the present situation. Several others — India, Cuba, South Africa, etc — said they saw merit in both proposals. South Africa added that the two proposals are not mutually exclusive.

Conclusion: The TRIPS Council will continue to discuss this issue at its next meeting in April. Two countries said they were preparing their own proposals. (The council also continued to review the application of provisions in the TRIPS Agreement dealing with geographical indications, with countries continuing supplying written descriptions of the way they handle geographical indications in their domestic laws. This work comes under Article 24.2 of the agreement.)

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## Intellectual property Council debates call to expand geographical indications protection

The higher level of protection given to place names used to identify wines and spirits should be expanded to geographical indications identifying other products, a group of WTO members once again told the organization's intellectual property Council on 21 March.

Another group of countries said the council should concentrate on its current task of setting up a multilateral system for notifying and registering these names and assessing actual implementation of the rules on geographical indications before thinking about extension of product coverage.

### Geographical indications

Geographical indications are place names, or words closely associated with places, such as "Champagne", "Scotch", "Tequila", and "Roquefort" cheese.

The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) says geographical indications in general should be protected, at least with a view to avoiding unfair competition and consumers being misled. Place names used to identify wines and spirits are given a higher level protection, i.e. even if consumers are not misled or if using the names does not constitute an act of unfair competition.

Members of the Central European Free Trade Agreement (CEFTA) with Latvia and Estonia (Poland speaking on their behalf) made a strong call for negotiations on geographical indications aimed at expanding the higher level of protection – currently given to wines and spirits – to other products.

They said that if "benchmarks" (i.e. flexible target dates for various stages of the negotiations) are to be set for the talks agriculture and services, then there should be similar benchmarks for negotiations on geographical indications.

They were supported wholly or partly by Turkey, India, Switzerland, Pakistan, Mauritius, Sri Lanka, Egypt, Cuba, and the EU.

Many in this group argued that a mandate to negotiate extending the product coverage exists in the TRIPS agreement (under Article 24). Several complained that after four years of implementing the agreement, there has been no progress either on negotiating a multilateral system of notification and registration of geographical indications for wines and spirits (Art 23.4) or on expanding the higher level of protection to other products.

Opposing the call with varying degrees of flexibility were: Argentina, New Zealand, US, Australia, Canada, Chile, Mexico, Brazil, and Hong Kong China. They said negotiations on geographical indications could not be put on the same level as the mandated negotiations on agriculture and services. They added that any negotiations on extending the scope of the product coverage of

Article 23 should wait until the TRIPS Council has finished its review of how member countries are applying the agreement's provisions on geographical indications.

They also argued that the TRIPS Council should not divert attention away from the current negotiations on setting up a multilateral notification and registration system for geographical indications. They welcomed the EU's announcement that it would submit a new paper on the subject soon. The TRIPS Council agreed that its chairperson should start informal consultations on how to continue work in these areas.

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 TRIPS COUNCIL REGULAR MEETING 5-7 MARCH 2002

## Members start work on Doha agenda items



[http://www.wto.int/english/tratop\\_e/dda\\_e/dda\\_e.htm](http://www.wto.int/english/tratop_e/dda_e/dda_e.htm)The WTO's TRIPS (intellectual property) Council has started work on a list of issues that ministers assigned to it at the November 2001 Ministerial Conference in Doha. These include specific aspects of TRIPS and public health, geographical indications, protecting plant and animal inventions, biodiversity, traditional knowledge, the general review of the TRIPS Agreement, and technology transfer.

The TRIPS Council chairperson, Ambassador Boniface Chidyausiku of Zimbabwe, ended the meeting by handing over to his successor for the year, Amb. Eduardo Pérez Motta of Mexico.

### Geographical indications (extension of higher level protection to other products)

The TRIPS Council embarked on its post-Doha task of preparing to report to the Trade Negotiations Committee on this subject – the deadline is the end of this year (2002)

At issue is the question of whether the higher level of protection currently given to geographical indications of wines and spirits (Article 23) should be extended to other products. Some countries say a key point of the debate is migration, particularly to the “New World” (the Americas, Australia, New Zealand, etc) – immigrants brought with them the production of goods identified by geographical indications and they should be allowed to continue to use the names. Other countries question whether this argument is relevant. They say that by limiting the higher level of protection to wines and spirits, the TRIPS Agreement discriminates, creating an imbalance between WTO Members.

In the meeting (5 and 6 March), members generally fell into two camps, with a handful not particularly committed either way:

- **For extension:** Some of these countries called for the TRIPS Council to agree on “negotiating modalities” (how to negotiate) that would be submitted to the Trade Negotiations Committee.
- **Against extension:** These countries said the TRIPS Council should simply report to the Trade Negotiations Committee on its discussions, without proposing any modalities.

Both groups include a mix of developed and developing countries. Those for the extension included: Sri Lanka, Slovenia, Switzerland, Turkey, India, Pakistan, Kenya, Hungary, EU, Slovak Rep, Cuba, Morocco, Czech Rep, Egypt, Bulgaria, Thailand, Jamaica

Those against included: Australia, Canada, Paraguay, Colombia, Guatemala, New Zealand, United States, Uruguay

The less committed included: Rep of Korea, Ecuador, Japan, Singapore

Among the points raised in the discussion:

- Whether extension would help or hinder market access and economic development
- Whether extension would be burdensome and impose costs
- Whether the names currently used as generics would have to be changed to protected geographical indications or the exceptions in Article 24 (which includes generic terms) would apply
- What role public, social and cultural policies play in the debate
- How to stop additional geographical indications becoming generic terms

Countries for extension said it would benefit trade and development because geographical indications can be a means for countries – particularly developing countries – to market their products and secure higher prices because of the quality associated with the geographical indications. They denied that it would necessarily raise costs and stressed that terms currently used generically would not qualify for protection.

Countries against extension said geographical indications can be so complex that their protection can be used by producing countries to block imports, and that the administrative cost of protecting the indications are too high. Some, such as Australia, argued on cultural grounds that many names have travelled with migrants (such as European migrants going to Australia) who naturally want to continue to make the same products as they did before and to use the same terms to identify those products. The EU countered that it too has immigrants, from African and Asia, but that should not be a justification for Europeans to use geographical indications from the migrants' countries of origin.

Part of the exchange focused on bilateral negotiations and agreements between Australia and the EU on "TRIPS-plus" geographical indications protection for wines and spirits. Australia cited this as an example of how complicated and disruptive the issue could be, including – Australia said – the EU's refusal to accept countries' names as geographical indications.

Bulgaria and Switzerland, both staunch supporters of extension, said Australia's bilateral problems with the EU are not relevant to the multilateral discussions in the TRIPS Council on extension to other products, especially as those bilateral problems are about wines and spirits. The TRIPS Agreement's definition of geographical indications clearly allows countries' names to be protected, Bulgaria argued. Bulgaria also warned that failure to reach consensus in the TRIPS Council would have implications for other subjects under the Doha Development Agenda, in particular agriculture.

The discussion will continue in June.

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TRIPS COUNCIL SPECIAL SESSION 8 MARCH 2002

## Two-phase negotiating programme launched



[http://www.wto.int/english/tratop\\_e/dda\\_e/dda\\_e.htm](http://www.wto.int/english/tratop_e/dda_e/dda_e.htm) WTO members have embarked on two-phase programme for completing negotiations on a multilateral registration system for geographical indications for wines and spirits. They did so on 8 March 2002 in the first “special session” of the TRIPS (intellectual property) Council, the Doha Development Agenda’s forum for reaching consensus agreement on this by the Fifth Ministerial Conference in 2003.

The TRIPS special sessions are chaired by Ambassador Eui Yong Chung of Rep. of Korea.

The first phase involves further discussion in a debate that began in the TRIPS Council in February 1997 (under Article 23.4 of the TRIPS Agreement). Chairperson Chung described this as a “more structured and engaged discussion” than before. In the second phase, which chairperson Chung described as a final negotiating phase, members would try to work on a single draft based on their various proposals, and to end with consensus.

Members agreed broadly on the terms of the two phases, although they placed different emphasis on the time needed for each stage. Some called for a longer initial phase of study and discussion, lasting at least until the end of the year. Others said that since the TRIPS Council has already discussed this for several years, members should move more swiftly into the final negotiating phase.

Ambassador Chung proposed that they should tentatively try to have in place a single draft document (even if it included options reflecting different opinions) either towards the end of this year (2002) or early next year (2003), depending on the exact dates of the Fifth Ministerial Conference.

Some members said they were not ready to accept this and other proposed “soft target dates”, or that they envisaged a draft next year rather than this. Others said having some form of target dates would help them assess these negotiations in comparison with other negotiations in the WTO.

WTO members have accepted Mexico’s offer to host the ministerial conference some time in 2003, but no date has been fixed yet. Four TRIPS Council’s special sessions on this subject have been scheduled for 2002 – 8 March, and tentatively, 28 June, 20 September and 28 November.

Although these negotiations are part of the Doha Development Agenda, they have a different deadline. Ministers agreed in Doha in November 2001 that the talks should end at the next ministerial conference, and not by 1 January 2005, the deadline for almost all other negotiations.

The talks on the multilateral register began in 1997 under Article 23.4 of the TRIPS Agreement. This calls for negotiations to set up “a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system”, wording that has led some to characterize it as a “voluntary” system. At the Singapore Ministerial Conference in 1996, ministers added the possibility of including spirits.

Proposals submitted in earlier TRIPS Council meetings adopt two different approaches. One, from the EU and supported by a number of other countries (including a supplementary proposal from Hungary), would presume that registered geographical indications are protected in all WTO members except in those that successfully challenge the terms on the grounds that they are generic in their countries.

The other from Canada, Chile, Japan and the US, and supported by a number of other countries, sees the proposed system as a database that would assist members in deciding whether to protect specific terms in their territories.

The 8 March discussion also reflected this difference, with some procedural points argued forcefully because of differences of opinion over what the registration system should be and do. The US presented its latest papers – a comparison of various proposals and a list of issues. (The EU had previously submitted its own comparison.)

The TRIPS Council’s “regular” meeting on a range of other issues, many on the Doha Development Agenda, was on Tuesday to Thursday, 5-7 March. Meetings tentatively scheduled for the rest of the year are:

- 28 June (following regular meeting on 25-27 June)
- 20 September (following regular meeting on 7-19 September)
- 28 November (following regular meeting on 25-27 November)