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STANDING COMMITTEE ON THE LAW OF TRADE MARKS, INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS

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ADDENDUM TO DOCUMENTSCT/6/3 REV.(GEOGRAPHICAL INDICATIONS:
HISTORICAL BACKGROUND, NATURE OF RIGHTS, EXISTING SYSTEMS FOR
PROTECTION AND OBTAINING PROTECTION IN OTHER COUNTRIES)

prepared by the Secretariat

I. INTRODUCTION

1. At its seventh session, which took place in Geneva from December 5 to 7, 2001, the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) decided that the International Bureau should, in preparation for discussion at the eighth session of the Standing Committee, revise document SCT/6/3 in accordance with the comments made by delegations on that paper during the seventh session, and supplement the revised document SCT/6/3 with an addendum dealing with the following non-exhaustive list of issues: definition of geographical indications, protection of geographical indications in their country of origin, protection of geographical indications abroad, generic terms, conflicts between geographical indications and trademarks, and homonymous geographical indications.

2. The issues referred to in the preceding paragraph have already been dealt with in documents SCT/5/3 (Possible Solutions for Conflicts Between Trademarks and Geographical Indications and for Conflicts Between Homonymous Geographical Indications) and SCT/6/3 Rev (Geographical Indications: Historical Background, Nature of Rights, Existing Systems for Protection and Obtaining Protection in Other Countries). The present document offers additional information of a predominantly technical nature with regard to the following

topics: definition of geographical indications, protection of geographical indications in their country of origin, protection of geographical indications abroad, and generic terms.

3. As regards conflicts between geographical indications and trademarks, and homonymous geographical indications, reference is made to document SCT/5/3 which addresses these issues in detail.

4. In the present document, general statements are often illustrated by reference to particular national or regional legislation. However, it should be noted that those references are of an illustrative nature, and that the information presented is not necessarily representative of the overall legal situation in the country or countries referred to.

II. DEFINITION OF GEOGRAPHICAL INDICATIONS

5. The definition of the subject matter at hand is an issue that comes up regularly in any discussion concerning geographical indications. This matter is directly related to the applicable terminology. As pointed out in paragraphs 3 onwards of document SCT/6/3 Rev., the term “geographical indication” was defined on the international level relatively recently through the adoption of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in 1994. Prior to the conclusion of that Agreement, “indications of source” and “appellations of origin” were the terms and legal concepts used for more than 100 years in the area that is now commonly referred to as “geographical indications.” Furthermore, the term “geographical indication” was used previously in international negotiations under the auspices of the World Intellectual Property Organization (WIPO) for designating both indications of source and appellations of origin. However, it has now the precise meaning of Article 22.1 of the TRIPS Agreement.

6. But “geographical indication,” “indication of source” and “appellation of origin” are not the only terms that are in use. For example, Resolution ECO 2/92 of the International Vine and Wine Office (OIV) provides for definitions of the terms “recognized geographical indications,” “recognized appellations of origin,” and mentions the term “recognized traditional denomination” without defining it. Another example would be Council Regulation (EEC) No. 2081/92 of July 14, 1992, applicable in the 15 member States of the European Communities and providing definitions of the terms “designation of origin” and “geographical indication.”

7. The variety in the existing terminology is such that the Secretariat of the World Trade Organization (WTO), when compiling the answers to a questionnaire concerning geographical indications that had been circulated to WTO Members, decided not to use the term “geographical indication” in this summary paper as a common denominator for the various expressions mentioned in the replies to the questionnaire and referring to various definitions of protectable subject matter.¹ The summary paper explains that, since the term “geographical indication” had a specific meaning in Article 22.1 of the TRIPS Agreement, another—undefined—term had to be used as a common denominator, in order to avoid any appearance of prejudicing the rights and obligations of Members of the World Trade

¹ WTO document IP/C/W/253

Organization (WTO). The summary paper uses the term “indication of geographical origin” (IGO) for that purpose.²

8. The question of definition and applicable terminology was also raised during the seventh session of the SCT. It was pointed out that, in the context of the work of the SCT, the term “geographical indication” should be used in the precise legal meaning given to it by Article 22.1 of the TRIPS Agreement. It was also pointed out that it did not appear to be wise to create new definitions in the area. Furthermore, it was said that, whatever definition was used, it was important that the substance of the concept of protected geographical indications was complied with, i.e. that the indication was used in order to demonstrate a link between the origin of the product to which it is applied and the determined characteristics that the product derives from that origin.³

9. It appears important to consider carefully the existing variety in applicable terms and legal concepts in any future work. In particular, the terms used and their exact scope of application will have to be defined at the outset of any attempt to set internationally applicable norms in that area.

III. PROTECTION OF GEOGRAPHICAL INDICATION IN ITS COUNTRY OF ORIGIN

10. Protection of a geographical indication in its country of origin deserves particular attention, since the geographical indication represents the link between the determined characteristics or the reputation of a product and its geographical origin. Goodson which a geographical indication is used must necessarily be produced in a particular place. The size of the place of origin may vary from a tiny vineyard to an entire country. What matters is that the product is tied to that place, which implies that it cannot be produced anywhere else.

11. The principle of independence of rights as, for example, expressed in Articles 4bis and 6 of the Paris Convention for the Protection of Industrial Property for patents and trademarks respectively, does not appear to be applicable to geographical indications. The dependence of a protected geographical indication from protection in its country of origin is further demonstrated by Article 24.9 of the TRIPS Agreement and the international registration system set up by the Lisbon Agreement.

12. Article 24.9 of the TRIPS Agreement provides that there shall be no obligation for WTO Members under the Agreement to protect geographical indications which are not ceases to be protected in their country of origin, or which have fallen into disuse in that country. It is not worthy that Section 3 of Part II of the TRIPS Agreement does not contain a definition of the term “country of origin.”

13. The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration establishes a system for the protection of appellations of origin and their international protection.⁴ A particular appellation of origin is only eligible for international registration and protection in the countries of the Lisbon Union, if it is already

² WTO document IP/C/W/253, paragraph 6

³ SCT/7/4 Prov., paragraphs 19 and 20

⁴ SCT/6/3 Rev., paragraphs 50 onwards

protected as such in its country of origin which must also be a member of that Union. The country of origin is defined in Article 2(2) of the Lisbon Agreement as the country whose name, or the country in which it is situated, the region or locality whose name, constitutes the appellation of origin which has given the product its reputation.

14. Protection of a geographical indication in its country of origin is obtained in accordance with the nationally applicable laws and regulations. Document SCT/6/3 Rev. describes in its Part C in some detail the existing approaches to the protection of geographical indications. What follows hereunder is a description of the legal and technical requirements that have to be complied with in order to obtain protection for a given geographical indication in particular systems.

15. This description consists of a reference to particular mechanisms for the protection of geographical indication. It is a summary description of the most significant features of some of those systems, without pretending to be complete in every detail, or representative of all existing means of protection. Information is provided in respect of *suigeneris* titles of protection, like protected appellations of origin and registered geographical indications, and the protection of geographical indications through certification marks. For reasons of accessibility of information, the description is limited to statutory means of protection and does not cover types of protection based on common law or tort, such as actions against unfair competition or for passing off.

16. Protected appellations of origin are, generally speaking, adopted at the conclusion of an administrative procedure involving producers, consumers and the administrations, and published in an official government publication. For example, in France, the process is conducted by a national agency called the National Institute of Appellations of Origin (INAO). The Institute comprises three national committees, each competent for a specific group of products and composed of representatives of producers, the administration and consumers. The committees give their view on appellations of origin proposed for protection and, in particular, on the delimitation of the production area and the recognition of the proposed appellation of origin as protected.⁵

17. In France, an appellation of origin obtains protection through the adoption of a *décret*, published in the *Journal officiel de la République française*. The decree defines the area of production, the applicable methods of production (which may comprise technical details such as, in the case of agricultural products, rules on plantation, irrigation or harvesting), the prescribed methods of processing and product labeling requirements.

18. A geographical indication may also be protected by a statute on an *ad hoc* basis rather than through a standard administrative procedure involving specialized government agencies. One example of this kind of protection of geographical indications is the Swiss Ordinance Governing the Appellation "Switzerland" of "Swiss" for Watches. The Ordinance defines in detail the conditions of the use of the terms "Swiss" and "Switzerland" for watches, contains precise rules for labeling and creates a basis for sanctions in cases of non-compliance with the prescribed rules.

19. Another example for a protection system for geographical indications having a statutory basis is the Australian Wine and Brandy Corporation Act 1980, permitting the registration of

⁵ Articles L. 115-19 and L. 115-20 of the French Consumer Code.

geographical indications in relation to wine. The Act establishes a body called the Geographical Indication Committee which is competent for determining geographical indications for wines in relation to regions and localities in Australia. In determining a geographical indication, the Committee must consult producers and may consult any other organization or person it thinks appropriate. Furthermore, it must identify the boundaries of the area or areas in the region or locality to which the determination relates and determine the word or expression to be used to indicate that area or those areas. The determination is first made on an interim basis. It is published together with an invitation for submissions. Thereafter, the Committee makes a final decision and publishes it.⁶

20. In cases in which the protection of geographical indications is obtained in the form of registered certification marks, trademark registration procedures are applicable. The competent authority is regularly a national or regional administration empowered to process applications for trademark registration, most commonly a trademark office. Certification marks are different from individual trademarks in a number of aspects. Most notably, the owner of the certification mark is not allowed to use it, and the certification mark is not used to distinguish goods or services from individual enterprises.⁷

21. An application for the registration of a certification mark in, e.g., the United States of America, must contain a so-called "certification statement," which may consist, for example, of a particular regional origin of the goods. A concrete example of a certification statement would be the following: "The mark certifies that the cheese is blue moulded or white cheese produced within the county boundaries of Leicestershire, Derbyshire and Nottinghamshire, England, with no applied pressure, forming it into a crust of coat and made in cylindrical form, from full cream milk produced by English dairy herds."⁸

22. Among the features of an application for the registration of a certification mark that are examined by the United States Patent and Trademark Office (USPTO) is the authority of the applicant to control a geographical term. Section 1306.02(b) of the Trademark Manual of Examining Procedure (TMEP) of the USPTO states in this regard: "When a geographical term is used as a certification mark, two elements are of basic concern: first, preserving the freedom of all persons in the region to use the term and, second, preventing abuses or illegal uses of the mark which would be detrimental to all those entitled to use the mark. Normally a private individual is not in the best position to fulfill these objectives satisfactorily. The government of a region would be the logical authority to control the use of the name of the region. The government, either directly or through a body to which it has given authority, would have power to preserve the right of all persons and to prevent abuse or illegal use of the mark."

IV. PROTECTION OF GEOGRAPHICAL INDICATIONS ABROAD

23. Generally speaking, protection of geographical indications abroad may be obtained pursuant to bilateral or multilateral international agreements. Information on bilateral and multilateral agreements, in particular on the Paris Convention, the Madrid Agreement for the

⁶ For more procedural details, see Australian Wine and Brandy Corporation Amendment Act 1993, Sections 40N onwards.

⁷ The basic characteristics of certification marks are explained in SCT/6/3 Rev, Chapter C. III(a).

⁸ US Certification mark Registration Number 0921358

Repression of False or Deceptive Indications of Source in Goods, the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration, and the TRIPS Agreement are contained in Chapter D of document SCT/6/3 Rev. Supplementary information concerning that type of agreements, and on protection under regional agreements concerning those countries participating in such agreements is given hereunder.

24. As an example for one relatively recently concluded bilateral agreement concerning the trade in wine between two trading partners and, *inter alia*, geographical indications, document SCT/6/3 Rev. cites the Agreement between Australia and the European Community on Trade in Wine, and Protocol, which entered into force on March 1, 1994. Title II of the Agreement is headed "Reciprocal protection of wine names and related provisions on descriptions and presentation," and Article 6 provides for the following:

"1. The Contracting Parties shall take all measures necessary, in accordance with this Agreement, for the reciprocal protection of the names referred to in Article 7 which are used for the description and presentation of wines originating in the territory of the Contracting Parties. Each Contracting Party shall provide the legal means for interested parties to prevent use of a traditional expression or a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question.

2. The protection provided for in paragraph 1 also applies to names even where the true origin of the wine is indicated or the geographical indication or traditional expression is used in translation or accompanied by expressions such as "kind," "type," "style," "imitation," "method" or the like.

3. The protection provided for in paragraphs 1 and 2 is without prejudice to the provisions of Articles 7(5), 8 and 11.⁹

4. The registration of a trademark for wines which contains or consists of a geographical indication or a traditional expression identifying a wine as referred to in Article 7 shall be refused, or if domestic legislation so permits and at the request of an interested party be invalidated, with respect to such wines not originating

(a) in the place indicated by the geographical indication, or

(b) in the place where the traditional expression has been traditionally used.

5. In the case of homonymous geographical indications:

(a) where a protected indication of a Contracting Party is identical with a protected indication of the other Contracting Party, protection shall be accorded to each indication, provided that the geographical name in question has been used traditionally and consistently and that the wine is not falsely represented to

⁹ Note by the Secretariat: Articles 7(5), 8 and 11 of the Agreement concern commencement of protection and the establishment of transitional periods for the phasing out of particular traditional expressions (Article 7(5)), the application of transitional periods for the use of certain names (Article 8), and the conditions for using of the name of a vine variety in the presentation of a wine (Article 11).

consumers as originating in the territory of the other Contracting Party;

(b) where a protected indication of a Contracting Party is identical with a geographical name outside the territories of the Contracting Parties, the latter name may be used to describe and present a wine produced in the geographical area to which it refers, provided that the geographical name in question has been used traditionally and consistently, that its use for this purpose is regulated by the country of origin and that the wine is not falsely represented to consumers as originating in the territory of the Contracting Party concerned. In such a case, the Contracting Parties shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

6. The provisions of this Agreement shall in no way prejudice the right of any person to use, in the course of trade, their name or the name of their predecessor in business, except where such name is used in such a manner as to mislead consumers.

7. Nothing in this Agreement shall oblige a Contracting Party to protect a geographical indication or traditional expression of the other Contracting Party which is not or ceases to be protected in its country of origin or which has fallen into disuse in that country.”

25. As regards regional agreements for the protection of geographical indications, reference can be made to Regulation (EEC) No. 2081/92 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, and Andean Community Decision 486 (as far as the protection of appellations of origin and indications of source is concerned). This document deals with some of the features of those protection regimes, but does not attempt to provide an exhaustive description.¹⁰

26. EC Regulation 2081/92 (“the Regulation”) applies to all 15 Member States¹¹ of the European Union. It creates a common regime for the protection of geographical indications and designations of origin for agricultural products and foodstuffs by means of a central registration at the level of the Commission of the European Communities. The registration procedure is set out in Articles 5 to 7 of the Regulation. An application for the registration of either a designation of origin or a geographical indication has to comply with certain requirements of form and substance. In particular, the application must contain information concerning the competent authority of the EU member State through which the application is

¹⁰ For further reference, see “Protection of Geographical Indications in the European Union” by Susana Pérez, in Symposium on the International Protection of Geographical Indications in the Worldwide Context, Eger, 1997, WIPO Pub. No. 760; “Protection of Geographical Indications: The Approach of the European Union” by François Vital, in Symposium on the International Protection of Geographical Indications, Somerset West, 1999, WIPO Pub. No. 764; “Some Observations on the Protection of Appellations of Origin in Emerging Economies: The Andean Community” by Luis Alonso García Muñoz-Nájara, WIPO Document WIPO/GEO/MVD/01/6.

¹¹ The member States of the European Union are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom.

filed, information concerning the applicant group, an indication of the type of product, a product specification indicating the name of the product, a description of the product, a description of the relevant geographical area of production, information as to how the origin of the product is proved, information concerning the method of production, a description of the link between the product and its special character that is due to its geographical origin, an indication of the competent inspection body and applicable labeling requirements.

27. The application for registration is submitted to the competent authority of the member State of the European Union concerned, which examines the application and forwards it to the Commission and of the European Community. Eventually, the procedure finishes with the registration of the geographical indication or designation of origin, and its publication in the Official Journal of the European Communities. A registered geographical indication or designation of origin has the same legal effect in all 15 member States of the European Union.

28. Decision 486 of the Andean Community, which entered into force on December 1, 2000, amends the common regime for the protection of industrial property for all member States of the Andean Community.¹² Title 12 of Decision 486 deals with geographical indications. Chapters I and II concern appellations of origin and indications of source. As regards the scope of application of Decision 486 that is relevant for geographical indications, it is not worthy that a limitation as to certain types of products does not exist, and that appellations of origin may be protected for natural, agricultural, handicraft or industrial products, subject to the general conditions of protection.¹³

29. As far as the applicable procedure for protection is concerned, an appellation of origin has to be declared protected by the competent national authority of the relevant member State. Once given an appellation of origin is protected as such in its country of origin, protection may be accorded to that appellation in the other member States upon a request to that effect formulated by interested parties or the relevant public authority.

30. The Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration has already been dealt with to some extent in Chapter DII(c) of document SCT/6/3 Rev.¹⁴ According to the statistics for the year 2001, 843 appellations of origin were internationally registered since 1967, of which 773 are still in force.

31. At its 17th session, which took place in Geneva from September 24 to October 3, 2001, the Assembly of the Lisbon Union unanimously adopted, with a view to their coming into effect on April 1, 2002, a revised version of the Regulations under the Lisbon Agreement.¹⁵

32. In applying the same rules of procedure and formal requirements to 20 different States, the Lisbon Agreement actually introduces a certain degree of harmonization to the administrative procedures relating to the protection of appellations of origin in the States that

¹² The member States of the Andean Community are: Bolivia, Colombia, Ecuador, Peru and Venezuela.

¹³ Article 212 of Andean Community Decision 486

¹⁴ On January 15, 2002, the following 20 States were party to the Lisbon Agreement: Algeria, Bulgaria, Burkina Faso, Congo, Costa Rica, Cuba, Czech Republic, France, Gabon, Haiti, Hungary, Israel, Italy, Mexico, Portugal, Republic of Moldova, Slovakia, Togo, Tunisia, Yugoslavia.

¹⁵ See WIPO document LI/A/17/1.

are party to the Agreement. By way of illustration, Rule 5(2) and (3) of the Regulations under the Lisbon Agreement, which describe the mandatory and optional contents of an international application for registration of an appellation of origin, is reproduced hereunder:

...

“(2) *[Mandatory Contents of the International Applications]* (a) The international applications shall indicate:

- (i) the country of origin;
- (ii) the holder or holders of the right to use the appellation of origin, designated collectively or, where collective designation is not possible, by name;
- (iii) the appellation of origin for which registration is sought, in the official language of the country of origin or, where the country of origin has more than one official language, in one or more of those official languages;
- (iv) the product to which the appellation applies;
- (v) the area of production of the product;
- (vi) the title and date of the legislative or administrative provisions, the judicial decisions or the date and number of the registration by virtue of which the appellation of origin is protected in the country of origin.

(b) Where the names of the holder or holders of the right to use the appellation of origin or the area of production of the product are in characters other than Latin characters, they must be indicated in the form of a transliteration into Latin characters; the transliterations shall use the phonetic of the language of the international application.

(c) Where the appellation of origin is in characters other than Latin characters, the indication referred to in subparagraph (a)(iii) must be accompanied by a transliteration into Latin characters; the transliterations shall use the phonetic of the language of the international application.

(d) The international applications shall be accompanied by a registration fee the amount of which is specified in Rule 23.

(3) *[Optional Contents of the International Application]* The international application may indicate or contain:

- (i) the addresses of the holders of the right to use the appellation of origin;
- (ii) one or more translations of the appellation of origin, in as many languages as the competent authority of the country of origin wishes;
- (iii) a statement to the effect that protection is not claimed for certain elements of the appellation of origin;

(iv) a declaration that protection is renounced in one or more contracting countries, designated by name;

(v) a copy in the original language of the provisions, decisions or registration referred to in paragraph (2)(a)(vi).”

33. With reference to those countries that provide protection for geographical indications by means of collective or certification marks, it should be noted that the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to That Agreement provide for the international registration of that type of mark. In particular, Rule 9(4)(x) of the Common Regulations under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement stipulates that, where the basic application or the basic registration relates to a collective mark or a certification mark or a guarantee mark, the international applications should contain an indication to that effect. On January 18, 2002, a total of 70 States were party to the Madrid Agreement and Protocol.¹⁶ At the same date, 1,019 collective marks and three certification marks were registered on the international register. However, it should be borne in mind that not all of those internationally registered collective and certification marks are used to certify the geographical origin of the products on which they are used.

V. GENERIC TERMS

34. Generic terms are terms that do not possess any distinctive character. In other words, such terms are not capable of distinguishing goods from different sources or to indicate a specific origin of goods. A sign may be considered generic because it describes the kind of goods to which it is applied, or because it has lost over time its distinctive character.

35. In the context of geographical indications, generic terms are understood to designate a kind of product rather than a product having a specific geographical origin and certain qualities or a reputation that is due to that origin. Whether or not a given term is considered generic is a matter of consumer perception and the applicable legal framework.

36. For example, Section 126 of the German Trademark Law provides for the following:

“(1) For the purposes of this Law, indications of geographical origin shall be names of places, areas, regions or countries as well as other indications or signs used in the course of trade to identify the geographical origin of goods or services.

(2) For the purposes of subsection (1), names, indications or signs of a generic nature shall not be eligible for protection as indications of geographical origin. Designations shall be considered to be of a generic nature which — although containing an indication of geographical origin within the meaning of subsection (1) or being derived therefrom — have lost their original meaning and serve as names of goods or

¹⁶ For a complete list of States Party to the Madrid Agreement and Protocol, see <http://www.wipo.int/treaties/docs/english/g-mdrd-m.doc>.

services or as designations for indications of the kind, nature, type or other properties or characteristics of goods or services.”

37. Specific national regulations for generic terms may be limited to certain types of products. For example, Title 27, Volume 1, Part IV of the Code of Federal Regulations of the United States of America, which lays down rules for the labeling and advertising of wine, delegates the power to the appropriate officer of the Bureau for Alcohol, Tobacco and Firearms to determine whether a name of geographic significance which is also the designation of a class or type of wine has become generic.¹⁷

38. Another example for a product-specific regulation of generic terms is Section 11.18(3) of the World Trade Organization Agreement Implementation Act of Canada. This provision is entitled “Exception for generic names for wines” and contains a list with designations of wines which are not considered protected under the applicable Canadian legislation for geographical indications.

39. The approach to generic terms in a regional context may be illustrated with reference to Council Regulation (EEC) No. 2081/92 of July 14, 1994, which shows how that question is dealt with in the European Union. Article 3(1) of the Regulation stipulates the following:

“1. Names that have become generic may not be registered.

For the purposes of this Regulation, a “name that has become generic” means the name of an agricultural product or a foodstuff which, although it relates to the place or the region where this product or foodstuff was originally produced or marketed, has become the common name of an agricultural product or a foodstuff.

To establish whether or not a name has become generic, account shall be taken of all factors, in particular:

- the existing situation in the Member State in which the name originates in areas of consumption,
- the existing situation in other Member States,
- the relevant national or Community laws. [...]

40. As regards multilateral agreements, the Lisbon Agreement and the TRIPS Agreement contain references to generic terms.

41. Article 6 of the Lisbon Agreement defines the scope of protection of an internationally registered appellation of origin by providing that such an appellation of origin may not be considered generic in the other States party to that Agreement. Article 6 reads as follows:

“An appellation which has been granted protection in one of the countries of the Special Union pursuant to the procedure under Article 5 cannot, in that country, be deemed to have become generic, as long as it is protected as an appellation of origin in the country of origin.”

¹⁷ See 27 CFR §4.24(a)(1) entitled “Generic, semi-generic, and non-generic designations of geographic significance”.

42. The TRIPS Agreement deals with generic terms by way of exception to the general obligation for WTO Member States to provide for the protection of geographical indications under Articles 22 and 23. TRIPS Article 24.6 does not use the term “generic,” but is commonly seen as the exception for generic terms.¹⁸ It provides for the following:

“6. Nothing in this Section [Section 3, Part II of the TRIPS Agreement] shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.”

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¹⁸ See, for example, WIPO Publication No. 760, page 42.