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

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REVIEW OF LEGISLATION

Replies by Argentina to the Follow-Up Questions Posed by the European Communities and their Member States

Addendum

By means of a communication from the Permanent Mission of Argentina, dated 20 September 2001, the Secretariat has received the following replies to the follow-up questions posed by the European Communities and their member States, which were circulated in document IP/C/W/274/Add.1.¹

Ad reply to question 14

Please explain whether or not the notion of "denominación de origen" of Article 3 of the Trademark Law No. 22.362 encompasses those of "Indicaciones de Procedencia", "Indicación Geográfica" and "Denominación de Origen Controlada" of Law No. 25.163. Please explain how none of the latter three notions can be used to be part of a registered trademark, totally or in part.

Article 22.1 of the TRIPS Agreement provides that "geographical indications are ... indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin".

Article 3(c) of Law No. 22.362 prohibits the registration of national and foreign appellations of origin as trademarks and indicates, in language similar to the protection required by the TRIPS Agreement, that "an appellation of origin is understood to mean the name of a specific country, region, place or geographical area that serves to designate a product originating therefrom, the qualities and characteristics of which are due exclusively to the geographical environment". The Article 3(c) definition covers "geographical indications" and "appellations of origin", as defined in Articles 4 and 13, respectively, of Law No. 25.163.

¹ Argentina's replies to the initial questions posed by the European Communities and their member States was circulated in document IP/C/W/271/Add.3.

Ad reply to question 16:

Please explain how the provisions of Article 7 ensure that the terminology used as a geographical indication relates to the geographical area where the goods originate. Alternatively, explain whether or not a name unrelated to the way a geographical area is commonly known can be used as part of the geographical indication.

Article 7, on which the follow-up question from the European Communities is based, refers to "geographical indications" as defined in Article 4 of Chapter III of Law No. 25.163. The Article in question states that a geographical indication is the name which identifies a product as originating in a defined region, locality or area of production in the national territory, which is no larger than a recognized province or interprovincial zone.

The five paragraphs of Article 7 describe the elements that must be included in the reports, explanatory material and/or studies designed to obtain recognition of a "geographical indication".

Ad reply to question 17:

Please provide the definitions pertaining to the notions of IP, IG and DOC. Please explain the different fact patterns to which they apply. Please explain their differences, with particular regard to the difference between IP compared to those of IG and DOC.

Law No. 25.163, Article 3: Indication of source:

"The use of an indication of source is reserved exclusively for table wines or regional wines. The procedure for determining the geographical area of an indication of source, the conditions of use and the control of that sector of the regime are the exclusive responsibility of the implementing authority for this Law."

Law No. 25.163, Article 4: Geographical indication:

"For the purposes of this Law, geographical indication (IG) is understood to mean: the name identifying a product as originating from a specific region, locality or area of production in the national territory that is no larger than a recognized province or interprovincial zone. A geographical indication is justified solely where a given quality and the characteristics of the product in question are essentially attributable to its geographical origin.

In the above definition, "product originating ... " is understood to mean a product processed and bottled in the specific geographical area, using grapes from *Vitis vinifera* L vines, where they have been entirely produced, harvested and bottled in the same area.

In cases where the processing and/or bottling of the product is carried out in a geographical area different from that where the grapes are produced, the origin of the product shall be determined by reference to the name corresponding to the area of production of the grapes in conjunction with the name of the geographical area encompassing the production of the grapes and the processing and/or bottling of the product.

In the case of bulk exports, the products concerned shall retain their designated classification.

Geographical area: the area defined by overall boundaries based on administrative or historical boundaries.

Area of production: the area comprising a plot of land or a set of plots, situated within a geographical area, which owing to the nature of their soil and their environmental situation are deemed suitable for the production of high-quality wines."

Law No. 25.163, Article 13: Registered designations of origin

"For the purposes of this Law, a registered designation of origin (DOC) is understood to mean the name which identifies a product originating from a specific region, locality or area of production in the national territory, the specific qualities or characteristics of which are exclusively or essentially due to the geographical environment, including natural factors and human factors.

The following meanings are applicable to terms contained in the above definition:

"Product originating ... ": the product obtained from grapes taken from vines of the *Vitis vinifera* L species, wholly produced in the specific area, processed and bottled in the same area, and explicitly certified as meeting these requirements by the implementing authority.

"Area of production": the area comprising of a plot of land or a set of plots situated within a geographical area, which owing to the nature of their soil and their environmental situation are deemed suitable for the production of high-quality wines.

"Geographical area": the area defined by overall boundaries based on administrative or historical boundaries."

Indications of source (IP) are merely indications identifying the origin of the product, since no requirements are laid down in respect of "quality, reputation or other characteristics" essentially attributable to its geographical origin.

Ad reply to question 18

Article 24.6 of the TRIPS Agreement states that generic names shall be appraised in relation to the "common language (...) for such goods or services in the territory of that Member". The plain meaning of Article 32.2 of Law No. 25.163 seems to indicate that the "generic" character needs to be assessed *vis-à-vis* the "country of origin". Yet, the answer to question 18 refers to an evaluation of such "generic" character to be made with respect to a "limited territory". Please clarify whether the "country of origin" of Article 32.2 of Law No. 25.163 refers to the country where the goods originate, the country where the GI was first protected or simply Argentina. Please clarify whether the "limited territory" to which you referred in your answer to question 18 implies that the "generic character" can be recognized in only part of Argentina and yet apply to (i) all, or (ii) part, of the country.

Article 32(a) of Law No. 25.163 is the implementing provision for the exception under Article 24.6 of the TRIPS Agreement. The Article provides that generic names shall not be registrable as indications of source, geographical indications or registered designations of origin when they constitute the common name of a good identified with that name by the general public in Argentina.

Ad reply to question 20

Please explain whether Argentinean law permits the use of a certain geographical indication for wine which, although literally true as to the territory, region or locality within Argentina in which the wine is made, falsely represents to the public that the wine originates in

another territory of identical name of another WTO Member in which the GI gained its original, prior reputation.

This question has already been answered under question 20 in the first set of questions from June 2001.

There appears to be an element of confusion in the follow-up question, since on the one hand it includes points to which the TRIPS Agreement makes no reference, while curiously, on the other hand, no mention is made of Article 23.3 of the TRIPS Agreement, the Article which lays down specific requirements for the protection of homonymous geographical indications for wines, which are explicitly recognized by the Agreement.
