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REVIEW OF LEGISLATION ON TRADEMARKS, GEOGRAPHICAL INDICATIONS AND INDUSTRIAL DESIGNS

Questions posed by the European Communities and their Member States

By means of communications from the Permanent Delegation of the Commission of the European Communities, dated 30 September 1996, the Secretariat has received questions that the European Communities and their Member States had communicated to the following WTO Members concerning the review of national implementing legislation in the areas of trademarks, geographical indications and industrial designs:

	<u>Page</u>
Australia	2
Canada	3
Czech Republic	4
Japan	5
Liechtenstein	6
New Zealand	7
Norway	8
Poland	9
Slovak Republic	9
Slovenia	10
South Africa	11
Switzerland	12
United States	12

AUSTRALIA

Trademarks

1. Does Australian law implement Article 4C(3) of the Paris Convention in conjunction with Article 2.1 of the TRIPS Agreement which says that if the last day of the period (of priority) is an official holiday, or a day when the office is not open for the filing of applications in the country where protection is claimed, the period shall be extended until the first following working day? If yes, please explain how.
2. Does Australian law provide for the prohibition to use trademarks (service marks) which constitute a reproduction, an imitation or a translation of a well-known trademark in accordance with Article 6*bis* of the Paris Convention in conjunction with Article 2.1 of the TRIPS Agreement, Article 16.2 and Article 16.3 of the TRIPS Agreement and, if so, on what basis?
3. Does Australian legislation provide temporary protection, and, if so, on what basis, for trademarks in respect of goods exhibited at official or officially recognized international exhibitions in accordance with Article 11 of the Paris Convention in conjunction with Article 2.1 of the TRIPS Agreement?
4. Could the Australian Government explain whether its legislation is in accordance with Article 15.3 of the TRIPS Agreement to the extent that trademark applications are not solely rejected on the ground that intended use has not taken place before the expiry of a period of three years from the date of application?

Geographical indications

5. Does Australian law grant protection against unfair competition in relation to geographical indications, as provided for in Article 10*bis* of the Paris Convention in conjunction with Article 2.1 of the TRIPS Agreement, over and above what is provided for under the Trade Practices Act 1974 and the fair trading legislation in the States and Territories of Australia?
6. Does Australian law provide protection for geographical indications for all goods (and not only for wine and grape products) in accordance with the provisions of Article 22 of the TRIPS Agreement and, if so, on what basis?
7. Does Australian law provide the legal means for interested parties to prevent the use of any means in the designation or presentation of a good, that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good in accordance with Article 22.2 of the TRIPS Agreement?
8. Does Australian law provide for the protection granted under Articles 22.2 and 22.3 of the TRIPS Agreement to a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory in accordance with Article 22.4 of the TRIPS Agreement and, if so, on what basis?
9. Does Australian law provide for the protection of spirits not obtained from grapes, in the terms of Article 23 of the TRIPS Agreement?

10. Does Australian legislation provide that, in order to be entitled to obtain the registration of a trademark containing or consisting of a sign that is a geographical indication for goods not originating in the same territory as the goods identified by the geographical indication, it is necessary to have acquired, through use in good faith, the right to use such a trademark, in accordance with Article 24.5 of the TRIPS Agreement?

Industrial designs

11. Does Australian law provide for a grace period of at least six months for the payment of fees prescribed for the maintenance of industrial property rights in accordance with Article 5*bis*(1) of the Paris Convention (1967) in conjunction with Article 2.1 of the TRIPS Agreement?

12. Are textile designs, including fashion, protected under Australian law (Article 25.2 of the TRIPS Agreement)? If yes, on which legal basis and under which conditions?

CANADA

Geographical indications

1. Could Canada explain in detail how the Canadian law protects geographical indications for products other than wines and spirits? Is this legislation in compliance with Article 22 of the TRIPS Agreement? Please explain.

2. Following TRIPS Article 23.1, what are the legal means available in Canadian legislation to prevent the misuse of a geographical indication identifying a wine or a spirit, where:

- (a) the true origin of the goods is indicated?
- (b) the geographical indication is accompanied by expressions such as "kind", "type", "style", "imitation", or the like?

3. Under Canadian law, where a rightholder of a geographical indication for wines or spirits disputes the rights of a trademark owner, user or applicant who claims his good faith under this subsection, will the burden of proof be on the latter (TRIPS Article 24.5)?

4. Can Canada explain whether the adoption, utilization or registration as terms customary in common language of protected geographical indications, under subsection 11.18(2) of the Canadian Trade-marks Act, is in line with the standstill obligation of TRIPS Article 24.3?

5. Section 11.18(3) of the Canadian Trade-marks Act, adopted in the framework of the WTO implementing legislation, provides for a list of indications in respect of wines whose registration as geographical indications does not prevent their adoption, use or registration as trademarks or otherwise. Can Canada substantiate its claim that the names included in the above-mentioned lists have become terms customary in the common language (TRIPS Article 24.6)?

6. Could Canada explain, in particular, how it has determined that names, like Champagne, Madeira, Port and Sherry, which were previously protected in Canada as geographical indications for wines from France, Portugal or Spain through bilateral agreements with those countries, can be now defined as customary in the common language in Canadian law (TRIPS Article 24.3 standstill obligation)?

7. Could Canada explain how the amendments to the Trade-marks Act concerning the implementation of a new system to register and protect geographical indications for wines and spirits, which has been published as an Industry Note by the Agriculture and Agri-food Canada (AAFC) on 31 July 1996, operates? Could Canada elaborate on its compliance with TRIPS Articles 22 to 24?

Trademarks

8. Given the restrictions set out in Section 34 of the Canadian Trade-marks Act concerning the applications upon which a claim of priority may be based, it appears that Canada is not entirely in compliance with Article 4A(1) of the Paris Convention (1967) as is required by Article 2, paragraph 2.1 of the TRIPS Agreement, since priority may only be based on an application filed in a country of which the applicant was a citizen or in which the applicant had a real and effective industrial or commercial establishment. Please clarify this issue.

9. There is no mention of collective marks in the Canadian Trade-marks Act. In light of this, please confirm that Canada is in compliance with Article 7bis of the Paris Convention (1967) in conjunction with Article 2.1 of the TRIPS Agreement.

Industrial designs

10. Does Canadian legislation provide for temporary protection of industrial designs and trademarks that are exhibited "at official or officially recognized international exhibitions" held in Canada (Article 11 of the Paris Convention (1967) in conjunction with Article 2.1 of the TRIPS Agreement), and if yes, on what basis and under what conditions?

CZECH REPUBLIC

Geographical indications

1. Could the Czech Republic explain how the definition of appellation or origin included in its legislation fulfils the criteria set out in Article 22.1 of the TRIPS Agreement?

2. Could the Government of the Czech Republic clarify whether its legislation foresees additional protection for geographical indications for wines and spirits (Article 23 of the TRIPS Agreement)? If yes, please explain.

Industrial designs

3. Does the law of the Czech Republic provide for the protection of textile designs, including fashion? If yes, on what legal basis and under which conditions?

4. The duration of protection under the Czech law amounts to five years (paragraph 54 of Act No. 527/1990 Coll. on Inventions). This period may be extended by the Intellectual Property Office, based on the request of the owner of an industrial design, for a maximum of two five-year periods.

- Are the Czech authorities aware that the five-year extension provision would appear to be consistent with Article 26.3 of the TRIPS Agreement only if the extension is automatically granted upon application of the rightholder?
- What is the exact meaning of "may be"?
- Are there any reasons for rejection of such an extension?

JAPAN

Trademarks

1. On what basis does Japanese law allow for a period of grace of not less than six months for the payment of fees prescribed for the maintenance of trademark rights in accordance with Article 5*bis* of the Paris Convention (1967) in conjunction with Article 2.1 of the TRIPS Agreement?

2. Does Japan accept for filing and protection collective trademarks belonging to associations in other WTO Members in circumstances where these associations are "not contrary to the law of their country of origin" but are "not established" or "not constituted according" to Japanese law (Article 7*bis*(3) Paris Convention in conjunction with Article 2.1 of the TRIPS Agreement)?

3. Does Japanese law provide protection, and, if so, on what basis, against a false indication on goods of the identity of the producer, manufacturer, or merchant (Article 10(1) of the Paris Convention in conjunction with Article 2.1 of the TRIPS Agreement)?

4. Are combinations of colours, other than in combination with characters, figures or other signs, eligible for registration as trademarks under Japanese law and, if so, on what basis (Article 15.1 of the TRIPS Agreement)?

5. Does the five year time-limit in Article 47 of the Japanese law also apply to the request for cancellation of the registration of a well-known trademark registered in bad faith? If yes, how do you explain this in relation to Article 6*bis*(3) of the Paris Convention in conjunction with Article 2.1 of the TRIPS Agreement and Article 16.3 of the TRIPS Agreement?

Geographical indications

6. How is the term "geographical indication" defined in Japanese law in respect of goods other than wines and spirits and what is the legal basis for such a definition (Article 22.1 of the TRIPS Agreement)?

7. Does Japanese law provide the legal means for interested parties to prevent, in respect of geographical indications, any use which constitutes a false allegation of such a nature as to discredit the goods concerned, even in the absence of any injury being caused to the business reputation of such parties (Article 22.2(b) of the TRIPS Agreement)?

8. Does Japanese trademark legislation provide for the refusal or invalidation of the registration of a trademark which contains or consists of a geographical indication in accordance with Article 22.3 of the TRIPS Agreement?

9. Does Japanese trademark legislation provide for the refusal or invalidation of the registration of a trademark which contains or consists of a geographical indication in accordance with Article 22.4 of the TRIPS Agreement?

10. Pursuant to Article 23.1 of the TRIPS Agreement, which are the legal means available in Japanese legislation to prevent the misuse of a geographical indication identifying a wine or a spirit, where:

- (a) the true origin of the wine or the spirit is indicated?
- (b) the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like?

11. Article 23.2 of the TRIPS Agreement provides that the registration of a trademark for wines or spirits containing or consisting of a geographical indication shall be refused or invalidated with respect to wines and spirits not having such origin. Article 4(1)xvii of the Trademark Law of Japan implements this provision as regards geographical indications from WTO Members. The Patent Office of Japan has adopted a list of those geographical indications registered with the International Bureau of WIPO which cannot be registered as trademarks in Japan. What provisions has Japan taken to update this list?

12. Does Japanese trademark legislation allow for the right to continue the use of a trademark acquired through use in good faith where such a trademark is identical with, or similar to, a geographical indication and, if so, what, if any, are the relevant dates in accordance with Article 24.5 of the TRIPS Agreement? Please explain.

Industrial designs

13. Does Japanese law provide for the protection of textile designs, including fashion? If yes, on what legal basis and under which conditions (Article 25.2 of the TRIPS Agreement)?

LIECHTENSTEIN

Trademarks and geographical indications

1. Within which term does Liechtenstein intend to put in force the revised Law on Trademarks and Geographical Indications?

2. What adjustments were/are going to be made during the debates in Parliament with respect to the draft submitted? To what extent do these adjustments comply with the TRIPS Agreement?

Industrial designs

3. What is the time schedule within which the total revision of the Liechtenstein Law on Industrial Designs and Models is intended to be started and to be concluded?

4. What will be the main features of the respective revision? What innovations are intended to be established in the line of the implementation of the TRIPS Agreement?

NEW ZEALAND

Trademarks

1. Does New Zealand law provide for the registration and protection of collective marks in accordance with Article 7*bis* of the Paris Convention in conjunction with Article 2.1 of the TRIPS Agreement? Please explain.

2. Does New Zealand trademark law provide for temporary protection of trademarks in respect of goods exhibited at official or officially recognized international exhibitions held in the territory of any Member of the Union of the Paris Convention, in accordance with Article 11 of the Paris Convention in conjunction with Article 2.1 of the TRIPS Agreement?

3. Is New Zealand law to be interpreted as granting trademark owners the possibility to oppose the cancellation of a trademark for reasons of non-use on the basis that use was prevented due to government requirements other than import restrictions (Article 19.1 of the TRIPS Agreement)?

Geographical indications

4. We understand that the Geographical Indications Act 1994 including a minor amendment is not in force yet. Furthermore, it is our understanding that the New Zealand Ministry of Commerce has prepared draft Regulations setting out detailed rules for the implementation of the Act. What is the expected timeframe for the Law and the implementing Regulations to be in force?

5. Is the period of grace for payment of fees for maintenance of geographical indication rights shorter than six months under New Zealand law (Article 5*bis* of the Paris Convention in conjunction with Article 2.1 of the TRIPS Agreement)?

6. Who is to be deemed an interested party in relation to the use of false geographical indications under New Zealand law (Article 10(2) of the Paris Convention in conjunction with Article 2.1 of the TRIPS Agreement)?

7. Is the definition of geographical indication under New Zealand law to be interpreted as referring to a given quality, reputation or other characteristic of the good which is essentially attributable to its geographical origin in accordance with Article 22.1 of the TRIPS Agreement?

8. Does New Zealand law intend to provide for the legal means or administrative action for interested parties to prevent use of geographical indications identifying wines or spirits for wines or spirits not originating in the place indicated in the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like, and, if so, when and on what terms (Article 23.1 of the TRIPS Agreement)?

9. Does New Zealand intend to provide that the registration of a trademark for wines or spirits containing or consisting of a geographical indication shall be refused or invalidated with respect to wines or spirits not having this origin in accordance with Article 23.2 of the TRIPS Agreement and, if so, when and on what terms?

10. Section 5(3) of the New Zealand Geographical Indication Law states that the use of a geographical indication in relation to goods "if the goods were produced before the goods were declared to be specified goods" does not infringe the right of a geographical indication. Could the Government of New Zealand explain how this complies with Section 3 of Part II of the TRIPS Agreement?

11. Does New Zealand's geographical indications law provide for an exemption for geographical indication protection where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith before the entry into force of the WTO Agreement in relation to New Zealand, as provided for in Article 24.5 of the TRIPS Agreement?

NORWAY

Trademarks

1. For the purpose of clarification: According to Article 2.1 of the TRIPS Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967). The Norwegian Trademarks Act, Section 29 (supplemented by the Trademarks Regulations, Section 11) states that "telle quelle" registration according to Article 6^{quinquies} of the Paris Convention shall be "subject to reciprocity". In light of the fact that the condition of reciprocity was deleted from the Trademarks Act, Sections 18 and 30 regarding priority in order to comply with the TRIPS Agreement, the Government should explain why a condition for reciprocity is upheld in Section 29.

Geographical indications

2. In the Government's proposal to the Norwegian Parliament (Stortinget) to ratify the TRIPS Agreement, the Government stated that it is necessary to amend Norwegian law in order to implement the protection for geographical indications for wines and spirits under Article 23 of the TRIPS Agreement (St.prp.nr. 65 - 1993-94, p. 169). The Norwegian Government should inform about the status of the proposed amendments to Norwegian legislation and at what time these amendments are expected to enter into force.

Industrial designs

3. Under Article 25.2 of the TRIPS Agreement, each Member shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection. In the Government's proposal to the Norwegian Parliament (Stortinget) to ratify the TRIPS Agreement (St.prp.nr. 65 - 1993-94, p. 169), the Government held that it is unclear whether Article 25.2 requires specific provisions in Norwegian legislation for the protection of textile designs. According to the Ministry of Justice's green paper of 21 December 1995, the Ministry is of the opinion that the assessment of whether it is necessary to give specific provisions in Norwegian law, should be postponed until the international development, especially in the European Union, is further clarified. As the Norwegian Government is obliged to implement the provisions of the TRIPS Agreement within the time limits given in Article 65, the Norwegian Government should clarify whether Norwegian law protects textile designs, including fashion (Article 25.2 of the TRIPS Agreement). If yes, which are the conditions and what is the legal basis?

POLAND

Trademarks

1. Could the Polish Government confirm whether actual use of a trademark is a condition for filing an application for registration (Article 15.3 of the TRIPS Agreement)?
2. How does the Polish Trademark Law incorporate the following wording of Article 16.1, sentence 2 of the TRIPS Agreement: "In case of use of an identical sign for identical goods or services, likelihood of confusion shall be presumed"?
3. Does the Polish Government intend to resolve the problem of marks in use by a third party prior to application (Article 16.1 of the TRIPS Agreement)?
4. Has the Polish Government incorporated Article 16.3 of the TRIPS Agreement into the Polish Law? And, if yes, how?
5. Could the Government of Poland clarify which circumstances would be recognized as valid reasons for the non-use of a registered trademark (Article 19.1 of the TRIPS Agreement) and whether the use by another person would fulfil the requirement of use (Article 19.2 of the TRIPS Agreement)?

Geographical indications

6. In the future Polish Industrial Property Code, the registration of a trademark which consists of or contains a geographical indication with respect to goods not originating in the territory indicated, will be prohibited only if the said geographical indication is registered in Poland. Could the Polish Government confirm this understanding and explain its consistency with Article 22.3 of the TRIPS Agreement?
7. How does Polish law incorporate Article 23.1 of the TRIPS Agreement where additional protection is granted to geographical indications for wines and spirits "even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like"?
8. How does the Polish legislation implement Article 23.2 of the TRIPS Agreement with respect to geographical indications for wines and spirits? Please explain.

Industrial designs

9. Does Polish law provide for the protection of textile designs, including fashion? If yes, on what legal basis and under which conditions?

SLOVAK REPUBLIC

Trademarks

1. Could the Slovak Republic explain how the rights of third parties (e.g. the owner of a trademark with the priority of a previous filing) are taken into account during the process of the registration of a trademark (Article 15.5 of the TRIPS Agreement)?

2. Article 16 of the TRIPS Agreement determines a well-known trademark, with no additional conditions based on a decision of the state authority. Is it an intention of the Slovak Republic to amend the trademark law and adjust respective provisions fully in conformity with this Article? If yes, what will be the main elements? If no, which are the reasons?

3. Against the background of the aforesaid (with respect to Article 16.2), how is the Slovak Republic going to embody the provisions of Article 16.3 into its domestic legislation (law on trademarks)?

Geographical indications

4. Could the Slovak Republic explain how the definition of appellation or origin included in its legislation fulfils the criteria set out in Article 22.1 of the TRIPS Agreement?

5. Could the Government of the Slovak Republic state whether its legislation foresees additional protection for geographical indications for wines and spirits (Article 23 of the TRIPS Agreement)? If yes, please explain.

Industrial designs

6. Does the law of the Slovak Republic provide for the protection of textile designs, including fashion (Article 25.2 of the TRIPS Agreement)? If yes, on what legal basis and under which conditions?

7. The duration of protection under the Slovak law amounts to five years (paragraph 54 of Act No. 527/1990 Coll. on Inventions). This period may be extended by the Intellectual Property Office, based on the request of the owner of an industrial design, for a maximum of two five-year periods.

- Are the Slovak authorities aware that the five-year extension provision would appear to be consistent with Article 26.3 of the TRIPS Agreement only if the extension is automatically granted upon application of the rightholder?
- What is the exact meaning of "may be"?
- Are there any reasons for rejection of such an extension?

SLOVENIA

Geographical indications

1. Could the Government of Slovenia clarify how the protection granted to "appellations of origin" under the Slovenian law complies with Article 22 of the TRIPS Agreement, in particular where only a given reputation of the good is essentially attributable to its geographical origin?

2. Could the Government of Slovenia clarify whether its legislation foresees additional protection for geographical indications for wines and spirits (Article 23 of the TRIPS Agreement)? If yes, please explain.

SOUTH AFRICA

Trademarks

1. With reference to Article 16.1 of the TRIPS Agreement, could the South African Government confirm whether under its trademark laws the likelihood of confusion is presumed in the case of use of an identical sign for identical goods or services?
2. In determining whether a trademark is well-known, does South Africa take account of the knowledge of the trademark in the relevant sector of the public (Article 16.2 of the TRIPS Agreement)?

Geographical indications

3. Until now, South Africa has not taken any step to implement in its legislation the provisions of Section 3 of Part II ("Geographical Indications") of the TRIPS Agreement. How and when does South Africa intend to afford this protection?
4. Is there any provision in the South African legislation which provides for a definition of geographical indications in line with the definition in Article 22.1 of the TRIPS Agreement?
5. Can a geographical indication be relied upon to oppose an application for registration or invalidate a registered trademark which contains or consists of a geographical indication (Article 22.3 of the TRIPS Agreement)?
6. Does South Africa afford protection of a geographical indication where there is a reputation in South Africa but in the absence of any goodwill in South Africa (Article 22 of the TRIPS Agreement)?
7. With reference to Article 23.1 of the TRIPS Agreement, does South Africa afford protection to a misused geographical indication identifying a wine or spirit from any other WTO Member, where:
 - the true origin of the goods is indicated;
 - the geographical indication is used in translation;
 - the geographical indication is used accompanied by expressions such as "kind", "type", "style", "imitation" or the like?
8. Does the South African legislation provide for the refusal or the cancellation of a trademark for a wine or a spirit which contains or consists of a geographical indication identifying, respectively, wines or spirits (Article 23.2 of the TRIPS Agreement)?

Industrial designs

9. Does the South African Design Act 195 of 1993 give the owner of a protected industrial design the right to prevent third parties not having his consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes, in terms of Article 26.1 of the TRIPS Agreement, irrespective of the nature of the articles which bear or embody the design?

SWITZERLAND

Geographical indications

1. Within which period of time does Switzerland intend to establish new legal regulations on the protection of geographical indications for agricultural products?
2. What will be the innovations of the respective provisions relating to the law presently in force?
3. Is it intended to establish a registration system for geographical indications with respect to wines and spirits on federal level? What shape would a respective system have?

UNITED STATES

Trademarks

1. Article 15.5 of the TRIPS Agreement provides that "Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed." Currently, US opposition and cancellation proceedings often take many years to bring to decision, and there are numerous ways in which a party effectively can stall the proceedings. Please explain, how currently US opposition and cancellation practice complies with Article 15.5 of the TRIPS Agreement.

2. Article 16.1 of the TRIPS Agreement provides:

"The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use."

Please explain how current US trademark statutes comply with the requirement that "[i]n the case of use of an identical sign for identical services, a likelihood of confusion shall be presumed".

3. Article 19.1 of the TRIPS Agreement provides:

"If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner."

Please explain how current US trademark laws comply with the TRIPS Agreement's requirement that "registration may be cancelled only after an uninterrupted period of three years of non-use".

Geographical indications

4. The United States has indicated that the term "geographical indication" as used in Section 2 of the Trademark Act will be interpreted to comprise "only those areas which have a reputation for being associated with the specific goods at issue". Please explain how this interpretation is consistent with TRIPS Article 22, which defines geographical indications as "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".

5. Under 15 U.S.C.A. §1052(a), the United States permits the registration or continuation of a trademark that includes a false geographical indication for wines or spirits, if the trademark was first used before the date of application of the TRIPS Agreement. The United States does not require a determination that the trademark was applied for, registered, or acquired in "good faith". Please explain how this provision is consistent with TRIPS Articles 23.2 and 24.5 which provide that trademark registration shall be refused or invalidated for a false geographical indication for wines and spirits except where "a trademark has been applied for or registered *in good faith*", before the application of the TRIPS Agreement.

6. TRIPS Article 23 sets forth "Additional Protection for Geographical Indications for Wines and Spirits". Article 23.1 states:

"Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question...even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation", or the like."

Does US legislation implement this provision? If not, what intentions does the US Government have in order to provide for such protection?

7. Under 27 C.F.R. §4.24, the Director of the Bureau of Alcohol, Tobacco and Firearms ("BATF") has sole authority to determine whether a name of geographic significance with respect to wine has become "generic" or "semi-generic". Please explain the basis on which the Director determines whether names of geographic significance, which are recognised and protected in the European Community and its Member States, are or have become "generic" or "semi-generic" and explain also how the relevant standard comports with TRIPS Articles 22.1 and 23.1.

8. Under 27 C.F.R. §5.22(k)(2), the Director of the BATF has sole authority to determine whether geographical names for distilled spirits "have by usage and common knowledge lost their geographical significance to such extent that they have become generic". Please explain in greater detail the basis on which the Director determines whether a geographical name for distilled spirits has become "generic" and explain how the relevant standard comports with TRIPS Articles 22.1 and 23.1.

9. Please explain, how the Director of the BATF will exercise the authority to designate names of geographic significance for wines as "semi-generic" or "generic" and the authority to designate geographical names for distilled spirits "generic" consistent with the obligation of Article 24.3 not to "diminish the protection of geographical indications that existed [in the United States] immediately prior to the entry into force of the WTO Agreement".

10. Under 27 C.F.R. §4.24(b)(1), a "semi-generic" name of geographical significance for wine may be used to describe wine that is not of the indicated origin, so long as it is accompanied by an indication disclosing the wine's true place of origin. Please explain how this provision is consistent with TRIPS Article 23.1 which forbids false use of geographical indications even where the true origin of the good is indicated.

Industrial designs

11. Does US law provide for the protection of textile design, including fashion? If yes, on what legal basis and under which conditions (TRIPS Article 25.2)?