

# WORLD TRADE ORGANIZATION

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

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## INFORMATION FROM MEMBERS ON ANY SYSTEMS FOR THE REGISTRATION OF GEOGRAPHICAL INDICATIONS WHICH THEY OPERATE

### Communication from Switzerland

#### Addendum

At its meeting of 27 February 1997, the Council for TRIPS agreed to initiate preliminary work on issues relevant to the negotiations specified in Article 23.4 of the TRIPS Agreement through an information-gathering activity. In this connection, the Council invited Members to submit information on any systems for the registration of geographical indications which they operate. Reference is made to paragraph 73 of document IP/C/M/12.

The present document reproduces the information received from Switzerland by a communication from its Permanent Mission, dated 8 August 1997.

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## GEOGRAPHICAL INDICATIONS IMPLEMENTATION OF ARTICLE 23 OF THE TRIPS AGREEMENT

### Information on the National Protection System

The following is in response to the TRIPS Council decision of 27 February 1997 in relation to Article 23.4 of the TRIPS Agreement (paragraphs 73 and 74 of document IP/C/M/12).

#### I. PROTECTION OF GEOGRAPHICAL INDICATIONS FOR PRODUCTS OTHER THAN WINES

##### A. In General

1. Swiss legislation concerning geographical indications ("indications of source") is found in combination with Swiss trademark legislation under the title "Federal Law on the Protection of Trademarks and Indications of Source" (Trademark Law) of 28 August 1992 (RS 232.11).<sup>1</sup> This Law

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<sup>1</sup>The Trademark Law as amended on 16 December 1994 (adjustment to the TRIPS Agreement) was notified in 1996 (see notification IP/N/1/CHE/T/1). Other amendments to the Trademark Law and to the implementing ordinance have been made since that notification. They will be notified in the near future together with other new pieces of legislation in an updated version of the lists of laws and regulations.

sets forth the requirements of protection for geographical indications for all products and services in general.

2. "Indications of source" encompass direct or indirect references to the geographical origin of products or services, including references to their nature or properties, having a relationship with their origin (Article 47(1)). Geographical names and signs not understood as a reference to a specific origin of goods or services in the interested circles are not deemed indications of source within the meaning of the Trademark Law (Article 47(2)). With respect to goods, only the "place of manufacture" or the "origin of the basic materials and components used" may be determinative (Article 48(1)). The fulfilment of further conditions may also be required, namely compliance with manufacturing ("fabrication") principles and quality requirements that are customary or prescribed in the place concerned.

3. In order to protect consumers as well as competitors of a given region or area from the possibility of fraud, deception or confusion with regard to the origin of a given product or service, the Trademark Law strictly forbids the application of incorrect indications of source as well as the use of "designations that may be confused with incorrect indications of source" (Article 47(3)(a) and (b)). The use of a name, address or trademark "in relation to goods or services of different origin" where this could be deceptive is also prohibited (Article 47(3)(c)). There are various judicial measures available for violations of the relevant provisions concerning indications of source: for example, anyone who intentionally acts in violation of Article 47(3) of the Trademark Law is liable to imprisonment of up to one year or a fine of up to 100,000 francs (Article 64, "Use of Incorrect Indications of Source"). Pursuant to the latter provision, it is not only incorrect geographical indications which are proscribed, but also correct indications that are, in effect, fraudulent or deceptive. Any trademark bearing a false geographical indication can be invalidated via a declaration of nullity of the trademark registration (Article 52). The fraudulent use of a trademark is also punishable by imprisonment or fine (Article 62).

4. In circumstances where the general interest of the economy or of individual sectors so requires, the Federal Council may detail the conditions under which a Swiss indication of source may be used for specific goods or services after first hearing the Cantons and the professional and industrial associations concerned (Article 50 Trademark Law). This has been done, for example, for watches in the "Ordonnance du 23 décembre 1971 réglant l'utilisation du nom 'Suisse' pour les montres" (Ordinance Governing the Use of the Appellation "Switzerland" or "Swiss" for Watches) (RS 232.119).

#### B. Geographical Indications for Agricultural Products and Processed Agricultural Products

5. Attention is also drawn to the fact that, in the field of agricultural products and processed agricultural products, protection of geographical indications is ensured by Article 18(c) of the Federal Law on the Improvement of Agriculture and Preservation of Farming Populations (RS 910.1)<sup>2</sup> and by the Ordinance of 28 May 1997 on the Protection of Appellations of Origin and Geographical Indications in respect of Agricultural Products and Processed Agricultural Products (RS 910.12).<sup>3</sup> With the exception of wines (see paragraphs 6 to 14 below), these texts also cover spirits. The Ordinance provides for a system of registration equivalent to the one established in the European Union. The systems of protection afforded by the Ordinance and the Trademark Law are complementary. Indications

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<sup>2</sup>Text submitted for referendum notified in 1996 (see notification IP/N/1/CHE/1). The definitive text will be notified in the near future together with other new pieces of legislation in an updated version of the lists of laws and regulations.

<sup>3</sup>Entry into force on 1 July 1997. The text will be notified in the near future together with other new pieces of legislation in an updated version of the lists of laws and regulations.

which are not registered under the terms of that Ordinance continue to be protected under the Trademark Law.

## II. PROTECTION OF GEOGRAPHICAL INDICATIONS FOR WINE

6. Section 5 of the Swiss Federal Decree on Wine Cultivation (RS 916.140.1<sup>4</sup>, hereinafter "Decree"), dated 19 June 1992, sets forth the federal requirements with regard to the cantonal wine harvest, quality and designation. Swiss Cantons may offer broader protection, but they are obligated to respect the minimal norms specified for wine production by the Decree.

7. The Cantons control and regulate their own wines with regard to quality (natural sugar content), type, amount and origin (Article 13(1)). The Decree stipulates that the Cantons are to provide a yearly report to the Federal Government concerning, among other things, the amount and quality of their wine harvest in accordance with the categories set forth below in Article 14 (Article 13(2)).

8. Pursuant to Article 14 of the Decree, grape must, and thus wine, is divided into three categories:

Category 1: Grape must used in wine production for which an "appellation d'origine" (e.g. name of a canton, part of a canton, district, vineyard ("cru")) can be applied;

Category 2: Grape must used in wine production for which an "indication de provenance" (e.g. name of the country, part of the country or a traditional designation) can be applied;

Category 3: Grape must used in wine production without any "appellation d'origine" or "indication de provenance".

9. The terms "appellation d'origine" and "indication de provenance" are defined in Articles 16 and 17 of the Decree. The Cantons have the authority to determine the area of production and the right to use the appellation of origin. The "indication de provenance" is to be used only for the product of grape harvested in the relevant region. Furthermore, the Cantons are given authority to introduce an "appellation d'origine contrôlée" (AOCs) for which they must establish corresponding requirements, provided they respect the minimal norms specified by the Decree with regard to the natural sugar content and the limitation of grape harvests (Article 18). These requirements may include, *inter alia*, a definition of production zones, description of grape variety, methods of production and vinification processes. Until today, five Cantons or regions have utilized this possibility: Geneva, Valais, Vaud, Neuchâtel and the region of the Lake of Biel (Bienne). The Cantons of Ticino and Schaffhausen will probably do the same next year. The Decree provides that the Federal Department (Ministry) of Public Economy is in charge of keeping a list of AOCs for the whole territory of Switzerland.

10. As far as the "indication de provenance" and the AOC are concerned, the geographical denominations used are, as a rule, based on cantonal or district ("commune") names, although regions or individual localities are also permitted.

11. In the context of protection against fraud, a further legal basis to be taken into account is the Swiss foodstuff legislation.

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<sup>4</sup>Text of Section 5 of the Decree was circulated in November of last year in the Swiss response to questions posed by the European Community and its Member States during the review of legislation in the field of trademarks and geographical indications.

12. Wine trade is also subject to control in order to ensure the protection of appellations. Such control, which has recently been elaborated in Article 23(a)<sup>5</sup> of the Decree, should offer warranties that wines will only be traded under their authorized indications. If irregularities are noted, they are brought to the attention of the cantonal health and/or agricultural authorities who are responsible for taking further action. Wines are randomly tested by cantonal health authorities for the purpose of detecting and terminating fraud or deception (Swiss foodstuff legislation).

13. The current means of redress is, basically, legal proceedings for wrongful use of a denomination. For inland wines, the wine control test and the relevant regulations of the given Canton are applicable. A list of Swiss geographical indications is being prepared in connection with the future bilateral treaty between Switzerland and the European Union. With regard to foreign geographical indications, special mention should be made of the bilateral treaties concluded by Switzerland with a number of countries<sup>6</sup>; they all contain a list of protected geographical indications, including appellations of origin. If there is no treaty existing, protection is available under the applicable laws, including the federal foodstuff legislation. In particular, the Trademark Law provides for various judicial measures. For example, anyone who intentionally uses an incorrect indication of source or a designation which can be confused with an incorrect indication of source, or who otherwise violates the prohibitions of Article 47(3) of the Trademark Law, is liable to imprisonment of up to one year or a fine of up to 100,000 francs (Article 64, "Use of Incorrect Indications of Source"). It is noteworthy that under the latter provision, it is not only incorrect geographical indications which are proscribed, but also correct indications which are, in effect, fraudulent or deceptive. Any trademark bearing a false geographical indication for wines can be invalidated via a declaration of nullity of the trademark registration (Article 52). The fraudulent use of a trademark is also punishable by imprisonment or fine (Article 62).

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<sup>5</sup>RS 916.140.1: amendment of 21 June 1996, entered into force on 1 July 1997 with the Ordinance on the Control of Wine Trade.

<sup>6</sup>Czech Republic, France, Germany, Hungary, Portugal, Slovakia, Spain. The treaties have been notified in 1996 (see document IP/N/4/CHE/1).