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PROTECTIONOFGEOGRA PHICALINDICATIONS: POINTOFVIEWOF THE
HUNGARIANGOVERNMENT

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Introduction

1. Ladies and Gentlemen, Distinguished Representatives of Governments, Producers and Trade and Industry,
2. A couple of weeks ago I spent some days in Finland. When walking on the street of Helsinki, I realized that the trams bear decorations with the colors of the Hungarian flag; in the picture there was anote as well, of course in Finnish language. After a while I could not resist asking my host about this advertisement. To my quest ion he informed me with a cheerful smile that in fact the note propagated Hungary with a very straight forward sentence: "Hungary is the country of enjoyment. Taste it!"
3. Well, of course, advertisements, as we know, are not necessarily reflecting reality. Nevertheless, I believe, that the above statement has indeed its bases. This opinion of mine is, besides my personal and probably biased belief, supported by the fact that whenever I meet a foreign person who has some difficulties in identifying our coun try, the mentioning of the Hungarian paprika, the *Tokaji* wine, or the *Herender* porcelain immediately rings him/her a bell. (If this does not work, of course, trying with Ferenc Puskás might bring a success as well.)
4. But what could support the justification of the above statement? Perhaps simply the pure facts of history. Perhaps just referring for instance to the fact that laws on the protection of a special type of *Tokaji* wine, the "*Tokajiaszú*" existed in Hungary as early as 1655; or that the Winter Sa lam of *Szeged* won gold medal at the World Fair in *Pécs* (a Hungarian town in south-west Hungary) in 1888 and also gold medal at the Paris World Fair in 1900.
5. All this reflects that the development of special tastes and unique products is very much in our traditions.
6. This might be also attributable to the fact that in Europe when trader relations started to develop about 1000 years ago, it was a common practice that a town had its typical product to trade with. Therefore, products were often identified by their geographical origin. One rather characteristic example of the Middle Ages is that of the horses: the ones stemming from Andalusia, from Far East or from England had huge differences. In Europe and in Hungary, the breeding of horses was traditionally of high importance, since they played an important part in the two most crucial activities of life: war and agriculture. Of course, different types were used for fighting, different ones for agricultural works, and, later on, again different ones for sporting purposes. In Hungary, in order to identify them, horses were marked with the stamp of the region where they were stemming from; the most famous ones were from *Bábolna*, from *Kisbér* and from *Muraköz*. They were all horses, but of course they were not the same!
7. It is due to this historical background that in Europe and in Hungary the protection of geographical indications was always of high importance.
8. My task today is to contribute to this conference by giving a short summary on the approach of the Hungarian Government to the protection of geographical indications, especially to the developments at various international fora. In order to do so, firstly I would like to outline the underlying policy reasons of the government approach.

The basis of the government approach: Policy reasons for the protection of geographical indications

9. First of all, geographical indications play an essential role in increasing *variety* and *diversity*. It is at once incredible and captivating, how mankind was able to diversify the simple gifts of nature. When speaking about Hungary, one could for instance give the example of salami coming from different regions: the ones produced in Szeged have special flavor attributed to the sunny Szeged region, to the century old know-how developed by local people and then the natural raw materials. It is not the same as the ones from other areas. It is just different. Not necessarily better or worse. Just different. In certain cases the difference between the products does not matter. In some other cases, however, it does.

10. In this latter case, having the exclusive right to use a geographical indication is essential for *quality assurance* and thus *consumer protection*. Unlike trademarks, geographical indications cover goods that owe their quality, reputation or other characteristics to their geographical origin. Therefore, quality assurance aims at ensuring the presence and continuity of the link between the product and the geographical origin, i.e. place of production, and not the manufacturer, as in the case of trademarks. Consequently, geographical indications are not chosen arbitrarily and they cannot be substituted. In the case of agricultural products and foodstuffs the function of quality assurance is ensured by the requirement of fulfilling the conditions laid down in the product specification checked and approved by a special certification body.

11. In addition, geographical indications bear *economic value*. The protection of geographical indications generates regional development partly by increasing employment, generates tourism and enhances the conditions of entering the market. The effective protection is advantageous to (intra-brand) competition as well. In Hungary the economic importance of geographical indications is especially strong, since the agricultural market, where geographical indications are most strongly represented, after the transformation of our economic system to a market economy in 1990, became rather fragmented and is largely dominated by small and medium sized undertakings. The effective protection for their products is essential for their staying on the market. It is also for this reason, that, as part of the agricultural policy, the Hungarian Government strongly supports, by ways of information and consultation services the utilization of this form of protection. The economic value of geographical indications is further increased by the fact that, unlike trademarks, their use is permitted to all manufacturers who produce in the given territory and, as the case may be, comply with the applicable standards of protection.

12. Since geographical indications are so much embedded in our history, they are an important part of our culture. Fairytales, proverbs, literary works are keeping the memories of them. The technologies, ideas lying behind these products and achievements are *part of our cultural heritage*. Closely related to this, they play crucial role in country-image building.

13. And finally, the protection of geographical indications certainly forms part of the *intellectual property* policy: investments of time, efforts and money must be encouraged and rewarded.

14. In summary, the protection of geographical indications forms part of, and relates to, different policies: consumer protection, competition, agricultural, cultural and intellectual property policy.

15. I suppose that all of us sitting in this room can agree that these objectives represent values – values, which are linked to certain territories, but which are to be respected globally.

16. All the foregoing leads to one conclusion: it is our interest, but also an obligation to provide strong and effective protection to geographical indications – and to respect the ones coming from other countries.

17. This is, Ladies and Gentlemen, the motto of the approach of the Hungarian Government to the protection of geographical indications. Now, please allow me to turn to the various attributes of the legal tools which, in the view of the Hungarian Government, are necessary to achieve the above objectives.

Elements of the Government policy: what we have and what we need?

18. On national level, Hungary provides for a strong legal protection scheme for geographical indications, under a *sui generis* legal regime separate from the trademark system. Protection can be obtained for the territory of Hungary via the Lisbon system as well.

19. In order to ensure an effective protection on the liberalized and globalized markets, however, beside the national protection system, international cooperation is essential. Other presentations prepared for this Symposium by the representatives of the two most important international Organizations playing a role in this field, the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO), describe in detail the international frameworks that have already been developed within these two international bodies. In relation to the work done under the auspices of the WTO, the following general remarks have to be made. First of all, the WTO seems to be an appropriate framework for the cooperation in this field. The TRIPS Agreement provides for a minimum standard of harmonization, it prescribes the minimum level of protection that must be fulfilled by all Members. And this is exactly what is needed: to ensure that the same product can, in all Members, enjoy the same protection.

21. Secondly, it shall be clear for us, that although the TRIPS Agreement made a huge step towards the protection of geographical indications, we cannot stop here. The achievements need to be supplemented by further steps. What are these further steps? And why are they necessary?

22. First of all, it should be ensured that Members can give effect to their obligations under the TRIPS Agreement. The tool of this was already outlined by the founding fathers of the Agreement, under Article 23.4: an adequate, effective and credible multilateral system of notification and registration of geographical indications is needed. As far as the main features of the system are concerned, Hungary has been representing the following views during the discussion taking place so far.¹

¹ See documents IP/C/W/234, IP/C/W/255 and also IP/C/W/259.

23. Article 23.4 contains the obligation to negotiate a system, which facilitates protection; for actually facilitating protection the system must have some legal effect. The register to be established thus must be more than just a simple database. Its added value and key element would be the presumption of protection. This would enable holders of registered names to enter on the market of another country and to take action against third parties usurping the name. In this case the national procedure would be simplified by prescribing it for third parties to challenge the registration.

24. Another important attribute to the system must be that, in order to be effective and adequate, it has to be based on a fair opposition system. Members must be free to decide whether or not to protect a given geographical indication on their territory. Therefore, if, on the basis of any of the grounds listed in the TRIPS Agreement they were not in a position to protect the given name, they must have the possibility to issue an opposition to indicate that the registration on international level would have no effect on their territory. Should a Member oppose the registration of a given geographical indication, the Members concerned shall enter into direct bilateral consultations. If these bilateral talks do not lead to a solution, in order to avoid a deadlock, and also to avoid abuse of bargaining powers, in the view of the Hungarian Government² the mentioned negotiations must be supplemented by a multilateral mechanism, based on the involvement of a separate body having power to settle the dispute by deciding whether the opposition is justified under the TRIPS Agreement or not. Thus, if no agreement is reached between the Members within a given period of time, according to our proposal 18 months, the case would be brought before an *ad hoc* arbitration body.

25. The decision of this body would be final and binding between the parties. Members, which have not, or have not successfully challenged the registration, shall not refuse the protection of the registered indication. This must be the general rule, with the exception of two cases: if a Member successfully challenged the registration on the basis of Article 22.1 or 22.4 of the TRIPS Agreement, which means that the geographical indication does not comply with the definition laid down by the Agreement or it falsely represents to the public that the goods originate in another country, all Members can refuse protection. In other words, in this case the challenge would have an *erga omnes* effect.

26. In Hungary's view, such an opposition system would be simple and would fit in with the WTO framework.

27. Certainly, the effectiveness of the system is dependent on one further condition, which is that a sufficient number of Members should be willing to participate in it. Otherwise, we would end up like the entrepreneur who builds up a stadium on the encouragement of the sport clubs and finally the stadium remains empty because it turns out that in fact none of the clubs want to do sport – they just like watching the games.

28. Therefore, Hungary strongly encourages that on the Cancun summit Members come up with a common proposal so as to enable us to reach the goals set by the TRIPS Agreement.

[Footnote continued from previous page]

²See document IP/C/W/255.

29. What other steps will have to be made in order to make the TRIPS system effective? The differences between the protection provided for vines and spirits on the one hand and other products on the other should be eliminated and the special protection provided for the former category shall be extended to all geographical indications. Why? Simply, because the differentiation between those two groups has no justification. Simply because there is no difference for instance between selling French Bordeaux wine or a French Camembert cheese under the labeling Bordeaux -kind wine or Camembert -kind cheese. Under the TRIPS Agreement the former would be illegal, while the latter activity could be freely exercised. It is hard to see, what justification could support this difference.

30. The other main international fora of cooperation, i.e. the WIPO, as it is introduced by other presentations prepared for this Symposium, largely contributed to the development of common thinking between the Member States on the protection of geographical indications. Since its establishment in 1998, the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications has dealt with this issue extensively and successfully. This is illustrated by the number of studies prepared and Joint Recommendations adopted by WIPO. It was WIPO who organized several Symposiums on the international protection of geographical indications, which also served as a good tool in integrating the views of the nations from all over the world.

31. Hungary fully supports and follows with great interest the current work that will certainly add further value to the discussions and facilitate the common understanding between the Member States in this field. The framework of cooperation developed within WIPO successfully supplements the work done within the WTO.

32. These were the most important elements of the approach of the Hungarian Government to the protection of geographical indications. I do not have any other obligation left, than to invite also you to taste Hungary; this taste is not only attributable to the Hungarian traditions and efforts, but also largely depends on the level and quality of international cooperation. If this cooperation is taken seriously, the tasting will, I can promise you, worth it!

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