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E-MAIL

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Subject: **EC REACTION TO THE COMMUNICATION FROM ARGENTINA** on the utilisation of traditional expressions or additional quality terms with respect to wines (EC Regulations Nos. 753/2002 and 316/2004)
Ref. G/TBT/W/290 of 26 June 2008

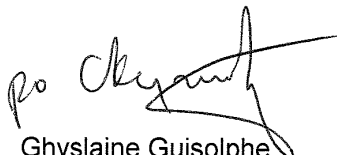
Message:

Dear Sir or Madam

Please find attached the reaction of the European Communities to your communication dated 26 June 2008 concerning the above-mentioned notification.

Could you please acknowledge receipt of this e-mail? Thank you.

Yours faithfully


Ghyslaine Guisolphé
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**EC REACTION TO THE COMMUNICATION FROM ARGENTINA ON THE UTILISATION OF TRADITIONAL
EXPRESSIONS OR ADDITIONAL QUALITY TERMS WITH RESPECT TO WINES
(EC REGULATIONS NOS. 753/2002 AND 316/2004)
REF. G/TBT/W/290 OF 26 JUNE 2008**

The European Communities (EC) takes note of the Communication of Argentina on the utilisation of traditional terms or additional quality terms with respect to wines (EC Regulations Nos. 753/02 and 316/04).

It notes that the subject was also discussed during the meeting of the TBT Committee of 1 and 2 July 2008, where Canada, New Zealand and the United States of America have also marked their interests in the issue.

In response to those concerns, the EC would like to make the following considerations.

1. The EC legal basis applicable to the issue of concern to Argentina is as follows:
 - Council Regulation (EC) No 1493/99 of 14 July 1999¹, and in particular Article 47(2)(b), Annex VII(A)(2)(c) and (4), and Annex VII(B)(1)(b) thereof;
 - Commission Regulation (EC) No 753/2002², and in particular its articles 23, 24, 29 and 37(1)(e), and Annexes III and IX thereof.
2. According to Regulation (EC) No 753/2002 there are two types of “traditional terms”, namely:
 - a) “Specific traditional terms” are compulsory particulars. The sales description shall consist of, among other things, a traditional specific particular included in a list. These specific traditional expressions are listed in Annex III to Regulation (EC) No 753/2002 (“*Qualitätwein*”, “*denominacion de origen*”, “*appellation d’origine contrôlée*”, etc);
 - b) “Complementary traditional terms” are facultative particulars and are also listed in Annex III to Regulation (EC) No 753/2002 (“*Reserva*”, “*Grand Cru*”, etc.).
3. A traditional term protected for EC products shall satisfy the following legal requirements:
 - a) be specific in itself and precisely defined in the respective EC Member State’s legislation;

¹ Council Regulation (EC) No 1493/1999 of 14.7.1999 on the common organisation of the market in wine (EOJ L 179 of 14.07.1999). Regulation last modified by Regulation (EC) No 1234/2007 (EOJ L299 of 16.11.2007, p.1.)

² Commission Regulation (EC) No 753/2002 of 29 April 2002 laying down certain rules for applying Council Regulation (EC) No 1493/99 as regards the description, designation, presentation and protection of certain wine sector products (EOJ L 118 of 04.05.2002, p. 1.) Regulation last modified by Regulation (EC) No 1471/2007 (EOJ L 329, 14.12.2007, p. 9).

- b) be sufficiently distinctive and/or enjoy an established reputation on the EC market;
- c) traditionally used for at least 10 years in the EC Member State in question;
- d) be used for one or more EC wines or categories of EC wine.

These terms are listed in Annex III to Regulation (EC) No 753/2002.

4. The scope of protection foreseen for traditional terms is limited to:

- a) the category of wine designated, namely:
 - quality liqueur wines produced in a specified region and liqueur wines with a geographical indication;
 - quality sparkling wines produced in a specified region;
 - quality semi-sparkling wines produced in a specified region and semi-sparkling wines with a geographical indication;
 - other quality wines produced in a specified region and table wines with geographical indication;
 - grape must in fermentation;
 - wine of overripe grapes with a geographical indication;
- b) the language claimed or in use as it is specified in Annex III to Regulation (EC) No 753/2002.

Therefore, a traditional term reserved for liqueur wines is free for the other categories of wine, like for instance sparkling wines. A traditional term reserved in German is in theory free in the other languages taking into account that the translation of such a term is not protected. This rule shall be interpreted taking into account the following recent case law (European Court of Justice Case C-285/06 of 13.3.2008, OJ C 116 of 9.5.2008, p. 5).

5. Non EC Member States may perfectly claim some of the listed terms or equivalent expressions if they meet the conditions of Articles 23 and 24 of Regulation (EC) No 753/2002 (see Article 37(1)(e)). In this regard, two cases shall be distinguished:

- a) A traditional term of a non EC Member State identical to those listed in Annex III to Regulation (EC) No 753/2002 may be included on the label of imported wines with geographical indications if the conditions of use conform to the rules applicable to wine producers in the non EC Member State concerned, including those emanating from representative trade organisations, and meet the following requirements:
 - these countries have made a substantiated request to the European Commission and forwarded the relevant rules justifying recognition of the traditional indications;
 - they are specific in themselves;

- they are sufficiently distinctive and/or enjoy an established reputation in the non EC Member State concerned;
 - they have been traditionally used for at least 10 years in the non EC Member State in question;
 - they are used for one or more categories of wine of the non EC Member State in question;
 - the rules laid down by the non EC Member State are not such as to mislead consumers about the indication concerned.
- b) If a traditional term of a non EC Member State does not correspond to one of the EC traditional terms, in this second case, this traditional term shall conform to the rules applicable to wine producers in the non EC Member State concerned, including those emanating from representative trade organisations.

It will not be indicated in Annex III to Regulation (EC) No 753/2002 and it will not be protected in the EC. Only the use of this traditional term will be granted in the territory of the Community.

Nevertheless, in case of an agreement, the EC may accept to protect these traditional terms.

In all cases, the assessment is made on a case by case basis by the competent European Commission service in a reasonable time frame and Annex III to Regulation (EC) No 753/2002 is updated once the request is accepted.

For example, the expressions "*Vintage*", "*Ruby*" and "*Tawny*" can be used for liqueur wines marketed in the EC and originating in South Africa.

On this basis, the EC would like to specifically address points raised by Argentina in its Communication of 26 June 2008.

6. Argentina claims that Regulation (EC) No 753/2002 establishes an exclusive right on the EC market to use additional quality term for labels of wines originating in Argentina (point 1 of document G/TBT/W/290).

This is not correct since Article 37(1)(e) of Regulation (EC) No 753/2002 provides for the possibility to non EC Member States to apply for recognition of their own traditional terms, including for traditional terms identical to Community traditional terms. Therefore, the "exclusive right" can be shared by several EC or non EC Member States. Conditions of recognition apply both for EC and non EC Member States without any discrimination.

7. Argentina also states that the use of traditional terms in wine labelling is governed by the WTO Agreement on Technical Barriers to Trade (point 2 of document G/TBT/W/290).

The EC agree that traditional terms are indeed regulated by wine labelling and not by legislation pertaining to the Intellectual Property Rights provisions established under the WTO TRIPS Agreement. The protection is based on the presentation and description of wine, which shall not be incorrect, or likely to cause confusion or to

mislead consumers as regards the characteristics or the quality of the wine concerned, which are conveyed by traditional terms.

8. According to Argentina, diverging definitions in the national legislation of EC Member States do not allow the possibility of requesting certification of compliance with an EC criterion in that area (point 3 of document G/TBT/W/290).

As already mentioned in point 5 of the present reaction, non EC Member States may perfectly claim some of traditional terms or equivalent expressions if they meet the conditions of Articles 23 and 24 of Regulation (EC) No 753/2002 (see Article 37(1)(e)).

9. Finally, Argentina considers that Regulation (EC) No 753/2002 is inconsistent with the WTO-TBT Agreement (Article 2) in that it creates an unnecessary and unjustified barrier to international trade, and asks that it is immediately brought into conformity with the principles of that Agreement (point 7 of document G/TBT/W/290).

The EC would like to remind Argentina that Regulations (EC) No 753/2002 and (EC) No 314/2004 were notified in 2002 and 2004 in accordance with the provisions of Article 2 of the WTO-TBT Agreement.

Regulation (EC) No 753/2002 improves consumer protection in that it supports the prevention of deceptive practices. This is a legitimate objective, in accordance with Article 2.2 of the WTO-TBT Agreement.

Moreover, the EC maintains its views that the relevant provisions of Regulation (EC) No 753/2002 as regards wine labelling legislation and traditional terms are not discriminatory since they apply to EC and non EC Member States.
