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ECTA

Mr. Max Oker-Blom

Mr. Dietrich Ohlgart

Bisschoppenhoflaan 286

B - 2100 Deurne

Dear Mr Oker-Blom,

Dear Mr Ohlgart,

*Dear Max,  
Dear Dietrich!*

Thank you for your message and attachment of 9 March 2006 enclosing the observations of ECTA on the proposal for a Council regulation on the protection of geographical indications ("the proposal").

As you mention in your document, the key objective of the proposal was to bring Community legislation in line with the ruling by the WTO Dispute Settlement Body following complaints by the US and Australia. Therefore, the proposal aims particularly to open up the Community registration scheme to operators in third countries. A streamlining of procedure to handle the growing number of applications (including those expected from third countries) is also included as well as a clarification of the roles of Member States and the Commission. An additional feature has been the proposal of the obligatory use of the PGI/PDO reference together with the Community symbol.

I fully share your concerns and I am pleased to note that there has been intense discussion in the Council Working Group and some amendments have been introduced into the text which are in line with the suggestions in your document.

As concerns the broadening of the definition of geographical indications in article 2(1)(b), indeed the proposal followed article 22 (1) of the TRIPs Agreement. The text of the current Regulation 2081/92 has been reintroduced.

The current six-month period to file objections, in draft article 7, is maintained.

With regard to the basis for objection to GI registration,

- a) the current article 7 (4) has not been deleted, it has been moved to the proposed article 7(3) (c) " *the registration of the name proposed would jeopardize the existence of an entirely or partly identical name or of a mark ...* ", which allows for objections based on a trade mark which has no reputation or renown;

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- b) indeed the current article 14(3) has been moved and it is now the proposed article 3(4), which provides for the refusal of registration where, "*...in the light of a trademark's reputation and renown and the length of time it has been used, registration is liable to mislead the consumer as to the true identity of the product*";
- c) draft article 7 (3) in fine provides that the criteria set out in (b), (c) and (d) of the first subparagraph shall be evaluated in relation to the territory of the Community, and new text has been introduced, "*...which in the case of intellectual property rights refers only to the territory or territories where the said rights are protected*".

Concerning the reference date for co-existence in the proposed article 14 (2), the date of 1 January 1996 has been introduced in full respect of the provisions of article 24 (5) of TRIPs. This wording does not prevent coexistence of trademarks applied for, registered or established by use after that date with GIs registered at a later date than the trademark. Moreover if the conditions in article 3(4) apply, registration of the later GI would be refused.

I am also pleased to inform you that the European Parliament's opinion was adopted on 15 March and the proposal has been adopted in the "Fisheries and Agricultural" Council of 20 March. It will enter into force on the date of publication in the Official Journal, within the next days.

I hope this information is useful.

Yours sincerely,



Erik Nooteboom

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