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# EC-US Bilateral on Wine: lower standards *quid pro quo* for GI protection?

*By Carol C. George*[1]

## Introduction

As recent press reports would have it, wine negotiations between the European Communities and the United States may soon be successfully concluded. According to Inside US Trade,[2] the US and EU 'are moving closer to a bilateral wine agreement that would ensure US producers can continue to export wines that do not conform to EU wine-making standards in exchange for agreeing to limit the use of certain semi-generic wine names'. Although both sides had hoped to reach an agreement before the current European Commission steps down on 1 November and the US presidential elections, a final document has not yet materialised. Informed sources suggest that outstanding issues will in any event need to be addressed in a second phase of negotiations.

The bilateral wine talks commenced in 1999, in response to US concerns over EU requirements on winemaking standards. The United States has obtained successive 'temporary' derogations from certain requirements set by the European Communities since 1983, when the parties concluded the first US - EC Wine Accord. More recently, US wine producers have become anxious to secure a permanent arrangement on standards on which to build their export industry. The 25-country market of the EU is the destination of over half of US wine exports, based on value, and nearly two-thirds of US wine exports, calculated on the basis of quantity.[3]

The EC has insisted that the negotiations on the issue of standards be tied to its own concerns, specifically the use of 'semi-generic' European names and 'traditional terms' to describe US wines. While the TRIPS Agreement in principle mandates Community protection of its geographical indications, it may be that indications used by US producers are covered by exceptions for indications that have been used continuously in good faith for an extended period, or those that are protected by acquisition of a trademark, or have become a common name for the product in the territory of the Member. There is no such foundation in the TRIPS Agreement for the Community to prevent the use by third countries of traditional descriptors for wine such as 'chateau', 'classico', 'ruby' and 'tawny'.

The fact that the US and the EC are seeking a bilateral solution to the handling of these issues is not a new concept, as the Community has already negotiated agreements on similar terms with several other major wine-producing countries. The former EC Commissioner responsible for Agriculture, Franz Fischler, described the

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[1] Prepared for the Commonwealth Secretariat by Carol C. George of Baker & McKenzie, London. The views expressed are not necessarily shared by the Commonwealth Secretariat.
[2] 17 September 2004.
[3] USDA, World Wine Situation and Outlook, July 2004.

discussions, which resumed in September 2004, as 'constructive', but indicated that their objective is to achieve a 'first step agreement' and should not be compared with other important bilateral negotiations on trade in wine in which the EU is currently engaged.[4]

The press reports of the 17th September 2004 indicate that under the proposed bilateral pact the EC is prepared to recognise US wine-making practices that are currently approved by the US Treasury Department's Alcohol and Tobacco Tax and Trade Bureau, but new practices will in future require approval by the Agriculture Directorate General of the EC. US winemakers would therefore be able to continue exporting wine as the approval process is conducted, and the EC would maintain control over standards without additional cost being imposed on US wine producers.

Not surprisingly, the US has attempted to impose its own standards on imports of EC wine into its territory. Currently, in the absence of a health or safety concern, US law effectively grants automatic acceptance of EU wine-making practices. During the week of the 15th of October, though, Congress tried to pass a 'miscellaneous' bill that has been pending since 2002. One of the provisions of that bill would require that countries *not* party to the *Agreement on Mutual Acceptance of Oenological Practices* (MAA) be subject to procedures guaranteeing that exports from these countries meet some minimum standards for winemaking. Specifically, after 31 December 2004, the US Treasury Secretary would only approve foreign wine-making practices if, at the time of importation, products are accompanied by government certification from the producing country and an 'affirmed laboratory analysis' to demonstrate that foreign practices and procedures comport with acceptable US commercial practices.

Private sector sources complained that it is not clear what would constitute an affirmed laboratory analysis, and that this provision was included in the bill solely as a means of pressing the EU into concluding negotiations with the US on a bilateral wine agreement. They assert that the requirement would be particularly harmful to small European wine exporters who would struggle to ensure that each shipment of wine is accompanied by both the government petition and the laboratory analysis. The US Senate nevertheless failed to approve the bill, on other grounds.

The EU-US negotiations raise a number of legal issues. Does the extension of concessions on EC standards to individual trading partners offend WTO principles of non-discrimination? Do the EC winemaking standards themselves create a technical barrier to trade with third countries? Do EC labelling regulations regarding the use of traditional terms to describe foreign products create technical barriers to trade? Does the Community's insistence on prevention of the use of European geographical indications offend the TRIPS rules on protection of intellectual property?

## EC oenological standards and the WTO rules

### *EC Regulations*

Under EC regulations, wine manufactured other than in accordance with EC practices will not gain entry into the Community for circulation on the common market.[5] The general rules on wine-making practices are set out in conjunction with the EC's establishment of the common market in wine.[6] Detailed implementing rules are collated into a further Community code of oenological practices and processes.[7] These Community-authorised practices are the only ones permitted for use in the manufacture of, among other things, the wine of fresh grapes (sparkling and non-sparkling) under CN code 2204.[8] Such products must not, *except by way of derogation*, be offered or disposed of for direct human consumption, *whether imported or not*, if they have undergone oenological practices not authorised by Community (or where permitted, national) rules.[9]

Since 1983, the US has overcome this problem by obtaining the necessary derogations from the EC rules. Under the first US-EU Wine Accord, the EC granted the US a permanent exemption from certain standards and a temporary exemption from others. The temporary exemption, which has been subject to repeated renewal, was due to expire at the end of December 2003, but, in order to avert a trade war, was extended 'only until the entry

[4] Outcome of Agriculture/Fisheries Council of October 2004, MEMO/04/241, Brussels, 19 October 2004.
[5] Council Regulation (EC) 1493/1999, Article 45.1(a).
[6] Council Regulation (EC) No 1493/1999, Title V, Chapter I.
[7] Commission Regulation (EC) No 1622/2000.
[8] Council Regulation (EC) 1493/1999, Article 1 refers specifically to products under CN codes: 2204 30 10, 2204 10, 2204 21, 2204 29.
[9] Council Regulation (EC) 1493/1999, Article 45.1(a).

into force of the agreement on trade in wine concerning, in particular, oenological processes and the protection of geographical indications', but not later than 31 December 2005.[10]

### *Disputed Practices*

It is not clear precisely which US wine-making practices are controversial for the EC. Press reports following the most recent talks indicate that in addition to 'other practices', the parties have settled a fight over the question of the volume of water that may be used in the production of Kosher wine products. The EC prohibits any use of water to increase quantity or decrease acidity, while US legislation permits the addition of a maximum of 35% water by volume.

One of the 'other practices' that is probably in dispute is the acidification of wine with malic acid, which has caused problems between the EC and third countries. Argentina, for example, requested consultations with the EC in the WTO dispute settlement mechanism on 4 September 2002, claiming that for the purposes of establishing oenological practices regarding acidification of wines,[11] the EU Commission failed to take into account certain Resolutions[12] comprising international standards that should have been used as a basis for technical regulations.[13]

### *Agreement on Mutual Acceptance of Oenological Practices*

The United States initially proposed that its differences with the EC in this area be resolved through the concept of 'mutual acceptance': that both the United States and the European Community accept wines made in accordance with the rules and regulations of the exporting country. Such a solution had been adopted by the World Wine Trade Group (WWTG), formerly the New World Wine Group, made up of Argentina, Australia, Canada, Chile, New Zealand, South Africa and the United States, wine-producing countries with a mutual interest in facilitating international trade in wine. The EC was not receptive, however, allegedly because mutual acceptance of practices would extend to any future practices that the US might approve, a situation that the EC described as handing the US a 'blank check'. Negotiators were willing to accept only those wine-making practices currently approved by the US Treasury's Bureau of Alcohol, Tobacco and Firearms. In other instances, such as the EU's wine and spirits agreement with Chile, the parties were able to agree on a procedure for the acceptance in future of new practices introduced by the other, on the basis of strict requirements such as health and consumer protection and the preservation of good wine making practices.

In Toronto on the 18 December 2001, Australia, Canada, Chile, New Zealand and the United States signed the *Agreement on Mutual Acceptance of Oenological Practices* (MAA) for the recognition of each others' wine-making practices. The MAA came into force on 1 December 2002, following ratification by Canada and the US on 27 November 2002. Chile ratified the Agreement on 5 November 2003, with effect from 1 December 2003. The MAA operates independently of the workings of the WWTG, in accordance with its own rules of procedure. Argentina and South Africa have also indicated interest in signing up to the Agreement.

### *Oenological Standards: are they Technical Barriers to Trade?*

The first question that arises in relation to the imposition of EC standards on third states is whether they create technical barriers to trade. Non-EC wine-producing countries take the view that the Common Market Organisation (CMO) for wine establishes a set of requirements regarding oenological practices that are more restrictive than they should be, creating an unnecessary obstacle to trade, in a manner inconsistent with EC obligations.[14] They argue that the regulations are more restrictive than is necessary to fulfil a legitimate objective, taking account of the risks that non-fulfilment would create. Such 'legitimate objectives' include, among other things: national security requirements, the prevention of deceptive practices, protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration include: available scientific and technical information, related processing technology or intended end-uses of

[10] Council Regulation (EC) 1037/2001 provides a specific derogation to the general rule governing authorised oenological practices, for wines produced in the territory of the United States.
[11] Described in Annex IV of Regulation 1493/1999.
[12] OENO 3 and 4 of 1999 and OENO 13 and 14 of 2001.
[13] WTO Agreement on Technical Barriers to Trade, Article 2.4.
[14] Agreement on Technical Barriers to Trade, Article 2.2.

products.[15] Although 'health reasons and the pursuit of quality' are identified in the recitals to the CMO Regulation[16] as the basis for Community-level rules on oenological practices, no scientific and technical information has been adduced in support of health and safety concerns, and 'the pursuit of quality' seems unlikely as a separate foundation for precluding US products from circulation in the Community market.

### *Individual derogations from oenological standards*

The second issue is whether EC provision for derogations from Community wine-making standards constitutes a violation of the MFN principle contained in the WTO agreements. Under the CMO,[17] the EC contemplates that in some instances wine may be offered or disposed of for direct human consumption in the Community, even though it has undergone oenological processes that are not authorised by the Community rules. The CMO authorises adoption of such derogations in accordance with the procedure set out in the EU Treaty.[18] In practice, the EC has issued individual derogations for products originating in specific WTO Member states, rather than creating a blanket exception for all like imports, regardless of origin.[19] The fact that the concession has not been extended to like products from other Members creates a *prima facie* violation of the most-favoured nation requirement of the GATT 1994[20] and Article 2.1 of the Agreement on Technical Barriers to Trade.

## Geographical Indications and Traditional Terms

### *The EC Regulations*

The protection of geographical indications in regard to wines and spirits is also addressed in the Regulation on the CMO for wine.[21] Recitals 53-56 of that Regulation, regarding the basis for labelling wine read as follows:

> *(53) rules should also be applied to the labelling of imported products, in particular to clarify their origin and to avoid any confusion with Community products;*
>
> *(54) the right to use geographical indications and other traditional terms is a valuable one; the rules should therefore govern this right and provide for protection for these terms; to promote fair competition and so as not to mislead consumers, this protection may need to affect products not covered by this Regulation, including those not found in Annex I to the Treaty;*
>
> *(55) bearing in mind the interests of consumers and the desirability of obtaining equivalent treatment for quality wine psr in third countries, provisions should be made so that reciprocal arrangements can be established whereby wines imported for direct human consumption and bearing a geographical description and marketed in the Community may enjoy these protection and control arrangements;*
>
> *(56) in order to take account of the obligations arising, in particular, from Articles 23 and 24 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, which forms an integral part of the Agreement establishing the World Trade Organisation approved by Decision 94/800/EC, provision should be made for the parties concerned to prevent, under certain conditions, the unlawful use of geographical designations protected by a third-country member of the WTO;*

The CMO on wine contains general rules on the 'description, designation, presentation and protection of certain wine sector products'.[22] Detailed rules for the implementation of that system are contained in a separate Regulation.[23] The rules include provisions governing the protection and control of geographical indications as well as traditional terms, and the labelling of imported products so that consumers are aware of the nature of the product concerned and that the latter is not labelled as a Community product.[24]

The labelling restrictions for 'traditional expressions' are similar to those for geographical indications. The EC would like to prevent all third countries from using a list of reserved traditional terms including 'aged five years',

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[15] Ibid.
[16] Council Regulation (EC) 1493/1999, Recital (47).
[17] Ibid, Article 45.1.
[18] Ibid, Article 45.2.
[19] See Council Regulation (EC) 1037/2001 providing the current derogation for wines produced in the US.
[20] GATT 1994, Article I.1.
[21] Council Regulation (EC) No 1493/99, last amended by Regulation (EC) No 2585/2001.
[22] Council Regulation (EC) No 1493/1999, Title V, Chapter II.
[23] Commission Regulation (EC) No 753/2002, last amended by Regulation (EC) No 316/2004.
[24] Regulation 1493/2004, Article 47.2(e) and (f).

'tawny', 'ruby', 'eiswein', 'chateau', 'grand cru' and 'fino' to describe wine or liqueur. Such terms are often used with other expressions, including geographical indications, and are in many cases generic. Regulation (EC) 753/2002 provided for two categories of traditional expressions: the first contained expressions that could be used by third countries under certain conditions (such as 'classic', 'chateau', 'classico', 'reserva' etc) and the second was exclusively reserved to wines produced in the EU and contains terms that the EC asserted were linked with a particular geographical area ('vin jaune', 'amontillado', 'ruby' etc).

Later amendments[25] merged these two categories into one group of expressions that may be used by third states if they meet strict conditions arguably equivalent to those existing for Member States. Still, the US and others do not recognise these 'traditional terms' as intellectual property, arguing that their protection unjustifiably creates a new category of IP rights. The protection of traditional expressions is not addressed by the TRIPS Agreement.

Although the EC grants protection to its own producers regarding their use of GIs and traditional expressions, third country industry does not have a means to apply for or protest applications for such protection, requiring instead a specific bilateral agreement. The TRIPS Agreement requires the EC to make additional protection available to GIs on wine from all WTO Members, without the conclusion of a bilateral agreement. In addition, the regulations appear to deprive trademark owners of TRIPS-level ownership rights by requiring the phase-out of marks that conflict with later-in-time geographical indications. US industry has been vocal in raising concerns about the impact of these EU regulations on US-owned trademarks.

### *GIs: The TRIPS provisions*

WTO Members have agreed that the use of geographical indications, in regard to goods generally, is to be prevented wherever they are used in a manner which misleads the public as to the true geographical origin of the product.[26] Wines and spirits benefit from additional protection.[27] In regard to these products, Members are to ensure that GIs are applied in the strictest sense: they are not to be used to identify wines or spirits that do not originate in the place indicated by the GI, even if the true origin of the product is noted elsewhere on the label, or the GI is used in translation or accompanied by expressions such as 'kind', 'type', 'style', 'imitation', etc.[28] In other words, GIs for wines must, in themselves, be accurate, even if the product description as a whole would not mislead the public.

The difficulty is that in some instances, 'inaccurate' geographical indications have been used continuously, in good faith, for many years. Some, such as 'Port' or 'Burgundy', may be the same term customarily used in the United States as the common (or 'generic') name for the wine in question, or may be identified with the name of a grape variety that exists in US territory. A term may already have been registered as a US trademark. In these exceptional circumstances, a Member 'is not required' to prevent the continuous use of a particular geographical indication by another Member.[29] The American wine industry has therefore been wise in promoting the use of the phrase 'semi-generic names' to replace 'geographical indications' in its debate with the European Community over wine labelling.

In an attempt to overcome some of these difficulties, all Members are required to enter into negotiations aimed at increasing protection for individual GIs for wines and spirits under TRIPS Article 23.[30] The exceptions for continuous use of generic names are not to be used by Members as a basis for refusing to conduct such negotiations, and it is contemplated that the parties will seek to conclude both bilateral and multilateral agreements. Members should nevertheless be willing to consider the continued applicability of the exceptions to individual GIs that are the subject of the negotiations.[31] This provision lays a clear foundation for the EC to use bilateral negotiations as a means of resolving its differences with the US in such a way that European GIs are protected to the greatest extent possible.

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[25] Regulation 316/2004; see discussion under TBT Committee, below.
[26] Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Article 22.
[27] Ibid, Article 23.
[28] Ibid, Article 23.1.
[29] Ibid, Articles 24.4. and 24.6.
[30] Ibid, Article 24.1.
[31] Ibid.

*Multilateral System for Notification and Registration of Wines and Spirits*

At the same time, the Council for TRIPS is charged with undertaking negotiations for the establishment of a multilateral system of notification and registration of GIs for wines eligible for protection in those Members who voluntarily participate in the system. The purpose of the system is to facilitate the protection of geographical indications for wines by providing a tool to help Members meet their TRIPS obligations. A joint proposal was made in April of this year[32] by Argentina, Australia, Canada, Chile, Ecuador, El Salvador, New Zealand and the United States regarding the details as to how it would work. These Members propose that the system should consist of a searchable database of all GIs for wines and spirits that are notified by participating Members. The database would be available in hard copy as well as on the Internet. The information on GI rights claimed by producers in the territory of another WTO Member would be used by national offices when making decisions regarding the recognition and protection of GIs for wines and spirits, in accordance with national legislation. These decisions would continue to be made at the national level, in accordance with TRIPS Articles 22-24. Participating Members would commit to consult the system, along with other sources of information.[33] This would provide a tool to help Members meet their TRIPS obligations, where previously they did not have a central body of information to consult to determine which terms are recognised as GIs in other countries.

*Traditional terms: the TBT debate*

The EC Regulation on wine labelling[34] raised a host of concerns in the Committee on Technical Barriers to Trade[35] (by the US, New Zealand, Canada and Australia, supported by Argentina, Brazil, Uruguay, Bolivia Mexico, Paraguay and Peru), as a result of its inclusion of 'traditional terms'. The US found the manner in which the Regulation was developed (the lack of notification and of a meaningful opportunity to comment) as well as the substance of the requirements unacceptable. In addition to procedural violations regarding notification under the TBT Agreement, the US representative argued that to reserve generic descriptive terms and phrases exclusively for the use of EC producers raised serious concerns about the EC's compliance with its WTO obligations, including both the GATT 1994 and the TBT Agreement.[36] Similar concerns were expressed about the EC's prohibition on the use of certain bottle shapes, and any similar types that might be confused with them, by all but EC producers. The use of grape variety names were also in issue, as the EC allegedly permits some countries but not others to inform EC consumers of certain grape varieties used to produce wines.

- unnecessary obstacle to trade

The US representative noted that the protection of 'traditional expressions', with no specific connection with a geographical source of a given class of goods, has no counterpart in the laws of any country outside the EU. The US representative argued that the prohibition of their use would cause an unnecessary obstacle to international trade and could even contribute to consumer deception. Refuting the claim of the EC that the use of such terms on imported wines would deceive or confuse customers, the US says that even if this is found to be true, the EC's objective could be achieved in a less trade-restrictive manner.[37]

New Zealand agreed that the EC's overall approach to wine labelling was in conflict with the principle of the TBT Agreement to ensure that the use of regulations and standards did not create unnecessary obstacles to international trade. It also agreed that the regulation was more trade-restrictive than necessary to fulfil the legitimate objective of prevention of deceptive practices. It said that to the extent that the Regulation prevented the use of generic descriptors common in the wine trade, it undermined its stated objectives - consumer information. Canada supported the views of the US and New Zealand on these points, and questioned the need for a prescriptive approach in an area where serious health, safety or environmental risks did not seem to apply.[38]

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[32] For details see TN/IP/W/9, 13 April 2004.
[33] Ibid, page 2, 'What is a Joint Proposal'?
[34] Regulation (EC) No 753/2002.
[35] Committee on Technical Barriers to Trade, Minutes of the Meeting held on the 20-21 June 2002, G/TBT/M/27, 31 July 2002, paragraphs 29-61.
[36] Ibid, paragraph 30.
[37] Ibid, paragraph 31.
[38] Ibid, paragraph 47.

- not intellectual property

The US also contradicted the notion of the EC that 'traditional terms' are 'intellectual property' and trademarks containing a 'traditional term' should be prohibited. In its view traditional terms do not constitute intellectual property, and the regulations restricting the usage of descriptive language on wine labels therefore falls under the purview of the TBT Agreement.[39] New Zealand asserted that the Regulation attempted to broaden the definition of geographical indications beyond the definition contained in the TRIPS Agreement, and attempted to control the use of traditional expressions more far-reaching that the earlier draft Regulation on which several concerns had been expressed in the Committee.[40] Canada expressed the view that the EC was 'inappropriately using the regulation to provide intellectual property rights by stealth'.[41] Australia also rejected the 'legitimisation' of the EC's efforts to reserve these terms for the exclusive use of EU wine industries by claiming them as intellectual property rights.

- amendments: Regulation 316/2004

As a result, the Commission adopted amendments intended to simplify the rules governing the use of traditional expressions and 'enhance the conformity of the EU legislation with its international commitments under the TRIPS and GATT Agreements'. The amendments to Regulation 753/2002 merged the two categories of traditional expression[42] into one single category of terms that can be used by third countries upon compliance with a set of strict conditions equivalent to those existing for Member States. The equivalent conditions included: the submission of a substantiated request to the Commission that the traditional term in question was recognised and governed by either applicable rules or by rules laid out by representative professional organisations in the third country; that the traditional term was sufficiently distinctive and/or enjoyed an established reputation in the third country; that the traditional term had been traditionally used for at least 10 years in the third country; and that the rules of the third country concerned on the term in question did not mislead the consumer. There was also a rule relating to the language of the third country of origin.

These changes do not, however, address the fundamental claim that the terms in question are not intellectual property and that any restriction upon their use may be contrary to the provisions of the TBT Agreement, Agreement on TRIPS and the national treatment provisions of the GATT 1994.

## WTO rules and bilateral arrangements

### *MFN*

The broad question as to the compatibility of bilateral or regional trade agreements with the multilateral WTO agreements is beyond the scope of this analysis. The immediate question is whether favourable treatment potentially afforded by a EU-US bilateral agreement on wine would result in a violation of the MFN and national treatment provisions of the GATT 1994. The use of a bilateral agreement for the resolution of matters relating to geographical indications is not, in itself, a problem: such negotiations are specifically contemplated in the TRIPS provisions on GIs.[43] It is the substantive terms of the agreement that are in issue. Although the EU has already entered into bilateral wine deals on similar terms with Canada, Australia, South Africa and Chile, other Members have also sought to challenge them in the context of the WTO dispute settlement mechanism.[44]

### *National Treatment*

The MFN principle requires that any 'advantage, favour, privilege or immunity' granted by a WTO Member to a product from one country must be extended immediately and unconditionally to the like product or service of every WTO Member, regardless of origin. There is no express limitation in the WTO text on the means by which the favourable treatment may be 'granted', so it may be understood that provision through a bilateral

[39] Ibid, paragraph 32.
[40] Draft Regulation 881/1998.
[41] Committee on Technical Barriers to Trade, Minutes of the Meeting held on the 20-21 June 2002, G/TBT/M/27, 31 July 2002 paragraph 49.
[42] Regulation (EC) 753/2002 provided for two categories of traditional expressions: the first contained expressions that could be used by third countries under certain conditions (such as 'classic', chateau', 'classico', 'reserva' etc) and the second was exclusively reserved to wines produced in the EU and contains terms that the EC asserted were linked with a particular geographical area ('vin jaune', 'amontillado', 'ruby' etc).
[43] Agreement on TRIPS, Article 24.1.
[44] Argentina filed a request for consultations (WT/DS263/1), but the matter has not proceeded further.

arrangement is not exempt from the MFN requirement. The principle applies not only with respect to customs duties and charges, and rules and formalities in connection with importation and exportation, but also with respect to all matters governed by the national treatment requirement, specifically all internal taxes or charges, and *all laws, regulations and requirements* affecting the internal sale, offering for sale, purchase, transportation, distribution or use of the product. The MFN rule extends, therefore, to advantages with respect to 'internal' regulations, such as derogation from EC oenological standards. Such treatment is to be extended 'immediately' to the like products regardless of origin, without the requirement of a further special arrangement. While the EC denies other wine-producers such treatment, and negotiates individual agreements on the basis of political motivation, it remains in contravention of the MFN rule.

From another perspective, a bilateral arrangement that enables the US to derogate from EC oenological standards would arguably violate the national treatment rule in the GATT[45] and the TBT Agreement[46] if it secures a mutual right of the EC to export to the US wine that does not comply with its own domestic standards. Wine products imported into the EC in accordance with Community oenological standards receive what is arguably less favourable treatment than like products of national origin, because EC products destined for export are not required to meet Community standards as long as they are not being offered for human consumption in the territory of the Community. This was one of the claims made by Argentina in its Request for Consultations regarding EU Measures Affecting Imports of Wine.[47]

## Conclusions

In conclusion, there are several aspects of the Community regime on geographical indications and its bilateral negotiations with the US on wine that remain open to question in light of the application of WTO principles. The regulatory provisions on oenological standards as well as the intellectual property protection afforded 'traditional terms' arguably create unnecessary obstacles to trade, contrary to the TBT Agreement.

While the negotiation of a bilateral arrangement between the parties does not itself contradict WTO rules, the fact that bilateral negotiations are the only means by which a third country is able to secure MFN treatment from the EC in these particular matters is contrary to the MFN principle. Any advantage, privilege or favour granted, without limitation, must be extended immediately and unconditionally to the like wine products from other WTO members, regardless of origin. National treatment issues may also arise in relation to the Community treatment of foreign wine products where the EC enters into reciprocal arrangements permitting its own producers to derogate from its domestic standards. In practice, the EC has secured bilateral agreements on wine with several of the major wine-producing countries, and will likely perpetuate this approach until it is successfully challenged, either in the WTO Committees on TBT or TRIPS, or in the WTO dispute settlement system.

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[45] Agreement on Technical Barriers to Trade, Article 2.1.
[46] GATT 1994, Article III.4.
[47] WT/DS263/1, G/L/558, G/TBT/D/25.

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For further information or copies, please contact:
Economic Affairs Division, Commonwealth Secretariat, Pall Mall, London SW1Y 5HX, UK
Tel: 020 7747 6231/6433 Fax: 020 7747 6235
Email: i.mbirimi@commonwealth.int or v.qalo@commonwealth.int