ADDITIONAL PROTOCOL

adjusting the trade aspects of the Interim Agreement between the European Community, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, to take account of the outcome of the negotiations between the parties on reciprocal preferential concessions for certain wines, the reciprocal recognition, protection and control of wine names and the reciprocal recognition, protection and control of designations for spirits and aromatised drinks

THE EUROPEAN COMMUNITY, hereinafter referred to as 'the Community',

of the one part, and

THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, hereinafter referred to as 'the former Yugoslav Republic of Macedonia',

of the other part,

hereinafter referred to as 'the Contracting Parties',

WHEREAS the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, was signed by Exchange of Letters in Luxembourg on 9 April 2001,

WHEREAS Article 27(4) of the Stabilisation and Association Agreement provides that a wine and spirits agreement remains to be negotiated,

WHEREAS an Interim Agreement ensuring the development of trade links through the establishment of a contractual relation and implementing as speedily as possible the provisions of the Stabilisation and Association Agreement on trade and trade-related matters, entered into force on 1 June 2001. Article 14(4) of the Interim Agreement repeats the commitment to a separate wine and spirits agreement,

WHEREAS on this basis negotiations have been undertaken and were concluded between the Parties,

WHEREAS in order to ensure consistency within the overall stabilisation process, the wine and spirits agreement should be integrated into the framework of the Interim Agreement in the form of a Protocol,

WHEREAS this Protocol on wines and spirits should enter into force on 1 January 2002,

WHEREAS to this end it is necessary to implement as speedily as possible the provisions of this Protocol,

DESIROUS of improving the conditions for the marketing of wines, spirits and aromatised drinks on their respective markets, in accordance with the principles of quality, mutual benefit and reciprocity,

HAVING REGARD to the interest of both Contracting Parties in the reciprocal protection and control of wine names, designations for spirits and aromatised drinks,

HAVE AGREED AS FOLLOWS:

Article 1

This Protocol includes the following elements:

1. an Agreement on reciprocal preferential trade concessions for certain wines (Annex I to this Protocol);
2. an Agreement on the reciprocal recognition, protection and control of wine names (Annex II to this Protocol);
3. an Agreement on the reciprocal recognition, protection and control of designations of spirits and aromatised drinks (Annex III to this Protocol).

The lists referred to in Article 5 of the Agreement mentioned in point 2 and in Article 5 of the Agreement mentioned in point 3 shall be established at a later stage and approved according to the procedure laid down in the respective Articles 13 and 14 of these Agreements.

Article 2

This Protocol shall form an integral part of the Interim Agreement. The Annexes to this Protocol shall form an integral part thereof.

Article 3

This Protocol shall be approved by the Community and the former Yugoslav Republic of Macedonia in accordance with their own procedures. The Contracting Parties shall take the necessary measures to implement this Protocol.

The Contracting Parties shall notify each other of the accomplishment of the corresponding procedures according to the first paragraph of Article 3.

Article 4

Subject to completion of the procedures referred to in Article 3, this Protocol shall enter into force on 1 January 2002 and become applicable on the same date.

Article 5

This Protocol shall be drawn up in duplicate in each of the official languages of the Contracting Parties, each of these texts being equally authentic.

ANNEX I

AGREEMENT

between the European Community and the former Yugoslav Republic of Macedonia on reciprocal preferential trade concessions for certain wines

1. Imports into the Community of the following products originating in the former Yugoslav Republic of Macedonia shall be subject to the concessions set out below:

CN code	Description	Applicable duty	Year 2002 quantities (hl)	Yearly adjustments (hl)	Specific provisions
ex 2204 10 ex 2204 21	Quality sparkling wine Wine of fresh grapes	exemption	15 000	+ 6 000	(1)
ex 2204 29	Wine of fresh grapes	exemption	285 000	– 6 000	(1)

(1) Consultations at the request of one of the Contracting Parties may be held to adapt the quotas by transferring quantities above 6 000 hl from the quota applying to position ex 2204 29 to the quota applying to positions ex 2204 10 and ex 2204 21.

2. The Community shall grant a preferential zero-duty within tariff quotas as mentioned under point 1, subject to the condition that no export subsidies shall be paid for exports of these quantities by the former Yugoslav Republic of Macedonia.

3. Imports into the former Yugoslav Republic of Macedonia of the following products originating in the Community shall be subject to the concessions set out below:

FYROM customs tariff code	Description	Applicable duty	Year 2002 quantities (hl)	Yearly increase (hl)	Specific provisions
ex 2204 10 ex 2204 21	Quality sparkling wine Wine of fresh grapes	exemption	3 000	300	

4. The former Yugoslav Republic of Macedonia shall grant a preferential zero-duty within tariff quotas as mentioned under point 3, subject to the condition that no export subsidies shall be paid for exports of these quantities by the Community.

5. This Agreement shall cover wine:

(a) which has been produced from fresh grapes wholly produced and harvested in the territory of the Contracting Party in question, and

(b) (i) originating in the European Union, which has been produced in accordance with the rules governing the oenological practices and processes referred to in Title V of Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine (1);

(ii) originating in the former Yugoslav Republic of Macedonia, which has been produced in accordance with the rules governing the oenological practices and processes in conformity with the former Yugoslav Republic of Macedonia law. These oenological rules referred to shall be in conformity with Community legislation.

(1) OJ L 179, 14.7.1999, p. 1. Regulation as last amended by Regulation (EC) No 2826/2000 (OJ L 328, 23.12.2000, p. 2).

6. Imports of wine under the concessions provided in this Agreement will be subject to the presentation of a certificate issued by a mutually recognised official body appearing on the lists drawn up jointly, to the effect that the wine in question complies with point 5(b).

7. The Contracting Parties shall examine no later than in the first quarter of 2005 the opportunities for granting each other further concessions taking into account the development of wine trade between the Contracting Parties.

8. The Contracting Parties shall ensure that the benefits granted reciprocally are not called into question by other measures.

9. Consultations are to take place at the request of either Contracting Party on any problem relating to the way this Agreement operates.

10. This Agreement shall apply, on the one hand, in the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other hand, in the territory of the former Yugoslav Republic of Macedonia.

ANNEX II

AGREEMENT

between the European Community and the former Yugoslav Republic of Macedonia on the reciprocal recognition, protection and control of wine names

Article 1

Objectives

1. The Contracting Parties hereby agree, in accordance with the principles of non-discrimination and reciprocity, to recognise, protect and control names of wines originating in their territory on the conditions laid down herein.

2. The Contracting Parties shall take all general and specific measures necessary to ensure that the obligations laid down by this Agreement are fulfilled and that the objectives set out in this Agreement are attained.

Article 2

Scope and coverage

This Agreement shall apply to wines falling under heading No 2204 of the International Convention on the Harmonised Commodity Description and Coding System ('Harmonised System'), done at Brussels on 14 June 1983.

Article 3

Definitions

For the purposes of this Agreement and except where otherwise expressly provided herein:

(a) 'wine originating in' followed by the name of one of the Contracting Parties means a wine produced in the territory of the said Party from grapes which have been wholly harvested in its territory;

(b) 'geographical indication' means any indication, including an 'appellation of origin', as defined in Article 22(1) of the Agreement on trade-related aspects of intellectual property rights (hereinafter referred to as 'the TRIPs Agreement'), that is recognised by the laws or regulations of a Contracting Party for the purpose of describing and presenting a wine originating in the territory of that Contracting Party;

(c) 'traditional expression' means a traditionally used name, as specified in the Annex, referring in particular to the method of production or to the quality, colour or type of wine which is sufficiently distinctive and/or of established reputation and recognised by the laws and regulations of a Contracting Party for the purpose of describing and presenting of such a wine originating in the territory of that Contracting Party;

(d) 'protected name' means a geographical indication or a traditional expression as defined in paragraphs (b) and (c) respectively that is protected under this Agreement;

(e) 'homonymous' shall mean the same protected name, or a protected name so similar as to be likely to cause confusion, to denote different places of origin, or different wines originating in the respective territories of the Contracting Parties;

(f) 'description' means the words used to describe a wine on a label, or on the documents accompanying the transport of that wine, on commercial documents, particularly invoices and delivery notes, and in advertising;

(g) 'labelling' means all descriptions and other references, signs, designs or trade marks identifying a wine and appearing on the container, including its sealing device or the tag attached thereto and the sheathing covering the neck of bottles;

(h) 'presentation' means the words or signs used on containers, including their closure, on the labelling and on the packaging;

(i) 'packaging' means the protective wrappings such as paper, straw envelopes of all kinds, cartons and cases, used in the transport of one or more containers and/or for their presentation for sale to the final consumer;

(j) 'trade mark' shall mean:

— a trade mark registered in terms of the legislation of a Contracting Party,

— a common law trade mark which is recognised under the law of a Contracting Party, and

— a well-known trade mark referred to in Article 6 bis of the Paris Convention for the Protection of Industrial Property (1967).

TITLE I

RECIPROCAL PROTECTION OF WINE NAMES

Article 4

Principles

1. Without prejudice to Articles 22 and 23 of the TRIPs Agreement, set out in Annex 1C to the Agreement establishing the World Trade Organisation, the Contracting Parties shall take all necessary measures, in accordance with that Annex, to ensure reciprocal protection of the names referred to in Article 5 which are used for the description and presentation of wines originating in the territory of the Contracting Parties. To that end, each Contracting Party shall provide the interested parties with the appropriate legal means to ensure effective protection and prevent geographical indications and traditional expressions from being used to identify wines not covered by the indications or the descriptions concerned.

2. In the former Yugoslav Republic of Macedonia, the protected Community names:

(a) are reserved exclusively to the wines originating in the Community to which they apply, and

(b) may not be used otherwise than under the conditions laid down in the laws and regulations of the Community.

3. In the Community, the protected names of the former Yugoslav Republic of Macedonia:

(a) are reserved exclusively to the wines originating in the former Yugoslav Republic of Macedonia to which they apply, and

(b) may not be used otherwise than under the conditions laid down in the laws and regulations of the former Yugoslav Republic of Macedonia.

4. The protection provided for in this Agreement shall prohibit in particular any use of protected names for wines which do not originate in the geographical area indicated or in the place where the expression is traditionally used, and shall apply even when:

— the true origin of the wine is indicated,

— the geographical indication in question is used in translation,

— the name is accompanied by terms such as 'kind', 'type', 'style', 'imitation', 'method' or other expressions of the sort.

5. In the case of homonymous geographical indications:

(a) where such indications protected under this Agreement are homonymous, protection shall be granted to each indication, provided it has been used traditionally and consistently and consumers are not misled as to the true origin of the wine;

(b) where such indications protected under this Agreement are homonymous with the name of a geographical area outside the territory of the Parties, the latter name may be used to describe and present a wine produced in the geographical area to which the name refers, provided it is traditionally and consistently used, its use for that purpose is regulated by the country of origin and consumers are not misled into believing that the wine originates in the territory of the Party concerned.

6. In the case of homonymous traditional expressions:

(a) where such expressions protected under this Agreement are homonymous, protection shall be granted to each expression, provided it has been used traditionally and consistently and consumers are not misled as to the true origin of the wine;

(b) where such expressions protected under this Agreement are homonymous with the name used for a wine not originating in the territory of the Parties, the latter name may be used to describe and present a wine, provided it is traditionally and consistently used, its use for that purpose is regulated by the country of origin and consumers are not misled into believing that the wine originates in the territory of the Party concerned.

7. The Cooperation Council may determine by way of decision the practical conditions of use to enable a distinction to be drawn between the homonymous indications or expressions referred to in paragraphs 5 and 6, bearing in mind the need to treat the producers concerned fairly and to ensure that consumers are not misled.

8. The provisions of this Agreement shall in no way prejudice the right of any person to use, in the course of trade, their name or the name of their predecessor in business, except where such name is used in such a manner as to mislead consumers.

9. Nothing in this Agreement shall oblige a Contracting Party to protect a geographical indication or traditional expression of the other Contracting Party which is not or ceases to be protected in its country of origin or which has fallen into disuse in that country.

10. The Contracting Parties hereby waive their right to invoke Article 24(4) to (7) of the TRIPs Agreement in order to refuse to grant protection to a name, from the other Party, for products covered by this Agreement.

Article 5

Protected names

With regard to wine originating in the Community and in the former Yugoslav Republic of Macedonia, the names defined in the lists established in accordance with Article 14(2)(a) shall be protected.

Article 6

Trade marks

1. The registration of a trade mark for a wine which contains or consists of a protected name under this Agreement shall be refused or, at the request of the party concerned, invalidated if:

— the wine in question does not originate in the place to which the geographical indication refers or, as the case may be,

— the wine in question is not one to which the traditional expression is reserved.

2. However, a trade mark registered in good faith no later than 31 December 1995 may be used until 31 December 2005, provided it has actually been in continuous use since being registered.

Article 7

Exports

The Contracting Parties shall take all measures necessary to ensure that in cases where wines originating in the Contracting Parties are exported and marketed outside of their territories, the protected names of one Contracting Party referred to in Article 5 are not used to describe and present a wine originating in the other Contracting Party.

Article 8

Extension of protection

Insofar as the relevant legislation of the Contracting Parties permits, the benefit of the protection afforded by this Agreement shall extend to natural and legal persons, federations, associations and organisations of producers, traders or consumers whose head offices are located in the territory of the other Contracting Party.

Article 9

Enforcement

1. If the appropriate competent authority, designated in accordance with Article 11, becomes aware that the description or presentation of a wine, in particular on the labelling, in official or commercial documents or in advertising, is in breach of this Agreement, the Contracting Parties shall apply the necessary administrative measures and/or shall initiate legal proceedings with a view to combating unfair competition or preventing the wrongful use of the protected name in any other way.

2. The measures and proceedings referred to in paragraph 1 shall be taken in particular in the following cases:

(a) where the translation of descriptions provided for by Community or the former Yugoslav Republic of Macedonian legislation into the language or languages of the other Contracting Party results in the appearance of a word which is liable to be misleading as to the origin, nature or quality of the wine thus described or presented;

(b) where descriptions, trade marks, names, inscriptions or illustrations which directly or indirectly give false or misleading information as to the provenance, origin, nature, vine variety or material qualities of the wine appear on containers or packaging, in advertising or in official or commercial documents relating to wines whose names are protected under this Agreement;

(c) where, for packaging, containers are used which are misleading as to the origin of the wine.

3. The application of paragraphs 1 and 2 shall not prejudice the possibilities of the persons and entities referred to in Article 8 to take appropriate actions in the Contracting Parties, including recourse to the courts.

Article 10

Other internal legislation and international agreements

Unless otherwise agreed by the Contracting Parties, this Agreement shall not preclude any more extensive protection afforded, now or in the future, to names protected by this Agreement, by the Contracting Parties under their internal legislation or other international agreements.

TITLE II

CONTROLS AND MUTUAL ASSISTANCE BETWEEN COMPETENT AUTHORITIES

Article 11

Enforcement authorities

1. Each Contracting Party shall designate the authorities to be responsible for the application of this Agreement. Where a Contracting Party designates more than one competent authority, it shall ensure the coordination of the work of these authorities. For this purpose, a single authority shall be designated.

2. The Contracting Parties shall inform one another of the names and addresses of these authorities not later than two months after this Agreement comes into force. There shall be close and direct cooperation between these authorities.

Article 12

Infringement

1. If one of the authorities referred to in Article 11 has reason to suspect that:

(a) a wine being or having been traded between the former Yugoslav Republic of Macedonia and the Community does not comply with this Agreement or with provisions laid down in the laws and regulations of the Contracting Parties, and

(b) this non-compliance is of particular interest to the other Contracting Party and could result in administrative measures and/or legal proceedings being taken,

it shall immediately inform the Commission and the relevant authority or authorities of the other Party.

2. The information to be provided in accordance with paragraph 1 shall be accompanied by official, commercial or other appropriate documents, with details of any administrative measures or legal proceedings that may, if necessary, be taken. The information shall include, in particular, the following details concerning the wine in question:

(a) the producer and the person who has power of disposal over this wine;

(b) the composition and organoleptic characteristics of this wine;

(c) its description and presentation;

(d) details of the non-compliance with the rules concerning production and marketing.

TITLE III

MANAGEMENT OF THE AGREEMENT

Article 13

Working group

1. Pending the entry into force of the Stabilisation and Association Agreement, a working group, functioning under the auspices of the existing working party, created by Decision No 1/98 of the Cooperation Council [1] established by the Cooperation Agreement between the European Community and the former Yugoslav Republic of Macedonia signed by Exchange of Letters on 29 April 1997 [2] shall be established.

2. The working group shall see to the proper functioning of this Agreement and shall examine all questions which may arise in implementing it. In particular, the Working Group may make recommendations which would contribute to the attainment of the objectives of this Agreement.

Article 14

Tasks of the contracting parties

1. The Contracting Parties shall, either directly or through the working group, referred to in Article 13, maintain contact on all matters relating to the implementation and the functioning of this Agreement.

2. In particular, the Contracting Parties shall:

(a) establish and amend by decision of the Interim Committee the lists referred to in Article 5 and the Protocol to this Agreement by mutual decision to take account of any amendments to the laws and regulations of the Contracting Parties;

(b) inform each other of the intention to decide new regulations or amendments of existing regulations of public policy concern, such as health or consumer protection, with implications for the wine market;

(c) notify each other of judicial decisions concerning the application of this Agreement and inform each other of measures adopted on the basis of such decisions;

3. Within the framework of this Agreement, either of the Contracting Parties may put forward suggestions for widening the scope of their cooperation in the wine market, taking into account the experience gained in its application.

4. Decisions taken under paragraph 2(a) shall be binding on the Contracting Parties, which shall take the measures necessary to implement the decisions taken.

TITLE IV

GENERAL PROVISIONS

Article 15

Transit — small quantities

This Agreement shall not apply to wines which:

(a) pass in transit through the territory of one of the Contracting Parties, or

(b) originate in the territory of one of the Contracting Parties and which are consigned in small quantities between those Contracting Parties under the conditions and according to the procedures provided for in the Protocol.

Article 16

Territorial application

This Agreement shall apply, on the one hand, to the territories to which the Treaty establishing the European Community applies and under the conditions laid down in that Treaty and, on the other hand, to the territory of the former Yugoslav Republic of Macedonia.

Article 17

Failure to comply

1. The Contracting Parties shall enter into consultations if one of them considers that the other has failed to fulfil an obligation under this Agreement.

2. The Contracting Party which requests the consultations shall provide the other Party with all the information necessary for a detailed examination of the case in question.

3. In cases where any delay could endanger human health or impair the effectiveness of measures to control fraud, appropriate interim protective measures may be taken, without prior consultation, provided that consultations are held immediately after the taking of these measures.

4. If, following the consultations provided for in paragraphs 1 and 3, the Contracting Parties have not reached agreement, the Party which requested the consultations or which took the measures referred to in paragraph 3 may take appropriate protective measures so as to permit the proper application of this Agreement.

Article 18

Marketing of pre-existing stocks

1. Wines which, at the time of the entry into force of this Agreement, have been produced, prepared, described and presented in compliance with the internal laws and regulations of the Parties but are prohibited by this Agreement may be sold until stocks run out.

2. Except where provisions to the contrary are adopted by the Contracting Parties, wines which have been produced, prepared, described and presented in compliance with this Agreement but whose production, preparation, description and presentation cease to comply therewith as a result of an amendment thereto may continue to be marketed until stocks run out.

---

[1] OJ L 190, 4.7.1998, p. 48.
[2] OJ L 348, 18.12.1997, p. 1.

Protocol to the Agreement between the European Community and the former Yugoslav Republic of Macedonia on the reciprocal recognition, protection and control of wine names

THE CONTRACTING PARTIES HEREBY AGREE AS FOLLOWS:

Pursuant to Article 15(b) of the Agreement, the following shall be considered to be small quantities of wine:

1. quantities in labelled containers of not more than 5 litres fitted with a non-reusable closing device where the total quantity transported, whether or not made up of separate consignments, does not exceed 50 litres;
2. (a) quantities contained in the personal luggage of travellers in quantities not exceeding 30 litres;
   (b) quantities sent in consignments from one private individual to another in quantities not exceeding 30 litres;
   (c) quantities forming part of the belongings of private individuals who are moving house;
   (d) quantities imported for the purpose of scientific or technical experiments, subject to a maximum of 1 hectolitre;
   (e) quantities imported for diplomatic, consular or similar establishments as part of their duty-free allowance;
   (f) quantities held on board international means of transport as victualling supplies.

The case of exemption referred to in point 1 may not be combined with one or more of the cases of exemption referred to in point 2.

ANNEX III

AGREEMENT

between the European Community and the former Yugoslav Republic of Macedonia on the reciprocal recognition, protection and control of designations for spirits and aromatised drinks

Article 1

Objectives

1. The Contracting Parties hereby agree, in accordance with the principles of non-discrimination and reciprocity, to recognise, protect and control designations for spirits and aromatised drinks originating in their territory on the basis of the conditions laid down herein.

2. The Contracting Parties shall take all general and specific measures necessary to ensure that the obligations laid down by this Agreement are fulfilled and that the objectives set out in this Agreement are attained.

Article 2

Scope and coverage

This Agreement applies to the following products:

(a) spirit drinks as defined:

— for the Community, in Council Regulation (EEC) No 1576/89 of 29 May 1989 laying down general rules on the definition, description and presentation of spirit drinks [1],

— for the former Yugoslav Republic of Macedonia, in the regulations on the quality of spirits (*Official Journal of the Socialist Federative Republic of Yugoslavia* No 16/88), as last amended by the regulations on the quality of spirits (*Official Journal of the Socialist Federative Republic of Yugoslavia* No 63/88),

and falling within heading No 2208 of the International Convention on the Harmonised Commodity Description and Coding System, done at Brussels on 14 June 1983;

(b) aromatised wines, aromatised wine-based drinks and aromatised wine-product cocktails, hereinafter called 'aromatised drinks', as defined:

— for the Community, in Council Regulation (EEC) No 1601/1991 of 10 June 1991 laying down general rules on the definition, description and presentation of aromatised wines, aromatised wine-based drinks and aromatised wine-product cocktails [2],

— for the former Yugoslav Republic of Macedonia, in the regulations on the quality of wines (*Official Journal of the Socialist Federative Republic of Yugoslavia* No 17/81), as last amended by the regulations on the quality of wines (*Official Journal of the Socialist Federative Republic of Yugoslavia* No 14/89),

and covered by headings Nos 2205 and ex 2206 of the International Convention on the Harmonised Commodity Description and Coding System, done at Brussels on 14 June 1983.

Article 3

Definitions

For the purposes of this Agreement:

(a) 'spirit drink originating in', followed by the name of one of the Contracting Parties, means a spirit drink produced in the territory of that Party;

(b) 'aromatised drinks originating in', followed by the name of one of the Contracting Parties, means an aromatised drink produced in the territory of that Party;

(c) 'description' means the words used on labelling, on any documents accompanying spirits or aromatised drinks during transport, on commercial documents, particularly invoices and delivery notes, and in advertising;

(d) 'homonymous' shall mean the same protected name, or a protected name so similar as to be likely to cause confusion, to denote different places of origin, or different spirit drinks and aromatised drinks originating in the respective territories of the Contracting Parties;

(e) 'labelling' means all descriptions and other references, signs, symbols, illustrations or trade marks identifying spirits and aromatised drinks and appearing on the container, including the sealing device or the tag attached thereto, and the sheathing covering the neck of bottles;

(f) 'presentation' means the words or signs used on containers, including their closure, on the labelling and on the packaging;

(g) 'packaging' means the protective wrappings such as paper, straw wrapping of all kinds, cartons and cases, used in the transport of one or more containers and/or in their presentation for sale to the final consumer;

[1] OJ L 160, 12.6.1989, p. 1. Regulation as last amended by Regulation (EC) No 3378/94 of the European Parliament and of the Council (OJ L 366, 31.12.1994, p. 1).

[2] OJ L 149, 14.6.1991, p. 1. Regulation as last amended by Regulation (EC) No 2061/96 of the European Parliament and of the Council (OJ L 277, 30.10.1996, p. 1).

(h) 'trade mark' shall mean:

— a trade mark registered in terms of the legislation of a Contracting Party,

— a common law trade mark which is recognised under the law of a Contracting Party, and

— a well-known trade mark referred to in Article 6 bis of the Paris Convention for the Protection of Industrial Property (1967).

TITLE I

RECIPROCAL PROTECTION OF DESIGNATIONS OF SPIRITS AND AROMATISED DRINKS

Article 4

Principles

1. Without prejudice to Articles 22 and 23 of the Agreement on trade-related aspects of intellectual property rights (hereinafter called 'the TRIPs Agreement') set out in Annex 1C to the Agreement establishing the World Trade Organisation, the Parties shall take all the necessary measures, in accordance with that Annex, to ensure reciprocal protection of the designations referred to in Article 5 and used to describe spirits and aromatised drinks originating in the territory of the Parties. To that end, each Party shall provide the interested parties with the appropriate legal means for preventing the use of a designation to identify spirits or aromatised drinks not originating in the geographical area indicated by the designation in question or in the place where the designation in question is traditionally used.

2. In the former Yugoslav Republic of Macedonia, the protected Community designations:

— may not be used otherwise than under the conditions laid down in the laws and regulations of the Community, and

— shall be reserved exclusively for the spirits and aromatised drinks originating in the Community to which they apply.

3. In the Community, the protected former Yugoslav Republic of Macedonian designations:

— may not be used otherwise than under the conditions laid down in the laws and regulations of the former Yugoslav Republic of Macedonia, and

— shall be reserved exclusively for the spirits and aromatised drinks originating in the former Yugoslav Republic of Macedonia to which they apply.

4. The protection provided for in this Agreement shall prohibit in particular any use of protected designations for spirits and aromatised drinks which do not originate in the geographical area indicated by the designation in question or in the place where the designation in question is traditionally used, and shall apply even when:

— the true origin of the spirits and aromatised drinks is indicated,

— the geographical indication in question is used in translation,

— the name is accompanied by terms such as 'kind', 'type', 'style', 'imitation', 'method' or other expressions of the sort.

5. In cases of homonymous designations for spirits and aromatised drinks, protection shall be accorded to each designation. The Cooperation Council may determine by way of decision the practical conditions under which the homonymous designations in question are to be differentiated from each other, taking into account the need to treat the producers concerned fairly and to avoid misleading the consumer.

6. The provisions of this Agreement shall in no way prejudice the right of any person to use, for trade purposes, their own name or the name of the person whose business they have taken over, provided that such names are not used in a way that misleads consumers.

7. Nothing in this Agreement shall oblige a Party to protect any designation of the other Party which is not protected or ceases to be protected in its country of origin or which has fallen into disuse in that country.

8. The Contracting Parties hereby waive their right to invoke Article 24(4) to (7) of the TRIPs Agreement in order to refuse to grant protection to designations from the other Party.

Article 5

Protected designations

The following designations shall be protected:

(a) as regards spirit drinks originating in the Community, the designations in list 1;

(b) as regards spirit drinks originating in the former Yugoslav Republic of Macedonia, the designations in list 2;

(c) as regards aromatised drinks originating in the Community, the designations in list 3;

(d) as regards aromatised drinks originating in the former Yugoslav Republic of Macedonia, the designations in list 4.

Article 6

Trade marks

1. The registration of a trade mark for a spirit drink or aromatised drink which contains or consists of a designation as referred to in Article 5 shall be refused or, at the request of an interested party, be invalidated, with respect to such spirits not originating in the place indicated by the designation.

2. Notwithstanding paragraph 1, a trade mark registered in good faith by 31 December 1995 at latest may be used until 31 December 2005, provided it has been used effectively without interruption since its registration.

Article 7

Exports

The Parties shall take all measures necessary to ensure that, in cases where spirits or aromatised drinks originating in the territory of the Parties are exported and marketed outside their territory, the designations of one Party protected under this Agreement are not used to designate and present spirits or aromatised drinks originating in the other Party.

Article 8

Extension of protection

To the extent that the relevant legislation of the Parties allows, the benefit of the protection afforded by this Agreement shall cover natural and legal persons and federations, associations and organisations of producers, traders and consumers whose head offices are located in the territory of the other Party.

Article 9

Enforcement

1. If the appropriate competent authority, designated in accordance with Article 11, becomes aware that the description or presentation of a spirit drink or aromatised drink, in particular on the labelling, in official or commercial documents or in advertising, is in breach of this Agreement, the Parties shall apply the necessary administrative measures and/or shall initiate suitable legal proceedings with a view to combating unfair competition or preventing the wrongful use of the protected designation in any other way.

2. The measures and proceedings referred to in paragraph 1 shall be taken in particular in the following cases:

(a) where the translation of designations provided for by Community or the former Yugoslav Republic of Macedonian legislation into the language or languages of the other Contracting Party results in the appearance of a word which is liable to be misleading as to the origin, nature or quality of the spirits or aromatised drinks thus identified;

(b) where descriptions, trade marks, words, inscriptions or illustrations which directly or indirectly give false or misleading information as to the origin, nature, material qualities of the spirit drink or aromatised drink appear on containers or packaging, in advertising or in official or commercial documents relating to designations protected under this Agreement;

(c) where, for packaging, containers are used which are misleading as to the origin of the spirit drink or aromatised drink.

3. The application of paragraphs 1 and 2 shall not prejudice the possibilities of the persons and entities referred to in Article 8 to take appropriate actions in the Contracting Parties, including recourse to the Courts.

Article 10

Other internal legislation and international agreements

Unless otherwise agreed by the Contracting Parties, this Agreement shall not preclude any more extensive protection afforded, now or in the future, to designations protected by this Agreement by the Contracting Parties under their internal legislation or other international agreements.

TITLE II

CONTROLS AND MUTUAL ASSISTANCE BETWEEN COMPETENT AUTHORITIES

Article 11

Enforcement authorities

1. The Contracting Parties shall each designate the authorities responsible for the enforcement of this Agreement. Where a Contracting Party designates more than one competent authority, it shall ensure the coordination of the work of these authorities. For this purpose, a single authority shall be designated.

2. The Parties shall inform one another of the names and addresses of the above authorities not later than two months after this Agreement comes into force. These authorities shall cooperate closely and directly with each other.

Article 12

Infringement

1. If one of the authorities referred to in Article 11 has reason to suspect that:

(a) a spirit drink or aromatised drink as defined in Article 2, being or having been traded between the former Yugoslav Republic of Macedonia and the Community, does not comply with this Agreement or with provisions, laid down in the laws and regulations of the Contracting parties, applicable to spirits and aromatised drinks, and

(b) this non-compliance is of particular interest to the other Contracting Party and could result in administrative measures and/or legal proceedings being taken,

it shall immediately inform the Commission and the relevant authority or authorities of the other Party.

2. The information to be provided in accordance with paragraph 1 shall be accompanied by official, commercial or other appropriate documents, with details of any administrative measures or legal proceedings that may, if necessary, be taken. The information shall include, in particular, the following details concerning the spirits or aromatised drink in question:

(a) the producer and the person who has power of disposal over the spirits or aromatised drink;

(b) the composition and organoleptic characteristics of that drink;

(c) its description and presentation;

(d) details of the non-compliance with the rules concerning production and marketing.

TITLE III

MANAGEMENT OF THE AGREEMENT

Article 13

Working group

1. Pending the entry into force of the Stabilisation and Association Agreement, a working group, functioning under the auspices of the existing working party created by Decision No 1/98 of the Cooperation Council [1] established by the Cooperation Agreement between the European Community, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, signed by Exchange of Letters on 29 April 1997 [2], shall be established.

2. The working group shall see to the proper functioning of this Agreement and shall examine all questions which may arise in implementing it. In particular, the working group may make recommendations which would contribute to the attainment of the objectives of this Agreement.

Article 14

Tasks of the Contracting Parties

1. The Contracting Parties shall, either directly or through the working group referred to in Article 13, maintain contact on all matters relating to the implementation and the functioning of this Agreement.

2. In particular, the Contracting Parties shall:

(a) establish and amend by decision of the Cooperation Council the lists referred to in Article 5 and the Protocol of this Agreement to take account of any amendments to the laws and regulations of the Contracting Parties;

(b) inform each other of the intention to decide new regulations or amendments of existing regulations of public policy concern, such as health or consumer protection, with implications for the spirits and aromatised drinks market;

(c) notify each other of judicial decisions concerning the application of this Agreement and inform each other of measures adopted on the basis of such decisions.

3. Within the framework of this Agreement, either of the Contracting Parties may put forward suggestions for widening the scope of their cooperation in the spirits and aromatised drinks market, taking into account the experience gained in its application.

4. Decisions taken under paragraph 2(a) shall be binding on the Parties, which shall take the measures necessary to implement the decisions taken.

TITLE IV

GENERAL PROVISIONS

Article 15

Transit — small quantities

This Agreement shall not apply to spirits and aromatised drinks which:

(a) pass in transit through the territory of one of the Contracting Parties, or

(b) originate in the territory of one of the Contracting Parties and which are consigned in small quantities between those Contracting Parties under the conditions and according to the procedures provided for in the Protocol.

Article 16

Territorial application

This Agreement shall apply, on the one hand, to the territories to which the Treaty establishing the European Community applies and under the conditions laid down in that Treaty and, on the other hand, to the territory of the former Yugoslav Republic of Macedonia.

Article 17

Failure to comply

1. The Contracting Parties shall enter into consultations if either considers that the other has failed to fulfil an obligation under this Agreement.

2. The Contracting Party which requests the consultations shall provide the other with all information necessary for a detailed examination of the case in question.

3. In cases where any delay could endanger human health or impair the effectiveness of measures to control fraud, appropriate interim protective measures may be taken, without prior consultation, provided that consultations are held immediately after such measures are taken.

4. If, following the consultations provided for in paragraph 1 and 3, the Contracting Parties have not reached agreement, the Party which has requested the consultations or taken the measures referred to in paragraph 3 may take appropriate safeguard measures so as to permit the proper application of this Agreement.

[1] OJ L 190, 4.7.1998, p. 48.
[2] OJ L 348, 18.12.1997, p. 2.

Article 18

Marketing of pre-existing stocks

1. Spirits and aromatised drinks which, at the time of entry into force of this Agreement, have been legally produced, described and presented, in accordance with the internal laws and regulations of the Contracting Parties, but which may be prohibited by this Agreement may be marketed by wholesalers for a period of one year from the entry into force of the Agreement and by retailers until stocks are exhausted. From the entry into force of this Agreement, spirits and aromatised drinks included herein may no longer be produced outside the limits of their regions of origin.

2. Spirits and aromatised drinks produced, described and presented in accordance with this Agreement whose description and presentation cease to comply with this Agreement following an amendment thereto may continue to be marketed until stocks are exhausted, unless otherwise agreed by the Contracting Parties.

Protocol to the Agreement between the European Community and the Former Yugoslav Republic of Macedonia on the reciprocal recognition, protection and control of destinations for spirits and aromatised drinks

THE CONTRACTING PARTIES HEREBY AGREE AS FOLLOWS:

Pursuant to Article 15(b) of the Agreement, the following shall be considered to be small quantities of spirits and aromatised drinks:

1. quantities in labelled containers of not more than 5 litres fitted with a non-reusable closing device where the total quantity transported, whether or not made up of separate consignments, does not exceed 10 litres;

2. (a) quantities contained in the personal luggage of travellers in quantities not exceeding 10 litres;

   (b) quantities sent in consignments from one private individual to another in quantities not exceeding 10 litres;

   (c) quantities forming part of the belongings of private individuals who are moving house;

   (d) quantities imported for the purpose of scientific or technical experiments, subject to a maximum of 1 hectolitre;

   (e) quantities imported for diplomatic, consular or similar establishments as part of their duty-free allowance;

   (f) quantities held on board international means of transport as victualling supplies.

The case of exemption referred to in point 1 may not be combined with one or more of the cases of exemption referred to in point 2.