

#### **Article 4**

##### **Scope of protection of geographical indications**

1. In respect of geographical indications referred to in Article 2 and Article 3, each Party shall protect the geographical indications listed therein against:<sup>1</sup>
  - (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;
  - (b) any use of a geographical indication identifying an identical or similar product not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation, transcription<sup>2</sup> or transliteration, or accompanied by expressions such as "kind", "type", "style", "imitation" or the like;
  - (c) any use of a geographical indication identifying an identical or similar product not compliant with the product specification of the protected name;
2. In the case of wholly or partially homonymous geographical indications, protection shall be accorded to each indication, provided that a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory, shall not be protected. Each Party shall, as far as possible, consult the other Party prior to determining the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.
3. Pursuant to Article 3, a Party shall not be required to protect as a geographical indication a name that conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product.

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<sup>1</sup> For the purpose of this Article and to the extent it does not contradict the provisions of Section 3 of Part II of the TRIPS Agreement, the Parties agree that 'any use' or 'use of any means' may encompass any direct or indirect commercial use of a protected name, including imitation, or use that would suggest or indicate a connection or an association between the product in question and the protected name. The 'designation or presentation of a good' may include any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin.

<sup>2</sup> The term "transcription" covers the transcription of the geographical indications protected under this Agreement in Latin or non-Latin characters into the characters of the People's Republic of China, on the one hand, and the transcription of the geographical indications protected under this Agreement in the characters of the People's Republic of China into the Latin characters used in the EU, on the other hand. Annexes III, IV, V and VI specify the original name and its transcription to be protected by this Agreement, and its translation for information purposes.

4. Where a Party, in the context of negotiations with a third country, proposes to protect a geographical indication of that third country, and the name is homonymous with a geographical indication of the other Party protected under this Agreement the latter shall be informed and be given the opportunity to comment before the name becomes protected.

5. Nothing in this Agreement shall oblige a Party to protect a geographical indication of the other Party which is not or ceases to be protected in its country of origin, or which has fallen into disuse in that country. The Parties shall notify each other if a geographical indication ceases to be protected in its country of origin or has fallen into disuse in that country.

6. This Agreement shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.