



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05.05.1997  
COM(97) 189 final

97/ 0130 (ACC)

Proposal for a

COUNCIL DECISION

concerning the approval of an Agreement between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks

(presented by the Commission)

## EXPLANATORY MEMORANDUM

1. The United Mexican States have expressed interest in negotiating recognition by the European Union of the Mexican spirit drinks 'Tequila' and 'Mezcal', on the basis of the reciprocal arrangements in Article 11 of Regulation (EEC) No 1576/89 laying down general rules on the definition, description and presentation of spirit drinks.
2. The Council, on 22 April 1996, authorized the Commission to open negotiations with a view to the conclusion of an Agreement between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks.
3. The negotiations between the two parties culminated in a draft Agreement covering the mutual recognition of:
  - all the products listed in Annex II to Regulation (EEC) No 1576/89 as well as the six designations protected by the same Regulation, and
  - the two Mexican designations 'Tequila' and 'Mezcal'.
4. The Commission considers that the attached draft Agreement covering the mutual recognition and protection of all Community products as against two Mexican products recognized in Mexico's national legislation represents a more than fair result under the terms laid down in Article 11 of Regulation (EEC) No 1576/89.

The Agreement provides for further enhancement of Community exports of spirit drinks to Mexico, which currently account for 2% of total Community exports of spirit drinks but which exceed almost sixfold Community imports of spirit drinks from Mexico.
5. The Agreement has no financial impact on the Community budget.
6. The persons or groups of persons concerned are Community producers, consumers, importers and exporters of spirit drinks.
7. It is accordingly proposed to the Council adopt the attached proposal.

## COUNCIL DECISION

of

concerning the approval of an Agreement between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks

### **THE COUNCIL OF THE EUROPEAN UNION,**

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof, in relation to Article 228 paragraph 2 first phrase

Having regard to the proposal from the Commission,

Whereas it is appropriate to improve the conditions for the marketing of spirit drinks on the respective market of the European Community and the United Mexican States, in accordance with the principles of equality, mutual benefit and reciprocity,

HAS DECIDED AS FOLLOWS:

#### Article 1

The Agreement between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks is hereby approved on behalf of the European Community.

The text of the Agreement is attached to this Decision.

#### Article 2

The President of the Council shall make the notification provided for in Article 22 §1 of the Agreement.

#### Article 3

For the purposes of Article 18 of the Agreement, the Commission is hereby authorized to conclude the necessary acts amending the Agreement, in accordance with the procedure laid down in Article 15 of Regulation (EEC) No 1576/89.

Article 4

The Commission, assisted by the representatives of the Member States, shall represent the Community in the Joint Committee referred to in Article 17 of the Agreement.

Article 5

This Decision shall be published in the Official Journal of the European Communities.

Done at Brussels,

For the Council,  
The President

## **AGREEMENT**

### **between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks**

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The EUROPEAN COMMUNITY, hereinafter called "the Community",  
of the one part, and  
The UNITED MEXICAN STATES, hereinafter called "Mexico"  
of the other part,

hereinafter called "the Contracting Parties",

DESIROUS of improving the conditions for the marketing of spirit drinks on their respective markets, in accordance with the principles of equality, mutual benefit and reciprocity.

HAVE AGREED AS FOLLOWS:

#### Article 1

The Contracting Parties agree, on the basis of non-discrimination and reciprocity, to facilitate and promote trade between them in spirit drinks.

#### Article 2

This Agreement shall apply to products falling within code 2208 of the International Convention on the Harmonized Commodity Description and Coding System.

For the purposes of this Agreement,

- (a) "spirit drink originating in" shall mean, when followed by the name of one of the Contracting Parties, a spirit drink listed in the Annex and made on the territory of that Contracting Party,
- (b) "description" shall mean the names used on the labelling, on the documents accompanying the transport of the spirit drinks, on the commercial documents, particularly the invoices and delivery notices, and in advertising,
- (c) "labelling" shall mean all the descriptions and other references, signs, designs or trade marks which distinguish the spirit drinks and which appear on the same container, including the sealing device or the tag attached to the container and the sheathing covering the neck of the bottles,
- (d) "presentation" shall mean the names used on the containers, including the closure, on the labelling and on the packaging,

- (e) "packaging" shall mean the protective wrappings such as papers, straw envelopes of all kinds, cartons and cases, used in the transport of one or more containers.

### Article 3

The following designations are protected:

- (a) as regards spirit drinks originating in the European Community, the designations listed in Annex I,
- (b) as regards spirit drinks originating in Mexico, the designations listed in Annex II,

### Article 4

1. In Mexico, the protected Community names:

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

are reserved exclusively to the spirits originating in the Community to which they apply.

2. In the Community, the protected Mexican names:

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

are reserved exclusively to the spirits originating in Mexico to which they apply.

3. Without prejudice to Articles 22 and 23 of the Agreement on Trade-Related Aspects of Intellectual Property Rights set out in Annex IC of the Agreement establishing the World Trade Organization, the Contracting Parties shall take all the necessary measures, in accordance with this Agreement, to ensure reciprocal protection of the names referred to in Article 3 and used to designate spirit drinks originating in the territory of the Contracting Parties. Each Contracting Party shall provide the interested parties with the legal means of preventing the uses of designations to designate spirit drinks not originating in the place indicated by the designation in question.

4. The Contracting Parties shall not deny the protection provided for by this Article in the circumstances specified in paragraphs 4, 5, 6 and 7 of Article 24 of the Agreement on Trade-Related Aspects of Intellectual Property Rights".

#### Article 5

The protection afforded by Article 4 shall also apply even where the true origin of the spirit drink is indicated or the designation is used in translation or accompanied by terms such as "kind", "type", "style", "way", "imitation", "method" or the like, including graphic symbols which may lead to confusion.

#### Article 6

In the case of homonymous designations for spirit drinks, protection shall be accorded to each designation. The Contracting Parties shall lay down the practical conditions under which the homonymous designations in question will be differentiated, taking into account the need to treat the producers concerned fairly and to avoid misleading the consumer.

#### Article 7

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 a business, except where such name is used in such a manner as to mislead consumers.

#### Article 8

Nothing in this Agreement shall oblige a Contracting Party to protect a designation 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.

#### Article 9

The Contracting Parties shall take all measures necessary to ensure that, in cases where spirit drinks originating in the Contracting Parties are exported and marketed outside their territories, the protected names of one Contracting Party referred to in this Agreement are not used to designate and present spirit drinks originating in the other Contracting Party.

#### Article 10

To the extent that the relevant legislation of the Contracting Parties allows, the benefit of the protection given by this Agreement shall be extended to natural and legal persons and to federations, associations and organizations of producers, traders or consumers whose headquarters are in the other Contracting Party.

#### Article 11

If the description or presentation of a spirit drink, particularly on the label or in the official or commercial documents or in advertising, is in breach of this Agreement, the Contracting Parties shall apply administrative measures or initiate legal proceedings as appropriate in order to combat unfair competition or prevent any other form of wrongful use of the protected name.

#### Article 12

This Agreement shall apply, on the one hand, to 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, to the territory of the United Mexican States.

#### Article 13

This Agreement shall not apply to spirit drinks:

- (a) that are in transit through the territory of one of the Contracting Parties; or
- (b) that originate in the territory of one of the Contracting Parties and which are consigned in small quantities between those Parties.

The following shall be considered to be small quantities:

- (a) Quantities of spirit drinks not exceeding 10 litres per traveller contained in travellers' personal baggage;
- (b) Quantities of spirit drinks not exceeding 10 litres forming part of consignments from one individual to another;
- (c) Spirit drinks forming part of the household effects of individuals moving house;
- (d) Up to 1 hectolitre of spirit drinks imported for conducting scientific and technical experiments;
- (e) Spirit drinks imported as part of the duty-free allowances of diplomatic missions, consular posts and assimilated bodies;
- (f) Spirit drinks which form part of the supplies carried on board international means of transport.

#### Article 14

1. The Contracting Parties shall each designate the bodies to be responsible for the enforcement of this Agreement.
2. The Contracting Parties shall inform one another of the names and addresses of those bodies not later than two months after this Agreement comes into force. There shall be close and direct cooperation between those bodies.



#### Article 15

1. If one of the bodies designated in accordance with Article 14 has reason to suspect that:
  - (a) a spirit drink as defined in Article 2, being or having been traded between Mexico and the European Community, does not comply with this Agreement or Community or Mexican legislation applicable to spirit drinks, and
  - (b) this non-compliance is of particular interest to the other Contracting Party and could result in administrative measures or legal proceedings being taken,

that body shall immediately inform the Commission and the relevant body or bodies of the other Contracting Party.

2. The information to be provided in accordance with paragraph 1 shall be accompanied by official, commercial or other appropriate documents; there should also be an indication of what administrative measures or legal proceedings may, if necessary, be taken. The information shall include, in particular, the following details of the spirit drink concerned:
  - (a) the producer and the person who has power of disposal over the spirit drink;
  - (b) the composition of that drink;
  - (c) the description and presentation, and
  - (d) details of the non-compliance with the rules concerning production and marketing.

#### Article 16

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, 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 took the measures referred to in paragraph 3 may take appropriate protective measures so as to permit the proper application of this Agreement.

#### Article 17

A Joint Committee shall be established, consisting of representatives of the European Community and of Mexico. It shall meet at the Parties' request and as required for the implementation of the Agreement alternately in the European Community and Mexico.

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

#### Article 18

1. The Contracting Parties may by mutual consent amend this Agreement in order to enhance the level of cooperation in the spirit drinks sector.
2. Where the legislation of one of the Contracting Parties is amended to protect designations other than those listed in the Annexes to this Agreement, these designations shall be included within a reasonable length of time following conclusion of the consultations.

#### Article 19

1. Spirit drinks which, at the time of entry into force of this Agreement, have been legally produced, designated and presented in a manner 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 the Agreement spirit drinks included therein may no longer be produced outside the limits of their regions of origin.
2. Spirit drinks produced, designated and presented in accordance with this Agreement when they are marketed and whose description and presentation ceases to conform to the Agreement following an amendment thereto may be marketed until stocks are exhausted unless otherwise agreed by the Contracting Parties.

#### Article 20

The Annexes to this Agreement shall form an integral part thereof.

#### Article 21

This Agreement is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, all these languages being equally authentic.

## Article 22

This Agreement shall enter into force on the first day of the second month after the date on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been complied with.

Either Contracting Party may terminate the Agreement by giving one year's written notice to the other Contracting Party.

ANNEX I

|                 |   |
|-----------------|---|
| 1. Rum          | Rhum de la Martinique<br>Rhum de la Guadeloupe<br>Rhum de la Réunion<br>Rhum de la Guyane<br>(These designations may also be supplemented by the expression "traditional".)<br>Ron de Málaga<br>Ron de Granada<br>Rum da Madeira  |
| 2. a) Whisky    | Scotch Whisky<br>Irish Whisky<br>Whisky español<br>(These designations may also be supplemented by the expressions "malt" or "grain".)  |
| b) Whiskey      | Irish Whiskey<br>Uisce Beatha Eireannach/Irish Whiskey<br>(These designations may also be supplemented by the expression "Pot Still".)  |
| 3. Grain spirit | Eau-de-vie de seigle de marque nationale luxembourgeoise<br>Korn<br>Kornbrand   |
| 4. Wine spirit  | Eau-de-vie de Cognac<br>Eau-de-vie des Charentes<br>Cognac<br>following<br>expressions:<br>- Fine,<br>- Grande Fine Champagne,<br>- Grande Champagne,<br>- Petite Fine Champagne,<br>- Fine Champagne,<br>- Borderies,<br>- Fins Bois,<br>- Bons Bois.)<br>Fine Bordeaux<br>Armagnac<br>Bas-Armagnac<br>Haut-Armagnac<br>Ténarèse<br>Eau-de-vie de vin de la Marne<br>Eau-de-vie de vin originaire d'Aquitaine<br>Eau-de-vie de vin de Bourgogne<br>Eau-de-vie de vin originaire du Centre-Est<br>Eau-de-vie de vin originaire de Franche-Comté |

4. Wine spirit  
(cont'd)

Eau-de-vie de vin originaire du Bugey  
Eau-de-vie de vin de Savoie  
Eau-de-vie de vin originaire des Coteaux de la Loire  
Eau-de-vie de vin des Côtes-du-Rhône  
Eau-de-vie de vin originaire de Provence  
Faugères ou eau-de-vie de Faugères  
Eau-de-vie de vin originaire du Languedoc  
Aguardente do Minho  
Aguardente do Douro  
Aguardente da Beira Interior  
Aguardente da Bairrada  
Aguardente do Oeste  
Aguardente do Ribatejo  
Aguardente do Alentejo  
Aguardente do Algarve

5. Brandy

Brandy de Jerez  
Brandy del Penedés  
Brandy italiano  
Brandy Αττικής/Brandy d'Attique  
Brandy Πελοποννήσου /Brandy du Péloponèse  
Brandy Κεντρικής Ελλάδας/Brandy de Grèce centrale  
Deutscher Weinbrand  
Wachauer Weinbrand, Weinbrand Dürnstein

6. Grape marc spirit

Eau-de-vie de marc de Champagne ou marc de Champagne  
Eau-de-vie de marc originaire d'Aquitaine  
Eau-de-vie de marc de Bourgogne  
Eau-de-vie de marc originaire du Centre-Est  
Eau-de-vie de marc originaire de Franche-Comté  
Eau-de-vie de marc originaire de Bugey  
Eau-de-vie de marc originaire de Savoie  
Marc de Bourgogne  
Marc de Savoie  
Marc d'Auvergne  
Eau-de-vie de marc originaire des Coteaux de la Loire  
Eau-de-vie de marc des Côtes du Rhône  
Eau-de-vie de marc originaire de Provence  
Eau-de-vie de marc originaire du Languedoc  
Marc d'Alsace Gewürztraminer  
Marc de Lorraine  
Bagaceira do Minho  
Bagaceira do Douro  
Bagaceira da Beira Interior  
Bagaceira da Bairrada  
Bagaceira do Oeste  
Bagaceira do Ribatejo  
Bagaceiro do Alentejo  
Bagaceira do Algarve  
Orujo gallego  
Grappa  
Grappa di Barolo

6. Grape marc spirit  
(cont'd)

Grappa piemontese ou del Piemonte  
Grappa lombarda ou di Lombardia  
Grappa trentina ou del Trentino  
Grappa friulana ou del Friuli  
Grappa veneta ou del Veneto  
Südtiroler Grappa/Grappa dell'Alto Adige  
Τσικουδιά Κρήτης /Tsikoudia de Crète  
Τσίπουρο Μακεδονίας /Tsipouro de Macédoine  
Τσίπουρο Θεσσαλίας /Tsipouro de Thessalie  
Τσίπουρο Τυρνάβου /Tsipouro de Tyrnavos  
Eau-de-vie de marc de marque nationale luxembourgeoise

7. Fruit spirit

Schwarzwälder Kirschwasser  
Schwarzwälder Himbeergeist  
Schwarzwälder Mirabellenwasser  
Schwarzwälder Williamsbirne  
Schwarzwälder Zwetschgenwasser  
Fränkisches Zwetschgenwasser  
Fränkisches Kirschwasser  
Fränkischer Obstler  
Mirabelle de Lorraine  
Kirsch d'Alsace  
Quetsch d'Alsace  
Framboise d'Alsace  
Mirabelle d'Alsace  
Kirsch de Fougerolles  
Südtiroler Williams/Williams dell'Alto Adige  
Südtiroler Aprikot ou Südtiroler  
Marille/Aprikot dell'Alto Adige ou Marille dell'Alto Adige  
Südtiroler Kirsch/Kirsch dell'Alto Adige  
Südtiroler Zwetschgeler/Zwetschgeler dell'Alto Adige  
Südtiroler Obstler/Obstler dell'Alto Adige  
Südtiroler Gravensteiner/Gravensteiner dell'Alto Adige  
Südtiroler Golden Delicious/Golden Delicious dell'Alto Adige  
Williams friulano ou del Friuli  
Sliwovitz del Veneto  
Sliwovitz del Friuli-Venezia Giulia  
Sliwovitz del Trentino-Alto Adige  
Distillato di mele trentino ou del Trentino  
Williams trentino ou del Trentino  
Sliwovitz trentino ou del Trentino  
Aprikot trentino ou del Trentino  
Medronheira do Algarve  
Medronheira do Buçaco  
Kirsch ou Kirschwasser Friulano  
Kirsch ou Kirschwasser Trentino  
Kirsch ou Kirschwasser Veneto  
Aguardente de pêra da Lousa  
Eau-de-vie de pommes de marque nationale luxembourgeoise  
Eau-de-vie de poires de marque nationale luxembourgeoise  
Eau-de-vie de kirsch de marque nationale luxembourgeoise

|                                     |   |
|-------------------------------------|---|
| 7. Fruit spirit<br>(cont'd)         | Eau-de-vie de quetsch de marque nationale luxembourgeoise<br>Eau-de-vie de mirabelle de marque nationale luxembourgeoise<br>Eau-de-vie de prunelles de marque nationale luxembourgeoise<br>Wachauer Marillenbrand   |
| 8. Cider spirit and perry spirit    | Calvados du Pays d'Auge<br>Calvados<br>Eau-de-vie de cidre de Bretagne<br>Eau-de-vie de poiré de Bretagne<br>Eau-de-vie de cidre de Normandie<br>Eau-de-vie de poiré de Normandie<br>Eau-de-vie de cidre du Maine<br>Aguardiente de sidra de Asturias<br>Eau-de-vie de poiré du Maine |
| 9. Gentian spirit                   | Bayerischer Gebirgsenzian<br>Südtiroler Enzian/Genzians dell'Alto Adige<br>Genziana trentina ou del Trentino  |
| 10. Fruit spirit drinks             | Pacharán<br>Pacharán navarro  |
| 11. Juniper-flavoured spirit drinks | Ostfriesischer Korngenever<br>Genièvre Flandre Artois<br>Hasseltse jenever<br>Balegemse jenever<br>Pékét de Wallonie<br>Steinhäger<br>Plymouth Gin<br>Gin de Mahón  |
| 12. Caraway-flavoured spirit drinks | Dansk Akvavit/Dansk Aquavit<br>Svensk Aquavit/Svensk Akvavit/Swedish Aquavit  |
| 13. Aniseed-flavoured spirit drinks | Anis español<br>Évoca anisada<br>Cazalla<br>Chinchón<br>Ojén<br>Rute<br>Ouzo/Oúço   |
| 14. Liqueur                         | Berliner Kümmel<br>Hamburger Kümmel<br>Münchener Kümmel<br>Chiemseer Klosterlikör<br>Bayerischer Kräuterlikör<br>Cassis de Dijon<br>Cassis de Beaufort<br>Irish Cream<br>Palo de Mallorca   |

|                                 |   |
|---------------------------------|---|
| <p>14. Liqueur<br/>(cont'd)</p> | <p>Ginünha portuguesa<br/>Licor de Singevergs<br/>Benediktbeurer Klosterlikör<br/>Ettaler Klosterlikör<br/>Ratafia de Champagne<br/>Ratafia catalana<br/>Anis portuguès<br/>Finnish berry/fruit liqueur<br/>Grossglockner Alpenbitter<br/>Marizzeller Magenlikör<br/>Mariazeller Jagasaftl<br/>Puchheimer Bitter<br/>Puchheimer Schlossgeist<br/>Steinfelder Magenbitter<br/>Wachauer Marüllenlikör<br/>Jägertee, Jagertee, Jagatee</p> |
| <p>15. Spirit drinks</p>        | <p>Pommeau de Bretagne<br/>Pommeau du Maine<br/>Pommeau de Normandie<br/>Svensk Punsch/Swedish Punsch</p>   |
| <p>16. Vodka</p>                | <p>Svensk Vodka/Swedish Vodka<br/>Suomalainen Vodka/Finsk Vodka/Vodka of Finland</p>  |



ANNEX II

|                    |  |
|--------------------|--|
|                    |  |
| Agave spirit drink | TEQUILA: Protected, made and classified in accordance with the laws and regulations of the United Mexican States |
| Agave spirit drink | MEZCAL: Protected, made and classified in accordance with the laws and regulations of the United Mexican States  |

**Exchange of letters concerning the Agreement between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks**

Letter No 1

Brussels, .....

Sir,

I have the honour to refer to the Agreement between the European Community and the United Mexican States concerning the mutual recognition and protection of designations for spirit drinks.

In this connection, I wish to confirm the following:

Notwithstanding the provisions of Article 4.2, the United Mexican States and the Community have agreed that the protection of the designation of the alcoholic spirit 'Tequila' referred to in Annex II to the Agreement shall not prevent the use in the Kingdom of Spain of the designation "Tequila" during a transitional period of one year, as of the entry into force of the Agreement provided that local producers undertake not to increase current output.

For the designated spirit drink "Tequila" produced in Spain, the provisions set down in Article 19(1), first sentence, of the Agreement will take effect from the expiry of the transitional period of one year.

I should be obliged if you would confirm that the Government of the United Mexican States is in agreement with the contents of this letter.

Please accept Sir, the assurance of my highest consideration,

For the Council of the European Union

**Exchange of letters concerning the Agreement between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks**

Letter No 2

Brussels, .....

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

"I have the honour to refer to the Agreement between the European Community and the United Mexican States concerning the mutual recognition and protection of designations for spirit drinks.

In this connection, I wish to confirm the following:

Notwithstanding the provisions of Article 4.2, the United Mexican States and the Community have agreed that the protection of the designation of the alcoholic spirit "Tequila" referred to in Annex II to the Agreement shall not prevent the use in the Kingdom of Spain of the designation "Tequila" during a transitional period of one year, as of the entry into force of the Agreement provided that local producers undertake not to increase current output.

For the designated spirit drink "Tequila" produced in Spain, the provisions set down in Article 19(1), first sentence, of the Agreement, will take effect from the expiry of the transitional period of one year.

I should be obliged if you would confirm that the Government of the United Mexican States is in agreement with the contents of this letter."

I have the honour to confirm that my Government is in agreement with the contents of this letter.

Please accept, Sir, the assurance of my highest consideration,

For the Government of the United Mexican States

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