

No. 34345

**EUROPEAN COMMUNITY
and
MEXICO**

Agreement on the mutual recognition and protection of designations for spirit drinks (with annexes and exchange of letters). Signed at Brussels on 27 May 1997

Authentic texts: Spanish, Danish, German, Greek, English, French, Italian, Dutch, Portuguese, Finnish and Swedish.

Registered by the European Community on 9 February 1998.

**COMMUNAUTÉ EUROPÉENNE
et
MEXIQUE**

Accord concernant la reconnaissance mutuelle et la protection des dénominations dans le secteur des boissons spiritueuses (avec annexes et échange de lettres). Signé à Bruxelles le 27 mai 1997

Textes authentiques : espagnol, danois, allemand, grec, anglais, français, italien, néerlandais, portugais, finnois et suédois.

Enregistré par la Communauté européenne le 9 février 1998.

AGREEMENT¹ BETWEEN THE EUROPEAN COMMUNITY AND
THE UNITED MEXICAN STATES ON THE MUTUAL RECOGNITION
AND PROTECTION OF DESIGNATIONS FOR SPIRIT
DRINKS

THE EUROPEAN COMMUNITY, hereinafter called "the Community",

of the one part, and

THE UNITED MEXICAN STATES,

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.²

¹ Came into force on 1 July 1997 by notification, in accordance with article 22.

² United Nations, *Treaty Series*, vol. 1503, p. 3.

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 Community, the designations listed in Annex I;
- (b) as regards spirit drinks originating in the United Mexican States, the designations listed in Annex II.

ARTICLE 4

1. In the United Mexican States, 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 the United Mexican States, and
 - are reserved exclusively to the spirits originating in the United Mexican States 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,¹ the Contracting Parties shall take all the necessary measures, in accordance with this Agreement, to ensure reciprocal protection of the designations referred to in Article 3 and used to refer to 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 a designation to designate spirit drinks not originating in the place indicated by the designation in question or in the place where the designation in question is traditionally used.
4. The Contracting Parties will 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.

¹ United Nations, *Treaty Series*, vols. 1867 to 1869, No. I-31874.

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 other analogous expressions, 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 will 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, provided that such name is not 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 protected 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 territory, 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 Community¹ 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) which are in transit through the territory of one of the Contracting Parties; or
- (b) which originate in the territory of one of the Contracting Parties and are consigned in small quantities between them.

¹United Nations, *Treaty Series*, vol. 298, p. 3 (English translation); vol. 294, p. 3 (authentic French text); vol. 295, p. 2 (authentic German text); vol. 296, p. 2 (authentic Italian text); vol. 297, p. 2 (authentic Dutch text); vol. 1376, p. 138 (authentic Danish text); vol. 1377, p. 6 (authentic English text); vol. 1378, p. 6 (authentic Irish text); vol. 1383, p. 146 (authentic Greek text); vol. 1452, p. 306 (authentic Portuguese text), and vol. 1453, p. 332 (authentic Spanish text).

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 one 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 the said bodies not later than two months after this Agreement comes into force. There shall be close and direct cooperation between the said bodies.

ARTICLE 15

1. If one of the bodies referred to in Article 14 has reason to suspect that:
 - (a) a spirit drink as defined in Article 2, being or having been traded between the United Mexican States and the 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, as well as 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 stocks 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 Community and of the United Mexican States. It shall meet at the request of one of the Contracting Parties and in accordance with the requirements for implementing the Agreement alternately in the Community and the United Mexican States.

The Joint Committee shall ensure 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, but which are 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 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 but whose description and presentation ceases to conform to this 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.

[For the testimonium and signatures, see p. 358 of this volume.]

ANNEX I¹ANNEX II¹

¹Not published herein in accordance with article 12 (2) of the General Assembly regulations to give effect to Article 102 of the Charter of the United Nations, as amended.

Hecho en Bruselas, el veintisiete de mayo de mil novecientos noventa y siete.

Udfærdiget i Bruxelles den syvogtyvende maj nitten hundrede og syv og halvfems.

Geschehen zu Brüssel am siebenundzwanzigsten Mai
neunzehnhundertsiebenundneunzig.

Έγινε στις Βρυξέλλες, στις είκοσι επτά Μαΐου χίλια εννιακόσια ενενήντα επτά
τέσσερα.

Done at Brussels on the twenty-seventh day of May in the year one thousand
nine hundred and ninety-seven.

Fait à Bruxelles, le vingt-sept mai mil neuf cent quatre-vingt-dix-sept.

Fatto a Bruxelles, addì ventisette maggio millenovecentonovantasette.

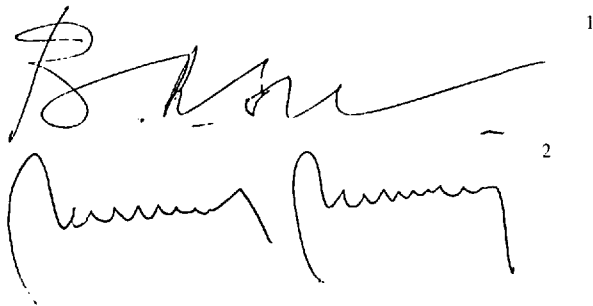
Gedaan te Brussel, de zevenentwintigste mei negentienhonderd zevenennegentig.

Feito em Bruxelas, em vinte e sete de Maio de mil novecentos e noventa e sete.

Tehty Brysselissä kahdentenkymmenentenäseitsemäntenä päivänä toukokuuta
vuonna tuhatyhdeksänsataayhdeksänkymmentäseitsemän.

Som skedde i Bryssel den tjugosjunde maj nittonhundra nittiosju.

Por la Comunidad Europea
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Για την Ευρωπαϊκή Κοινότητα
For the European Community
Pour la Communauté européenne
Per la Comunità europea
Voor de Europese Gemeenschap
Pela Comunidade Europeia
Euroopan yhteisön puolesta
På Europeiska gemenskapens vägnar



Por el Gobierno de los Estados Unidos Mexicanos

[For the Government of the United Mexican States — Pour le Gouvernement des Etats-Unis mexicains.]



¹ Bernard R. Bot.

² Manuel Marín.

³ Herminio Blanco.

EXCHANGE OF LETTERS
REGARDING THE AGREEMENT BETWEEN
THE EUROPEAN COMMUNITY AND THE UNITED MEXICAN STATES
ON THE MUTUAL RECOGNITION
AND PROTECTION OF DESIGNATIONS
FOR SPIRIT DRINKS

I

Sir,

I have the honour to refer to the Agreement between the European Community and the United Mexican States on 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 spirit drink "Tequila" referred to in Annex II to the Agreement will not prevent the use in the Kingdom of Spain of the designation "Tequila" during a transitional period of one year, as from 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 shall 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,

II

Sir,

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

[See letter I]

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,

Hecho en Bruselas, el veintisiete de mayo de mil novecientos noventa y siete.

Udfærdiget i Bruxelles den syvogtyvende maj nitten hundrede og syv og halvfems.

Geschehen zu Brüssel am siebenundzwanzigsten Mai
neunzehnhundertsiebenundneunzig.

Έγινε στις Βρυξέλλες, στις είκοσι εφτά Μαΐου χίλια εννιακόσια ενενήντα επτά τέσσερα.

Done at Brussels on the twenty-seventh day of May in the year one thousand
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Fait à Bruxelles, le vingt-sept mai mil neuf cent quatre-vingt-dix-sept.

Fatto a Bruxelles, addì ventisette maggio millenovecentonovantasette.

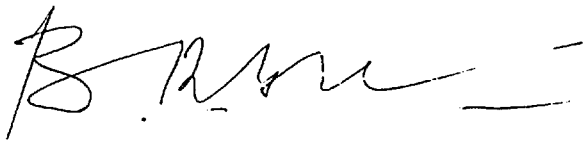
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Tehty Brysselissä kahdentenäkymmenentenäseitsemäntenä päivänä toukokuuta
vuonna tuhatyhdeksänsataayhdeksänkymmentäseitsemän.

Som skedde i Bryssel den tjugosjunde maj nittonhundra nittiosju.

Por la Comunidad Europea
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Για την Ευρωπαϊκή Κοινότητα
For the European Community
Pour la Communauté européenne
Per la Comunità europea
Voor de Europese Gemeenschap
Pela Comunidade Europeia
Euroopan yhteisön puolesta
På Europeiska gemenskapens vägnar

A handwritten signature in black ink, appearing to read "B. Bot".

1

A handwritten signature in black ink, appearing to read "Manuel Marín".

2

Por el Gobierno de los Estados Unidos Mexicanos

[For the Government of the United Mexican States — Pour le Gouvernement des Etats-Unis mexicains.]

A handwritten signature in black ink, appearing to read "Herminio Blanco".

3

¹ Bernard R. Bot.

² Manuel Marín.

³ Herminio Blanco.