
**Council for Trade-Related Aspects
of Intellectual Property Rights
Special Session**

**MULTILATERAL SYSTEM OF NOTIFICATION AND REGISTRATION OF
GEOGRAPHICAL INDICATIONS FOR WINES AND SPIRITS**

Report by the Chairman, Ambassador Darlington Mwape (Zambia)

1. This report on the negotiations on the establishment of a multilateral system of notification and registration ("Register") of geographical indications (GIs) for wines and spirits is submitted on my own responsibility and is without prejudice to the positions of delegations and to the outcome of the negotiations.

I. STATUS OF WORK

2. On 4 March 2010, the 25th formal meeting of the Special Session of the Council for TRIPS confirmed my appointment as Chairman in replacement of Ambassador C. Trevor Clarke (Barbados), who had relinquished his post at the end of November 2009. From 8 December 2009 to the date of my appointment, Ambassador Karen Tan (Singapore) chaired the Special Session on a *pro tempore* basis.

3. Since taking up his post on 29 October 2008, Ambassador Trevor Clarke had, at the request of Members, intensified the work of the Special Session, culminating in a report to the Trade Negotiations Committee (TNC) in document TN/IP/19, dated 25 November 2009 (for more details, see Annex 1 to this report). This report also refers, for certain aspects such as notification and registration, to a report made by his predecessor, Ambassador Manzoor Ahmad (Pakistan) in document TN/IP/18, dated 9 June 2008 (see Annex 2 to this report). Ambassador Karen Tan gave an oral report of the informal consultations she had held in the interim period.¹

4. At my first formal meeting of 4 March 2010, I made it clear at the outset that the specific negotiating mandate of the Special Session was limited to the negotiations of a Register of GIs for wines and spirits, and that other TRIPS-related issues were being handled in another context and at a different level. I said at that meeting that, while I may not be able to prevent delegations from making linkages, my task as Chair will be to remind Members of the limited mandate of the Special Session.

5. The three main proposals that have been discussed remain on the table.²

¹ To be reflected in the minutes of the 4 March formal meeting. In the meantime, see http://www.wto.org/english/news_e/news10_e/trip_04mar10_e.htm.

² Document TN/IP/W/8, tabled in April 2003, contains the proposal by Hong Kong, China. Document TN/IP/W/10, tabled in March 2005, contains the "joint proposal" and has been revised to reflect additional co-sponsors. The list of Members currently co-sponsoring TN/IP/W/10/Rev.2, dated 24 July 2008, is as follows: Argentina, Australia, Canada, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Korea, Mexico, New Zealand, Nicaragua, Paraguay, South Africa, Chinese Taipei and the United States ("Joint Proposal Group"). Document TN/C/W/52, dated 19 July 2008, and its

6. Tough, but useful technical discussions have taken place in the past years, more recently under Ambassador Clarke's chairmanship, around the three clusters of issues identified in the reports of my predecessors, i.e.:

- (1) legal effects/consequences of registration and participation, where profound differences remain;
- (2) notification and registration, where a fair amount of technical work has been done, but where further work is clearly required as positions on these matters are linked to the resolution of the two key issues in cluster 1 above; and
- (3) other issues, such as fees, costs, administrative and other burdens, in particular for developing countries and least-developed countries, and special and differential treatment, which have been less fully discussed.

7. In order to focus discussion on these clusters, and to provide a structure for discussions that went beyond having delegations simply expressing positions on their contrasting proposals, Ambassador Clarke circulated a list of four questions on 2 October 2009:

- (i) What legal obligations would be acceptable for the Register to facilitate the protection of geographical indications for wines and spirits, as mandated by Article 23.4 of the TRIPS Agreement?
- (ii) When making decisions regarding the registration and protection of trademarks and geographical indications, what significance and weight should national authorities give to the information on the Register?
- (iii) Are there any options regarding participation, other than voluntary and mandatory participation? If so, what criteria could be envisaged?
- (iv) What form could special and differential treatment take with regard to the Register?

8. I understand that delegations had excellent discussions on the basis of this list of questions. While this discussion did not fill the main gaps, it certainly succeeded in focusing Members' discussions on the critical issues. It is my impression that thanks to the clarifications, case studies and presentations put forward by delegations in response to these questions, there is now much more technical information on record regarding the operation and implementation of different proposals in the national legal systems of Members. This kind of technical discussion probably gave Ambassador Clarke some material to make suggestions on the way forward, including five guiding principles for future work in paragraph 16 of TN/IP/19. The five "guiding principles" are:

- (i) The purpose of the Register is to facilitate, not to increase, the protection of GIs for wines and spirits.
- (ii) The Register should be useful and meaningful to both notifying Members and consulting Members.

Addenda 1-3 contains a proposal for "Draft Modalities for TRIPS Related Issues", co-sponsored by Albania, Brazil, China, Colombia, Croatia, Ecuador, the European Communities, Georgia, Iceland, India, Indonesia, the Kyrgyz Republic, Liechtenstein, Moldova, the Former Yugoslav Republic of Macedonia, Pakistan, Peru, Sri Lanka, Switzerland, Thailand, Turkey, the ACP Group and the African Group. Under the sub-heading "GI-Register: draft Modality text", paras. 1-3 of document TN/C/W/52 specifically address the issues relating to the Register of geographical indications for wines and spirits. Para. 9 of TN/C/W/52 refers to special and differential treatment.

- (iii) The territorial nature of intellectual property rights should be preserved.
- (iv) The Register should not impose undue financial and administrative burdens on Members.
- (v) Special and differential treatment should be precise, effective and operational.

9. My understanding is that TN/IP/19 has been well received by Members as a fair and balanced reflection of the work undertaken, and of the current status of issues. On the way forward, there may be some nuanced views on Ambassador Clarke's assessment of the main remaining challenges, e.g. on participation (should it be voluntary, mandatory or conditional?). On the most difficult issue of legal effects/consequences of registration, thanks to the willingness of delegations to give down-to-earth clarifications and descriptions of how a proposal could in practice be implemented in domestic systems – the so-called "realities" - my predecessor felt "that negotiating efforts could find an acceptable formulation for an obligation capturing the realities highlighted by Members regarding how domestic authorities would treat information they have derived from a consultation of the Register, and that further negotiations are required to determine guidelines for such an obligation".

10. In respect of the guiding principles in paragraph 16 of TN/IP/19, I am fully aware of delegations' positions. All delegations agree that they are a useful tool for our work, but some think that they should not serve as the basis for negotiations, nor as an excuse to continue rhetoric debates on well-known concepts such as "multilateral", or "to facilitate".

II. FUTURE WORK

11. With all this in mind, I suggested at my first formal meeting that we build on what has been undertaken instead of reinventing the wheel. I would, therefore, suggest the "3-4-5" approach, namely:

- (a) we continue to structure our work around the three clusters identified by my predecessors;
- (b) while doing that, we continue to use Trevor Clarke's list of four questions on legal effects, participation and special and differential treatment;
- (c) while discussing each issue, we should try to see how our concerns could be reconciled:
 - in the light of continuing explanations as to how Members would actually implement different options within their national systems,
 - and bearing in mind the five guiding principles in TN/IP/19, without negotiating on those principles as such and recognizing that delegations may have some reservations on certain aspects of the principles.

12. Regarding paragraph 11(b) above, I do not exclude the possibility to put forward more questions as we progress in the discussions in order to keep the negotiations on the right track.

13. My impression from my first formal meeting is that the issues of legal effects/consequences of registration and participation are the stumbling block and that their resolution, in particular regarding legal effects/consequences of registration, will help progress in the other areas, including special and differential treatment. It is my sense that there is a genuine desire to further progress in the negotiations, which is illustrated by some delegations continuing to give useful clarifications and

examples of how the implementation of the proposals on the table would be implemented at their domestic level, and others expressing willingness to make similar contributions or further supplement them.

14. On the whole, the difficulty we are facing is a lack of convergence on a single textual basis for negotiations, which reflects both the differences in Members' positions and the different nature of the proposals on the table.³ Therefore, the "3-4-5" approach should help progress work towards *one* text on the basis of which all Members can agree to continue the negotiations. I believe that such a text is possible, and that exploring the flexibilities that already exist or could be envisaged in Members' national systems is one important step towards that objective. One possibility would be to construct at a certain point in time – strictly in pace with the overall process – a text from elements emerging from the delegations themselves.

15. Technical work should focus on the substantive issues, including in particular the question of the implications of a register entry, while using and building on the foundation established by Ambassador Clarke's work. There could be more exchange of technical information about how national trademark and GI authorities presently operate and how their operation would be affected by different proposed ways of "taking account" of the information on the register.

16. A formal meeting of the Special Session has been tentatively scheduled for 10 June 2010. I do not, however, exclude consultations and meetings in various formats before that time in pace with the overall process.

³ While two proposals, TN/IP/W/8 by Hong Kong, China and TN/IP/W/10/Rev.2 by the Joint Proposal Group are in legal text form, the text in TN/C/W/52 is a modalities proposal.

ANNEX 1

**WORLD TRADE
ORGANIZATION**

TN/IP/19
25 November 2009

(09-5943)

**Council for Trade-Related Aspects
of Intellectual Property Rights
Special Session**

**MULTILATERAL SYSTEM OF NOTIFICATION AND REGISTRATION OF
GEOGRAPHICAL INDICATIONS FOR WINES AND SPIRITS**

Report by the Chairman, Ambassador C. Trevor Clarke (Barbados)

1. This report on the negotiations on the establishment of a multilateral system of notification and registration ("Register") of geographical indications for wines and spirits is submitted on my own responsibility and is without prejudice to the position of any delegation and to the outcome of the negotiations.
2. On 29 October 2008, the twentieth formal meeting of the Special Session of the Council for TRIPS confirmed my appointment as Chairman in replacement of Ambassador Manzoor Ahmad (Pakistan), who had relinquished his post at the end of July 2008. The report made by my predecessor in document TN/IP/18, dated 9 June 2008, remains valid in many respects. This new report focuses on the work done since I have taken up my task as Chairman of the Special Session.

PART A – WORK UNDERTAKEN

3. As reported on previous occasions, three formal proposals have been tabled. Document TN/IP/W/8, tabled in April 2003, contains the proposal by Hong Kong, China and remains unchanged. Document TN/IP/W/10, tabled in March 2005, contains the "joint proposal" and has been revised to reflect additional co-sponsors. The list of Members currently co-sponsoring TN/IP/W/10/Rev.2, dated 24 July 2008, is as follows: Argentina, Australia, Canada, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Korea, Mexico, New Zealand, Nicaragua, Paraguay, South Africa, Chinese Taipei and the United States ("Joint Proposal Group"). Document TN/C/W/52, dated 19 July 2008, and its Addenda 1-3 contains a proposal for "Draft Modalities for TRIPS Related Issues", co-sponsored by Albania, Brazil, China, Colombia, Croatia, Ecuador, the European Communities, Georgia, Iceland, India, Indonesia, the Kyrgyz Republic, Liechtenstein, Moldova, the Former Yugoslav Republic of Macedonia, Pakistan, Peru, Sri Lanka, Switzerland, Thailand, Turkey, the ACP Group and the African Group. Under the sub-heading "GI-Register: draft Modality text", paragraphs 1-3 of document TN/C/W/52 specifically address the issues relating to the Register of geographical indications for wines and spirits. Paragraph 9 of TN/C/W/52 refers to special and differential treatment.
4. At the meeting of 29 October 2008 Members called for an "intensification of work" of the Special Session. Following that session I held a series of informal meetings and consultations in various formats during which useful clarifications were made, in particular by the European

Communities in respect of its earlier proposals. At an open-ended informal consultation on 1 December 2008 the European Communities circulated a statement that paragraphs 1-3 of document TN/C/W/52 superseded all previous EC proposals, i.e. TN/IP/W/11 of 2005 and the so-called "new thinking" of November 2007. On 4 December, several Members of the Joint Proposal Group circulated a list containing 64 questions to the European Communities and the other co-sponsors of TN/C/W/52. Singapore also circulated a list of questions. At an informal meeting on 4 and 5 December, as well as at the formal meeting on 5 March 2009, there were intensive exchanges of questions and replies on the basis of the questions posed.¹ Speaking on behalf of the proponents of TN/C/W/52, the European Communities grouped its answers into the three categories identified by my predecessor in his report in document TN/IP/18, namely:

- (a) the two key issues of consequences/legal effects of registration and participation where fundamental differences remain;
- (b) issues of notification and registration; and
- (c) issues such as fees, costs and administrative burdens, in particular for developing and least-developed country Members, and special and differential treatment.

5. In 2009 I held four formal meetings, on 5 March, 10 June, 23 (continued on 28) October², and 27 November. Between those formal meetings, I held informal consultations, including open-ended meetings for transparency purposes. At the March and June meetings, discussions were structured around the three categories or clusters of issues mentioned above in paragraph 4. In order to move from a repetition of positions and proposals to a discussion on the substantive issues and negotiations, I suggested that delegations focus on a list of four questions that I posed on my own responsibility. The four questions are:

- (i) What legal obligations would be acceptable for the Register to facilitate the protection of geographical indications for wines and spirits, as mandated by Article 23.4 of the TRIPS Agreement?
- (ii) When making decisions regarding the registration and protection of trademarks and geographical indications, what significance and weight should national authorities give to the information on the Register?
- (iii) Are there any options regarding participation, other than voluntary and mandatory participation? If so, what criteria could be envisaged?
- (iv) What form could special and differential treatment take with regard to the Register?

6. In my view the substantive discussions on the basis of this list of questions were extremely useful in focusing Members' interventions on substantive questions, particularly in the areas of participation and consequences/legal effects of registration. Several delegations usefully explained what the implementation of the Register proposals would entail in their current domestic systems. The point has been made that the issue of participation is linked to the consequences/legal effects of registration.

7. This report does not describe the range of views that have been expressed on issues of linkage between work in the Special Session and work on the relationship between the TRIPS Agreement and the Convention on Biological Diversity and on GI extension, including in regard to the coverage of

¹ A record of the exchanges at the meeting on 5 March 2009 can be found in document TN/IP/M/21 of 28 May 2009.

² A record of the exchanges at the meetings on 10 June and 23 and 28 October 2009 can be found in documents TN/IP/M/22 and TN/IP/M/23, respectively.

the Register and in regard to procedural parallelism between these three TRIPS issues. This is because the issues of GI extension and TRIPS/CBD relate to matters which go beyond the mandate of the Special Session, including its limitation to GIs for wines and spirits. I repeatedly made the point that the mandate of the TRIPS Special Session is limited in that way.

PART B – STATUS OF ISSUES

8. The three proposals by Members currently on the table are the proposal by Hong Kong, China, the joint proposal and the proposal on modalities.³ With respect to the status of issues, the work undertaken since my predecessor's report has continued to be structured around the three categories of elements he had identified.

(a) Consequences/Legal Effects of Registration and Participation

With respect to the first category, the issues of consequences/legal effects of registration and participation remain the central questions of this negotiation where fundamental differences of view continue to exist among Members. The detailed discussion of the new position in paragraphs 1-3 of TN/C/W/52 as a modalities proposal vis-à-vis the two proposed legal texts in TN/IP/W/8 and TN/IP/W/10/Rev.2, as well as Members' responses to questions (i)-(iii) of my list of questions, have further deepened the understanding of where these differences lie.

With respect to the consequences/legal effects of registration, in my view there seems to be scope for convergence on the expectation that consulting the information on the Register would include taking that information into account "when making decisions regarding registration and protection of trademarks and geographical indications"⁴ in the relevant domestic procedures. Differences remain as to what significance and weight should be given to the information on the Register. With respect to participation, while Members have discussed different ideas in this regard, Members' views remain unchanged.

(b) Notification and Registration

With respect to the second category, the issues of notification and registration, a considerable amount of detailed work has been done in the past. The assessment of points of convergence and divergence on these issues reflected in TN/IP/18, in particular paragraphs 4 and 12–20, remains valid.

(c) Other Issues

With respect to the third category, the issues of fees, costs and administrative burdens, in particular for developing and least-developed country Members, and special and differential treatment depend substantially on the key policy choices to be made, in particular on the questions of participation and consequences/legal effects.

Of those issues, Members discussed special and differential treatment in response to question (iv) of my list. Some developing country Members emphasized the need for special and differential treatment and mentioned transitional periods and registration fees as examples. Members held on to their long-standing positions, namely on the one hand, that special and differential treatment was embodied in the proposed voluntary nature of the Register and, on the other hand, that devising rules on special and differential treatment

³ The texts of the three proposals can be found in documents TN/IP/W/8, TN/IP/W/10/Rev.2 and in paragraphs 1-3 of TN/C/W/52, respectively.

⁴ This text appears both in TN/IP/W/10/Rev.2, paragraph 5 and in TN/C/W/52, paragraph 2.

would best be left for discussions at a later stage after the main elements of the Register had been agreed.

PART C – THE WAY FORWARD

9. The mandate for the negotiations on the system of notification and registration of geographical indications for wines and spirits is contained in Article 23.4 of the TRIPS Agreement and the first sentence of paragraph 18 of the Doha Ministerial Declaration. Article 23.4 provides as follows:

"In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system."

The first sentence of paragraph 18 of the Doha Ministerial Declaration indicates that the negotiations on the Register are not limited to GIs for wines, but also extend to GIs for spirits.

10. Several Members have called for a greater focus on the mandate. I therefore revisit the two crucial issues of participation and consequences/legal effects of registration in light of the mandate to further examine the elements thereof that give rise to the different positions in critical areas of the negotiations. The purpose of this examination is to make suggestions which may be capable of moving the negotiations forward when Members feel the time is right.

Participation

11. With respect to the issue of whether participation in the system should be voluntary or mandatory, some Members interpret the reference in the mandate to "*a multilateral system*" to mean that the system should apply to all Members. Other Members interpret the words "*those Members participating in the system*" to mean that not all Members are expected to participate.

12. There are several areas of WTO negotiations where some Members are excluded from certain obligations for a variety of reasons. It is therefore my view that the use of the words "*a multilateral system*" does not necessarily mean that participation must be mandatory for all Members. It is also my view that the formulation "*those Members participating in the system*" does not necessarily mean that participation must be voluntary. Against this background, I would encourage Members to continue searching for an acceptable solution that would determine a participation of Members in the Register that renders it a useful and meaningful tool in line with its purpose to facilitate protection. If the system of notification and registration is to have some meaning and significance, as Members seem to accept, then I would propose that some criteria or some other approach be determined to identify Members for participation.

Consequences/Legal Effects of Registration

13. With respect to the consequences/legal effects of registration, all Members seem to accept an obligation to consult the information on the Register. Members also seem to be willing to take the information on the Register into account "when making decisions regarding registration and protection of trademarks and geographical indications"⁵ under their national procedures. However, views differ significantly as to how such information should be taken into account, what weight and significance should be given to it, and whether there should be a specific legal obligation to take the information into account. While some Members are of the view that the mere obligation to consult

⁵ This text appears both in TN/IP/W/10/Rev.2, paragraph 5 and in TN/C/W/52, paragraph 2.

the Register is not enough to ensure meaningful facilitation of protection of wine and spirit GIs, others are concerned about extra-territorial effects of GI protection.

14. A number of Members have explained how the proposals on the table would technically be implemented in their domestic legal systems. In the course of these explanations, some Members have indicated that implementing an obligation to consult the Register in their domestic systems would in fact ensure at the same time that the information was duly taken into account and given the appropriate weight in their domestic procedures. Other Members have expressed the view that it would be necessary to agree minimum guidelines as to how the information in the Register would be taken into account and what weight would be appropriate.

15. In light of the above, I feel that negotiating efforts could find an acceptable formulation for an obligation capturing the realities highlighted by Members regarding how domestic authorities would treat information they have derived from a consultation of the Register, and that further negotiations are required to determine guidelines for such an obligation.

Guiding Principles for Future Work

16. In order to advance these negotiations, I suggest that some broad acceptance of "Guiding Principles" would be helpful. Building on the contributions of various Members, I therefore propose that future work should be guided by the following principles, it being understood that this is without prejudice to the position of any delegation and to the outcome of the negotiations:

- (i) The purpose of the Register is to facilitate, not to increase, the protection of GIs for wines and spirits.

The establishment of the Register is intended to facilitate, rather than to increase, the level of substantive protection, which exists under the TRIPS Agreement. At the same time, it seems reasonable to expect that "facilitation" would make obtaining such protection easier. It is also clear that the Register is intended to facilitate protection of wine and spirit GIs, not only the examination process. In my view, Members' negotiations should focus on the crucial question of what are acceptable means of facilitating achievement of the existing level of protection, while ensuring that the substantive level of protection remains the same.

- (ii) The Register should be useful and meaningful to both notifying Members and consulting Members.

The Register should be an accurate, reliable and authentic source of information. The primary responsibility for providing such information to the Register should rest with the notifying Member. It should also be explored how the nature and quality of the information on the system may influence the manner in which Members may take this information into account in their domestic legal systems.

- (iii) The territorial nature of intellectual property rights should be preserved.

The territorial nature of intellectual property rights embodies the accepted view that intellectual property rights are valid only in the territory for which they have been established or granted. While this concept is not questioned by Members in these negotiations, the question is whether and under what circumstances Country A is prepared to give recognition to a protected GI from Country B, or recognize the facts that gave rise to such protection in Country B. Such recognition of legal or factual elements from

another jurisdiction is practised under various international agreements and is the consequence of a sovereign decision by countries to do so.

- (iv) The Register should not impose undue financial and administrative burdens on Members.

With respect to financial and administrative burdens, Members seem to accept that *some* financial and administrative burden may be necessary to fulfil the mandate, but that it should as much as possible be proportionate to the use and benefits of the Register.

- (v) Special and differential treatment should be precise, effective and operational.

Special and differential treatment should be provided through precise and effective provisions targeting developing and least-developed countries, including those that wish to benefit from participating in the system.

ANNEX 2

**WORLD TRADE
ORGANIZATION**

TN/IP/18
9 June 2008

(08-2700)

**Council for Trade-Related Aspects
of Intellectual Property Rights
Special Session**

**MULTILATERAL SYSTEM OF NOTIFICATION AND REGISTRATION OF
GEOGRAPHICAL INDICATIONS FOR WINES AND SPIRITS**

Report by the Chairman

1. This report on the negotiations on the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits is submitted on my own responsibility and is without prejudice to the position of any delegation and to the outcome of the negotiations.
2. The mandate of the Special Session is set out in the first sentence of paragraph 18 of the Doha Ministerial Declaration, which reads as follows:

"With a view to completing the work started in the Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS) on the implementation of Article 23.4, we agree to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference."

The mandate refers to the work already under way in the Council for TRIPS on the basis of Article 23.4 of the TRIPS Agreement, which provides that:

"[i]n order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system."

In the Hong Kong Ministerial Declaration, Ministers took note of a progress report on the negotiations in the Special Session and agreed to intensify them in order to complete them within the overall time-frame for the conclusion of the negotiations that were foreseen in the Doha Ministerial Declaration (WT/MIN(05)/DEC, paragraph 29).

3. As reported on previous occasions, three formal proposals have been tabled. Document TN/IP/W/12 sets out side by side the elements of the three proposals tabled that, in the view of the proponents of each proposal, are relevant to the mandate of the Special Session: Hong Kong, China's proposal, contained in Annex A of TN/IP/W/8; the Joint Proposal of Argentina, Australia, Canada, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Mexico,

New Zealand, Nicaragua, Paraguay, Chinese Taipei and the United States ("Joint Proposal Group") in TN/IP/W/10 and Addenda 1, 2 and 3; and the European Communities' proposal, contained in the Annex set out in TN/IP/W/11. More recently the European Communities has shared with the participants in the Special Session new thinking which it has presented as an effort to narrow the gap; the references to the position of the European Communities in this report are based on this new thinking. A detailed compilation, prepared by the Secretariat, of the points raised and views expressed on the proposals can be found in document TN/IP/W/12/Add.1 and Add.1/Corr.1 of May 2007.¹

4. The elements of a registration system that have been considered in the work can be put into three categories:

- (a) First, there are the two key issues of participation and the consequences/legal effects of registrations, where there continue to be fundamental differences, even if there has been some movement in the past months. In regard to these elements, I reproduce below the position of participants as reflected in the proposals submitted and discussions in the Special Session.
- (b) There is a second category of elements on which a fair amount of detailed work has been done. These are the areas of notification and registration. While most of this work is not all that recent and further work is clearly required, in particular because positions on these matters are linked to the treatment of participation and consequences/legal effects, my tentative appreciation of the points of convergence and divergence can be found below.
- (c) Third, there are a number of other elements which depend substantially on the key policy choices to be made, in particular on the questions of participation and consequences/legal effects, and which have thus been less fully discussed so far. These include such matters as: fees, costs, and administrative burdens, particularly as they impact on developing and least developed country Members, and special and differential treatment; as well as the duration of registrations and procedures for their modification and withdrawal; arrangements for review; and contact points. These are points that need further discussion.

5. No agreement has yet been reached on the legal form of the eventual outcome and on the institutional arrangements for its management and servicing. On the former question, the suggestions on the table include a TRIPS Council decision and the addition of an annex to the TRIPS Agreement through an amendment to it. On the latter question, delegations have not excluded the possibility of inviting the WIPO secretariat to play a role.

6. There are different views on whether the work of the Special Session should be addressed in the context of the modalities decision. Some Members believe that the issue of the GI register should be part of the horizontal process in order to have modality texts that reflect Ministerial agreement on the key parameters for negotiating a final draft legal text as part of the Single Undertaking. Some other Members believe that no further guidance is necessary since the existing mandate is sufficiently clear and technical work can and should be pursued intensively on this basis in order to fulfil the Doha mandate to which they remain committed.

7. This report does not describe the range of views that have been expressed on issues of linkage between work in the Special Session and work on the relationship between the TRIPS Agreement and the Convention on Biological Diversity and on GI extension, including in regard to the coverage of

¹ A record of the most recent expression of the positions and views of Members will be circulated in document TN/IP/M/19 (minutes of the Special Session's meeting of 29 April 2008).

the GI register and in regard to procedural parallelism between these three TRIPS issues. This is because the issues of GI extension and TRIPS/CBD relate to matters which go beyond the mandate of the Special Session, including its limitation to GIs for wines and spirits.

Participation

8. The Joint Proposal Group has proposed:

"In accordance with paragraph 4 of Article 23 of the TRIPS Agreement, participation in the System established by the Decision is strictly voluntary, and no Member shall be required to participate.

In order to participate in the System, a Member shall make a written notification to the WTO Secretariat of its intention to participate."

9. The European Communities has proposed:

"In accordance with paragraph 4 of Article 23 of the TRIPS Agreement, the system is multilateral, that is applicable to all WTO Members.

Participating Members are Members above a certain share in world trade."

Under the EC approach, all WTO Members would be entitled to submit notifications under the system.

10. Hong Kong, China has proposed:

"Participation in the system is voluntary which means that:

- (a) Members should be free to participate and notify GIs protected in their territories.
- (b) The obligation to give legal effect to registrations under the system will only be binding upon Members choosing to participate in the system."

Hong Kong, China has also proposed that "the question of scope of participation should be revisited as part of the review" of the notification and registration system that it is proposing should be held "after [four] years from establishment of the system".

11. The range of positions taken in regard to whether and, if so, in what way registration should have consequences/legal effects in non-participating Members is described in paragraphs 25-28 of this report.

Notification

12. On the notification by Members of GIs for inclusion in the register, earlier discussions indicated a fair measure of common ground on certain aspects, but significant remaining differences on some others. With regard to the content of notifications, there seemed to be significant common ground among Members that the notifying Member would be required to:

- (a) specify the name of the notifying Member;
- (b) specify whether the good for which the geographical indication is used is a wine or a spirit;

- (c) identify the geographical indication as it appears on or is protected for the wine or spirit in the notifying Member's territory;
- (d) where the geographical indication is in characters other than Latin characters, include a transliteration into Latin characters using the phonetics of the language in which the notification is made;
- (e) specify the territory of the notifying Member, or the region or locality in that territory, from which the wine or spirit must originate in order to be eligible in that Member to be identified by the geographical indication;
- (f) include, where available, the date on which the geographical indication first received protection in the notifying Member and, if applicable, any date for the expiration of the protection currently accorded.

On point (d) there were different views as to whether it should be specified that transliterations would be for information purposes only, and on point (f) whether the inclusion of the date of first protection should be obligatory or voluntary.

13. There were different views on whether notifying Members should be required to identify how the geographical indication is protected in the territory of the notifying Member including, as appropriate, the legal instrument that forms the basis of such protection; or, as suggested in one proposal, as an optional alternative, by providing a statement executed under seal affirming the protection of the geographical indication in the notifying country. It might also be noted that there were outstanding differences on whether or not there should be an explicit requirement that a notifying Member only notify GIs which, in its territory, meet the definition of a geographical indication specified in paragraph 1 of Article 22 of the TRIPS Agreement and are protected and have not fallen into disuse.

14. Significant differences also remain on the treatment of translations in notifications. These include whether the notifying Member should provide any available translation of the geographical indication into the language in which the notification is made in cases where the language in which the geographical indication appears on the wine or spirit in the notifying Member is not that language; whether the notifying Member should be explicitly given the option of providing suggested translations of the geographical indication into other languages; and whether, if provisions on these matters are included, it should be made clear that this would be for information purposes only.

15. Other points which remain to be settled are whether notifications:

- (a) should, on a mandatory or voluntary basis, include information identifying the producers of the wine or spirit entitled to use the geographical indication in the notifying Member and/or the owner of the geographical indication; and
- (b) may include other information that the notifying Member considers may be useful in facilitating protection of the geographical indication, such as:
 - (i) details of the quality, reputation or other characteristics of the wine or spirit essentially attributable to its geographical origin;
 - (ii) for information purposes only, any bilateral, regional and/or multilateral agreement under which the geographical indication is protected.

16. It is my impression that there is a large measure of common ground among Members regarding the following issues:

- (a) the notification shall be made in an official WTO language;
- (b) the notification, with the exception of the geographical indication itself, shall be translated by the administering body into the other official WTO languages;
- (c) the notifications shall be made in a standard format to be adopted by the Council for TRIPS prior to the entry into operation of the system, which shall be such as to limit notifications, wherever possible, to no longer than two pages, not counting any attached or cross-referenced texts.

Registration

17. Regarding the issue of registration of geographical indications in the system it is my sense that there is significant common ground among Members on the following elements:

- (a) following receipt of a notification of a geographical indication, the administering body shall register the notified geographical indication on the register of geographical indications for wines and spirits;
- (b) the registration of the notified geographical indication on the register shall consist of the recording on the register of the information provided in the notification; and
- (c) the administering body shall notify all WTO Members of the registration of each notified geographical indication.

18. Members also seem to agree that the register shall take the form of a searchable on-line database, available in the three WTO languages and accessible free of charge to all WTO Members and the public, and that it shall provide a means of access to the original notification of each geographical indication as made by the notifying Member.

19. Different views have been expressed on a proposal that has been made for a formality examination of each notification by the administering body prior to its entry on the register.

20. The view has been expressed that the appropriateness of a system providing for the registration of geographical indications notified by Members without a prior opportunity for opposition or reservation by other Members in the light of national examination by them of those GIs was dependent on the consequences/legal effects that such registration would have.

Consequences/Legal Effects of Registrations

In participating Members

21. The Joint Proposal Group has proposed:

"Each Participating Member commits to ensure that its procedures include the provision to consult the Database when making decisions regarding registration and protection of trademarks and geographical indications for wines and spirits in accordance with its domestic law."

22. The European Communities has proposed:

"Commitment to consult the Register when making decisions on registration and protection of trademarks and GIs in accordance with domestic law.

Rebuttable presumptions that the notified GI:

- (i) is a GI in accordance with the definition in Article 22.1 TRIPS;
- (ii) is not a generic (Article 24.6 TRIPS);
- (iii) does not falsely represent to the public the true origin of the goods (Article 22.4 TRIPS)."

23. Hong Kong, China has proposed:

"Registration of an indication on the Register shall be admitted as prima facie evidence to prove:

- (a) ownership of the indication;
- (b) that the indication satisfies the definition in Article 22.1 of the TRIPS Agreement as a geographical indication; and
- (c) that the indication is protected in the country of origin (i.e. Article 24.9 of the TRIPS Agreement does not apply)

in any domestic courts, tribunals or administrative bodies of the Participating Members in any judicial, quasi-judicial or administrative proceedings related to the geographical indication. The issues will be deemed to have been proven unless evidence to the contrary is produced by the other party to the proceedings."

24. The position has also been taken that there should be no national legal effects consequent on the registration of GIs in the register.

In non-participating Members

25. The Joint Proposal Group has proposed:

"Members who choose not to participate are encouraged, but are not obliged, to consult the Database in making decisions under their domestic law involving registration or protection of trademarks and geographical indications for wines and spirits."

26. The European Communities has proposed:

"Commitment to consult the Register when making decisions on the registration and protection of trademarks and GIs in accordance with domestic law."

27. Under the Hong Kong, China proposal there would be no legal effects for non-participating countries.

28. The following positions have also been taken:
- the legal effects proposed by the European Communities for participating Members should apply also in non-participating Members;
 - there should be no national legal effects consequent on the registration of GIs in the register.
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