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

MINUTES OF MEETING

Held in the Centre William Rappard
on 30 November 2004

Chairperson: Ambassador Manzoor Ahmad (Pakistan)

The present document contains the record of the discussion which took place during the TRIPS Council Special Session meeting held on 30 November 2004.

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1. The Special Session agreed to adopt the agenda as set out in WTO/AIR/2436.

A. ORGANIZATION OF WORK

2. The Chairman recalled that, as indicated in WTO/AIR/2436, he had suggested at the September 2004 meeting that the Special Session might follow-up on the three sets of issues discussed at that meeting. Those were: first, the major issues of legal effects and participation; second, the possible administrative and other burdens that might fall on countries, in particular developing country Members, as a result of a notification and registration system; third, a number of issues of a fairly technical or procedural nature relating to the operation of a notification and registration system, flagged in headings 7 to 14 of document JOB(03)/75 of 16 April 2003. The Chair reiterated that his reference to JOB(03)/75 was not designed to attribute to it any particular status. He further recalled that at the September 2004 meeting he had suggested that delegations might also wish to take up once more the notification phase of the system, which had been discussed in some detail in April 2003.

B. NEGOTIATION ON THE ESTABLISHMENT OF A MULTILATERAL SYSTEM OF NOTIFICATION AND REGISTRATION OF GEOGRAPHICAL INDICATIONS FOR WINES AND SPIRITS

3. The representative of the European Communities said that the issue of notification should be relatively uncontroversial, mainly because both proposals, that is the so-called "joint proposal" contained in document TN/IP/W/5 and the one made by his delegation in document

IP/C/W/107/Rev.1, proposed a notification phase with similar features. In his delegation's view, two issues warranted some attention: the information that should be contained in the notification, and the question of translation.

4. As regards the issue of information that should be contained in the notification, he said that this should be kept to a strict minimum necessary to facilitate the examination by other Members: This could be done using a relatively short format, e.g. two A4 pages maximum. There would always be a possibility of asking for additional information.

5. On the second issue, that of translation, he said that his delegation remained quite open. There were a range of possibilities. One option would be for Members themselves to provide translations. Another one would be to entrust the WTO Secretariat with the task; in this event, a number of possibilities might be envisaged.

6. The representative of New Zealand said that discussion on what seemed to appear to be a purely "technical" matter might rapidly lead to a number of difficult issues such as the legal effects of a registration, the purpose of the system, and translation. With regard to the notification phase of the system, her delegation was trying to develop for itself a set of principles to guide its thinking regarding this.

7. Firstly, the notification and registration system must be sufficiently flexible to deal with all geographical indications for wines and spirits eligible for protection, whether they are protected under domestic law through registration under a *sui generis* or a trademark system or through consumer or other laws.

8. Secondly, the multilateral system must be cost effective and not be unduly bureaucratic; it should require as little active administration as necessary both domestically and at the multilateral level. All costs should be met by right holders or applicants.

9. Thirdly, the process should be as transparent and simple as possible to enable national decision-makers and other interested users to easily access and use the information. Referring to the suggestion made by the delegation of the European Communities in relation to simplicity, she said that, in order to avoid an overly prescriptive and unnecessarily complex notification procedure, there might be value in an agreed format for simplifying the procedure. There might also be value in considering whether or not there might be a useful role for contact points in the procedure.

10. Fourthly, the notification phase should not have the effect of detracting from, or expanding, existing TRIPS obligations: for example, the system should not allow the notification of geographical indications that had fallen into disuse in their country of origin and were therefore no longer eligible for protection.

11. Fifthly, the notification process must ensure that the decision-making process regarding the eligibility of geographical indications remain at the national level. For example, it should be left to Members to decide what to notify and whether or not the conditions for notification and registration had been satisfied. There would not be any role for the administrative body in determining whether or not a notification fulfilled the conditions for eligibility.

12. The notification procedure should be consistent with the practices of the WTO and TRIPS. The joint proposal, co-sponsored by her delegation, proposed a system that would be simple and rely as much as possible on procedures familiar to all Members. To the extent possible, her delegation would encourage a notification which was consistent with existing models, such as the ones in the area of TBT or SPS, which involved simple notifications to a central registry followed by dissemination of information to the membership.

13. The representative of Australia said that delegations should be aware that discussing technical issues would to some extent mask the fact that there remained other significant areas of disagreement, namely the legal effects of registrations and participation in the multilateral system. It would be difficult for his delegation not to have these two issues in the back of its mind since the type of system and the extent of burdens that it would impose would inevitably have an effect on the so-called "technical" issues. He reiterated his delegation's position in regard to the mandate for this negotiation: as was made clear in Article 23.4, the system must be voluntary and should not result in a change in the current balance of rights and obligations in the TRIPS Agreement. In other words, this negotiation was not about recalibrating or amending the TRIPS Agreement. This was fundamental to Australia's approach. His delegation was interested in hearing during the course of the present meeting whether the *demandeurs* were able to give any further clarity as to what precisely they wanted.

14. He further expressed his delegation's concerns that a number of delegations were not participating in the discussion. Recalling the usefulness of informal consultations between delegations at the September 2004 meeting, he said that it was important to continue to try and find as many opportunities as possible to engage all Members in the discussion since some proposals tabled would entail significant obligations and burdens on all Members.

15. On issues relating to the notification phase, he said that his delegation supported the statement made by the delegation of New Zealand. Notification would be an important part of the multilateral system, and it warranted careful thought, balanced with a pragmatic and focused consideration of the task at hand. The Special Session should not reinvent the wheel: notifications were after all an established part of the WTO practice, considering the wide range of agreements with notification requirements. This should be instrumental in how the Special Session approached the issue. In the voluntary and facilitory system envisaged by Article 23.4, Australia would be looking to minimize the burdens on Members in the notification process while at the same time making sure that there be an effective system in place. Sticking to best practices in the WTO was one way of doing this. Other issues also deserved careful attention such as languages and translation, and the format and length of a notification. This was the approach taken in the joint proposal, which set down a number of reasonable requirements for notification.

16. He further expressed support for the comments made by the delegation of New Zealand on the need for flexibility, for a cost effective system and for transparency. He said that the Special Session should think further about what was meant by "notification" as well as by "registration".

17. On the content of a notification, he said that the authors of the joint proposal had made some suggestions. For example, the notification should include elements such as a geographical indication for a wine or a spirit and the geographical area from which the geographical indication originated, i.e. a place in the territory of the notifying Member. The information should be in the language of the notifying Member, and if it were in characters other than Latin characters, a transliteration into Latin characters using the phonetics of the language in which the language of the notification was made should be provided.

18. Other suggestions were made to also include elements such as the date on which the geographical indication received protection in the notifying Member, any time limit or date of expiry for that protection, and international agreements under which the geographical indication was protected. In his delegation's view, it might not be necessary to include all these elements: some of them might be dealt with outside the notification process.

19. With regard to the body dealing with the processing of notifications, his delegation could see a possible role for the WTO Central Registry of Notifications ("CRN").

20. The representative of Argentina agreed with the delegations of New Zealand and Australia that, while participants could enter into a discussion of "technical" elements taken in isolation, they should bear in mind that the technical approach given to each and every one of these elements would, when brought together, form the legal effects of the system. She reaffirmed certain concepts that were important with regard to the notification. First, like for the registration phase, the notification phase should not generate rights in the national jurisdictions of the WTO Members because this was not provided for by the TRIPS Agreement. Second, what was important in the notification phase was to keep intact all the provisions of the TRIPS Agreement, which should apply in the same way as they currently did. Third, the issue of notification was linked to participation: notifying Members would be those that had expressly, i.e. voluntarily, indicated their desire to participate in the system in accordance with Article 23.4.

21. The representative of Switzerland agreed with previous speakers that the setting up and use of a system of notification of geographical indications should not imply excessive burdens or costs. This principle should be kept in mind when discussing the characteristics of the system. She said, however, that cost-related issues should be looked at together with the benefits to be derived from the system. To set up a system with legal effects such as a presumption of validity of the geographical indication would reduce significantly the costs related to the protection of geographical indications for producers of products identified by such indications. Therefore, producers would no longer feel bound to seek protection as a preventive means in each Member. In the event of litigation, the protection of their geographical indications would be facilitated by the reversal of the burden of proof. The national authorities of a Member would also stand to win because they would have a reference tool regarding geographical indications to be protected. It would suffice to make a notification at the multilateral level to obtain all these advantages if the registrations produced legal effects. For example, it would be particularly of interest to producers in developing countries, who probably did not have the means to take preventive action in all the markets in which they intended to market their products. A simple data base without legal effects would not help make such savings since the information recorded would only be a source of information among others. Under all the proposals made so far, Members wishing to benefit from the system must in all cases make notifications, and this implied a certain amount of effort. For legitimate producers, the benefits derived from a notification onto a simple data base without legal effects would be virtually nil because there would not be any reversal of the burden of proof in their favour. With a register that creates a presumption of validity, the burden would no longer be on producers of products identified by the geographical indication that had been registered without challenges but rather on the other party. For the Swiss delegation, the notification and challenge procedures should be considered as an investment to ensure the usefulness and viability of the system and that the costs involved would be compensated by the benefits of a truly facilitated protection.

22. As regards the administering body, she said that this body could proceed to a formal examination to determine whether or not a notification met *prima facie* the formal requirements that might be set for notifications. This formal examination would facilitate the substantive examination that Members might make subsequently.

23. With regard to the question of who would actually bear the costs of the system, she said that one solution would be to have a fee based on the number of notifications made. This approach would be similar to the one adopted for the Lisbon system as described in the Secretariat document TN/IP/W/4. It would be logical that Members using, and benefiting from, the system bear the costs thereof.

24. The representative of Canada said that his delegation agreed with the delegation of New Zealand that the multilateral system must be simple, flexible and transparent. His delegation expressed support for the comments by the delegation of Australia in respect of the content of the notification.

25. He further said that the suggestion made by the Swiss delegation that there be a reversal of the burden of proof fell outside the mandate of this negotiation, and would disrupt the balance of rights and obligations established in the Uruguay Round with respect to geographical indications. He hoped that the Special Session could at some stage reach the agreement that the purpose of this negotiation was not to add new rights or obligations but to facilitate the protection of geographical indications.

26. The other suggestion made by the delegation of Switzerland that the administering body undertake some examination of individual notifications also fell outside the mandate of this negotiation.

27. In respect of geographical indications that were not, or had ceased to be, protected or had fallen into disuse in the country of origin, he asked delegations which had not been active so far in the discussions whether or not it would be useful to include in the notification phase information about how a notifying Member was protecting the notified geographical indication in its own territory.

28. He further said that there should be a distinction made between the two phases of the process: notification would be the action undertaken by the Member to notify the information, and registration would concern the action to be taken by the administering body. For his delegation, the administering body ought to be the WTO Secretariat. Whichever task was to be entrusted to the administering body, the system should not create additional protection for geographical indications, for example create a reversal of the burden of proof. It should simply make the information available to other Members so that they could determine for themselves which geographical indications they wanted to protect in their own territory.

29. The representative of European Communities said, in response to a comment made by the representative of Argentina regarding the difficulty of separating the notification and the "technical" issues from other issues, that the content of a notification might actually have a greater relevance in the case of a legally-binding system.

30. Concerning the role of the administering body, his delegation supported the suggestion made by the delegation of Switzerland that it have the task of performing some "sanitary check" so as to ensure that certain information Members had agreed to provide was actually provided. This examination would occur irrespective of the substance; it would concern for example information on the geographical indication or on the date of protection. This kind of examination would help Members make notifications in such a way that they could be more easily processed by the national administrations of other Members.

31. In response to a point made by the delegation of Australia concerning the inclusion of the date of protection of a geographical indication in the notification, he said that Articles 22, 23 or 24 could apply depending on the date. For example, Article 24.5 on prior trademarks which could be grandfathered, mentioned in its subparagraph (b) the date of protection of the geographical indication in its country of origin. For his delegation, information on this date would be useful. The same applied to existing international instruments like the Lisbon Agreement or any future system such as the one which was being discussed within the WTO framework.

32. The representative of Australia said that the delegations of Switzerland and of the European Communities might not be addressing the same point in respect of the role of the administering body. Switzerland seemed to suggest that the administering body carry out some *prima facie* examination, which would imply some legal standards. The European Communities seemed to say that they just wanted to look for some sort of formal role. For her delegation, the greatest comfort might come from an exploration of the existing role of the WTO Secretariat, for example the role played by the CRN.

33. With regard to the date of protection of a geographical indication, her delegation believed that the future system should operate without prejudice to the way a Member elected to protect a geographical indication. In systems based on certification marks, the issue of the date of protection would be relevant. However, in the case of trademarks protected under common law, there would be no information regarding the date of protection. Thus, information about dates might not always be necessary.

34. As to information concerning international agreements, her delegation seriously questioned the relevance of such information and had concerns about the potential legal implications thereof, given the strong legal effects envisaged by the *demandeurs*.

35. The representative of Chile expressed her delegation's full support for the comments made by the delegation of Australia concerning the role of the administering body and the content of a notification. The administering body's role would be only to check those elements as indicated by the delegation of Australia; anything beyond that would be outside the mandate.

36. The representative of the United States associated his delegation with the views expressed by the delegations of Australia, Argentina, Canada, Chile and New Zealand.

37. With regard to the information that should be contained in the notification of a geographical indication, he said that the objective was to ensure that all the various systems for the protection of geographical indications, in particular the ones under common law, the unfair competition law, the trademark law, including for certification and collective marks, and special laws on the registration of geographical indications were equally taken into consideration in the future multilateral system. Therefore, the main issue would be to reflect in the notification the information that could be provided under these various systems of protection. The sponsors of the joint proposal envisioned notifications under the multilateral system to include at least the following: (i) a geographical indication for a wine or a spirit that met the definition of Article 22.1; and (ii) the geographical area from which the geographical indication originated. In addition, when the geographical indication and the geographical area were in characters other Latin ones, there should be a transliteration into Latin characters in order to ensure a common understanding about the notified geographical indication.

38. On the reference to international instruments under which a geographical indication notified was protected, he said that despite the potential usefulness in knowing which geographical indications were protected in the territory of other Members, there were other issues Members should consider. Under the future system, each participating Member should notify its own geographical indications, and the terms that a Member was protecting under an international agreement would not be the focus of the system. In addition, whether a geographical indication was protected under an international agreement did not address the issue of whether the term was eligible for protection in other WTO Members that were not party to that agreement. He further said that identifying this type of information to be provided in a notification implied favouritism for a system that allowed for bilateral agreements for specific geographical indications.

39. As to the points made regarding the date on which a geographical indication received protection and the date, if any, on which protection would expire, he said that Members should consider whether this was a viable element. As already indicated by other delegations, it might not be possible under certain systems of protection to provide specific information on the date of recognition or expiration, e.g. under common law or unfair competition law, which did not require the registration of a term. In addition, information concerning the expiry date of protection might not be relevant in the overall objective of ensuring that geographical indications were used on goods that came from the true place of origin. Would information about the date of the expiry of protection for a term suggest that other Members would then be free to use that term since it was no longer protected in the country

of origin? Members might need to further consider whether this type of information would contribute to meeting the shared objective of the multilateral system.

40. On translation, he said that concerns remained that there existed a large number of geographical indications that potentially might be notified, with the consequent burden of translating these indications. In particular, under the system proposed by the European Communities, i.e. one with legal effects, the issue of translation would become very significant, as the information would be considered as intellectual property to be protected at the national level once it was registered on the system. He further said that certain Members currently did not protect geographical indications in translation. Therefore, the issue of requiring translations of notified geographical indications might not be an important element for the overall operation of the system.

41. He said that further discussion would be necessary on whether the system should include a formality examination of the notified geographical indications. The formality examination would involve checking that the documentation submitted met the stipulated formal requirements such as the notification containing: (i) a geographical indication for a wine or spirit that met the definition of Article 22.1; and (ii) the geographical area from which the geographical indication originated.

42. Finally, he said that delegations would also need to consider whether a special body within the TRIPS Council should examine the fulfilment of these standards before the geographical indication was registered on the system. Would this impose significant resource burdens on this administering body to review all notifications? His delegation believed that the system would be better managed if notifying Members certified that a notification met the standards set out in the system.

43. The representative of Switzerland said that her delegation agreed with the delegation of the European Communities that the administering body would only make a formality examination. It would examine whether or not the formal requirements set out for the notification were fulfilled.

44. Her delegation agreed with the delegation of Australia that the indication of the date of protection would not be a necessary element in the notification phase since there were various systems providing for the protection of geographical indications without the date of protection being a necessary element of the systems.

45. As regards the comments made by the delegation of the United States concerning certain documents, she said that information on bilateral agreements containing lists of geographical indications would be useful to some Members, in particular those which did not have a special registration system at the national level and that it would only serve as guidance to other Members that these geographical indications had been recognized at the national level. The fact that two Members were bound by a bilateral agreement did not mean that the agreement applied to other Members. If a Member had any problems regarding a notification, it should raise them in the challenge procedure.

46. The representative of New Zealand said that, while there might be some scope for discussion of the procedure described by the delegation of the United States as a "formality assessment", or what had been outlined by the European Communities, her delegation did not envisage any role for the administering body in terms of "qualitative" assessment. The decisions about what to register and whether or not the conditions for notification had been met must remain at the national level. Her delegation did not want any system that would in any way compromise this situation. It fully supported the suggestion made by the delegation of Australia regarding the CRN.

47. The representative of the European Communities said there seemed to be some commonality of views among delegations that had taken the floor that the role of the administering body should be

to undertake a formality examination, as envisaged by the delegation of the United States. He further said that there was no difference of views between Switzerland and the European Communities. If a Member notified for example the term "bicycle" for services, the administering body should, before sending the notification to the other 147 Members, tell the notifying Member that the notification did not clearly meet the requirements.

48. With regard to the comments made by delegations on the inclusion of the date of protection in the country of origin, he asked how Article 24.5(b) would then be implemented in the national legislation. Would those delegations mean that only Article 24.5(a) would be applied; in other words, only the date of entry into force of the TRIPS Agreement would actually be taken into account? He doubted that this was possible under the TRIPS Agreement. If relevant, the date of protection in the country of origin had to be taken into consideration. He asked whether any Member had experienced any of the situations covered by Article 24.5.

49. With regard to international agreements, he said that his delegation had no intention of favouring a certain type of agreement but only wished to ensure transparency and information. Information regarding international agreements would not only be helpful to Members, which in any event had the obligation to protect geographical indications, but also to producers that might be using in good faith a name that was protected as a geographical indication in another country and might want to know where the geographical indication was actually protected. There was no intention to give an additional legal value to the current obligations under the TRIPS Agreement. If need be, his delegation would accept having a caveat according to which the mention of international agreements would be for information purposes only.

50. The representative of Argentina disagreed with the representative of the European Communities regarding the usefulness of mentioning any date of protection. For her delegation, such a date would only be relevant to national protection systems.

51. In response to the comment made by the European Communities and Switzerland on obligations contracted under bilateral or multilateral agreements, she said that WTO Members did not need to be reminded of obligations undertaken under other auspices. She asked whether the EC would include in the Community registers information on all the lists of geographical indications which might be protected as a consequence of bilateral agreements. For her delegation, bilateral agreements served other purposes: they were concluded, for example, in the framework of mutual concessions, and would not necessarily be relevant information. The idea explained by the delegation of the European Communities, i.e. to inform the WTO membership on the protection granted by some Members under bilateral or international agreements, would create a precedent by ensuring that agreements concluded outside the WTO had effects on WTO Members.

52. Referring to his earlier statement (paragraphs 24-28), the representative of Canada said that his delegation was merely asking whether information about how a Member was protecting a geographical indication would be useful and was not advocating that the information should or should not be in the notification. He further said that his delegation did not see any possible role for any type of challenge in the multilateral system nor any role for the administering body in deciding whether a geographical indication notified met the definition in Article 22.1 This was a matter for individual Members to decide at the national level in accordance with the principle of territoriality.

53. The representative of the European Communities said that it would be a waste of resources to notify to 147 Members a term like "bicycle" for services, which obviously did not fit in the scope of the register. It was not this delegation's intention to have the administering body assess whether or not a term notified was a geographical indication under Article 22.1, or to have the administering body encroach upon Members' prerogatives. The idea was to avoid generating work for national

authorities or giving them erroneous information, which would be important even within the system proposed under the joint proposal.

54. He agreed with the delegation of Argentina that bilateral agreements were commitments undertaken outside the TRIPS framework - although some of these agreements would fall under Article 24.1 of the TRIPS Agreement. Without getting into the debate on legal effects, he said that the information on protection would ensure transparency in trade relations: in other words, it would ensure that producers were properly informed about where to use and where not to use a geographical indication.

55. The representative of Canada said, in relation to the last statement made by the delegation of the European Communities, that, if a Member chose to notify a term it believed deserved some protection, the other Members would have the obligation to consider the notification and deal with it according to their own national procedures as they deemed fit.

56. The representative of Malaysia said that her delegation agreed with what was said by the delegations of Australia, the European Communities and New Zealand concerning certain principles regarding the notification procedure, namely simplicity, low costs and transparency.

57. On the issue of costs, her delegation was of the view that a short notification, for example of two A4 pages, would contribute to low costs and would be consistent with the systems of notification currently used by the WTO and alluded to by the delegation of New Zealand.

58. With regard to supporting documents like the legal instrument under which the geographical indication received protection or international agreements, she noted that usually such texts were not stored in a database nor did they form part of the accompanying documents to the notification. Only references were made to them. However, where references were made in the notification, then the question was whether the texts mentioned would be made available to other Members upon request, not only for purposes of transparency but also to ensure that they could take this information into account in the decision-making process regarding the recognition of notified geographical indications.

59. The representative of Australia, referring to the note made by the Secretariat in 2002 in document TN/IP/W/4/Add.1 on the WTO Central Registry of Notifications, said that there was a system already in place in the WTO to receive and register notifications under the WTO Agreements, and that it was evolving. It would usefully add to the discussions both in terms of how to approach the issue of notifications and the role of the administering body to have either the Secretariat paper updated or have a presentation made on the operation of the CRN in an informal mode during the meeting of the Special Session.

60. The representatives of Canada, Chile, New Zealand and the United States expressed support for the suggestion made by Australia regarding a possible presentation on the operation of the CRN.

61. The representative of the European Communities said that his delegation was open to suggestions regarding the question of who could be the administering body. While having no objection regarding a presentation on the operation of the CRN, he said that it would be useful to also have a presentation by WIPO on the Lisbon system. He said that the presentations should however be made outside the time allocated for the negotiations so that delegations could focus on the substantive negotiations.

62. The representative of Australia said that it would be more sensible to start with a system the WTO Members were familiar with and not deal with a system which concerned only 22 countries.

63. In concluding the discussion on this point, the Chairman said that the Secretariat paper on the CRN (TN/IP/W/4/Add.1) would be updated, that a CRN administrator would be invited to attend the next session to respond to questions, and that he would hold consultations regarding a possible presentation on the operation of the CRN.

64. The representative of Australia said that a number of topics listed in document JOB(03)/75 were not necessarily a basis for the so-called "technical" discussions. His delegation was still in the process of working out the topics on which discussions should be focused. Fees and costs would be an important issue. In this regard, the suggestion made that the cost of the system should be borne by its users was indeed interesting but might raise a number of systemic questions for the WTO. The comments his delegation had made in respect of the administering body and the CRN would also be relevant to the discussions on fees and costs.

65. The representative of Malaysia said that paragraph 11 on "Committee responsible for managing the system", paragraph 12 on "Administering body", and paragraph 14 on "Review by competent committee" might, in terms of roles and functions, overlap. For example, would the "committee" in paragraph 11 be the same as the one in paragraph 14? What would be the role of the TRIPS Council under the future system? She said that her delegation was reflecting on these issues and would revert to them at a later stage.

66. The representative of the European Communities agreed with the comment made by the delegation of Australia regarding fees and costs, including the possible systemic implications for the WTO, as well as with an earlier comment made by the representative of Argentina that much would depend on the system which would be adopted. He reiterated that his delegation was in favour of the principle that those who benefited most from the system should carry the costs in a commensurate manner, and was open to discuss the various possibilities to articulate that principle in practice. He recalled that there were already many international agreements that were currently applying this principle, such as the Madrid Protocol Concerning the International Registration of Marks or the Lisbon Agreement. He suggested looking at some of the existing systems and exploring them in an "abstract" way, that is leaving aside the issues of legal effects and of the role of the governments in participating in the system. He asked whether the Secretariat could provide, in a single document, some information on how costs had been allocated to different Members within existing notification systems at the WTO and elsewhere.

67. The representative of Argentina said that her delegation was opposed to the last suggestion made by the delegation of the European Communities concerning the various existing systems such as those of Madrid or Lisbon. Her delegation might however consider discussing the issue of the costs of the CRN for Members and for the WTO.

68. The representative of the European Communities said that his delegation supported the last suggestion made by the delegation of Argentina. He would suggest that the Secretariat provide in a single document information regarding costs, not only on the CRN but also on other systems within and outside the WTO.

69. Finally, he expressed his delegation's concern that there had been no progress in this negotiation, and said that the time could be better used for substantive negotiations. He further said that his delegation had since the beginning of the negotiation made moves and concessions to take into account points and issues raised by other delegations. He had not so far seen any move or concession by the joint proposal group.

70. The representative of Australia said that his delegation also had concerns about the lack of progress. The co-sponsors of the joint proposal, which were not the *demandeurs* in this negotiation, had tried to further explain or document their approach. What was missing in the negotiation was a

clear sense of what the *demandeurs* were looking for. For example, he would like to know the status of the Hungarian proposal contained in document IP/C/W/255.

71. The representative of the European Communities said that it was his delegation's understanding the Hungarian proposal was a valid option that had received support from certain Members and that it should remain on the table for the time being. With regard to certain systemic issues raised by proposals that were made by WTO Members before becoming members of the European Union, he did not believe that it was up to the Special Session to address them.

72. The representative of Canada asked whether or not there were other WTO Members supporting that proposal.

73. The representatives of Moldova and Switzerland expressed interest in the proposal made by Hungary and considered that it would be useful to keep this proposal as one of the possible options for the elements of the system.

74. The Special Session took note of the statements.

C. OTHER BUSINESS

75. With regard to meetings in 2005, it was agreed that the Special Session would hold meetings back to back with the meetings of the regular session of the TRIPS Council, that is on 11 March, in the weeks starting 13 June and 24 October, and that a meeting would also be held on 16 September 2005.

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