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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 11 March 2005

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 11 March 2005.

Subjects discussed — Page nos.

A. ADOPTION OF AGENDA 1

B. NEGOTIATION ON THE ESTABLISHMENT OF A MULTILATERAL SYSTEM OF NOTIFICATION AND REGISTRATION OF GEOGRAPHICAL INDICATIONS FOR WINES AND SPIRITS 1

C. OTHER BUSINESS 28

A. ADOPTION OF AGENDA

1. The twelfth Special Session agreed to adopt the agenda as set out in WTO/AIR/2518.

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

2. In light of the consultations he had held after the meeting of 30 November 2004, the Chairman suggested, as indicated in WTO/AIR/2518, that the Special Session take up the sets of issues discussed at the two last meetings, namely: legal effects and participation; the notification phase; administrative and other burdens; and certain technical and procedural matters. He also recalled that, at the last meeting in November 2004, there had been a discussion on whether or not the Special Session should have a presentation by the WTO Secretariat on the operation of the WTO Central Registry of Notifications (CRN) as well as a presentation by the WIPO Secretariat on the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration. In the light of the consultations mentioned above, he suggested that the WTO Secretariat be invited to make a presentation on the CRN, to be followed by a presentation by a representative of the International Bureau of WIPO on the Lisbon Agreement. Members would then have an opportunity for questions and replies.

3. It was so agreed.

4. The Chairman suggested that the International Bureau of WIPO be invited to participate at the present formal session in an expert capacity, this being without prejudice to the issue of observer status for intergovernmental organizations.

5. It was so agreed.

6. The Chairman said that on 9 March 2005, the delegations of Argentina, Australia, Canada, Chile, Ecuador, Mexico, New Zealand and the United States had tabled a new submission, entitled "Proposed Draft TRIPS Council Decision on the Establishment of a Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits". The submission was being circulated, as an advance copy, in document TN/IP/W/10.

7. Speaking on behalf of the co-sponsors of document TN/IP/W/10, the representative of Canada said that the new proposal gave a clear indication that the co-sponsors wanted to move the negotiations forward within the mandate established by Article 23.4 to establish a system of notification and registration for geographical indications for wines and spirits that would facilitate the protection of such geographical indications and in which participation would be voluntary. The proposed draft decision built upon earlier communications from the co-sponsors, including the so-called "joint proposal" itself, from October 2002 (TN/IP/W/5), and a document from April, 2004, a question and answer communication on the joint proposal (TN/IP/W/9). The draft decision adhered to the principles set out in Article 23.4 and in the TRIPS Agreement, namely: the system would be voluntary; there should be no legal effect whatsoever for non-participating Members; it should maintain the balance of rights and obligations in the TRIPS Agreement, and not increase the level of protection for geographical indications; it should preserve the territoriality of intellectual property rights for geographical indications; and it should allow WTO Members to continue to determine for themselves the appropriate method for implementing the provisions of the TRIPS Agreement within their own legal system and practice.

8. For the co-sponsors, the draft decision should be used as a basis for negotiations. They were mindful that the text, as a first draft, would need to be improved and certain details would need to be worked out.

9. The representative of Chile, speaking on behalf of the co-sponsors of document TN/IP/W/10, said that the co-sponsors were making a serious and decided effort to achieve progress in the negotiation on the establishment of the multilateral system of notification and registry of geographical indications for wines and spirits and to fulfil the obligation under Article 23.4 of the TRIPS Agreement and paragraph 18 of the Doha Declaration. This proposal constituted a serious effort to consolidate in a legal form the views expressed and proposals made over the years of negotiations. The system proposed had the following features: (i) participation would be voluntary; (ii) it would have no legal effects for Members who decided not to participate in the system, which would be consistent with all legal systems and with international law; (iii) it would preserve the existing balance between Members' rights and obligations; (iv) it would not involve substantial costs, neither for those Members which had decided to participate in the system nor for the body which would administer the system; (v) it would respect the principle of territoriality, on which intellectual property was based; (vi) it would preserve the rights of Members "to determine the appropriate method of implementing the provisions of [the TRIPS] Agreement within their own legal system and practice"; and (vii) it would be limited exclusively to wines and spirits.

10. Paragraph 2.1 of the draft decision required that a WTO Member deciding to participate in the system send a notification in writing to the WTO Secretariat, indicating its intention to do so. The system would be open to all WTO Members, including those who did not have geographical indications in their territory. Participation of a Member in the system did not, however, entail any obligation for that Member to notify or to protect a geographical indication. If a WTO Member

decided to participate, it would then be able to notify any geographical indication identifying a wine or spirit that originated from its territory in accordance with paragraph 3 of the draft decision. This provision established the requirements concerning the information that would be contained in the notification. Some information would be mandatory, such as: the name of the notifying Member; the geographical indication as it appeared on wine or spirit goods in the territory of the notifying Member. Other information would be voluntary, such as information on how the geographical indication was protected in the notifying Member and the date on which that protection was received. The most important provision for participating Members was contained in paragraph 5: it established the obligation for participating Members to consult the database when decisions were taken in relation to the registration and protection of trademarks and geographical indications for wines and spirits in accordance with their domestic legislation. Once a geographical indication had been notified, it could be amended or withdrawn, if a Member deemed it necessary, in accordance with paragraphs 7 and 8. Participating Members could end their participation in the system by notifying the Secretariat, in writing, of their withdrawal in accordance with paragraph 9. The only effect that the withdrawal would have was that all of the geographical indications notified by that Member would be withdrawn from the database. Paragraph 2.1 provided that there was no obligation for a Member to participate in the system. For those Members that had chosen not to participate, paragraph 6 encouraged them to consult the database when they took decisions with regard to the registration and protection of trademarks and geographical indications for wines and spirits.

11. The draft decision laid the foundation for an agreement. It represented a good common denominator that reconciled many different proposals and options. It would help the Special Session fulfil its mandate under Article 23.4 to establish a multilateral system that would facilitate the protection of geographical indications for wines and spirits.

12. The representative of Australia associated her delegation with the statements made by the two previous speakers. Document TN/IP/W/10, by giving a practical and realistic focus to the ongoing discussions, was an attempt to translate the principles of the joint proposal into a workable text which would serve as a draft decision that could be taken by the TRIPS Council. Additionally, the draft could benefit from the input of other Members during the present and future meetings. The draft decision was clear about the principles mandated in this negotiation and preserved Member's rights and obligations under the TRIPS Agreement. It would not amend the TRIPS Agreement nor would it require the TRIPS Agreement to be amended in the future. Participation in the system would be entirely voluntary; it would, however, provide for access to the system by all WTO Members. The system proposed had the genuine aim of facilitating protection.

13. The draft decision was a solid first attempt to work through the issues faced by Members and should be the basis for the Council's future work.

14. The representative of the United States associated his delegation with the statements made by the three previous speakers. His delegation believed that the co-sponsors had made significant progress in moving this negotiation forward through the tabling of this text. The proposed system would facilitate the protection of geographical indications for participating Members by providing an uncomplicated and efficient system for notification and registration of geographical indications for wines and spirits that were recognized in the national systems of individual WTO Members. The draft decision satisfied the requirements of Article 23.4 as well as the criteria that the co-sponsors and other delegations had identified in previous meetings of the Special Session for such a multilateral system to facilitate the protection of geographical indications for wines and spirits. Using the proposed system would not pre-empt decisions made regarding the protection of geographical indications at the national level. All decisions regarding that protection would continue to be made in accordance with the domestic law of each WTO Member, consistent with current obligations under the TRIPS Agreement. As WTO Members were free to implement the TRIPS Agreement in a myriad of ways, the proposed system recognized and accommodated the various regimes of WTO Members

for the protection of geographical indications. Additionally, under the proposed system, the establishment of an intellectual property right in a territory as well as the adjudication of conflicting intellectual property rights in such a territory would continue to be handled by national law, national offices and national courts, in the jurisdiction where protection was claimed. Therefore, nothing in the proposed system would usurp the operation of national law. Finally, the system would not impose undue administrative burdens or costs on the WTO Secretariat. The proposed draft decision contained a workable system that would improve the protection of geographical indications in a way that would be fair to existing GI systems and be consistent with the TRIPS Agreement and the principle of territoriality, and would preserve the rights of prior valid trademarks under Article 16.1 of the TRIPS Agreement. The draft decision was a helpful contribution in realizing this Council's goal of fulfilling the mandate under Article 23.4.

15. He said that, while the co-sponsors recognized that document TN/IP/W/10 was only an initial draft, they also believed that it should be the basis for future work in the Special Session.

16. The representative of New Zealand said that the draft legal text contained in document TN/IP/W/10 was based on the joint proposal that was submitted in September 2002 (TN/IP/W/5). In light of the discussions in the Special Session and consultations held with other Members, her delegation remained convinced that the joint proposal was the best and only option on the table. Document TN/IP/W/10 contained a text to establish a multilateral system that not only clearly fell within the mandate of Article 23.4 of the TRIPS Agreement and of paragraph 18 of the Doha Declaration, but also truly and faithfully embodied that mandate in many respects. Firstly, it established a voluntary system as envisaged by Article 23.4, which did not compel Members to participate in that system and did not penalize those who chose not to participate. Secondly, it facilitated protection but did not, in and of itself, provide any additional legal protection. Given that the system should be voluntary in nature, it should be the key objective to design a system that would be as easy and cost-effective to use as possible in order to ensure that Members would want and choose to participate. The joint proposal and the draft decision would achieve the objectives described. First, by designing a system that was open for participation by all WTO Members. Second, by ensuring that the proposal accorded with Article 1.1 of the TRIPS Agreement and respected the fact that Members had chosen a range of measures to implement their TRIPS obligations in relation to geographical indications for wines and spirits. Third, by designing a system that did not impose new obligations on Members but the aim of which would be to increase transparency and to facilitate the exchange of information that would assist the decision-making process of national authorities. Fourth, by ensuring that decision-making powers were retained by national authorities, but providing them with additional information to assist in that decision-making process. Fifth, by ensuring that it was worthwhile for information to be placed on the register; the proposal would ensure that participating Members committed to consulting the database when making determinations about eligibility of geographical indications for protection in their own domestic territories. And finally, by making sure that the process was free from undue cost and complexity. The proposal clearly defined the purpose of the multilateral system for notification and registration as facilitating protection of geographical indications. Focusing the purpose of the multilateral system on facilitating protection ensured that the carefully constructed balances in the TRIPS Agreement were maintained. It ensured, for example, that trademark rights could be given due consideration, and that the exceptions and limitations to protection as provided in Article 24 could be considered and applied under national legislation. She hoped that the consideration of the present proposal by other Members would lead to reactions, comments, requests for clarification and suggestions, and that Members would therefore be able to further develop this text in an evolutionary process to reflect the positions of as many Members as possible.

17. The representative of Argentina endorsed the comments made by the previous speakers. She said that the proposal effectively met what the majority of Members hoped to see in a system in the WTO context as well as under the mandate of Article 23.4. It basically maintained intact the

provisions of the TRIPS Agreement as well as the principles of intellectual property and of the WTO. In other words, this proposal did not create additional obstacles or barriers to the legitimate trade in wines and spirits. With regard to the main characteristics of the system described by Chile and which were relevant to developing and least developed countries, she said that this system would entail minimal costs, would be voluntary, and would not create any new obligations regarding the protection of geographical indications, including enforcement.

18. The representative of the Philippines recalled that his delegation had co-sponsored the initial submission, known as the joint proposal (TN/IP/W/5), and was considering whether or not it should add its name to the list of co-sponsors of document TN/IP/W/10. In the meantime, his delegation wanted to lend its full support to the approach taken in TN/IP/W/10 since the document provided a sound basis for a decision establishing a multilateral system of notification and registration of geographical indications for wines and spirits. An important element of the proposed system was its voluntary nature, which was genuinely consistent with what many developing countries, including the Philippines, had stated on numerous occasions: namely, that those who had no economic interest in such a system should not be compelled to participate in it. Such a voluntary nature should not be made useless by imposing certain legal obligations even on those Members who had opted not to participate in such a system. Furthermore, the approach taken by the proposal was consistent with the prerequisite of according due respect for each Member's prerogative to determine the appropriate method of providing GI protection to wines and spirits, whether it were through trademarks, specific GI protection legislation or unfair competition. He said that document TN/IP/W/10 was a first attempt to propose, in legal form, a multilateral system, and certainly there would be questions and comments which would arise during the course of the discussions. An example of some issues that merited further reflection was the legal consequences of the procedures established in paragraph 5 to Members who chose to participate in the system. Another issue was to assess the possible effects the termination of the participation according to paragraph 9 would have on rights granted as a result of previous inclusion in the database.

19. The representative of Chinese Taipei said that his delegation attached great importance to this negotiation, not only because of the existing mandate but also due to its significant implications. He recalled Article 1.1 of the TRIPS Agreement, which stipulated that Members were free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice. In this light, his delegation believed that a system with a voluntary participation would be sufficient to serve Members' interests. As highlighted by previous speakers, the proposed system aimed to facilitate the protection of geographical indications for wines and spirits of those Members to whom a participation in the system would be of interest. The system was designed to provide an uncomplicated and efficient system for notification and registration of the geographical indications for wines and spirits that were recognized at the national level by individual WTO Members. All WTO Members would be provided with the notifications made by other individual WTO Members. This system would indeed serve great transparency purposes and, most importantly, it would be entirely voluntary and not impose undue burdens. His delegation asked to be added to the list of co-sponsors of TN/IP/W/10.

20. The representative of Korea said that his delegation shared the view of the co-sponsors that the multilateral system of notification and registration of geographical indications for wines and spirits should be non-binding and that participation in the system should be voluntary. The new submission was, in this light, very useful as it enabled Members to look at, in concrete legal form, the shape the system envisaged by the co-sponsors.

21. He said that his delegation would give the submission the careful review that it deserved but, in the meantime, it would also like to pose a few questions of a technical nature. First, paragraph 3.4 of the submission stated that "notification shall be made on the basis of a standard form to be adopted by the TRIPS Council". Did the co-sponsors envisage some form of formality examination? If not,

why? Second, the submission did not say anything about the costs involved in running the system. How did the co-sponsors think that the establishment and operation of the system would be financed? Third, one of the key features of the notification procedures in the WTO was to provide opportunities for comments and consultations on the notification in order to help Members monitor the implementation of the obligations set out in the WTO Agreement. Did the co-sponsors envisage any such mechanism for making comments and consultations on the notified geographical indications in the TRIPS Council or in any other fora?

22. Finally, on participation, he said that, although his delegation agreed that Article 23.4 pointed voluntary participation, such a voluntary participation could mean different things to different Members as the debate in this Special Session had shown so far. In this respect, the voluntary system set out in the new submission was interesting in the sense that some Members would voluntarily assume the obligation of referring to the database in making decisions regarding protection of geographical indications for wines and spirits while other Members could opt not to assume such an obligation. This was certainly different from special and differential treatment provisions, which allowed developing country Members to use certain flexibilities in carrying out their obligations while other Members must assume such obligations. Could the co-sponsors give other examples within the framework of the WTO that reflected the approach proposed?

23. The representative of Japan said that his delegation, as one of the co-sponsors of the joint proposal in document TN/IP/W/5, continued to have the same position on this matter. As to the new proposal in document TN/IP/W/10, his delegation noted that it went in the same direction as that of the joint proposal. Although Japan warmly welcomed this new submission as an excellent contribution for the present negotiations, it was still not in the position to be a co-sponsor.

24. The representative of El Salvador said that his delegation, as the one of the co-sponsors of documents TN/IP/W/5 of 2002 and TN/IP/W/9 of 2004, had already pointed out that it was important that the system be voluntary, that it be compatible with the various GI protection regimes used by WTO Members, and that it did not impose new TRIPS obligations nor diminish the ones already in place. The system proposed in document TN/IP/W/10 contained these characteristics and therefore effectively fulfilled the mandate received by Members. He asked that El Salvador be included as a co-sponsor of TN/IP/W/10.

25. The representative of the European Communities offered some preliminary comments on the proposal contained in TN/IP/W/10. His delegation could not see this proposal as being a contribution to moving forward Members' work on a multilateral registration system for geographical indications. Instead of bridging the gap between various approaches, the new proposal would actually increase it. So far, it had been possible to identify a few common elements discussed in the last few years of work, such as the definition to be used, the purpose of the system and the fact that decisions regarding protection should be taken at the national level. His delegation had serious concerns with the new proposal.

26. First, on participation, the European Communities held the view that a multilateral register as mandated by Article 23.4 of the TRIPS could only be truly multilateral if it had legal effects in all Members. A voluntary system would not fulfil this mandate. While agreeing that the treatment of participating and non-participating Members should be different, his delegation considered that it would be possible for the treatment to be different and at the same time ensure that there were legal effects in all Members.

27. Second, on legal effects, basically what the co-sponsors were proposing was a system of providing information on geographical indications that could be used by national authorities when making decisions on GI protection. His delegation had already clearly said that this was not enough

and could not be a basis for further work in the negotiations, the reason being that such a system would deliver little or unreliable information and would not therefore be useful.

28. Third, on notification, in the co-sponsors' previous proposal (TN/IP/W/5), it was said that participating Members "will submit" a list of geographical indications. Conversely, paragraph 3.1 of the new proposal stipulated that participating Members "may notify" geographical indications, thus leaving open the possibility to notify or not to notify geographical indications. Therefore, the new proposal replaced what had been an obligation by an option. It would actually go in the direction of increasing the unreliability of information contained in the database. Under the new proposal, if there was no information at all in the database, this would still be considered as being in compliance with the system. This would not be acceptable. As to the content of the notification, he said that the information foreseen by paragraphs 3.2 and 3.3 of the draft decision was even less than what had been proposed in the previous joint proposal. He recalled the proposal made by his delegation that the notification also include information about the legal basis for protection of the notified geographical indication, e.g. any decision, piece of legislation or agreement as well as the date of protection. Pointing out that dates of protection were an essential feature under the TRIPS Agreement, he said that, while the joint proposal foresaw that notifications should include information on the date of protection, this new proposal foresaw it as an option only. His delegation had also suggested that evidence of compliance with the TRIPS provisions needed to be included. This was reasonable because otherwise there would be no way of knowing whether what was notified to the system was a geographical indication or not.

29. On the "registration on the database" under paragraph 4 of the new proposal, he said that his delegation had problems as well. The first problem was the automaticity of the registration: any notification, even those without any evidence showing that the names were geographical indications, would be registered in the system. This would make the information on the database unreliable. The second problem related to the challenge procedure: one of the key elements in the EC proposal was to ensure that the information in the system was reliable, and that was precisely the objective of having an opposition procedure regarding the status of a name in different Members. As a consequence, this procedure would mean that the notifying Member would get a picture of the situation regarding a specific geographical indication in the different markets where protection was sought. Unlike the joint proposal, which contained at least a reference to national opposition procedures, the new proposal did not foresee anything of that sort. The third problem related to certain additions, such as the provision on transliteration: he asked why the new proposal had included that.

30. He reminded Members of the Chair's note contained in document JOB(03)/75 of 2003, which was an attempt to establish a "Draft Text" for a multilateral register that took account of the different options that the Members had presented. Where it seemed that Members might have a common ground, the draft proposed a single set of provisions without brackets. Where the differences between the approaches were important, the document simply offered, within square brackets, options reflecting the various proposals made. There was a third set of provisions on points which needed further discussion. Within the first set of provisions, there were for example: the provisions dealing with the substantive conditions for a notification, namely whether the geographical indication notified met the definition under Article 22 and was protected in the territory of the notifying Member; the provisions dealing with the contents of the notification, such as the translation of the geographical indication itself, the relevant legal basis for protection, the date of protection and the geographic area corresponding to the geographical indication. In contrast, the new proposal did not seem to take account of the above-mentioned provisions of JOB(03)/75.

31. As to the question of legal effects on participating Members, he noted that paragraph 5 of the new proposal did not contain an express reference to the words "legal effects". It simply referred to a commitment by those Members to ensure that their procedures included the provision to simply consult the database when making decisions regarding the registration and protection of geographical

indications. This was a significant departure from the previous joint proposal, which provided that such information obtained from the database would be "taken into account" when making such decisions, and which was reflected in JOB(03)/75 as one of the options.

32. As to the issue of the legal effects on non-participating Members, he said that the proposal encouraged them to look at the database when making decisions, which would not be sufficient to reflect the fact that the system should be truly multilateral.

33. He wondered whether draft legal instruments with no commitments but simply options were commonplace. If what was wanted was simply to obtain information, it would be much easier to simply make use of the obligations on transparency under paragraphs 2 and 3 of Article 63 of the TRIPS Agreement than through this proposed database. For all the above reasons, the proposed draft decision could not be considered as a basis for an agreement or for further negotiation. It was not the only option on the table since there was, for example, the European Communities' proposal that, in his delegation's view, really fulfilled the mandate of facilitating protection for geographical indications through a real multilateral system with legal effects in all Members.

34. The representative of Paraguay said that her delegation saw the proposed draft decision as a step towards the achievement of the mandate contained in Article 23.4 of the TRIPS Agreement and paragraph 18 of the Doha Declaration. This was a realistic and balanced proposal, which did not impose new obligations on Members, many of whom were not in a position to assume further burdens with potential negative economic and financial impacts. Paraguay believed that the voluntary nature of this registry would preserve the balance of rights and obligations provided for in the TRIPS Agreement and would maintain the right Members had to choose the best means of implementing these obligations within the context of their own legal systems. No multilateral notification and registration system for geographical indications for wines and spirits should create new obligations or expand those that were already contained in the TRIPS Agreement. Finally, Paraguay believed that the possibility of accessing a database which could provide reliable information regarding the state of registration and protection of trademarks and geographical indications at the international level could be extremely useful. These incentives could promote greater voluntary participation in this registration system.

35. The representative of Malaysia said her delegation was pleased to note that the proposed draft decision met the mandate of Article 23.4 of the TRIPS Agreement. It established a system which was voluntary, had no legal effects on non-participating Members, provided easily accessible information on geographical indications of wines and spirits, did not impose new obligations on Members that chose not to participate in it, and entailed minimum setting-up and running costs, thus reducing the financial burden on WTO Members. She stressed that the issue of voluntary participation was highly important to Members which did not have geographical indications for wines and spirits.

36. On the content of the notification, she asked the co-sponsors why notifications could not also include a statement to the effect that the geographical indication was protected in the territory of the notifying Member. She believed that, if this were included, it would give the assurance that the notified geographical indication was really protected in that territory, therefore putting the burden of proof on the notifying Member. Such information could be included in paragraph 3.3 of the draft decision.

37. On the issue of costs which had been raised by Korea, she thought that, because the proposed system would probably be part of the WTO notification system, it might not be necessary to address this issue. Members should, however, keep the question of costs in mind, just in case the financial implications of the system to be implemented were higher than they had initially envisaged.

38. Finally, she said that the proposed draft decision could form the basis for further negotiations.

39. The representative of Costa Rica recalled that his delegation was one of the co-sponsors of the joint proposal in TN/IP/W/5 and said that it fully supported the establishment of a multilateral system which was voluntary, simple, did not include issues such as examination, challenges and dispute settlement mechanisms and, instead of requiring Members to implement new legislative or administrative structures, allowed them to make use of the structures already in place in their own territories with the view to facilitating the protection already provided by the Agreement.

40. His delegation fully endorsed the seven principles identified by the delegation of Chile, which formed the basis of the proposed draft decision and should be basis of the Special Session's future work. Echoing the comments made by the delegation of the Philippines that not all WTO Members were either producers or exporters of wines and spirits and thus did not have an economic interest in these negotiations, he said that they did, however, have a systemic interest in ensuring compliance with the commitment that Members had assumed in the Uruguay Round. That was the reason why his delegation believed the system should not create new obligations nor alter the existing rights and obligations of Members. Apparently, some Members had forgotten or disregarded the minimum standard established in Article 1.1 of the TRIPS Agreement. Referring to the comment made by the delegation of the European Communities that the proposed draft decision would create an unreliable system, he said that that delegation did not trust the legal systems and practices for GI protection in place in each WTO Member, and had therefore proposed a new system which, in his delegation's view, would alter the existing rights and obligations in the TRIPS Agreement. He also considered as an important feature of the new proposal the reference made in its preamble to the possibility of providing GI protection through unfair competition and consumer protection legislation.

41. The representative of Honduras said that this new proposal incorporated the principles set out in the joint proposal, which was co-sponsored by Honduras. Her delegation therefore considered that this new text could form a basis for future discussion and requested her delegation's inclusion as a co-sponsor.

42. The representative of the Dominican Republic said that the proposed draft decision complied with the mandate in paragraph 18 of the Doha Declaration. The voluntary nature of this proposal would give flexibility to Members which were not wine and spirit producers or exporters, such as the Dominican Republic. The system proposed would be more in line with her country's domestic legislation on geographical indications. Additionally, the fact that there would be no additional burdens and costs on the administrations of Members and no new legally binding obligations gave this proposed system considerable advantages over proposals submitted by other Members. Finally, she asked that the Dominican Republic be included as a co-sponsor of document TN/IP/W/10.

43. The representative of Colombia said that this new proposal came at a timely stage in these negotiations and would help Members to move forward. The proposed draft decision was based on the main elements - the most important being voluntary participation - contained in the joint proposal, co-sponsored by Colombia. Finally, she said that although Colombia was still conducting a detailed analysis of this document and therefore was not yet in a position to join it as a co-sponsor, it believed that it should be used as a basis for future work.

44. The representative of Switzerland took note of the statements made by the co-sponsors of TN/IP/W/10 that they were ready to discuss further the proposed draft decision. Her delegation would only make preliminary comments and would like to reserve its right to revert to the document. It continued to believe that the proposed text, which in skeleton form simply took up the joint proposal, would make it impossible for Members to meet the mandate under Article 23.4 of the TRIPS Agreement. In order to comply with this mandate, meaning should be given to the terms contained in that provision, in particular the word "multilateral". This could only be done by comparing it to the word "plurilateral". In the WTO context, "plurilateral" implied a system where participation was fully voluntary and only applied to those Members wishing to participate therein.

On the other hand, "multilateral systems" were to be understood as instruments which were binding on all WTO Members. Her delegation did not believe that the drafters of the TRIPS Agreement had chosen the terms of Article 23.4 lightly. The words "eligible for protection in those Members participating in the system" in Article 23.4 meant that the WTO Members had a choice of participating and benefiting from the effects of the system for their geographical indications by notifying such geographical indications. This was how the system was voluntary. To the extent that the system to be set up should not create any new rights or obligations, but rather facilitate the protection of existing rights without increasing that protection, it was indispensable and logical that the effects of the registration apply to all WTO Members. It should not be forgotten in this context that, without prejudice to the exceptions under Article 24 and the transition periods for implementation that were accorded to certain Members, these rights and obligations already existed without registration for all Members of the WTO.

45. As to the question of legal effects, she said that it would be important to ensure that these effects were not out of proportion. It would therefore be useful and sufficient to give to the registered and unchallenged geographical indications the legal effect of a rebuttable presumption of validity. No new rights would be created. Moreover, this legal effect fully respected the condition of territoriality and did not jeopardize the freedom established in Article 1.1 of the TRIPS Agreement as had been said by some delegations. Like other Members, Switzerland attached great importance to the principle embodied in that provision.

46. Turning to the proposed draft decision, she first asked a question similar to the one posed by Korea: Would there be a formality examination? If this were the case, then it would correspond to the role that her delegation had envisaged for the Secretariat.

47. She further asked how the proposed draft decision would actually facilitate the protection of geographical indications since the only obligation for Members who so wished would be to consult, along with other sources of information, a database which would contain only national information. Where in the proposed system was the effective facilitation of protection of geographical indications for right-holders? Was it only for the right-holders to know that they were protected in their country of origin? Was that really the only objective of the system? Was this how Members believed they could comply with the mandate of Article 23.4? This was not at all her delegation's view. The purpose of the registration system was to actually facilitate protection of geographical indications in other Members, otherwise it would not make any sense to be party to a multilateral agreement and to focus only on the protection accorded by a Member at the national level for geographical indications located on its own territory. This was why her delegation believed that only a procedure of notification, examination and opposition, including settlement of conflicts, and entailing legal effects in all Members would actually be able to facilitate the protection of geographical indications by clarifying the status of protection of these geographical indications in all WTO Members.

48. Finally, she said that on a number of points the proposed draft decision should be amended to take into account the concerns that her delegation had been expressing for years, particularly, but not solely, on participation, legal effects, and notification and registration procedures.

49. The representative of Hong Kong, China said that any new input would be very useful in taking forward these negotiations. He said that the proposed draft decision, as described by the representative of Chile, shared the same features as the system proposed by his delegation in document TN/IP/W/8, namely one based on voluntary participation and without legal effects on non-participating Members.

50. Hong Kong, China's proposal would not incur any extra costs for non-participating Members. For participating Members, it envisaged a system of pro-rata payment so as to enable Members to

share its costs; in other words, Members which had few geographical indications would not need to share the same burden as other Members who had a higher number of geographical indications.

51. As to legal effects, Hong Kong, China's proposal carried some legal effect on participating Members, namely that the registration of a geographical indication would serve as a rebuttable prima facie evidence that it satisfied the definition in Article 22.1 of the TRIPS Agreement and was protected in the country of origin. This proposal also tried to preserve the territorial nature of IPR protection by ensuring that all these rebuttable presumptions operated in each Member's own domestic courts in accordance with its own judicial system.

52. Recalling that document JOB(03)/75 was prepared one week before his delegation had tabled its own proposal, he asked that Members keep that in mind when discussing what would be the best basis for future negotiations.

53. The representative of Brazil said that the proposed draft decision was being examined by the authorities in his capital. Without attempting to comment, at this juncture, on all aspects of the text, his delegation would like to highlight the fact that Brazil attached great importance to certain principles that were stated in TN/IP/W/10. In fact, some principles that had guided the draft decision should be applied in a systemic way to all IPR-related issues that were dealt with in the WTO and under the TRIPS Agreement. His delegation agreed with the reading made in the draft decision that the term "facilitation" should not lead to TRIPS-plus rules and disciplines on geographical indications. It also took note of the fact that the proposed system would be voluntary, that it struck a balance between the rights and obligations within the TRIPS Agreement, and would preserve the territorial nature of intellectual property rights. More importantly, the co-sponsors tried to maintain the flexibility that existed in the TRIPS Agreement for WTO Members to determine the appropriate method of implementing their obligations under this Agreement. As had been highlighted by other delegations, the proposed system would bear low costs for Members, particularly for developing country Members. His delegation cherished these basic principles of the intellectual property system that were enshrined in the new proposal and would be happy to see the co-sponsors defend them, not only regarding geographical indications in the WTO, but also in other fora, including at WIPO, when dealing with substantive intellectual property rights issues, including patents.

54. The representative of Canada said that the questions posed by some Members during this meeting demonstrated a new level of engagement and activity in this negotiation, which made his delegation quite optimistic.

55. In response to the delegations of Korea and Switzerland regarding a formality examination to be performed by the WTO Secretariat, he said that, in his delegation's view, such an examination would not be necessary since it would be up to participating Members to decide for themselves what to do with the information provided under the system, and what would be consistent with the territoriality principle and the right of Members to determine for themselves how to implement their TRIPS obligations.

56. In response to the question raised by Korea about how this system would be financed, he said that the cost of the system would be very low. It would essentially involve the establishment of a new part of the WTO website. In this regard, he recalled a recent experience, namely the dedicated webpage created by the WTO Secretariat regarding notifications under the so-called Paragraph 6 Decision of the Doha Declaration on the TRIPS Agreement and Public Health. The costs associated to this notification system were absorbed by the regular WTO budget. The same could happen with the system proposed by the co-sponsors.

57. While taking note of the disagreement expressed by the European Communities and Switzerland on Canada's interpretation of the mandate with respect to the voluntary nature of the

system and its legal effects on non-participating Members, he said that there was an emerging consensus in the Special Session on these two key issues and that he had not so far heard great support for a system with compulsory participation and legal effects on non-participating Members.

58. In response to the comment made by the European Communities regarding the unreliability of information, he expressed surprise that the European Communities seemed to have so little faith in the integrity of the Members who would be notifying their geographical indications to the system. Ultimately, the reliability of the information in the system was to be decided by Members themselves and this would be consistent with current TRIPS obligations. His delegation saw no need to move in the direction of having the WTO Secretariat make decisions on what was or was not a geographical indication, or to establish some new dispute settlement system just for geographical indications.

59. In response to the comment made by the European Communities about the reference to national opposition procedures, he said that such procedures were already provided for in Section 3 and other provisions of the TRIPS Agreement, so there would be no need to repeat those obligations in this draft decision.

60. With regard to the comment made by the European Communities regarding the need for more information to be available in the system so as to help Members to decide whether they would protect a geographical indication or not, he said that notifying Members could, of course, provide as much information as they thought would be necessary to convince other Members to protect their geographical indications.

61. As to the question raised by Malaysia under paragraph 3.3 of the draft decision, he said that Canada would welcome any drafting suggestions in that regard.

62. In response to comments made by the European Communities and Switzerland on "facilitation", he said that the draft decision would genuinely facilitate the protection of geographical indications because the system proposed would provide national IP offices with new information on GI rights claimed by producers in the territory of another WTO Member. This information could be used by national offices when making decisions regarding the recognition and protection of geographical indications for wines and spirits in accordance with their national legislation. Such decisions by national offices would continue to be made entirely at the national level, consistent with Articles 1.1 and 22, 23, and 24 of the TRIPS Agreement. In making those decisions, WTO Members who had chosen to participate would commit to consult the system, along with other sources of information. Currently, national offices did not have any single place to look for information about which terms were recognized in other countries as geographical indications, and the proposed system would, without impeding national sovereignty and the application of national law, provide the information that national offices needed to make better-informed decisions with regard to both trademarks and geographical indications. This system would, therefore, facilitate the protection of geographical indications for wines and spirits by making available to Members much more information on the status of the names used to describe these goods throughout the world.

63. On a comment made by Switzerland about the multilateral character of the system and Article 23.4, he said that there was a precedent in the WTO: the multilateral Code of Good Practice in Annex 3 of the Agreement on Technical Barriers to Trade, which was open to acceptance by the standardizing bodies of any Member, but was not compulsory for all Members.

64. In response to a comment made by the European Communities that the draft decision was a departure from JOB(03)/75, he recalled that his delegation had already said almost a year beforehand that JOB(03)/75 could not be accepted by the Special Session as a basis for further work. Therefore, some Members, like Canada, that were mindful of the pressing need for the first approximations of the Doha Round negotiations by July had moved on and presented the draft decision.

65. With regard to a comment by Switzerland that the draft decision needed to be re-worked, he said that Canada was willing to make revisions to the text to take into account the concerns of other Members, without deviating from the main principles defined by the co-sponsors.

66. The representative of Australia agreed that there were some similarities between Hong Kong, China's proposal and the proposed draft decision. However, her delegation continued to think that it would be possible to achieve the outcome sought by Hong Kong, China in a cheaper and more cost-effective way.

67. As to the questions posed by Korea, particularly on the issue of special and differential treatment, she recalled a paragraph from the earlier joint proposal which said that that "the proposed system is entirely voluntary and would not impose undue burdens, thus satisfying the needs for special and differential treatment measures for developing and least developed countries. For the purposes of the proposed system, this would be a self-regulating special and differential treatment mechanism for developing countries and least developed countries that are concerned about their ability to participate in the system (bearing in mind that least-developed countries are not presently required to implement a system of protection for geographical indications)". Australia would be more than open to any further discussion with Members on the issue of special and differential treatment.

68. With regard to a question posed by Korea on the voluntary nature of the proposed system, she recalled the reference made by New Zealand on previous occasions regarding the Code of Good Practice under the TBT Agreement.

69. In response to comments made by the European Communities and Switzerland on the mandate, she said that in tabling TN/IP/W/10 her delegation was interested in moving the Special Session to the negotiation of a concrete and workable solution. She had not really heard much support for the view that TN/IP/W/10 did not fulfil the mandate. The TRIPS Agreement and document TN/IP/W/10 had as a common denominator the fact that they set forth minimum standards. As had been explained by Chile, the mandate was clear, and if there was any issue, it would be an issue of those who wished to go beyond the mandate.

70. In response to the suggestion made that the co-sponsors of TN/IP/W/10 should bridge the gap between the two approaches, she pointed out that such a responsibility rested with all delegations and that, as far as the co-sponsors were concerned, they had already made a serious attempt to that effect.

71. With regard to participation, she said that the history of this issue was that it had been difficult for the European Communities to get countries to participate in systems that had strong legal effects and the Lisbon Agreement was a clear example of that. She further said that there was a similar problem with the mandate for the negotiation: there had been no agreement that the system would be mandatory; that was why the co-sponsors had proposed a voluntary one.

72. With regard to comments made the European Communities that the new proposal contained changes compared to the earlier joint proposal, she said that this was inevitable when moving from a document based on principles to a document, like the present one, that was supposed to be a workable concrete draft legal text.

73. As to the issue of challenge procedures, Australia did not see any need to make a reference to domestic procedures in a document related to a multilateral system in the WTO.

74. As to the issue of transliteration, she said that it would be genuinely facilitative if transliteration were provided, since the goal of the system was to facilitate the existing level of protection. Australia would, however, be happy to hear comments on this technical issue from other Members, and in particular those who would be doing the transliteration.

75. As to the comments on the reliability of information provided by the proposed system, she did not see that information as any more or less reliable than, for example, information that was required as part of a TBT notification. In the TBT framework, a Member simply alerted the WTO membership to the existence of a particular measure. Other Members would then be free to decide what to do with that information.

76. Finally, on JOB(03)/75, her delegation said that it was in no way a basis for future discussions.

77. The representative of Chile said, in support of the view that the system proposed in the draft decision was multilateral in nature, that nobody could say that the PCT, which comprised well over 120 countries, was not multilateral.

78. As to the argument that the absence of a notification obligation could result in no geographical indications being notified, he said that the same could also happen with the system proposed by the European Communities.

79. On the approach proposed by the European Communities, he said that making a treaty mandatory for countries which had not signed it would violate principles not only of intellectual property but also of public international law, like the ones in the Vienna Convention.

80. In response to the comment that the draft decision did not refer to the definition of geographical indications, he considered this to be unnecessary since compliance with the definition of Article 22.1 of the TRIPS Agreement was already an obligation imposed on all 148 WTO Members.

81. As to the allegation that the proposed system would be an unreliable database, he referred to what Canada and Australia had said on this point, and added that Members, not individuals, would be those making the notifications. As was the case for the PCT, the Madrid Protocol or The Hague Agreement, nothing could guarantee that the information provided would be always reliable.

82. With regard to the possibility that more than one country would notify a geographical indication, he said that it would be up to the Members concerned to analyse whether these geographical indications were homonymous or not.

83. As to the lack of reference to opposition procedures, since this possibility already existed within national legislation, there would be no need to deal with this issue in the proposed multilateral system.

84. The representative of the European Communities expressed surprise that all the co-sponsors of document TN/IP/W/10 considered it a virtue of their proposed system that it would have no effect on national systems, particularly in view of the fact that some of these delegations normally considered the TRIPS Agreement as a good treaty and a major result for the development and implementation of intellectual property rights in all Members.

85. Commenting on the statements made by Canada and Costa Rica that the European Communities seemed to put into question the integrity of the Members' systems, he said that he had not said that. On the contrary, what he had said was that the system as described in the proposed draft decision would simply not be useful because the information on the database would be unreliable and the effects on Members would be almost non-existent. This had nothing to do with the integrity of the Members' respective national systems. He recalled that the European Communities' proposed system also operated through the national systems.

86. The problem his delegation had with the proposed draft decision was that it did not imply any firm commitment of Members, not even participating Members, to use the system since they would

have the option to either notify or to not notify. This might result in a situation where no notification would be made.

87. Rejecting Canada's assertion that his delegation had complained about the low level of engagement of the co-sponsors in these negotiations, he said that on the contrary his impression was that the level of engagement was relatively high among Members. The only problem was that it was an engagement which sought to ensure a very low level of protection or a system that did not deliver effective protection.

88. On Canada's and Australia's point that the proposed draft decision would bring negotiations forward and bridge the gap between the various positions on the table, his delegation's impression was that the effect of this new proposal was, in fact, pushing the positions further apart. As to the comparison made between the proposed system and other international registration systems, such as the Madrid Protocol and the PCT, he pointed out that those systems were not about creating a database with some information on the specific intellectual property right that Members would consult if they so wished. Those systems were about real obligations and protection and, as was the case of the Madrid Protocol, protection was granted through one single application.

89. While agreeing with Chile's statement that international agreements only implied obligations for their signatories, he also recalled that the TRIPS Agreement had been signed by all WTO Members, which had accepted the obligations contained therein, including the obligation to establish a multilateral system for the notification and registration of geographical indications for wines and spirits.

90. In response to a clarification made by Hong Kong, China that JOB(03)/75 had not taken into account its own proposal, he said that this could be easily corrected. After reaffirming that JOB(03)/75 constituted a good basis for further negotiations, he proposed that, if this document were not used, then these negotiations should be based on a compromise proposal that could come from the Chair.

91. The representative of New Zealand said that many of the valid questions that had been raised during the present meeting had been adequately and comprehensively answered by Australia and Canada, particularly about legal effects, participation and facilitation of protection. She acknowledged the widespread support expressed by other delegations for TN/IP/W/10, in particular regarding the principles that were outlined by Chile.

92. She said that the issues of the role of national authorities and of territoriality related to the question of what kind of system was being negotiated: a system that would work to facilitate the kind of protection Members were already required to provide, or something much more ambitious such as a supranational system of protection. In addition, as Chile had pointed out, all other regimes at the very least respected the principle of territoriality. This issue was also related to the fact that Members had worked hard to ensure that this legal text was flexible enough to accommodate all approaches to implementing the obligations in the TRIPS Agreement, whether they were the very complex, burdensome and ornate systems some Members had, or the most simple and basic systems that others had chosen to put in place to meet their obligations under the Agreement. This was a crucial feature, given the number of different approaches that Members of the WTO had taken.

93. In response to a statement made by the European Communities that it was surprised that all delegations considered it a virtue that the proposed draft decision would have no effect on national systems, she said the proposed system included a real and serious commitment by all participating Members to consult the database.

94. Finally, on the usefulness and reliability of the proposed system, she echoed the comments made by others that, because decisions on geographical indications were made at the national level and then notified by participating Members, one should be very careful about questioning the integrity or effectiveness of other Members' national GI systems.

95. The representative of Canada said that there was clearly no agreement between his delegation and the delegation of the European Communities on issues like participation, legal effect and the interpretation of the mandate. Refuting the European Communities' suggestion that Canada had said that the proposed system would be the single place to look for information on geographical indications, he recalled that the Q&A document tabled last year (TN/IP/W/9) stated that "in making those decisions, WTO Members who choose to participate would commit to consult the system, along with other sources of information".

96. On the issue of whether or not participating Members should notify their geographical indications, he said that the European Communities were quite correct to point out that paragraph 3.1 of the TN/IP/W/10 provided that each participating Member could notify to the WTO any geographical indications that it had identified. He recalled that in the past the European Communities, which had some 10,000 geographical indications for wines and spirits, had said that they had not decided how many of those geographical indications would be notified. With this in mind, Canada believed that there was no need for the system to compel a participating Member to notify all of its geographical indications if there were some that, for any reason determined by that Member, did not merit being notified. In fact, the flexibility provided for in paragraph 3.1 of the proposed text would allow the European Communities themselves to show some restraint in their notifications as they had proposed in the past.

97. The representative of Argentina said that the last proposal from the European Communities had been submitted in 2000, before Doha, and that after that date it had only submitted non-papers or made oral statements. This had made it difficult to actually determine, for example, the scope of the legal effects that they wished to have in the system.

98. Responding to the European Communities' comment that other international systems, such as the Madrid Protocol and the Lisbon Agreement did not create a database, but rather gave substantive protection, she said that the purpose of the TRIPS Agreement was not to grant automatic IPR protection among Members. What this Agreement provided for, as stated in its Article 23, was only the obligation to provide the legal means to interested parties, in their respective jurisdictions, to seek the protection they needed. This was exactly the same situation in the fields of patents and trademarks. She expressed surprise that the Lisbon and Madrid systems were mentioned as examples, since these systems contained the basic principles of maintaining territoriality and primacy of domestic jurisdiction. They did not foresee any challenge system nor international or bilateral negotiations.

99. The representative of Australia said that these negotiations were taking place in a WTO context. In this regard, she recalled that the systems mentioned in the Secretariat paper (TN/IP/W/4) were multilateral and participation in those systems was voluntary. While her delegation was well aware of other registration and notification systems, it was also aware that these negotiations were taking place in the WTO context.

100. With regard to the suggestion made by the European Communities to have a compromise paper by the Chair, she said that at the present juncture any discussion on this point would be premature. The co-sponsors of TN/IP/W/10 had put a draft on the table and would like to work on that basis.

101. The representatives of Canada and of the United States expressed support for Australia's views on a compromise paper.

102. The representative of the European Communities recalled, in response to a comment made by Canada, that the suggestion they had made with regard to the number of geographical indications to be notified was a demonstration of their flexibility. The European Communities was the Member least interested in over-burdening the system with a great number of notifications or in making it overly complicated and difficult to manage. He further said that the precise number of geographical indications was much lower than had been mentioned by Canada.

103. As to the comments made by Argentina and Australia on the lack of clarity of his delegation's positions regarding the issue of legal effects of the registry, he said that the European Communities had tried to explain their positions both orally and in writing, in particular in document JOB(03)/123 of 2003.

104. As to the points made on the various international registration systems in the field of intellectual property, he said that the comparisons which were made in this regard referred, first and foremost, to the spirit and operation of those systems, in particular the Madrid Protocol, which had a structure substantially similar to the registry proposed by the European Communities. In fact, the Madrid Protocol was a system with legal effects which clearly respected the principle of territoriality. In that regard, it would be closer to the proposal made by the European Communities than a system whose objective was simply to create a database with limited information available on geographical indications and without any legal effects.

105. The representative of the United States said that the best explanation of the voluntary character of the system proposed in the draft decision was that the co-sponsors saw the system as a market-driven incentive for a Member to notify a geographical indication. The system took into account the possibility that there could be some domestic reason why a particular geographical indication would not be notified. Since what the participating Members would achieve under this system would be the possibility to notify and register geographical indications, she failed to understand what other benefits the European Communities or other like-minded Members would achieve by turning this possibility into a requirement.

106. As to the status of JOB(03)/75, she said that this document contained certain options that did not reflect all Members' positions. She further suggested that the European Communities, whose proposal had been tabled for quite some time, come forward with a new text that would bring more clarity with regard to their position.

107. The representative of Chile clarified that his delegation's reference to international registration systems was not made in order to insinuate that the co-sponsors' proposal was similar to those systems but rather to make the point that the European Communities' proposal went even further than those systems. While he was well aware of the fact that those systems had stronger obligations and legal effects than the co-sponsors' proposal, he pointed out that these effects applied only to those who were Members.

108. On territoriality, he failed to understand how it could be alleged that this principle was respected when a country that had decided not to participate in the system would in any event have an obligation to protect geographical indications that were notified by others if they were not opposed within a given period of time.

109. The representative of Canada said that, in the bilateral negotiations between Canada and the European Communities in the area of wines and spirits his country had been asked to protect approximately 10,000 European names. It had taken a great deal of time and effort for Canada to

analyse those names, which were translated into different languages, to see whether they referred to a geographical area or were protected in the country of origin. Ultimately, Canada had agreed to protect 1,500 European names for wines and spirits. This was a number Canada had experience with, but it was his understanding that some of the other bilateral agreements that the European Communities had concluded involved a higher number of geographical indications. That was the reason why his delegation believed it would be helpful if the European Communities could indicate the number of geographical indications that it was seeking to protect under the future system. Did they intend to notify all the geographical indications for wines and spirits? If so, it would also be helpful if the European Communities could clarify whether it was seeking a system in which all WTO Members were compelled to notify every geographical indication that they had. If that were the case, what would be the consequences if a Member did not notify a geographical indication for some reason? Which body would decide which geographical indications should be notified under the system envisaged by the European Communities? Would this be a matter for the WTO Secretariat to decide unilaterally or would it be for the WTO Dispute Settlement Body to examine? Or would it be necessary, as had been proposed by some other Members in the past, to set up a new and separate dispute settlement system for geographical indications?

110. The representative of Switzerland said that her delegation had some difficulty in seeing how there could be a constructive dialogue if some Members that had claimed their willingness to take into account the concerns of other Members said at the same time that the parameters of their proposals could not be changed. Her delegation had listened carefully to the explanations by the co-sponsors but, as they had not mentioned flexibility on any point, it did not see how progress could be made. Under those circumstances, JOB(03)/75 would be the most appropriate basis to enable the Special Session to begin to crystallize certain positions. Hong Kong, China's proposal, which was a compromise proposal attempting to take into account the elements of a number of proposals on the table, should also be taken into account. Finally, she reassured Members that might have any doubts that her delegation was fully aware of the WTO context and its parameters when it made comments and suggestions regarding the multilateral system.

111. The representative of the European Communities said that his delegation had always taken into account the fact that this negotiation was taking place in the WTO. This was precisely the reason why it was equating the idea of a multilateral registration and notification system with the idea that all Members should be covered, since this was the meaning of "multilateral" in the WTO. On the issue of the number of geographical indications to be notified, he said that this number would be relatively limited when compared with other forms of intellectual property. For example, the PCT had just processed its first millionth patent application. Another example was the Madrid system, which had received almost 30,000 applications for registration in 2004.

112. The representative of Australia asked further clarification about what Switzerland and Korea meant by a "formality examination", because they seemed to use this expression as an IP term of art. She had understood them to be referring to what would happen if there was a formatting error or spelling mistake.

113. The representative of Switzerland said that the formality examination by the administering body would be to look at the conditions which would be defined as the elements to be notified. To take the proposed draft decision, if a name was notified, then the notification should mention whether it was for a wine or a spirit. That would help Members in further examination. This formality examination had nothing to do with the examination regarding the eligibility of the geographical indication. This could not in any event be carried out by the administering body.

114. As scheduled, the Chairman suspended the discussion in order to allow for the presentations on the CRN and on the Lisbon Agreement.

Presentations on the CRN and on the Lisbon Agreement

115. The Chairman welcomed Mr. John Dickson, from the WTO Documents System Section, and the representative of the International Bureau of WIPO, Mr. Matthijs Geuze, from WIPO's Sector of Trademarks, Industrial Designs and Geographical Indications.

116. He said that, as requested by the Special Session on 30 November 2004, the WTO Secretariat had circulated updated information on the CRN in document TN/IP/W/4/Add.1/Rev.1, dated 16 February 2005, and that background information on the Lisbon Agreement could be found in document TN/IP/W/4, dated 18 September 2002.

- Presentation on the CRN

117. The representative of the WTO Secretariat said that the aim of his presentation was to provide a brief history of the CRN, describe the life-cycle of a notification within the Secretariat and explain how to access notification documents via the CRN on the Internet.

118. The Central Registry of Notifications, or CRN, was established by Ministerial Decision in 1993, the whole text of which was available as an annex to document TN/IP/4/Add.1/Rev.1. The main role of the CRN was to record and cross-reference notifications submitted to the Secretariat by Members. The CRN database was an internal WTO computer database that recorded all notifications submitted to the Secretariat by Members in fulfilment of their obligations under the WTO Agreements. The CRN was not a notification system *per se*, but rather a central register of notification documents. Each database record had 17 descriptive data fields and also a number of system fields for application management purposes. The database stored records of all notifications issued by the WTO from 1995 onwards, both regular and ad hoc. For each notification document issued there was a corresponding notification record containing information about the notification, and a link to the respective WORD document. Only selected elements of the database record were posted in the CRN records on the Internet. The key data fields for retrieving notifications were: symbol, issuing date, notification requirement - e.g. TRIPS, TBT, SCM - and notifying Member.

119. He said that currently, under all the WTO Agreements, there were 182 notification obligations or requirements recorded in the database. To date, almost 27,000 individual notifications had been issued by the Secretariat. In 2004, 2,730 notifications were issued. The CRN database was managed by staff of the WTO CRN, which was a section of the Language Services and Documentation Division. The CRN administrator was an information professional and was assisted by one database clerk. All WTO notifications were issued as unrestricted documents which meant that they were immediately available to the public as well as Members. Notifications were posted on the Internet in *Documents online*, a web application designed by the WTO for disseminating and archiving electronically all official documents. *Documents online* was available on the Internet in two places: on the WTO website and on the WTO Members' site.

120. With regard to the lifecycle of a notification within the WTO Secretariat, he said that a notification was usually sent by a Member's agency to the WTO, as an attachment to an e-mail. It could also be submitted on paper or by fax. Ideally, notifications should always be sent to the CRN and not to the divisions or to individual members of the administration, but unfortunately this was not always the case in practice. The receipt and storage of original notification documents was centralized in the CRN. The notifications were recorded in the CRN database and then transmitted to the responsible division for further processing. The division would then prepare an official notification document, assign a symbol and transmit the notification to Documents Control for final editing and translation. Four to five working days were required on average to produce a notification document. The notification was then circulated as a paper document to authorized recipients and also

posted in *Documents online* on the Internet. Once the document had been distributed, the CRN Registry Staff would complete the database record with the symbol details.

121. He said that the CRN was a small unit that operated with two staff and basic computing equipment. The bulk of the costs of producing notifications occurred, first, in the divisions, where secretarial and professional intervention was called for in the creation of the document, and second, in Documents Control, which was part of the Language Services and Documentation Division, where multiple editorial and formatting interventions by clerical and professional staff were called for and where the translation of the document was also requested. The paper reproduction and distribution costs would vary according to the size and volume of notifications produced in the three languages.

122. Finally, he explained how to search for notifications on the Internet: first, open *Documents online* on the WTO website or alternatively on the WTO Members' site; then enter the search criteria in the appropriate fields on the search screen – for example, all intellectual property notifications made by a notifying Member. After clicking on the search button or simply pressing "enter", the results of the search would be sorted automatically by requirement, with an indication of the total number of notifications found, again, by requirement. The documents should appear on screen in a standard display, sorted in reverse chronological order and ordered by symbol. Additionally, it would be possible to view the notifications directly on screen, print the notification documents and download the documents in English, French or Spanish in their original WORD format.

- Presentation on the Lisbon Agreement

123. The representative of the International Bureau of WIPO said that the Lisbon system facilitated the protection of appellations of origin at the international level through the filing of a single application for registration. As any system for the filing and recording of IPRs, the Lisbon system specified a large number of substantive and procedural requirements. Operation of the system required formal examination by WIPO of applications received. These should contain the necessary data for individual member States to judge whether the subject-matter of an application actually met the requirements for protection. Individual member States could refuse protection, if they so notified WIPO. Their refusal notifications should also meet certain requirements and would then be entered in the International Register. There were also procedures for the recording of changes to registered appellations, such as invalidation of the effects of the appellation by a member State or modifications notified by the country of origin, for example, concerning the limits of the area of production, the holders of the right to use the appellation, or the legal basis for protection.

124. On an annual basis, there were relatively few entries in the International Register and they had marginal impact on the overall operations under the various registration systems WIPO was administering. Staff employed for these other registration systems were taking care of the handling of Lisbon notifications. Thanks to the infrastructure available in WIPO for the handling of incoming notifications under the existing registration systems for IPRs, the work relating to Lisbon notifications in the receipt, indexing, examining, translating, communication with applicant countries and third countries, registration, publication and the maintenance of an on-line database could be done at marginal cost.

125. The Lisbon system facilitated the recognition and protection of a special category of geographical indications, namely "appellations of origin", in countries other than their country of origin. The Lisbon Agreement and its Regulations laid down a number of eligibility criteria for the international registration of appellations. In order to qualify for registration at WIPO, an appellation of origin must be recognized and protected in the country of origin in accordance with the definition of Article 2(1) of the Lisbon Agreement. Under Article 2(2), country of origin meant "the country whose name, or the country in which is situated the region or locality whose name, constitutes the

appellation of origin that has given the product its reputation". This condition implied that the appellation should be protected in its country of origin as an appellation of origin, which, in accordance with the Lisbon definition, meant as a geographical name recognized in the country of origin as the name of a geographical area, e.g. the name of the country, region or locality, serving to designate a product that originates therein and meeting certain qualifications. The demarcated area should be the area of production of the products protected by the appellation. Such *ex ante* recognition of the name could take place by virtue of legislative or administrative provisions, a judicial decision or registration. The manner in which recognition took place was determined by the domestic legislation of the country of origin. This did, in principle, not exclude registration as a certification mark in the country of origin as the basis of a Lisbon registration, for example if the certification mark in question met the definition of a Lisbon appellation and its registration as a certification mark implied recognition by the country of origin. However, the more common way to register certification marks internationally was through the procedures of the Madrid system for the international registration of marks, i.e. in the 77 contracting parties of that system. The application for registration under the Lisbon system had to be filed by the competent national authority of the country of origin. Registration was in the name of the natural persons or legal entities, public or private, having, according to their national legislation, the right to use the appellation in the country of origin.

126. Formal requirements aimed to standardize notifications as much as possible and facilitate their examination by WIPO and member countries. They also helped in the development of Internet-based publication of data contained in the International Register and in automating the procedures. Applications were to be filed on the official form established by WIPO, in English, French or Spanish. If this was not the case or if any of the mandatory content requirements were not met, WIPO would communicate with the competent national authority in the country of origin and enter the appellation, and its transliteration into Latin characters, using the phonetics of the language of the application, in the International Register, once all the irregularities had been corrected and the application had been translated by the International Bureau into the other working languages. It would then send a certificate of registration to the applicant country and notify the other member countries. The necessary data to identify the registered appellation would be published in the Lisbon Bulletin. They were also made available on WIPO's website in the Lisbon Express database. For the registration of each appellation of origin, a fee of Sw F 500 was due and, for the entry of a modification, a fee of Sw F 200.

127. As far as legal effects were concerned, the Lisbon procedures allowed for the allocation of filing and priority dates securing the priority of applications claiming protection for appellations. In addition, the Lisbon Agreement laid down a number of provisions of substantive law concerning the protection to be made available at the national level. An appellation which had been the subject of an international registration was ensured protection in each member country which had not issued a refusal. Member countries that had received notice of the registration of an appellation had the right to refuse its protection in their territory. Any such declaration of refusal had to meet two requirements. The first was a time requirement: the refusal had to be notified to WIPO within a period of one year from the date of receipt by the country in question of the notice of registration. When WIPO had received a declaration of refusal within the prescribed period, it notified it to the country of origin, entered it in the International Register and published it in the Lisbon Bulletin. The country of origin communicated it in turn to the interested parties concerned, who could avail themselves of the same administrative and legal remedies against the refusal as nationals of the country that had pronounced it. The second was a requirement regarding content: the declaration of refusal had to specify the grounds for refusal. There was no limitation as to what grounds. Any ground could be advanced that was available at the domestic level to oppose the grant of protection for an appellation registered under Lisbon, in accordance with the procedures available at the domestic level. For instance, a country could refuse to protect an appellation on various grounds: because it considered that the appellation had already acquired a generic character in its territory in relation to the product to which it referred;

because it considered that the geographical designation did not conform to the Lisbon definition of an appellation; or because the appellation would conflict with a trademark or other right already protected in the country concerned.

128. The international registration of an appellation assured its protection, without any need for renewal, for as long as the appellation was protected in its country of origin. Nevertheless, where the effects of an international registration were invalidated in a member country and the invalidation was no longer subject to appeal, the country concerned shall notify WIPO, which would then enter the invalidation in the International Register and send a copy of the notification to the country of origin.

129. Article 3 of the Lisbon Agreement defined the content of the protection that the member States undertook to accord to appellations registered at WIPO. According to that provision, protection was to be ensured against any usurpation or imitation of the appellation even if the true origin of the product was stated or if the appellation was used in translated form or accompanied by terms such as "kind," "type," "make," "imitation" and the like. Article 6 specified that, if the registration of an appellation had not been refused by a country, it could not, subsequently, deem that the appellation had become generic as long as it was protected in the country of origin. The necessary enforcement action had to be taken before the competent authorities of each of the countries of the Lisbon Union in which the appellation was protected, according to the procedural rules laid down in the national legislation of those countries. Standing must be available to the public prosecutor, the competent office or interested parties.

130. In the course of 2004, five new appellations had been notified and registered, namely three from Mexico, one from Italy and one from Cuba. These appellations were: *Mango Ataulfo del Soconusco Chiapas*; *Charanda* for an alcoholic beverage; *Café Chiapas*; *Prosciutto de San Daniele* for ham; and *Pinar del Rio* for tobacco. In addition, two appellations had been cancelled, six modified and two refusals recorded in the International Register.

131. Finally, the representative of the International Bureau of WIPO showed some examples from the Lisbon Express *database* on WIPO's website, which contained all information published in the Lisbon Bulletin. Information from the International Register that was not published in the Lisbon Bulletin could be obtained from the International Bureau, upon request, by any person. He first referred to international registration number 837 of 24 November 2000, concerning the appellation of origin "Budweiser Bürgerbrau" for beer from Česke Budějovice in the Czech Republic. Protection for this appellation had been refused by eight member countries under Lisbon, namely Costa Rica, Haiti, Hungary, Israel, Italy, Mexico, Moldova and Portugal. The grounds for refusal related to the existence of earlier trademark rights in the countries in question. The second international registration he showed was number 840 of 2 October 2001 concerning the appellation of origin "Veracruz" for green or roasted coffee from the State of Veracruz in Mexico. "Veracruz" had been refused by one member country, i.e. Portugal, on the ground that, in Portugal, this appellation was liable to mislead the public. Third, he referred to international registration number 1 of 22 November 1967 concerning the appellation of origin "Pilsen Pils" for beer from the city of Pilsen in the Czech Republic. This appellation had been refused by two member countries, i.e. France, and Serbia and Montenegro, on the ground that the appellation was generic in their territories. Initially, Mexico had also refused to protect this appellation, but this refusal had been withdrawn in 1980. Fourth, he showed that a search in the Lisbon Express for the name "Porto" revealed two appellations of origin registered under Lisbon, i.e. number 696 of 18 March 1985 concerning "Vin de Corse - Porto Vecchio" for wines from a delimited area within the department of Southern Corsica in France, and number 682 of 18 March 1983 concerning "Porto" for generous wine, or liqueur wine, from a delimited area within the Douro region in Portugal. The fifth and last example concerned the result of a search in Lisbon Express for the name "Champagne", which revealed seven appellations of origin as registered under the Lisbon Agreement. Two of these related to products from a territory in the north of France, i.e. international registration numbers 231 and 439, both of 20 December 1969, concerning, respectively,

"Champagne" for wine from a delimited territory within the departments of Marne, Aisne, Aube and Seine-et-Marne and "Eau de Vie de Marc de Champagne" for a grape marc spirit from the same territory. The other five related to products from areas in the south of France, namely: international registration number 345 concerning "Grande Fine Champagne" for a wine-spirit from a delimited territory within the department of Charente; number 346 concerning "Grande Champagne" for another wine-spirit from the same territory; number 347 concerning "Fine Champagne" for a wine-spirit from a delimited territory within the departments of Charente and Charente Maritime; number 782 concerning "Petite Champagne" for a spirit from a delimited territory within the departments of Charente and Charente Maritime; and number 783 concerning "Petite Fine Champagne" for another spirit from the same territory.

Questions posed to and responses given by the representatives of the WTO Secretariat and WIPO

132. The questions posed to the representative of the WTO Secretariat were:

- Was the CRN accessible in all WTO languages? What would be the approximate amount of time needed for translations? What was the procedure of amendment of notifications? Were all notifications accessible to the public? (Australia)

- Did WTO Members have the obligation to notify, and, if not, how many notifications were optional? Was completeness or comprehensive coverage of information a common objective of all the notification systems or did it rather depend on the "demand-driven" principle according to which notifications would require notifications only if this was in the interest of a specific Member? To what extent did the WTO Secretariat undertake a formality examination when it checked whether or not notifications were missing? (European Communities)

- What were the costs for running the CRN, including translations? (Turkey)

133. The questions posed to the representative of the International Bureau of WIPO were:

- When did the negotiations on the Lisbon Agreement start and when had they been concluded? Was there any dispute settlement system attached to the Lisbon Agreement? Would countries have to enter into bilateral negotiations in case of disputes? What would be the consequences of a failure to notify a refusal to protect within the one-year time-limit? (Australia)

- Could the Lisbon system be characterized as a system of notification and registration? Could it be described as a system that was simple to manage? What did "marginal costs" mean? Did the Lisbon system respect the principle of territoriality and, if so, how? Did the Lisbon system facilitate the protection of geographical indications? Could the Madrid system and other systems administered by WIPO be described as facilitating the acquisition of industrial property rights in more than one country or in a group of countries? Were there any international registration systems of IPRs with no legal effects? (European Communities)

- Was the Lisbon system a voluntary one and would only the 23 member countries have obligations? What were the practical consequences for not opposing a notified appellation within the one-year time-limit? Would prior trademark rights be extinguished even if the notified term had not been commercially exploited in the receiving country? If a Member did not object to a notified appellation that had become generic on its territory such as "champagne", would this prevent all importers and domestic producers in that Member from using that term? (United States)

- What was the legal effect of the Lisbon Agreement on those WIPO members who chose not to participate in the system? (Canada)

- Did the Lisbon system presume a particular form of protection or a particular domestic system for protection of appellations of origin or was it amenable to any system such as for example a common law system for protecting appellations of origin? Were there any fees additional to the ones mentioned in the presentation? Had all members of the Lisbon system registered appellations of origin? If not, how many members had registered appellations of origin and how many had not? Had all appellations of origin been registered under the system or had there been cases where the International Bureau of WIPO had decided not to register such appellations of origin and, if so, on which grounds? (New Zealand).

- Were there statistics on the number of registered geographical indications per country, broken down according to the status of development of member countries, that is per developing and least developed countries? Where could information be found regarding withdrawals and modifications of registered appellations of origin, or the number of notifications as well as registrations and refusals of appellations of origin by developing countries? (Argentina)

- What would enable a system like the ones under the Lisbon Agreement or the Madrid Agreement and Protocol, which had a limited number of contracting parties, that is 23 and 77 respectively, to be characterized as a "multilateral" system? (Malaysia)

- Were member countries that had not notified any appellation of origin bound to protect other member countries' appellations that were registered under the Lisbon system? (European Communities)

134. The representative of the WTO Secretariat gave the following replies:

- The CRN database was available in the three official languages of the Secretariat: English, French and Spanish, and notifications were translated into the three languages as well. The time line for translations would be difficult to establish since some notifications consisted of one page and others of 500 pages of text in a single piece of legislation. Four to five days might be an average for short documents.

- The cost of translation varied according to the size of the document.

- All the amendments to notifications that had been issued were communicated generally by the division concerned and a corrigendum was issued to the original document.

- All documents posted in the CRN were publicly available to Members and outside the Secretariat; there was no restriction.

- The obligation to notify applied to all signatories of the WTO Agreements. That was the reason why the CRN applied a call-and-reminder twice a year, that was a call issuing the full list of obligations which each Member was required to fill in the coming 12 months and a reminder, which was the means of reminding Members who had not notified that they should do so.

- The CRN was content to prepare lists of notifications made and submit them to the responsible divisions. Compliance would be ensured via the calls-and-reminder exercises monitored by the divisions. The CRN prepared lists of what had been notified and submitted them to the responsible divisions. It was then decided whether there was anything lacking and the reminders were then sent out to the appropriate bodies.

- The completeness of the data in the CRN was dictated by the requirements of the original decision. It specified clearly what information was to be collected and made available for Members upon request.

- *Documents online* was a bibliographic database. It was not intended to be more than a register of documents with a brief indication of their content and providing an access to the main elements of the documents. Therefore, the CRN did not contain an exhaustive description of the full contents of every notification recorded.

- The fact that there were only two staff members for the operation of the CRN would seem to indicate that the system was highly mechanized and automated. However, as had been indicated in the presentation, most of the work involved in the recording and preparation of notifications happened outside the CRN, namely in the relevant divisions and afterwards in Documents Control Section, which was in charge of translation, editing and production.

135. The representative of the International Bureau of WIPO gave the following responses:

- The Lisbon Agreement had been negotiated in the 1950s, had been adopted in 1958 and had entered into force in 1966.

- Any country party to the Paris Convention could voluntarily decide to accede to the Lisbon Agreement.

- There was no dispute settlement system under the Lisbon Agreement nor any obligation to enter into bilateral negotiations.

- Any member country had the right to refuse an appellation registered under Lisbon within a period of one year after receipt of the notification of the registration, on any ground that existed under its law at that time. After that time-limit, Article 6 of the Lisbon Agreement would prevent it from invoking as a ground for invalidation that the appellation had subsequently become generic, unless it was no longer protected in its country of origin. However, this did not mean that the Lisbon Agreement precluded that the effects of an international registration could be invalidated subsequently in a member country. Any such invalidation could be recorded in the International Register if it was no longer subject to appeal in the country concerned as provided under Rule 16 of the Lisbon Regulations. The effects of an international registration might, for example, be invalidated if it was subsequently found that prior trademark rights had already existed in the country concerned, or that the name had already become generic before the date of the international registration in question.

- As had been shown in the presentation, the Lisbon system was a notification and registration one. Was it simple to manage? So far, only 854 registrations had been made, most of them in the first year. Since then, little had happened under the Lisbon system, even on the occasion of new accessions. In this connection, it might be noted that there seemed to be a growing interest in the Lisbon system. The fact that there was an infrastructure in WIPO for other systems certainly helped in managing the Lisbon system.

- The examples given at the end of the presentation showed that the principle of territoriality, which applied under international IP law in general, was applied under Lisbon as well. The Lisbon and Madrid systems had been designed to facilitate protection at the international level of appellations of origin, trademarks as well as collective, guarantee and certification marks, both in terms of costs for applicants and holders and in terms of procedural aspects.

- There was no obligation to notify appellations under Lisbon. It was up to each member country, or beneficiaries of protection in it, to initiate the necessary procedures.

- The procedures under which WIPO checked applications as received under Lisbon on formalities could result in a communication to the country of origin of irregularities. If these irregularities were not corrected, the formal requirements under Lisbon would not be met and the application in question would have to be rejected.

- As a matter of comparison, under the Madrid system for the international registration of marks, about 29,000 applications had been received last year. Examination of such applications by the International Bureau of WIPO usually took a couple of weeks.

- There was a procedure under Article 6*ter* of the Paris Convention – and the corresponding TRIPS provisions - that provided for the communication to member States, through the intermediary of the International Bureau of WIPO, of lists of "emblems", etc. Under this procedure, the International Bureau functioned as the intermediary for the communication of these lists; it did not register them. The procedure had been established for the application of the provisions of Article 6*ter*, which required States party to the Paris Convention to take the necessary action against the registration and use as trademarks of armorial bearings, flags, other emblems, official signs and hallmarks indicating control and warranty adopted by member States or intergovernmental organizations.

- An appellation of origin registered under the Lisbon system would be protected against any usurpation or imitation of the appellation in all member States that had not recorded a refusal or in which the effects of the international registration had not been invalidated.

- Registration of appellations of origin did not entail legal effects in countries that were not parties to the Lisbon Agreement.

- As far as the registration procedures under Lisbon were concerned, there were two fees: one, of SwF 500 for the registration, and the other, of SwF 200, for modifications.

- Not all member countries had notified appellations of origin. There were seven member countries that had never notified any appellation under Lisbon.

- With regard to the Madrid system, the number of developing and least developed countries could be broken down as follows: nine in Asia and the Pacific; two in Latin America and the Caribbean; 12 in Africa. In addition, all Central European countries and Baltic States as well as all Caucasian, Central Asian and Eastern European countries were party to the Madrid system. Developing and least developed country members of the Lisbon Union were: Algeria, Burkina Faso, Congo, Costa Rica, Cuba, Democratic People's Rep. of Korea, Gabon, Haiti, Israel, Mexico, Peru, Togo and Tunisia.

- The "Lisbon Express" was a freely available database on the WIPO website which contained data registered under Lisbon, such as those regarding the holders of the registration or the right to use the appellation, or the names of the countries that had refused the registration of a notified appellation of origin.

136. The representative of Argentina said that the question posed by the representative of the European Communities as well as the reply by the International Bureau as to whether the Lisbon system facilitated protection or not were irrelevant to the subject-matter under negotiation in the Special Session. Whether or not a registration system facilitated protection and entailed legal effects

depended upon the substantive provisions contained in the treaty establishing that system. The Lisbon system's negotiating history and its particular substantive and formal provisions could not automatically be assimilated to justify a claim that under Article 23.4 of TRIPS "to facilitate" would mean having a system equal to, or higher than, Lisbon.

137. The Chairman thanked the representatives of the WTO Secretariat and the International Bureau of WIPO for their presentations and responses to the questions.

Resumption of discussion

138. The Chairman asked whether delegations wished to make additional comments, including in light of the presentations and of any consultations they might have held after the morning session.

139. The representative of Australia said that her delegation had thought it would be useful to have a presentation on the CRN simply to clarify its technical understanding of some of the issues at hand. Members would now be familiar with paragraph 4 of the draft decision contained in TN/IP/W/10, which proposed the registration of geographical indications on a database and set forth certain ideas on what might be contained in that database. After having listened to previous interventions as well as the presentations and the questions and replies, her delegation was of the view that the existing WTO system offered a platform in which the ideas put forward by the co-sponsors of the draft decision could fit. Notification obligations did exist in WTO agreements. She pointed out that the co-sponsors had not proposed that the administering body be the CRN.

140. With regard to the discussion regarding the Lisbon Agreement, she said that some questions posed were not relevant to the ongoing negotiations in the Special Session. The discussion showed that the system proposed by the *demandeurs* was replicating in many ways the Lisbon system, and that in other ways was going far beyond that system and would constitute a "Lisbon plus". Her delegation strongly questioned what the utility was of replicating within the WTO system a treaty which had only 23 members and even of going beyond it.

141. The representative of the European Communities said that there were clear differences between the WIPO systems and the one that was being negotiated at the WTO that would justify the different approach adopted by his delegation. Unlike the global protection systems under the auspices of WIPO, the negotiations in the Special Session were based on a provision that was specific to the TRIPS Agreement, which was legally binding on all WTO Members.

142. The representative of New Zealand said that the Lisbon system seemed less onerous than the system proposed by the European Communities in that it was voluntary, did not provide for bilateral negotiations or a dispute settlement mechanism. That being said, she admitted that the Lisbon system was closer to the EC proposal than the one tabled by New Zealand and other Members. The low take-up of the Lisbon Agreement was in fact the best indication of the low attractiveness of the system. The benefits resulting from the Lisbon system were highly concentrated on a few countries. Two thirds of the registrations actually related to appellations of origins in France and 95 per cent of them related to six EU member States. The system proposed by the EC placed the burdens and costs of running the system on governments. This was probably reflective of the fact that, in the European Communities and other Members who supported the EC proposal, governments did play a more central role.

143. The representative of Canada said that, thanks to the presentations and the ensuing discussion, his delegation was able to better understand how the Lisbon Agreement functioned. It also realized that in fact the system proposed by the European Communities was going further that the Lisbon system. The Lisbon Agreement did not provide for: any obligation for participating members to notify appellations of origin if they chose not to do so; any legal effects on those WIPO member

States that had chosen not to participate in the system; or any dispute settlement system or compulsory bilateral negotiations.

144. The representative of Switzerland said that there should be no confusion between the situation in the WTO and the one in WIPO. The obligation for WTO Members to commit themselves to negotiate a notification and registration system for geographical indications was enshrined in Article 23.4 of the TRIPS Agreement and this was binding upon the entire WTO membership. In contrast, there was no such equivalent provision in the WIPO Convention: WIPO Members might choose to accede or not to the various conventions placed under the umbrella of the WIPO Convention, such as the Lisbon Agreement.

145. The representative of the European Communities said that the system his delegation was proposing might actually be closer to the Madrid system, whereby the effect of an international application was to require each of the Madrid members to protect the trademark in accordance with the national or regional law unless it had lodged a refusal to protect within a certain period. However, the Lisbon Agreement also specified the substantive protection that must flow from international registrations rather than leaving this entirely to national legislation. The purpose of the EC proposal was not to create new obligations but to facilitate compliance with the obligations already accepted by all Members under the TRIPS Agreement.

C. OTHER BUSINESS

146. The Chairman said that the TNC Chair had called, at the meeting of 14 February, for "appropriate positive elements in each negotiating area" to be available to the TNC by July 2005 and had also referred to "first approximations" from the negotiating groups by that time, while making it clear that the nature of the first approximations might differ between areas. He also recalled the statement he had made at that TNC meeting that it would be necessary for delegations to show greater flexibility than had been the case hitherto if the Special Session was to make a contribution to the "first approximations". In the light of these points and of the fact that there was only one meeting scheduled before the July marker, that was on 16-17 June 2005, he asked delegations for their suggestion on how to proceed further with the work.

147. The representative of the European Communities said that, in view of the June meeting, one way would be to use document JOB(03)/75 submitted by the former Chairman of the Special Session in April 2003 as a basis for further work with some modifications to take into account the proposal made by Hong Kong, China (TN/IP/W/8). He further suggested that delegations meet in smaller settings, possibly with the participation of the Chairman.

148. The representative of Australia, supported by the representative of Argentina and the United States, recalled her delegation's reservations concerning document JOB(05)/75. She further expressed concerns that that document did not reflect the recent proposal tabled by Australia and other Members and on which a number of responses had been made. Document TN/IP/W/10 should therefore be the basis for further work.

149. The Chairman said that the text of the sort presented in document TN/IP/W/10 was very useful in clarifying delegations' positions as had been shown by the discussion. Although he had not detected any flexibility on matters of substance, he saw that delegations were prepared to step up the intensity of work with a view to preparing at the June meeting an appropriate input for the TNC by July.

150. The representative of the European Communities said that there was little time left before the time line of July 2005 and recalled his delegation's view that TN/IP/W/10 was not an acceptable basis for future work.

151. The representative of the United States said that delegations which had problems with TN/IP/W/10 should explain the problems and come forward with new proposals instead of simply saying that it was unacceptable. She expressed the hope that TN/IP/W/10 would stimulate other delegations and their constituencies to identify precisely what was acceptable as a way forward with regard to substance.

152. The representative of Switzerland said that JOB(03)/75 should be updated and be used as a basis for further work.

153. The Chairman said that he would undertake consultations on how to proceed further with the work, prior to the next meeting of the Special Session, scheduled to be held on 16-17 June 2005.

154. It was so agreed.

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