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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 16-17 June 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 16-17 June 2005.

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A. ADOPTION OF AGENDA

1. The thirteenth Special Session agreed to adopt the agenda as set out in WTO/AIR/2587.

2. The Chairman suggested that the Special Session invite the International Bureau of WIPO to be represented in an expert capacity, this being without prejudice to the issue of observer status for intergovernmental organizations.

3. It was so agreed.

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

4. The Chairman first asked the delegation of the European Communities to introduce its new paper circulated to the Special Session in document TN/IP/W/11 and then to open the floor for comments on this paper as well as other papers before the Special Session. He recalled that at the March meeting a group of delegations had tabled a proposal in document TN/IP/W/10, and that the proposal made by Hong Kong, China in 2003 in TN/IP/W/8 remained on the table.

5. The representative of the European Communities said that, given the different fora in which the proposals would need to be discussed, his presentation would be the first of two, possibly more, on this document. Previously, the case had often been made that the discussion of the different

aspects of the DDA concerning geographical indications was a difficult, or even impossible one, because of the difficulty in addressing them in a piecemeal fashion. While it was questionable whether these arguments had great merit, his delegation had nevertheless responded to them through the submission of a legal text which covered both the multilateral register and the extension of additional protection to products other than wines and spirits. In the present meeting the objective was to present the proposals concerning the operation of the register for which negotiations were mandated in Article 23.4 of the TRIPS Agreement and paragraph 18 of the Doha Declaration. The proposals concerning the extension, including issues of the scope of the register, would be presented at the consultations chaired by Deputy Director-General Thompson-Flôres on 17 June 2005. Those consultations were being held under the responsibility of the Director-General for subsequent reporting to the TNC and the General Council and it was for this reason that the present document had also been circulated within those bodies.

6. He said that, given that the EC submission was 19 pages long and contained legal text proposals, his delegation had anticipated, and fully understood, that Members would not be in a position to give considered responses to every aspect of the proposal during the present meeting. The content of the proposal was based on earlier documents and discussions. In the case of the register, the paper included: explanations on pages 3 and 4; a reference to the register in paragraph 4 of the new Article 23.4 on page 7; and a proposed annex to the TRIPS Agreement on pages 11 to 19. This annex followed the structure of document JOB(03)/75, which had been discussed in earlier meetings of the Special Session and covered the same issues. Most of the other parts of the document were not meant for discussion at the present meeting. The definition of geographical indications in Article 22 of the TRIPS Agreement was not changed and was only included to give clarity to the legal text proposed on page 6 of the document, so as to enable Members to have before them a complete text of the EC proposal for Section 3 of Part II of the TRIPS Agreement. The EC communication responded to the basic philosophy that international instruments in the area of intellectual property should ensure tangible results in terms of protection and be something more than a mere speculative tool. This was why the EC communication still advanced a system that had legally binding effects and was multilateral in nature. In other words, a system which concerned all WTO Members that were under the obligation to implement Section 3 of Part II of the TRIPS Agreement. While his delegation acknowledged that other proposals had been made, notably a good-faith attempt by Hong Kong, China in 2003, it nevertheless maintained its level of ambition in this respect.

7. With regard to its basic aspects, the EC proposal aimed to facilitate a level of protection of geographical indications which was already the subject of existing obligations. All developed and developing countries had the obligation to provide the legal means to protect geographical indications, and the vast majority of them did so via registers, where they received applications that were examined and signs were determined to be geographical indications or generic terms. This was the case, *inter alia*, of the United States, Australia and Chile. Secondly, the EC proposal advanced a system whereby applications, rather than being filed locally, would be filed via a centralized procedure based in Geneva. Thirdly, all registration systems that his delegation was aware of had an opposition procedure, where third parties could raise claims as to, for instance, whether or not a term was generic. None of these domestic opposition procedures lasted more than 12 months. Fourthly, the European Communities had offered that examination procedures at the multilateral level could last up to 18 months, a much longer period during which any Member would be able to raise a duly substantiated reservation that could or could not be lifted at a later stage. If a WTO Member did not raise a reservation, it would be giving consent that a certain geographical indication would not be considered as a generic term. In this particular regard, many WTO Members had asked what would happen if a country had not made a reservation. The EC proposal explicitly made sure that the grandfathering clause of Article 24.4 and the clause regarding prior trademarks in Article 24.5 could continue to be evoked at the national level. In other words, if a government had "forgotten" to place a reservation on the basis of genericness, the other exceptions and the grandfathering clause of Article 24 would continue to remain available. It should not be forgotten that the provisions of Article 24.4 and 24.5 of the TRIPS Agreement were those designed to protect good-faith uses and

prior trademarks that contained, or consisted of, geographical indications. Article 24.6 on genericness was a provision that permitted the total denial of protection to geographical indications.

8. As far as new elements were concerned, they included a mechanism that tried to provide further transparency and predictability regarding any potential conflicts between geographical indications and trademarks by allowing the applicant country to request some or all WTO Members to identify prior trademarks that contained, or consisted of, notified geographical indications. In addition, the applicant country could also request some or all WTO Members to notify any trademark applications that contained, or consisted of, the notified geographical indications. To respond to the concern expressed by some delegations that this feature would entail resources and costs, the EC proposal had for the first time foreseen a specific model for financing the proposal, which was inspired by the Madrid Protocol, an agreement well-known to Members such as the United States and Australia. This in itself should be an indication that claims of high costs should be viewed with some scepticism. Under the EC proposal, most of the costs in running the system should be carried by the applying WTO Member via a system of fees. This was a clear example that the European Communities stood by its position that those who benefited the most from the system should carry it costs commensurately.

9. The EC proposal tried to inject some impetus into the discussions by addressing and bringing onto the table two issues that had been identified as obstacles to the much needed progress in this area, namely trademarks and costs. He hoped that this new proposal would open the way to a constructive, fruitful and more focused negotiation. He highlighted the fact that this issue was an important part of the negotiating agenda. It was also an issue which was already built into the TRIPS Agreement and which had received further impetus in the Doha Declaration. His delegation would therefore seek engagement and progress commensurate with other aspects of the Round and would also be looking for confirmation that its proposal remained a key part of the negotiating agenda and that other Members understood that the European Communities were serious on this issue.

10. The representative of Australia said that his delegation had major procedural and substantive concerns with the new EC paper, in particular with the fact that the paper proposed that the register apply to all products. All Members knew that the Special Session operated under a very specific mandate, set out in the first sentence of paragraph 18 of the Doha Declaration, which referred to the "establishment of a multilateral system of notification and registration of geographical indications for wines and spirits". The EC paper could not be a basis for discussion. There was no way that his delegation could discuss the EC paper in this Special Session without prejudicing its position in discussions which had no relationship to these negotiations. To suggest that Members could discuss one part of this paper in this Special Session and deal with other issues in another forum was not possible. This linkage of ambitions regarding extension and the register in the way made in this paper only confirmed how extreme the demands of the European Communities were. Members should also keep in mind the fact that the European Communities were still not in compliance with the TRIPS Agreement, as had been found in two recent panel reports. Since, in that dispute, the European Communities had requested almost a year to remedy the defects of its own domestic system, it did not seem that this would be the right time to be increasing the demands already on the table. The question facing the Special Session was where to go from here. The minutes of the last meeting had highlighted that discussion on the joint proposal had been sustained and fruitful. Some key points of that proposal included a system that should: facilitate the protection of geographical indications provided for wines and spirits; be voluntary and without legal effects on non-participating Members; maintain the balance of rights and obligations in the TRIPS Agreement; not increase the level of protection afforded to geographical indications; preserve the territoriality of intellectual property rights for geographical indications; allow Members to continue to determine for themselves the appropriate method for implementing the provisions of the TRIPS Agreement within their own legal systems and practices; and recognize that intellectual property rights were private rights. This proposal showed that it was possible to move these discussions forward and was the only one

currently on the table that seriously attempted to work within the mandate under which Members had been operating.

11. The representative of Argentina said that his delegation was confused by the new EC proposal and in particular by the statement made by the representative of the European Communities that the proposal formed part of the negotiations. There was no basis for a proposal such as for an annex on the register in the current mandate of Article 23.4 of the TRIPS Agreement and of paragraph 18 of the Doha Declaration. While being aware that the proposal was compatible with the European Communities' ambition, he was of the view that it fell outside the mandate of the Special Session.

12. The representative of the European Communities said that in all discussions regarding the register or extension, Australia had obstructed any meaningful progress. Such an attitude for issues which were of great importance to his delegation was not conducive to overall constructive progress in all the other components of the single undertaking. Each delegation had the full right to put proposals to the membership, and other delegations could not always agree with the content or scope of such proposals. However, the European Communities had never disputed the right of Members to put proposals to the membership. He therefore took real offence at the statement by the Australian delegation that it was not even willing to discuss the EC proposal. The EC proposal contained a part which dealt with the register of geographical indications for wines and spirits. Recalling his introductory statement where he had made a clear distinction between this aspect and other elements that concerned products other than wines and spirits, he asked that the Special Session deal with the part relevant to wines and spirits.

13. The representative of Chile associated his delegation with the views expressed by Australia and Argentina. While on the one hand the European Communities was putting in one document issues concerning extension which were not in the province of this Special Session, on the other hand it was submitting a proposal on the multilateral register of wines and spirits which was open to all products and, consequently, outside the mandate. By bringing to this Special Session, under the question of the multilateral register, a system which would cover all products, the proposal would prejudice the discussions on extension. Not only had the European Communities espoused a system which would have legal effects beyond the current TRIPS obligations that Members were trying to implement, but they had also put forward a proposal which was outside the mandate given to Members. The joint proposal, on the other hand, respected the mandate by proposing a registry which would have no legal effects for non-participating countries, would respect the principle of territoriality and would be limited to what the text of the TRIPS Agreement currently provided for. Therefore, it would certainly prejudice his delegation's position if he started discussing the details of the EC proposal.

14. He believed that the EC proposal was also offensive in many other ways. For instance, it stated in part II that "developing countries would find this proposal more tailored to their needs". As the representative of a developing country, he knew best what Chile's needs were. Another example was the statement on page 3 that it was "providing a sufficient level of comfort to GI opponents". This was not a correct characterization of Chile's position, since his country had never opposed the protection of geographical indications. On the contrary, it upheld and wanted to protect them in accordance with the obligation it had accepted.

15. In response to the point made by the delegation of the European Communities regarding their right to table proposals, he said that they certainly had the right to table whatever they wanted, but Chile certainly also had the right to refuse to discuss issues which were way beyond the mandate which Members had given themselves. He recalled that Members had struck a deal for these

negotiations that was carefully balanced, which was simply to implement an obligation under the TRIPS Agreement.

16. The representative of Japan said his delegation preferred a system which would be within the mandate established by Article 23.4 of the TRIPS Agreement, did not impose administrative burdens, facilitated the protection of geographical indications for wines and spirits, and provided for voluntary participation. After careful examination of the new joint proposal in document TN/IP/W/10, his delegation was of the view that the proposal was not a rigid one and could be improved. It could therefore serve as the basis for negotiation. Thus, Japan would like to be included as a co-sponsor of document TN/IP/W/10.

17. As to the new EC proposal, his delegation would limit its comments to the part dealing with the "multilateral system of notification and the registration of geographical indications". It believed that the present discussions on the multilateral system should concentrate on geographical indications only for wines and spirits.

18. The representative of the United States said that his delegation shared the concerns expressed by Argentina, Australia and Chile. The new EC communication in document TN/IP/W/11 confirmed that the system proposed was over-reaching in nature and was well beyond the mandate under Article 23.4 of the TRIPS Agreement. He recalled that all delegations were struggling to complete negotiations on several difficult issues within the Doha mandate, and that the new proposal, which clearly went beyond the mandate, did not help bring delegations closer. His delegation's comments would be directed to issues within the mandate regarding a notification and registration system only for wines and spirits.

19. As had been noted, the only proposal on the table that was within the mandate of Article 23.4 of the TRIPS Agreement and of paragraph 18 of the Doha Declaration was the joint proposal, contained in document TN/IP/W/10. Despite the comments made by certain delegations at the March meeting, the notification and registration system in the joint proposal was consistent with the mandate in that participation in the system would be voluntary and the system would facilitate the protection of geographical indications for wines and spirits. The joint proposal did this by assisting Members in making decisions on protecting geographical indications within their territory without altering or increasing the substantive TRIPS obligations. The co-sponsors of the joint proposal recognized that this was only the first draft, and were willing to work with the WTO membership to improve it within the parameters of the TRIPS Agreement, namely that the system be voluntary, that it preserve the existing balance of rights and obligations in the TRIPS Agreement, that it respect the territoriality of intellectual property rights for geographical indications, and that it allow WTO Members to continue to determine for themselves the appropriate method of implementing the provisions of the TRIPS Agreement within their own legal system and practice. The system proposed would facilitate protection of geographical indications for participating WTO 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 system would consist of a searchable database of all geographical indications for wines and spirits that were notified by participating Members. It would provide national intellectual property offices with 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 registration and protection of trademarks and geographical indications for wines and spirits in accordance with their national legislation. WTO Members who chose to participate would commit to ensuring that their domestic procedures for trademark and GI registration included the provision to consult the database when making decisions regarding GI and trademark registrations under domestic law. At the same time, non-participating Members would be free to consult this information, if they chose to do so, to ensure that their decisions regarding trademark and GI registration under domestic law were based on the most complete information available. Under the joint proposal, such decisions by national offices would continue to be made entirely at the national level, based on the principle of territoriality and

consistent with current practices under the TRIPS Agreement. The multilateral registration and notification system would not have a direct real effect within any WTO Member. It would be up to the Member consulting the database to determine, according to its national law and registration requirements, what evidentiary weight to give to the geographical indications included in the database. The database would be used when making determinations as to whether a trademark should be registered or whether a GI application from another country should be accepted by the registration authorities. This proposal accurately reflected that, under the TRIPS Agreement, each Member determined for itself whether an indication met the requirements under national law to be recognized and protected as a GI. Thus, consistent with this approach, the notification of one country's geographical indications to the system did not mean that the GI was protected everywhere; it would only be protected where it met the requirements of the reviewing Member, which could include the requirement that consumers in that Member recognized it as a GI. The value of the joint proposal system was that it provided a unified, searchable database of information for national offices to use in determining, in conjunction with research as to the treatment of the term in the reviewing country, whether a geographic term in a proposed trademark would be deceptive or misleading to consumers in that country. The database would not constitute an application or request for protection in WTO Members. Nationals from Members seeking protection would still be able to apply directly to national offices. The decision by each Member regarding the legal means for implementing GI protection would be left in the hands of that Member's national authorities. The decision about whether or not a term was a GI would also be left to the national authorities. The joint proposal would therefore assist Members in protecting geographical indications under TRIPS, and not add additional burdens.

20. He concluded by saying that, in light of the EC proposal, it remained clear that the joint proposal was the only submission before Members that met the mandate and should therefore be considered as the basis for these negotiations. He would welcome from the European Commission any submission that was within the parameters of the mandate.

21. The representative of the European Communities said that the interpretation of a mandate was in itself a subjective matter. Nothing in Article 23.4 of the TRIPS Agreement or in paragraph 18 of the Doha Declaration prevented an interpretation that the system of notification and registration should have legal effects, which was his delegation's position. A Member could, of course, be opposed to it, but that was a different matter. In the same way that his delegation was prepared to discuss the joint proposal, which contained a system of notification and registration without legal effects, it expected that the sponsors of the joint proposal were also prepared, as a matter of principle, to discuss the system proposed by the European Communities. As had been indicated, his delegation accepted that the Special Session's mandate was only to discuss the register of geographical indications for wines and spirits. Members could therefore limit the discussions to those elements in the EC communication which were strictly related to the register for wines and spirits. His delegation had never asked Members to discuss in the Special Session whether or not such a register should have a wider scope than wines and spirits. If other Members took the view that such scope should be limited only to wine and spirits, this would be a position which the European Communities could not accept but which was nevertheless a fair one. However, what his delegation would insist on was the need for Members to be willing to discuss proposals of other Members. In the absence of such a willingness to discuss, Members could close the discussion in the present negotiating body and his delegation would have to raise this issue in the TNC or in the General Council.

22. The representative of Australia said that his delegation was not disputing the right of any delegation to come forward with a paper. It only drew Members' attention to the mandate of this Special Session and, in particular, to the way the EC paper sought to confuse and introduce issues that were not relevant to these negotiations. The key point that his delegation was making was that it failed to see how it could engage in a discussion on a paper that introduced all of these issues in a way that was clearly prejudicial to his delegation's position on issues under discussion in other fora and on issues that were not negotiating ones. The records of the past meetings showed that his delegation

had been extremely engaged in these discussions by, *inter alia*, asking many questions and putting forward proposals. The sponsors of the joint proposal had shown that they wanted to move these discussions forward. Regarding the comment made by the European Communities that Australia did not want to discuss the new EC proposal, he said that this was contradicted by their own statement at paragraph 33 of the minutes of the last meeting in document TN/IP/M/12, where the European Communities said that the new joint proposal in document TN/IP/W/10 could not be considered as a basis for an agreement or for further negotiation.

23. The representative of Mexico expressed support for the statements made by Australia and other Members with regard to the mandate and the proposal presented by the European Communities.

24. The representative of Canada said that his delegation shared the concerns expressed by previous delegations regarding the mandate of the Special Session, which was to negotiate a multilateral registry for wines and spirits only. The EC paper went far beyond this mandate and thus the Special Session was not the appropriate forum to discuss it. He urged delegations instead to refocus on the joint proposal contained in document TN/IP/W/10 and supported by many delegations. The joint proposal adhered to the principles set out in Article 23.4 of the TRIPS Agreement by: facilitating the registration of geographical indications for wine and spirits; making participation in the system voluntary; not providing for legal effects on non-participating Members; maintaining the current balance of rights and obligations; not going beyond TRIPS obligations; and preserving the principle of territoriality, i.e., Members' right to use appropriate methods to implement obligations according to their national legal systems. The joint proposal also facilitated the protection of geographical indications for wines and spirits by making the information available in a transparent fashion and in a single location for intellectual property offices and others to use. Furthermore, the joint proposal was not burdensome from either a resource or cost perspective.

25. The representative of Bulgaria recalled that paragraph 18 of the Doha Declaration covered extension and that, without the reference to extension, there would not have been any Doha Declaration. The EC proposal was the only one so far that took into account the mandate as a whole. The point had been made by opponents of extension that there were too many proposals on geographical indications in too many fora. This was due to the fact that the opponents did not want to discuss the register and extension in one single forum. The EC communication had responded to the point made by extension opponents that they did not know what the *demandeurs* wanted. What the European Communities were proposing in the Special Session was only to discuss that part of the proposal which dealt with the register for wines and spirits, leaving aside the question of scope, which could be discussed in the TNC or in the consultations held under the chairmanship of the Friend of the TNC Chairman. Refusing to discuss a proposal by one Member on the basis that it contained parts which were under the mandate of another negotiating body meant not wanting to negotiate in good faith and not wanting to engage in constructive discussions.

26. The representative of India welcomed the communication from the European Communities in document TN/IP/W/11 and those aspects that were covered by paragraph 18 of the Doha Declaration.

27. The representative of Argentina said that what was at stake was the issue of whether delegations had the right to refuse discussion of a submission that went beyond a mandate. He urged the European Communities to prepare documents that complied with the mandate and to reflect on the impact which their attitude, as had been presented in this meeting, could have on the rest of the negotiations.

28. The representative of Turkey, recalling that his country was a supporter of extension and of the establishment of a meaningful register of geographical indications for all products, said that the

European Communities had made a valuable contribution, which aimed at bringing together the two aspects of the GI issue, namely the register and extension.

29. He suggested that the EC paper combine Articles 22 and 23 of the TRIPS Agreement into a single provision. Additionally, the wording of paragraph 5 of the annex on the register could be improved and could be made more parallel with that of paragraph 1 on participation. The 18-month period referred to in paragraph 5 could be elaborated in paragraph 3.1. The process of how the register would function could also be elaborated in paragraph 3.1. In the same vein, paragraphs 3.6 and 3.7 could be inserted immediately after paragraph 3.1 since they dealt with the form and content of the register. In paragraph 3.2, the wording should reflect the register's scope, that was to cover all products. His delegation welcomed the "user pays" concept that was reflected in the proposal on the use of the register. Many developing countries had commercially valuable or potentially commercial geographical indications, but they lacked ways and means for their registration and protection. Besides, most developing countries did not have a good database for their geographical indications. In his delegation's view, a transition period for developing countries could be envisaged in the proposal, so as to give them enough time to create a sound database and to sort out domestic legal and practical issues related to a better protection of geographical indications. The proposal should contain provisions regarding special and differential treatment for developing countries.

30. The representative of Switzerland said that document TN/IP/W/11, presented by the European Communities, was a useful contribution to the discussions on geographical indications at a crucial moment of the Doha negotiations, namely before the July meeting of the General Council. This submission clarified and elaborated the position of the European Communities on the register of geographical indications. It also gave a useful clarification of some essential points relating to the issue of extension which had not been yet discussed in detail, such as the application of the exceptions under Article 24 of the TRIPS Agreement.

31. The Swiss delegation had always been seeking a balanced solution in the work on geographical indications: such a solution would consist of improving the protection of geographical indications for all products and in maintaining acquired rights which were justifiably covered by the exceptions under Article 24 of the TRIPS Agreement. While her delegation was fully aware that extension was not a matter to be dealt with in the Special Session and one that would be discussed in another meeting, it would nevertheless briefly comment on the issue of extension because this was part of the balanced approach sought by her delegation in the work on geographical indications, including the register. The EC proposal was a useful elaboration of the last submission presented by Switzerland and other WTO Members in JOB(05)/61 and its addenda 1 and 2 in the course of the technical consultations on extension in the sense that it proposed concrete modifications of Article 24 so that the exceptions under that Article continued, with extension, to have the same scope as what was foreseen by the negotiators in the Uruguay Round at the date of entry into force of the TRIPS Agreement. This was an essential element of extension that her delegation had always been prepared to accept as something to be enshrined in the TRIPS Agreement together with the principle of extending the protection of Article 23 to all products. To allow the current exceptions under Article 24 to apply to extension would ensure the balanced regime of the TRIPS Agreement that her delegation had never wanted to challenge in the framework of the negotiations on geographical indications. These were the reasons why her delegation had always said that the purpose of extension was not to make "*tabula rasa*" of the past but rather to ensure for the future an effective protection of geographical indications that had not yet fallen under one of the exceptions of Article 24 in a country. The objective of her delegation to respect the obligations under Article 24 also applied to the system of notification and registration to be established by the Special Session.

32. Turning to the register, she recalled that her delegation had always actively participated in the work of the Special Session in the belief that a multilateral register was, for the right holders of geographical indications, a tool that would usefully complete the protection offered by Section 3 of Part II of the TRIPS Agreement. Her delegation had also always defended the position that Members



should establish a register with a view to facilitating the protection of geographical indications as provided for under the TRIPS Agreement without increasing the level of protection, because this would fall outside the mandate. The register should be as light as possible both from the point of view of its administration and of its use and be the least costly possible. The future register should therefore have certain characteristics. First, registrations should have legal effects, namely to create a rebuttable presumption of the validity of the registered geographical indications. In order not to question the rights and obligations contained in the TRIPS Agreement, this presumption could be reversed at any time; this would apply to all the elements of the presumption. Second, to the extent that this presumption could be reversed at any time in any Member of the WTO, and taking into account that the mandate was to facilitate the protection of geographical indications, it seemed necessary that the legal effects of a registration, namely the rebuttable presumption, be claimed in all WTO Members in the same way since they were all – with the exceptions of LDCs – under the obligation to protect geographical indications. Third, in order for the principle of territoriality, which was inherent to any intellectual property right, to be fully applied in all the stages of the procedure from notification to registration, it would be a basic requirement that the registration phase be preceded by a procedure of examination and opposition. Her delegation had always been in favour of a system that would allow all countries and all producers to defend their rights irrespective of their size and economic or commercial weight. It would therefore be useful to have the opposition phase lead to an "arbitration". A system limited to bilateral negotiations would not be to the advantage of smaller countries or countries with limited resources. Fourth, the costs of the system should be borne mainly by those who notified geographical indications. A system of fees should therefore be developed for notifications.

33. She said that her delegation had not so far found the characteristics it was seeking for the register reflected in the joint proposal contained in document TN/IP/W/10.

34. With regard to the EC proposal in document TN/IP/W/11, she hoped that it would enable Members to do some useful work on geographical indications and help them make progress towards a solution. Her delegation was committed to reaching an effective and balanced solution to the protection of geographical indications for all products with due respect of legitimately acquired rights.

35. The Chairman reminded delegates not to discuss extension since this was not an issue for the Special Session.

36. The representative of the European Communities said, in response to a comment made by Australia, that his delegation had not refused at the last meeting to discuss the joint proposal but that, after having been through the provisions proposed, it had come to the conclusion that it could not be considered as a good basis for discussion. His delegation fully agreed to limiting the present discussion to the annex in document TN/IP/W/11, which was the *pièce de résistance* for the Special Session. What the European Communities were expecting from the other delegations was to go through the annex and make comments on any questions, including those where his delegation had tried to offer some comfort, like on costs and administrative burdens. If what was proposed in the annex was not sufficient, his delegation would be open to hearing that. In the end, there would be a difference of views which would have to be addressed, like the ones on legal effects.

37. The representative of Guatemala said the present discussions should be confined to the mandate, with which the joint proposal was consistent. Consequently, her delegation requested that it be included as a co-sponsor of document TN/IP/W/10.

38. The representative of New Zealand said that document TN/IP/W/11 was a hint of just how ambitious the European Communities were prepared to be in this Round and that New Zealand looked forward to seeing similar ambition reflected in other parts of the Round. His delegation had always taken mandates seriously and that was the reason why it had put forward a serious proposal that met the mandate received from Ministers. There had been a good dialogue at the last meeting and quite a

number of questions, which had been mostly answered at that same meeting. The key elements of the joint proposal had already been mentioned by a number of its co-sponsors, namely: its voluntary nature; the fact that there would be no legal effects on non-participating Members; the issue of the balance of rights and obligations; the question of costs; the principle of territoriality; the preservation of the rights of Members to choose the means by which they implement their TRIPS obligations; and, finally, its scope limited to wines and spirits.

39. The representative of Thailand said that his delegation saw no harm in discussing the EC proposal in the Special Session since the mandate did not limit the topic of discussion and Members could propose what they wished. It would like to hear more about the proposal on fees and costs, particularly paragraphs 9.2 and 9.4 on page 17 of document TN/IP/W/11.

40. The representative of Australia said that the discussions during this meeting had confirmed his worse fears that the EC paper would confuse issues as trying to lump together negotiation and non-negotiation issues. After noting that the delegations of Turkey and Switzerland had discussed extension, he thanked the Chair for clarifying that extension was not an issue for discussion in this forum.

41. As to the statement made by the European Communities that they were willing to engage on the joint proposal at the last meeting, he said that in reality what the European Communities had done was simply to put a number of points on the table that were not different from the ones they had already advanced on many previous occasions, and to conclude that the joint proposal was not a basis for negotiations. In fact, his delegation had difficulties in understanding in what exactly the European Communities wanted to engage. The suggestion that perhaps Members could just discuss the annex of document TN/IP/W/11 was unacceptable since Members could not just pretend that such a proposal only applied to wines and spirits. He therefore encouraged the European Communities to recast its proposal in a way that would enable Members to discuss it in the present forum.

42. The representative of Malaysia noted that the EC proposal was meant for discussion in three bodies, including this Special Session. She had heard a number of delegations stating that the multiple purposes of the document were creating some confusion as to which part of the document should be addressed before the Special Session. While all Members knew that the most relevant part of the document was its annex on the multilateral system, they had also noted that there were some words missing in the title of that annex, namely "wines and spirits". Her delegation was concerned that Members would go down the path of discussing extension and possible amendments to Articles 23 and 24 of the TRIPS Agreement, which would be outside the mandate of this Special Session. She said, however, that the European Communities had provided a serious proposal for a multilateral system and asked whether or not it could be resubmitted with a reference to "wines and spirits" in the annex. This would allow some delegations to participate in the discussions without much reservation. Finally, she recalled the concerns that her delegation had expressed in previous meetings regarding the legal effects on non-participating Members, and said that, even if the European Communities resubmitted the annex of document TN/IP/W/11 with the words "wines and spirits", those concerns would still remain.

43. In conclusion, she said that her delegation considered the joint proposal as one that met most of Malaysia's needs for a system that was voluntary and one that bore no legal effects on non-participating Members.

44. The representative of Bulgaria said that there was no confusion stemming from the EC paper. Its purpose was, rather, to alleviate the confusion created by some delegations which did not want to negotiate in good faith. He noted that Australia had not answered the question as to whether or not it was prepared to discuss the annex. He added that, whilst the Chairman was asking Members to refrain from discussing the extension part of the EC proposal, he should also, following the same logic, stop Members from making remarks that the EC proposal was confusing.

45. The representative of Zimbabwe, expressing support for the statements made by Thailand and Bulgaria, observed that nothing in paragraph 18 of the Doha Declaration prevented a Member from discussing any topic.

46. The representative of Chinese Taipei, expressing support for the statements made by Argentina, Australia, Canada, Chile and Japan, recalled that each negotiating group or Special Session of a WTO body had been established for a specific task mandated by the Doha Declaration. In this light, she suggested that the present discussions stick to the mandate and move forward focusing on the mandate so as to enable Members to quickly achieve a result.

47. The representative of Brazil associated his delegation with those who had expressed concerns regarding the EC submission and the mandate. Like the delegations of Argentina, Australia and Canada, he questioned the appropriateness of using the EC proposal as a basis for discussion in the Special Session.

48. The representative of the European Communities said that his delegation had made it clear that it was ready to limit the discussion of the annex to wines and spirits, which was the mandate of the Special Session. He would have a problem if some delegations refused to discuss the proposal made by a delegation representing 25 WTO Members and supported by some others. The heart of the negotiation in the Special Session was how to bridge the differences regarding certain aspects of the system, e.g. the legal effect of a registration. It was not a secret that in the overall negotiation the whole issue of geographical indications, including the register for wines and spirits, was of crucial importance to the European Communities, to the same extent as other issues of negotiation, such as Agriculture, NAMA or Rules, were for other delegations. If Members wished to have an ambitious achievement of the Doha mandate in Hong Kong, then they would have to take into account each other's crucial points.

49. The representative of Chile wondered what the reaction of the European Communities would be if, in the Negotiating Group on NAMA, Chile were to make a very ambitious proposal applicable to agricultural products? If the European Communities wanted to discuss its proposal on the register, it should present a piece of paper that was limited to wines and spirits only.

50. The representative of the European Communities said that document TN/IP/W/11 was a response to criticism made by other delegations that the European Communities had not tabled a more recent paper in the Special Session. He recalled that in presenting this document his delegation had made it clear that it recognized that the scope of the register and the extension of the register to products other than wines and spirits was not a question for this body but a subject for another meeting. To the same extent that the paper submitted by the joint proposal group had been given serious consideration and had been discussed in great detail by his delegation at the last meeting, the EC paper deserved due consideration and discussion.

51. The representative of the United States expressed support for the comments made by Australia, Brazil, Canada and New Zealand with respect to the scope and the dilemmas Members were having as a result of the EC paper. What some Members were refusing to negotiate was only on that part of the proposal that was outside the mandate and this was not an unreasonable position. Her delegation would have no problem with this entire document being considered in the consultations on GI extension as a tool to clarify the EC position, and would treat it as such. Instead of complaining about other delegations not being constructive, it would be helpful if the European Communities could submit a new document that assembled elements relevant to only wines and spirits in order to avoid any confusion about its content.

52. The representatives of Canada and Chile expressed support for the suggestion made by the United States about the European Communities recasting their proposal.

53. The Chairman asked the representative of the European Communities whether, given the suggestions made by several Members, his delegation would be in the position to restructure its paper.

54. The representative of Bulgaria said he opposed the suggestion made to the European Communities to resubmit their proposal.

55. The representative of the European Communities recalled that before Doha some discussion had taken place on the issue of scope and that the TRIPS Council had agreed to exclude this issue from the discussions. This explained, for example, why the very first proposal of the United States and Japan, which was circulated in document IP/C/W/133 and mentioned "wines and spirits", did not refer to wines and spirits in its revised version, IP/C/W133/Rev.1. This was the case because there had been a gentleman's agreement in the TRIPS Council not to discuss the issue of scope. The EC proposal did the same, both in 1998 and in 1999. His delegation had never included explicit references to wines and spirits, or implicit references to all products, leaving this issue completely outside the discussion in the TRIPS Council, because it pertained to the informal consultations on extension. His delegation did not accept being accused of abusing the mandate when, at the same time, there was a paper tabled by Australia in the informal consultations on extension, JOB(05)/8, asking that all proposals be considered when discussing the objectives, scope and content of GI extension. Document TN/IP/W/11 was just an attempt to respond to that, i.e., clarify the EC's level of ambition. He added that there was no need to resubmit the proposal.

56. The representative of Australia reaffirmed his delegation's commitment to continue the negotiations. Responding to the EC comments regarding the history of the issue of scope, he reminded delegations that "wines and spirits" were clearly written into the Doha Mandate and reaffirmed by the July Package in 2004. He recalled that the issue of whether or not this register would apply to all products had been raised before in the Special Session. The Chairperson at that time had said that Members had a clear mandate to negotiate the establishment of the multilateral system of notification and registration of geographical indications for wines and spirits by the 5<sup>th</sup> Ministerial Conference and that Members should work within the mandate. The Chairperson also said that the Special Session was required to fulfil that mandate in its entirety and not to go beyond the mandate. He believed that Members had agreed on this issue because no delegation had taken issue with the Chair's statement made at that time or later.

57. The representative of Bulgaria noted that delegations which were criticizing the EC paper were actually discussing scope. He suggested that the Chairman invite delegations to discuss only that part of the EC proposal which did not deal with scope.

58. The representatives of Chile and Mexico disagreed with the comments made by Bulgaria about certain delegations not willing to negotiate in good faith.

59. The representative of Costa Rica said that the paper presented by the European Communities, which dealt with extension and the register, fell outside the mandate. This was consequently a significant systemic issue. This Special Session could not allow Members to unilaterally change a mandate when that mandate had been a balanced outcome in Doha and had been reiterated in the July Package.

60. The representative of the European Communities said that, as his delegation had made clear in document TN/IP/W/11, its level of ambition had not changed and that it had also indicated that the scope of the register was not for discussion in the Special Session. It was not therefore a question of changing the EC proposal so that it only applied to wines and spirits, because that would not be a reflection of his delegation's position. The real issue was: where to discuss what. The annex could be discussed in this body insofar as it applied to wines and spirits.

C. OTHER ISSUES

*Chairman's draft report to the TNC*

61. The Chairman said that, at the meeting of the TNC on 19 May, the Chair of the TNC had requested the Chairs of the various negotiating groups to provide him with their inputs and assessment by early July, the aim being for the TNC Chair to provide Members in July with a good idea not only of the progress made, but also of what remained to be done to ensure a successful Ministerial Conference in Hong Kong. The TNC Chair had also recognized that the level of specificity of the inputs would no doubt vary from one negotiating group to another. The Chairman said that the report he would submit would be under his own responsibility and would reflect his own assessment of the progress in the group and of outstanding difficulties. Sharing with the Special Session his preliminary thinking as regards his report, he said that he would first give a brief description of the state of play of the work in the Special Session, aimed at fulfilling the mandate given to it in the Doha Declaration. In this context, he would say that he had detected some increase in the level of activity in the last few months as shown by the new submissions, spelling out in legal form proposals for a multilateral system. This had been useful in clarifying to the Special Session the thinking and the proposals of the proponents of these documents. He would also recall the other proposal on the table, namely the one submitted by Hong Kong, China in 2003. He would, however, say that it could not be claimed that the new submissions and the consideration that the Special Session had given to them had enabled a significant step towards finding agreement to be taken. Differences of view on the merits of the different proposals on the table and on their consistency with the Special Session's mandate as contained in paragraph 18 of the Doha Declaration appeared to be as large as ever and not to have narrowed since prior to Cancún. As in previous reports to the TNC, he would identify the two key points of difference that continued to impede efforts towards finding agreement, namely the question of legal effects and participation. In addition, he would mention that there were other issues that needed further discussion such as costs and administrative burdens. He would also say that, while there would be scope within the framework of the Special Session for fruitful work of a technical nature on some aspects in the coming months, any progress on the key issues would require significant new flexibility on the part of the delegations. He said that he would circulate his report in draft form to Members in writing for any further comments, it being clearly understood that the report would remain on his own responsibility.

62. The representative of Bulgaria said that whatever was to be done by the Chairs of the negotiating groups in view of the July process, this should be done in a uniform manner. He would be concerned if some Chairs were to include in their reports texts which would form a contribution to a first "approximation" of the Hong Kong text while others would limit their reports to a factual description or "*constatation des faits*".

63. The Chairman said that, if he saw any progress in this Special Session, he would report it, but, if he did not, he would also have to indicate this fact.

*Future meetings*

64. The Chairman recalled that the Special Session agreed at its meeting of 30 November 2004 to hold two other meetings, one on 16 September 2005 and the other on 27-28 October 2005, back to back with the regular session of the Council for TRIPS scheduled for 25-26 October.

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