# WORLD TRADE ORGANIZATION

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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 12-13 June 2006

*Chairman: Ambassador Manzoor Ahmad (Pakistan)*

Subjects discussed — Page No.



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### A. ADOPTION OF AGENDA

1. The seventeenth Special Session agreed to adopt the agenda as set out in WTO/AIR/2829.

2. The Chairman suggested that the Special Session invite the International Bureau of the World International Property Organization (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 recalled that, at the March 2006 meeting, the Special Session had a focused and useful discussion on the priority concerns identified by delegations and listed in the Chairman's note dated 10 March 2006, "List of Priority Concerns for Discussion at the Meeting of 16-17 March 2006". He also recalled that at the end of that meeting, he had concluded that, while in some areas, such as legal effects/consequences of registration and participation, Members were still far apart, on others, such as notification, there seemed to be more common ground. On issues such as fees and costs, there was a need for more work to clarify the issues and the differences. In that meeting he had also expressed the hope that the discussions had helped delegations to better understand each other's concerns and invited delegations to think further on how certain concerns or

fears could be allayed. He finally recalled that he was encouraged that certain delegations expressed some willingness to explore the scope for doing this.

5. He urged delegations not to repeat themselves, but, given the time available, to seek to limit their statements to new points. He proposed that delegations should first make general statements and then proceed through the various headings that Members had been using, namely participation, notification, registration, legal effects/consequences of registration, and fees and costs.

6. It was so agreed.

***General Comments***

7. The representative of the European Communities said that his delegation had taken an active and constructive role in these negotiations and expressed hope that other Members would also take the same approach. He considered the establishment of a meaningful multilateral GI register as an essential element in the overall balance of the DDA. In the course of 2006 his delegation had participated in useful Special Session meetings and consultations on this matter and had also discussed it bilaterally with some Members.

8. He said that his delegation's objective was to explore potential convergence and recalled that it had been flexible, compared to past proposals on the GI register, regarding, for example, the issues of fees and technical assistance and the avoidance of creating burdens on Members. He recalled that his delegation had also said that it would be prepared to commit itself, certainly initially, to annual ceilings on geographical indications to be notified and offer longer transitional periods for developing countries. However, if this Special Session wanted to move forward, a clear signal was needed from others showing that they were prepared to reciprocate in flexibility.

9. He recalled that the Chairman had announced in the Special Session meeting held last March that a working document would be on the table by July. Although his delegation had asked for this document to be circulated by the Chairman in advance of the present meeting, it understood that the Chairman wished to have more guidance from the Members before sharing such a paper. Such basic guidance could, in fact, take the form of clear signals by Members that they were prepared to be flexible. His delegation believed that this working document should be a compromise proposal from the Chairman and therefore he would only encourage the Chairman to explore all possible margins to present a meaningful compromise proposal as soon as possible.

10. The representative of Australia took note of the European Communities' statement that a meaningful GI register was essential for overall balance in the Round, as well as of their statement that their objective was to explore possible areas of convergence. She agreed that this was the task that Members had in these negotiations. However, in doing so, Members should look at the core issues and the fact that flexibility, on the margins, be it in relation to extended reservation periods or in relation to annual ceilings on a number of notifications, would not go to the heart of her and other delegations' concerns with the EC proposal.

11. The representative of the United States said that her delegation supported the comments made by Australia. With respect to the comments made by the European Communities on the working paper, while she believed that the paper should indeed clarify and reflect divergent views, her delegation was not supportive of a Chairman's document. Instead, her delegation would suggest that the side-by-side document could be updated and the Secretariat could provide an annex containing points raised by delegations in the Special Session clarifying those divergent views.

12. The representative of Argentina expressed her support for the statements made by Australia and the United States regarding the nature of the working document. Like Australia, her delegation

also believed that the flexibilities indicated by the European Communities did not really go to the heart of the concerns it had, such as those regarding the EC system of opposition, legal effects or participation. For this reason, she considered that the time was not ripe for any compromise document.

13. The representative of Romania said that her delegation fully supported the proposal made by the European Communities on the working document. The present discussions could be helpful in giving the Chairman more substance for such a paper.

14. The representative of Chile expressed support for the suggestion made by the United States regarding the working document. Although several questions still remained unanswered, his delegation could nevertheless agree to update the side-by-side document. He recalled that certain questions posed to the European Communities and Hong Kong, China had been satisfactorily clarified and could serve as elements for updating the text. Such modifications to the text could also include the flexibilities mentioned by the European Communities.

15. The representative of Canada said that Canada would continue to engage constructively in these negotiations to work actively towards their successful conclusion. She fully agreed with the statements made by Argentina, Australia, Chile and the United States and shared their concern that the flexibilities that had been shown by the European Communities did not meet their concerns. Her delegation was therefore still waiting to see some serious flexibility from the European Communities.

16. The representative of Japan associated himself with the statements made by Argentina, Australia, Canada and Chile. There were still fundamental differences between the proposals on the table and many questions still had to be clarified. Japan was convinced that the purpose of the system to be established should be to facilitate the protection of geographical indications and that it should not confer any rights regarding geographical indications registered under the system nor prejudice any rights and obligation under the TRIPS Agreement. Japan wished to continue to participate constructively in this exercise.

17. The representative of Switzerland recalled that Members were at a crucial stage in their negotiations and that according to the timelines defined in the Hong Kong Ministerial and the Doha work programme they were to produce a working document by July at the latest. These negotiations were part of the single undertaking and his delegation therefore welcomed the Chairman's active role in these negotiations, as well as his proposals on the various formats for these discussions during the present Special Session meeting. He hoped that these discussions would provide the Chairman with the guidance he needed. However, if Members were not able to converge, his delegation would suggest that the Chairman should consider the option of proposing a text himself and strike a compromise. Obviously, such a paper would have to go beyond a mere comparison of the proposals on the table and it would also have to go further than an options paper produced in 2003 by a previous Chair. Chairs in other negotiating groups were also proposing text proposals on a bottom-up approach. He believed that the fact that this Special Session already had three text proposals on the table provided an adequate bottom-up approach. Clearly, while it was up to Members to come to a consensus on such a text proposal once it was on the table, such a compromise text proposal by the Chair would put these negotiations on a new basis and would therefore help Members to focus and make progress on the most controversial and core issues. The consensus on some of the key factors might have to be found in a broader spectrum of the ongoing negotiations in the Doha Round, including agricultural modalities.

18. The representative of Colombia asked whether the European Communities could express with more clarity, ideally in written form, exactly what flexibilities they were proposing for developing countries.

19. The representative of Korea said that his delegation believed that there was still wide divergence on major issues with respect to the proposed multilateral GI registration system. Any system to be established should be non-binding and voluntary and not impose undue financial and administrative burdens on both participating and non-participating Members.

20. The representative of Chinese Taipei said that, as one of the co-sponsors of the joint proposal, his delegation shared the point made by many co-sponsors of that proposal that the flexibilities shown by the European Communities in the Special Session's meeting last March still did not go to the heart of the matter that was the focus of these delegations' concerns. As for the future work, he believed that it was still premature to discuss a Chairman's text.

21. The representative of New Zealand associated himself with the comments made by Australia and supported by others. His delegation did not see any basis at the present juncture for a Chairman's compromised text, certainly not one that would be consistent with a bottom-up approach, as mentioned by Switzerland. On the other hand, he agreed with the suggestions made by Chile and the United States in this regard. Since Members had had some positive discussion on the basis of the side-by-side document his delegation would be open to considering ways to amend this document further.

22. The representative of India said that his delegation respected both the mandate of the negotiations in the Special Session as well as the latest timelines given by the ministers at the Hong Kong Ministerial. India was ready to work constructively on the basis of any proposed process of moving towards a goal of an outcome within those timelines. For India and many developing countries the cost and burdens arising from each aspect of the possible solution were of prime importance.

23. The representative of Guatemala, supported by the representative of Mexico, associated herself with the interventions made by Argentina, Australia, Chile, New Zealand and the United States. She believed that the proposals made by the European Communities were not substantive and did not solve the core problems identified by the Joint Proposal Group. Including transitional periods, as proposed by the European Communities, would not solve the problems of the developing countries. Regarding the working document, she believed that the suggestions made by the co-sponsors of the joint proposal would be the best way forward at the present time.

24. The representative of the European Communities said that he was pleased to hear a number of delegations saying that they were willing to engage constructively in these negotiations. His delegation looked forward to this. He was, however, concerned with the fact that these same delegations who were willing to engage constructively, did not, at the same time, even want a compromise proposal to be put on the table, which was not a constructive manner in which to engage.

***Participation***

25. The representative of Australia said that the issue of participation spoke for itself and therefore her delegation would not restate its position in this regard and would instead simply recall the strong and broad support in this house for a voluntary system.

26. The representative of the European Communities recalled that the mandate called for a multilateral system, which in the WTO context meant a system that was applicable to all WTO Members. As his delegation had demonstrated in the past, it was flexible on this issue, so as to make a distinction between participation and non-participation in the system, while maintaining that all Members should be part of the system.

***Notification***

27. The representative of the European Communities recalled that this was one of the areas where there was a positive atmosphere, since Members were perhaps closer than they had been to identifying some convergence. However, he also recalled that the EC proposal made notification the way to indicate the willingness to become a participating member into the system and also the starting-point for the period for examination, which was one of the key elements of this proposal.

28. He saw some convergence between the joint proposal and the EC proposal regarding the content of the notification. Although this was not one of the core issues under negotiation, it would be useful if the proponents of the joint proposal could signal readiness to move on this and to "beef up" their proposal with regard to the contents of the notification. In previous meetings his delegation had made the point that some of the information to be contained in the notification was merely optional in the joint proposal system. This was the case, for example, of information on the basis of which the notified geographical indication was protected in the country of origin or the date of protection of the geographical indication. His delegation believed that this kind of data was quite important for it would increase the information within the system in a meaningful way. Addressing such concerns would be a good signal from the Joint Proposal Group that they were prepared to engage in these negotiations.

29. The representative of the United States agreed that notification was an area where perhaps there was some overlap that could be used as a basis for some further discussion. However, notification should not be discussed in isolation from the broader consequences of the system because with regard to some of the aspects that were included as notification items, particularly in the EC proposal, there were those that could have a negative impact on, for instance, fundamental principles of territoriality as well as those that might lead to discriminatory treatment of certain notified geographical indications or geographical indications that were protected under various systems that were now consistent with the TRIPS Agreement. For example, both the EC and the Hong Kong, China proposals required some reference to a legal instrument by which the geographical indication was protected. However, such a system would be difficult, if not impossible, for those Members who protect geographical indications through, for example, unfair competition or where rights were acquired through use or where geographical indications were protected by common law systems. There would therefore be a significant discrimination against Members using such systems. He said that another issue was the notification of translations, which under the EC proposal would have specific legal consequences. He cautioned that when addressing this question, Members would have to consider the ramifications of all these proposals.

30. He concluded by saying that his delegation had indicated a willingness to engage constructively on the issue of notification and would be happy to discuss it in broader terms. However, this would have to be done in a careful manner so as not to cross a line that would negatively impact on fundamental principles of intellectual property law, as had been the case under the existing proposal by the European Communities, including in their section on notifications.

31. The representative of Chile associated himself with the comments made by the United States on this issue and said that while the EC and Hong Kong, China proposals apparently allowed a Member to notify geographical indications from its territory as well as those coming from other countries, the joint proposal only allowed the notification of geographical indications that originated in the territory of the notifying Member. This was one of the examples of an area where changes could be made to update the document that Members were working on.

32. The representative of Australia agreed with both the European Communities and the United States that notification was perhaps an issue on which Members could find some convergence between the proposals on the table. Nevertheless, she also agreed with the United States' statement

that such an issue could not be looked at in isolation from the consequences, for the information contained in the notifications would be used in a certain way. One important aspect in this regard, as mentioned by the United States, was translation, which was an issue that each Member should deal with in relation to its own territory. Her delegation would not wish to see a situation where GI protection was expanded through the notification of certain translations that perhaps were not even geographical indications at all.

33. As to the notification of the legal instrument through which the geographical indication was protected, she said that perhaps this was an issue that could find a compromise through language. She agreed with the United States that there were many Members who did not protect geographical indications through registers and that their systems would need to be accommodated.

34. She said that another issue in relation to information to be provided in the notification related to Article 24.9 of the TRIPS Agreement. She was not sure whether the EC proposal was changing this provision in such a way as to mean that Members would not be required to implement the legal consequences of notified terms where they were not protected in the country of origin. If this were the case, then it would be a slightly different situation from the current language of Article 24.9, which was permissive.

35. The representative of the European Communities thanked other delegations for the encouraging comments regarding notifications. This was an area where Members could make some progress, given that there was some convergence. As a general point under this issue, he said that the EC proposal was fully consistent with the principle of territoriality and did not affect fundamental principles of IPR systems in other Members. It also met the TRIPS mandate to facilitate GI protection, which could only be reached through meaningful legal effects.

36. He understood the concerns expressed by the United States with regard to systems that did not protect geographical indications through registration. The first point in response to this concern was that most geographical indications were protected through registration schemes, which meant that, in general, for most geographical indications, it should be possible to indicate the legal basis for their protection clearly in the notifications. Such information would serve to demonstrate that the notified geographical indications had cleared the hurdle of Article 24.9 of the TRIPS Agreement. Such information was relevant for Members, given that this was what would unlock the TRIPS protection even for geographical indications that were not protected on the basis of, for example, *sui generis* GI registration systems or for those that were protected on the basis of unfair competition laws. This would not prevent any Member from indicating that in their notifications. While his delegation accepted the fact that geographical indications were protected in different ways, this did not change the need to have the ways in which these names were protected stated in the notifications.

37. He recalled and agreed with a point made that there could not be any agreement on notification before the final features of the GI register were known. This was, in fact, a point made in the report by the Chairman to the TNC in advance of the Hong Kong Ministerial, where he highlighted that the two core issues were participation and legal effects. It was clear that what Members agreed on those two issues would have an impact on the rest of the issues on the table, and that was exactly why the European Communities had consistently asked for these discussions to focus on those two core issues.

38. On the issue mentioned by Chile on the possibility, under the EC system, for a Member to notify a geographical indication corresponding to territories outside that of the notifying Member, he said that his delegation had already mentioned in the Special Session's last meeting that it would be prepared to modify its proposal to clarify that it only referred to geographical indications in the territory of the notifying Member.

39. As to the issue of translations, he said that what his delegation had inserted in its proposal on this matter was with the spirit of compromise based on the text in Job(03)/75, which was a paper that allowed some progress to be made by comparing various proposals on the table. On the question of translation this document only offered one single text; it was a text not to be considered final in any way, although it certainly hinted at an area where Members were supposed to be in agreement. The disagreement expressed by some Members to what the EC proposal was proposing on translations was a consequence of the sponsors of the joint proposal having changed their views on this matter. In any event, irrespective of what was in the EC proposal, he stated that for his delegation the principle of territoriality also applied to the question of translations. This meant that it remained with national authorities to make decisions or determinations with regard to translations and that what the European Communities was proposing would not bind the authorities of any Member or take such responsibility to decide out of their hands. If Members still had concerns regarding translations, his delegation was prepared to consider alternative language that they might propose on this issue.

40. The representative of Argentina said that the joint proposal had the merit of establishing a simple system which emphasized transparency. She agreed with the point made by the United States that focusing only on supposedly neutral technical issues was not appropriate, as the whole system was formed by a series of interrelated elements leading to a final solution, the issue of notification being just one of these elements. In the EC proposal, it was only when one looked at the registration phase that one would truly understand why all these elements were required to be contained in their proposed notification phase. The EC delegate said clearly in his last comments that these elements were essential because they were the legal basis for protection. This was where the principle of territoriality should be observed, because the granting of protection for notified geographical indications should not be the aim of the system to be established. The aim should be to receive notifications of geographical indications protected according to the national legislation of the notifying Member and not to inquire as to whether such a name was or was not protected in other WTO countries, a matter to be determined by the various national legislations of these other countries. In other words, no element contained in a GI notification should serve as the basis of protection of this name in other countries; otherwise the system would not be respecting the principle of territoriality for it would be accepting the extraterritorial application of the legislation of certain Members in the territories of other Members.

***Registration***

41. The representative of the European Communities proposed that rather than restating their well-known positions on this matter delegations might agree on the principle that the system to be established should contain reliable information. It was with this principle in mind that his delegation had included the specific elements forming the content of notifications in its proposal. Additionally, it was through the registration procedures that the EC proposal aimed at ensuring that the information contained in the system would be reliable, which was particularly important, given the fact that legal effects would flow from the register. Only a register containing reliable information would justify meaningful legal effects. He believed that the joint proposal's automaticity with regard to notification and registration would not attain, as the EC proposal did, the objective of ensuring reliability of information. Under the joint proposal system it would be possible, for example, to notify a geographical indication that did not meet the GI definition and yet national authorities would need to consult the GI register when making decisions even if that name was not a real geographical indication. What would happen, for example, if a judge having the obligation to consult the GI register suddenly found out that that name was in fact not a geographical indication? This kind of situation would not be good for legal certainty and would create confusion. Therefore, his delegation believed that Members had to do their utmost to establish a system that contained reliable information, which was an objective on which all could agree.

42. The representative of Australia asked the European Communities whether the sole or main purpose of the complex reservation system set up in its proposal was to ensure the reliability of terms on the register. She failed to understand the relationship between these two aspects. Members should recall that the EC proposal basically required Members to lodge substantiated reservations and enter into compulsory negotiations on behalf of every private interest in its territory that might be affected by the registration of a foreign geographical indication. By failing to follow such a procedure a Member would then waive its rights to decline protection on certain grounds, for example that the product was generic in its territory. She was therefore not certain how such a system would improve the reliability of terms on the register. It seemed to her delegation that the main effect of the reservation system was that some Members would register many geographical indications because other Members would be unable to lodge reservations given the complex and costly nature of the system. Therefore, it appeared that the main purpose of the system was to have as many terms registered in it as possible and not to ensure the reliability of information contained therein.

43. The representative of Chile recalled that he had already said in the previous meeting that the best guarantee that the information would be reliable was the fact that it would come from notifications made by governments. Cases of notified terms that were not geographical indications or of multiple identical GI notifications would be minimal. The joint proposal provided for fairly strong legal effects that might have practical effects beyond the simple obligation of industrial property offices to consult the database. For example, many offices and judges, after consulting the database, might in fact create an important precedent for the protection of that name by corroborating the content of that specific information in their decisions. No IP office was infallible, and there could be deficiencies in the system, but the fact that governments would be those making the notifications would be a strong and reassuring guarantee of reliability. Although the notification system Members set up at the end of last year as part of their decision on TRIPS and public heath did not provide for the verification of notified information, Members made their decision assuming that governments would make accurate and faithful notifications to the paragraph 6 system.

44. The representative of Chinese Taipei supported the approach suggested by the United States that the discussions should not focus only on the specific parts of the proposals in isolation from the overall systems they proposed. As to registration, he recalled that in the meeting held last March, the European Communities said that it was prepared to look at some flexibility, such as, for example, the possibility of allowing notifications to be made directly by producers. He asked the European Communities whether, assuming this would be the case, these producers would also be able to lodge reservations directly with the administrative body. If that were the case, how would the EC proposed system provide more reliable information? If that were not to be the case, then the responsibility to lodge reservations would be shifted to governments and would result in extra costs and burdens to them.

45. The representative of New Zealand said that his delegation could agree with the principle referred to by the European Communities that the information on the register should be reliable. However, such an objective should be pursued without making the system overly burdensome and undermining the flexibilities of the TRIPS Agreement that Members currently enjoyed. He agreed with the point made by Australia that the EC proposal's procedures seemed to go much further than simply establishing reliable information. In any case, there was scope to discuss the issue of reliability further, not only under the notification and registration headings but also under legal effects.

46. The representative of the European Communities clarified that the objective of his suggestion was simply to present a generic principle on which all Members agreed, namely making sure that the information within the system would be reliable and then that Members would look to the appropriate consequences of such a principle and consider modifications of the proposals accordingly. Essentially, what his delegation was suggesting was to offer an easier way through which the joint proposal could be adapted in order to improve the reliability of the information under it. He was not in any way

suggesting that the sole purpose of the registration system would be to ensure reliability. The system needed to be reliable because it would be such reliability that would justify that certain legal effects would flow from it. The consequence of agreeing on this principle was that any proposal providing for an automaticity between notification and registration, which made both concepts close to equivalent, would need to be revised. For his delegation, the solution to this question could be ensured through a challenge procedure in which Members that had a problem with a certain geographical indication could simply indicate this in a period of eighteen months. Through such a challenge procedure the EC proposal ensured that geographical indications would be examined by Members with full respect for the principle of territoriality. His delegation was not proposing, as suggested by some Members, that the WTO Secretariat take decisions on which Member would be the true owner of a geographical indication or the real notifying Member of a certain geographical indication that had been notified by two Members at the same time. What it was proposing was simply the establishment of a system that would make sure that territoriality was ensured by the fact that decisions would remain in the hands of national authorities, which would make their views clear through a challenge procedure that would prevent the unfolding of legal effects in the territories of the challenging Members. In sum, such a challenge procedure would certainly ensure reliability of the system with perfect consistency with the principle of territoriality.

47. As to Chinese Taipei's comment regarding some possible flexibility that the European Communities had offered to consider that producers could notify geographical indications directly, he said that if other Members did not agree with such an idea his delegation would not change its proposal in that direction. The only objective of offering such flexibility was simply to make clear that the European Communities were prepared to compromise in order to establish a system that would be acceptable to all Members.

48. The representative of the United States associated herself with the comments made by the delegations of Australia, Chile and Chinese Taipei. As to the point made that the EC proposal respected the principle of territoriality, she noted that this proposal indicated that Articles 24.4 and 24.5 of the TRIPS Agreement could not form the basis of a reservation. She also recalled that the different items of the proposals could not be looked at in isolation and that registration, notification and cost all needed to be analysed as a whole. The fact that the EC proposed system created a burden on Members to challenge notified geographical indications rather than putting the burden on right holders and the fact that it also, as a consequence, created certain legal effects could not be reconciled with the notion that IPRs were territorial and that these rights had to be established and asserted under the laws of the country where the protection was sought.

49. Responding to a point raised by the United States, the representative of the European Communities said that the reference to Articles 24.4 and 24.5 of the TRIPS Agreement in the EC proposal was made *ad abundantiam* and only to clarify that the proposal did not foresee specific legal effects for those grandfathering exceptions, which could be fully exercised at any time at the national level. His delegation was not, therefore, proposing a situation similar to that which it had proposed, for example, for Article 24.6 of the Agreement, where it said that if Members had a problem and considered a notified GI to be generic they had to say so within eighteen months, otherwise they would not be able to refuse protection of the geographical indication on that basis. However, even if there had been no opposition based on 24.6 but if there was prior use by some producers in that particular Member, they would still be able to make use of the GI because this would be in principle a grandfather clause under the exceptions in Articles 24.4 and 24.5 of the Agreement.

50. The representative of El Salvador said that, as a co-sponsor of the joint proposal, her delegation believed that the flexibilities that motivated this proposal must be preserved. She therefore agreed with the comments made by the delegations of Argentina, Chile and the United States in this regard. She wished the European Communities to confirm that their objective was neither to create a

supranational system nor to charge the WTO Secretariat with the prerogative of making decisions on the notifications.

51. The representative of Australia asked the European Communities what was the justification or the thinking behind treating Article 24.4 differently from Article 24.6 in its proposal. In previous meetings of the Special Session the response given to this question was that Articles 24.4 and 24.5 were mandatory but her reading of the TRIPS Agreement was that only Article 24.5 was mandatory. She was also interested in understanding the relationship between the requirement to give a presumption of protection for terms notified and the ability to continue to invoke Article 24.4 under national laws. She wondered what the relationship between those two provisions was in terms of burdens of proof and territoriality. For her delegation the key point was that the EC reservation system itself, regardless of how long the period for lodging reservations was, eroded the principle of territoriality by forcing Members to be proactive in denying IP rights to GI right holders rather than providing, as required by the TRIPS Agreement, the framework of minimum standards within which IP rights could be acquired in relation to that territory.

52. The representative of Canada said that her delegation still had many concerns with the registration aspects of the EC proposal, particularly with the fact that reservations would have to identify the applicable grounds and be duly substantiated. All WTO Members, participating and non-participating, would need to determine for themselves whether the geographical indication met the Article 22 definition, whether it represented the origin of the goods and whether it was a generic term in their territory. Canada knew from previous experience that a substantial amount of work was required to determine these factors and that such a process could take some time. She wondered how much additional work would need to be invested in duly substantiating these grounds and who would determine whether they were sufficient. Furthermore, the burden of all WTO Members wishing to retain the generic nature of notified terms would fall on the shoulders of those Members' governments.

53. The representative of the European Communities said that the presumption that unchallenged geographical indications would enjoy under the EC proposed system was their eligibility for protection, which covered the whole of the GI protection available under the TRIPS Agreement. That was the key idea that his delegation was proposing for participating Members and the main difference in relation to the effects foreseen for non-participating Members. This would facilitate GI protection and would make the TRIPS protection easier to implement because it would improve the standing of GI right holders before national authorities by putting the burden of proof in their favour. As to the effects provided under the EC proposal for all Members, both participating and non-participating, they only referred to the questions of the definition, homonymous geographical indications under Article 22.4 and generics under Article 24.6. The reason why his delegation limited itself to these aspects was to give meaning to the mandate under Article 23.4, which referred to a multilateral system and, at the same time, hinted that there were differences between participating and non-participating Members. Therefore, his delegation wished to be sure that legal effects for non-participating Members were in some way limited. However, he stated that if Members would find it useful for the European Communities to include other TRIPS exceptions in their proposal as grounds for opposition, this could be considered.

54. The representative of India thanked the European Communities for their clarification on the application of the various TRIPS GI exceptions under their proposal. He asked whether there would be an impact on the reliability of such a system if its notification procedures were to contain some of the non-mandatory elements of the joint proposal. Since there appeared to be convergence on the need for reliability, he wondered how the basis of GI protection would be known in cases where GIs were protected by common law or through unfair competition systems if such information was not a mandatory requirement in the notifications.

55. The representative of Australia said that the European Communities had indicated that it would be willing to include Article 24.4 on prior good faith use as a ground of objection in the reservation system. This would not, however, allay her delegation's concerns; her delegation was interested in understanding why Article 24.6 on the generic exception could not still be used under domestic law. This question was related to her original question on the justification for treating Articles 24.4 and Article 24.6 differently. It seemed to her that the EC proposal was creating a hierarchy in relation to the exceptions.

56. The representative of Argentina reaffirmed her delegation's serious concerns with regard to the issue of registration. She had trouble understanding the relation between establishing a complex system of reservations with the goal of ensuring reliability of the information notified. The registration and notification systems under the EC proposal were interrelated with the reservation procedure and its legal effects. Her delegation had serious systemic concerns with the fact that such a system, when seen in its entirety, was unprecedented when compared to other international IPR regimes. What Members were supposed to negotiate was the establishment of a system that would facilitate, and not modify, the protection of geographical indications. There was also no mandate to renegotiate how the exceptions were to be applied. The EC proposal would not create a neutral legal instrument, but rather a political system with mandatory bilateral negotiations. Such a system would have an impact in terms of legal security and predictability, as political pressure would be exercised by some countries against others that had less political clout and because it would seek to establish a supranational system for geographical indications that would have validity in each of the Member countries of the WTO.

57. The representative of Chile agreed with Australia's concern that the EC proposal created a hierarchy between the various exceptions in Article 24 of the TRIPS Agreement. He said that besides the two categories of exceptions that the European Communities said were expressly mentioned in their proposal, he would add a third category of exceptions, namely, those in Articles 24.8 and 24.9 of the Agreement, which had not been expressly referred to in that EC proposal. He asked whether, under the EC proposal, the exceptions could be invoked at a later stage due to factual changes. Would Chile be able to invoke Article 24.9 in the future in relation to a registered geographical indication that was no longer being used in Spain, for example?

58. The representative of the European Communities said that most of the comments made expressed a certain lack of confidence in a system of opposition based on challenges lodged by Members. A delegation had even made the point that this would be contrary to the principle of territoriality. For his delegation, the effect would actually be the opposite, for it would be through such a reservation system that the possibility of challenging the notifications made would be granted to Members, hence ensuring that the principle of territoriality was respected. In fact, the idea of oppositions and objections was something that was well known in international registration systems for intellectual property.

59. As to the question of Article 24.6, the exception regarding generic terms, he recalled that all Members agreed that the purpose of the system to be established was to facilitate the protection for geographical indications under the TRIPS Agreement. His delegation had made certain choices, one of them being on generic terms, in order to attain such objective. The idea of what the European Communities was proposing was essentially that, unless a Member had refused the notification of a geographical indication into the system by lodging a reservation within 18 months, it would no longer be able to refuse registration of that term on the basis that it was generic. This system would certainly facilitate protection as GI right holders would have a clear picture of which countries considered their geographical indications as generic. They could also more safely invest in marketing their products in the relevant markets. Additionally, and thanks precisely to the possibility of still invoking the exceptions in Article 24.4 and 24.5, current producers could still use the

registered geographical indication, even if the relevant Member had not lodged a reservation based on the fact that the term was generic.

60. As to the point raised by Argentina on bilateral negotiations, he said that under Article 24.1 of the TRIPS Agreement, an obligation accepted by all Members, Members had already given their "generic agreement" to negotiate on the issues dealt with under the challenge procedure foreseen in the EC proposal. It was clear from the language of Article 24.1 that Members could not withdraw their agreement to negotiate. Therefore, even if this possibility had not been mentioned in the EC proposal, such an obligation to negotiate would still exist for all Members. He clarified that what his delegation was proposing would not be a departure from what all Members had already agreed, namely a simple way of resolving differences with regard to challenge procedures. In any case, under the EC proposal, if no agreement was reached after the bilateral negotiations, the geographical indication would then be entered into the register with an annotation which would prevent legal effects from unfolding in the particular Member that had lodged the reservation.

61. With regard to the question on the pressure that some Members could exert on other Members during the bilateral negotiations, he said that this could exist irrespectively of the EC proposal. In fact, by clearly stating that the annotation in the GI register would prevent the unfolding of legal effects in the challenging Member, the EC proposal actually strengthened the hand of challenging Members because they would have a very clear and solid foundation for maintaining their position if they believed, for example, that a term was a generic.

62. As to the issue raised by Chile regarding other exceptions, he explained that the reference to Articles 24.4 and 24.5 in the EC proposal was not really necessary, because what his delegation was simply proposing were the legal effects as described in its proposal. However, the European Communities had felt that it would be useful to clarify in written form in the proposal that these two exceptions would remain freely invocable at the national level precisely to meet concerns expressed by some Members, namely: that some Members might perhaps not make use of the possibility of opposing a GI notification on the basis of Article 24.6 and that domestic producers using that term could have a problem.

63. The representative of Australia said that territoriality was a key issue in this debate. It was an example of the divergent views held by Members in this forum and the reason for the lack of convergence. He appreciated the attempt made by the European Communities to explain their understanding of territoriality and said that if the European Communities were able to allay his delegation's concerns on this issue, this would enable some progress to be made towards a compromise on an important element. Some of his delegation's concerns were in relation to the EC reservation system, with the presumptions that would flow from it, and its impact on the principle of territoriality. The EC delegation had said that the presumptions would put right holders in a better standing in the domestic jurisdiction of other Members, but this was a feature that sounded suspiciously like extraterritoriality. Another concern related to the economic impact that a reservation system would have for developing countries. Australia was a country surrounded by developing countries and had worked very closely with these countries, particularly those of the Pacific and Southeast Asia. Australia was therefore aware of the challenges and limitations they faced in implementing a comprehensive and rigorous IP system. Under the EC reservation system each and every country would have to place a reservation on each and every geographical indication that would be registered. That was a significant burden that even developed countries would find difficult to meet and one that would be beyond the means of developing countries.

64. The representative of Argentina said that she failed to understand how the EC proposal would not affect the principle of territoriality by making it impossible for a Member which had not lodged a reservation to claim at the national level that a term was generic. The practical effect of such a system

was to make Members renegotiate the current exceptions under the TRIPS Agreement, an unprecedented feature not found in relation to other forms of IPRs, such as patents and trademarks.

65. As to the issue of bilateral negotiations under the EC proposal, she said that her delegation did not share the interpretation of Article 24.1 of the TRIPS Agreement put forward by the European Communities. If the mandate in Article 23.4 of the Agreement included bilateral negotiations, such a provision would have been included there and not, as was the case, in Article 24.1. Additionally, the provisions in Articles 23.4 and 24.1 could not be combined, as intended by the European Communities, to justify the existence of a dispute settlement mechanism within their proposal. Such a mechanism already existed in the WTO and applied to all WTO disputes, including those related to the TRIPS Agreement.

66. The representative of New Zealand associated himself with the comments made by Argentina and Australia on the impact that the EC reservations systems would have on the territoriality principle and the flexibilities under the TRIPS Agreement. He was particularly supportive of the point made by Australia that the very existence of a reservation system would, in itself, erode the principle of territoriality. His delegation was particularly concerned with the impact that such a system would have on Members' producers and governments, particularly in developing countries, when confronted with the onerous and burdensome obligation to duly substantiate their reservations within the prescribed period of 18 months.

67. He recalled and agreed with Australia's point that the EC proposal created a hierarchy among the exceptions under Article 24. The exceptions under Articles 24.4 and 24.6 were very important to New Zealand's producers and exporters. He had listened to the explanations given by the European Communities as to why they had differentiated their treatment of these two exceptions in their proposal, but the impression he had was that it was a slightly arbitrary distinction. While he appreciated the European Communities' acknowledgement that the Article 24.4 exception could be exercised even in circumstances where it had been decided that Article 24.6 was no longer available, he still failed to understand the reason for making a distinction between these those two very important exceptions.

68. The representative of Canada said that her delegation also had serious concerns with respect to the principle of territoriality and shared the views expressed by Argentina, Australia and New Zealand in this respect.

69. As to the last comments made by the European Communities with respect to the issue of bilateral negotiations under the EC proposal, she expressed surprise at the reference to 24.1 of the Agreement, as this provision referred to negotiations with a view to "increasing" the protection of geographical indications, while the mandate in Article 23.4 only referred to facilitating the protection of geographical indications.

70. She concluded by asking the European Communities what would happen if a notifying Member decided not to enter into negotiations with all the Members who had lodged reservations. For example: country "A" notified a GI "X" and received reservations from 50 Members; given the time and the costs that would be involved in trying to enter into negotiations with 50 Members, country "A" decided to only negotiate with ten Members. Would this mean that country "A" would be precluded from seeking protection for GI "X" in the other 40 remaining Members in the future?

71. The representative of the United States said that in their comments the European Communities had indicated that they respected the principle of territoriality. However, under the EC proposal this principle seemed have taken a back seat to the presumptions created for worldwide GI protection. Furthermore, the EC proposal limited the grounds for objection and the timing to raise even those limited grounds. Instead, this proposal was not based on the objective of

guaranteeing reliability, but rather on providing an automatic worldwide protection based solely on one protection granted in the country of origin with limited grounds of objection. She failed to see how this would lead to a reliable system. Such a system would clearly change the balance of rights and obligations under the TRIPS Agreement and would therefore be beyond the mandate to facilitate protection.

72. She said that her delegation fully agreed with Australia that to work constructively Members had to look to the European Communities to allay their concerns on the presumptions created for geographical indications that seemed to create extraterritorial effects. In light of the concerns expressed in the present meeting, she urged the European Communities to consider a system that was more similar to that of the joint proposal so as to help resolve differences. The joint proposal contained a workable system that was fair to existing GI regimes and was the only one consistent with the TRIPS Agreement and the fundamental principle of territoriality. It was also the only proposal that preserved the existing balance of rights and obligations under the TRIPS Agreement.

73. The representative of the European Communities said that the EC proposal was fully consistent with, and respected, the principle of territoriality. Decisions regarding geographical indications would continue to be made at the national level, albeit with the presumption of eligibility for protection for participating Members. The exceptions in Article 24 would continue to apply in some cases, such as in the case of generics, which could be exercised within a time-limit of 18 months. Therefore, what his delegation was proposing could not be termed as imposing extraterritorial effects. Instead, it was simply proposing, as did the joint proposal, certain legal effects. In fact, the joint proposal's legal effect of imposing the obligation on Members to consult the GI list resulting from the operation of the system was not an obligation that existed under the TRIPS Agreement and he did not see this as being extraterritorial in nature. The EC proposal was simply establishing a way of facilitating the protection of geographical indications, which was the mandate in Article 23.4. It was a fact that international and multilateral agreements had effects in the Members that signed up to those agreements. However, this did not mean that by simply accepting that certain effects would happen in the territories of the countries signing such agreements that they were imposing extraterritorial effects. He wished to underline that all proposals on the table were providing for certain obligations for third country Members.

74. As to the questions on why the European Communities did not include Article 24.4 and, in particular, Article 24.5, as the basis of its challenge procedures, he said that the reason for that was related to the nature of these exceptions themselves. Article 24.6, if applicable, would imply that the geographical indication would not receive any protection whatsoever. It would not be possible to register a geographical indication and to claim exclusive use for that geographical indication where a term was considered generic. However, Article 24.4 dealt with a different situation as it prevented the "continued and similar use of a particular geographical indication". This was not a question of preventing GI protection altogether, but rather a situation in which certain uses of the name on other products were allowed when they had existed for a certain period of time. In this situation, it would be possible to allow these previous uses and, at the same time, register and protect the geographical indication. This geographical indication would then co-exist in the market with the prior uses that would qualify under Article 24.4. Clearly, a challenge procedure that would prevent any legal effects from happening would not fit with the functioning and with the nature of the exception in Article 24.4. A similar situation emerged for Article 24.5. He recalled that a recent panel had established that co-existence between geographical indication and certain prior trademarks was a possibility under the TRIPS Agreement. Members could therefore choose to either grant that co-existence or not. However, it would not be appropriate to establish in a system, or to include in a challenge procedure, the possibility for trademarks to impede geographical indications obtaining protection when it was a fact that in certain Members the possibility of co-existence between geographical indications and certain prior trademarks existed in their respective internal legal orders. The European Communities

was one of these Members and its co-existence system had been considered compatible with WTO rules by the Panel.

***Legal Effects/Consequences of Registration***

75. The representative of Switzerland said that legal effects was the core issue in these negotiations. There was agreement in the Special Session that on this element Members could not be as ambitious as they could in a plurilateral setting, like WIPO's Lisbon Agreement. This was so because the Special Session negotiations were instead conducted in the multilateral framework of the WTO. Nevertheless, Members should not forget that the mandate for the multilateral system was to facilitate the protection of geographical indications as compared to the situation currently available today. His delegation could not see how a mere database of terms, which might or might not be consulted by Members, could actually achieve that mandate.

76. He recalled that his delegation had proposed that the legal effect of the registration of a geographical indication in the multilateral system be the presumption of validity of the registered geographical indication in those Members that had not lodged a reservation after its notification and before the geographical indication was registered. This presumption could be rebuttable at the national level at any time and on all applicable grounds. Thus, such a presumption would not create new rights and obligations, but simply reinforce the rights GI right holders were already enjoying under the TRIPS Agreement. He believed that such a rebuttable presumption was a legal effect that fully respected the principle of territoriality because the issue regarding the validity of such presumption would still be within the competence of the national courts of Members. Each Member would therefore continue to be able to decide whether or not a term was a geographical indication in its territory and whether it merited protection.

77. The representative of Australia said that legal effects was a core issue for her delegation, which had a different view from that expressed by the Swiss delegation on what legal presumptions would mean and how they fitted within the mandate for these negotiations. The legal presumptions, both in the EC and Hong Kong, China proposals, would alter the balance of rights and obligations in the GI provisions of the TRIPS Agreement. They did this by increasing the rights of GI owners against others, be they trademark owners or generics producers. These proposals would also increase the rights of GI owners against these other interested parties through the reversal of the burden of proof.

78. The representative of the European Communities said that the EC proposal would not introduce substantive new obligations, as had been suggested by Australia, but rather some procedural requirements in order to facilitate GI protection, which was in line with the mandate. Conversely, simply publishing a list of geographical indications exclusively for information purposes, as established in the joint proposal, would not guarantee that protection would be facilitated. Additionally, such information would not necessarily be reliable. Had the drafters of Article 23.4 of the Agreement the intention of simply establishing a list of geographical indications, they would have clearly mandated that. The fact was that they did not have such an intention and had instead mandated the establishment of a multilateral system for the notification and registration of geographical indications. Multilateral systems of registration, as all Members knew and agreed on, carried certain legal effects. Therefore, it still remained for Members to ensure that any proposed legal effects actually met the mandate of facilitating the protection of geographical indications.

79. Responding to the European Communities, the representative of Canada said that the joint proposal had many positive effects. For example, the existence of a term in the database could act as a deterrent to others considering making use of the term. The protection of the geographical indications would be facilitated by virtue of the obligation of the participating Members to consult the database when making decisions regarding registration and protection of trademarks and

geographical indications in accordance with their domestic laws. This meant that should another participating Member receive a foreign or domestic application for a trademark or a geographical indication for a wine or spirit, it would be obliged to consult the database. In this case the registration by participating WTO Members would be revealed to the examiner. Examiners would be aware that this term was protected in another country, whereas in the current situation there was not a single, unified place to find such information.

80. The representative of Chile said that if the intention of the framers of the TRIPS Agreement had been to increase GI protection through these negotiations, they would have used the language of Article 24.1 and not the language of Article 23.4, which simply referred to facilitating protection. The database proposed by the joint proposal would be unprecedented and would have positive legal and *de facto* effects.

81. He disagreed with the European Communities' statement that under their proposal decisions would continue to be made at national level. This could be true for systems for the facilitation of IP protection, such as the Hague system for industrial designs or the Madrid system for trademarks. Under the EC system, however, an unopposed notification would produce the extraterritorial legal effects established in paragraphs 4 and 5 of the proposal. This would therefore be in violation of the principle of territoriality. The qualification of terms as a trademark or geographical indication was a decision that should be left to each respective country to make. In fact, different perceptions not only varied territorially but also temporally. Hence, what was a protected term one day would not necessarily be protected in the future. This was precisely the reason behind the existence of the exceptions under Articles 24.4, 24.5 and 24.6 of the Agreement. In fact, this was a common phenomenon in many Members, including in the European Communities, and this was why some trademarks were no longer protected in some countries. The same change in the future could happen with geographical indications registered under the proposed EC system. Would Chile, in such cases, still have to protect these geographical indications just because they were in the register?

82. The representative of the European Communities recalled that about a year ago Members had had an interesting discussion about the WIPO registration systems based on a very useful paper circulated as document TN/IP/W/4, which described how these systems worked. It had become clear from this discussion that WIPO administered a number of systems which aimed at facilitating the obtention of industrial property protection. In that paper for example, it was stated that the Madrid system for the protection of trademarks had the objective of facilitating the obtention of protection for trademarks. WIPO systems all carried legal effects of admittedly varying degrees. They also had challenge procedures and, for example, under the Madrid system, unless refused following national examination, the mark in each party would have the same protection as if it had been the subject of an application for registration filed directly with the national office. This was a very strong legal effect. There were also effects under the Lisbon Agreement, which stated that, unless opposed, notified geographical indications would have the protection established in the Lisbon agreement itself. The conclusion his delegation derived from all this information was that those registrations systems of which the objective was to facilitate obtaining IP protection all had legally binding effects and carried the possibility of challenging notifications. What his delegation was proposing in these negotiations was different from those systems because it had to take into account the fact that Members were negotiating in the WTO, not WIPO. This was why the European Communities was proposing a system of presumptions so there would be some legal effects in all Members so as to ensure that meaning was given to the word "multilateral" as written in Article 23.4 of the TRIPS Agreement.

83. The representative of Argentina said that while the WIPO systems had the objective, as the EC delegate had said, of facilitating the obtention of protection, the mandate in Article 23.4 of the TRIPS Agreement only required the establishment of a system to simply facilitate protection, not to obtain it. The European Communities were basing their proposal on exactly that difference in the language. Additionally, the European Communities cited the WIPO systems as if they had a broad

acceptance by WTO Members, which was not the case, particularly in relation to developing countries. For example, with exception of the PCT, virtually no Latin-American WTO Member had ratified any WIPO system.

84. The representative of the United States said that the joint proposal facilitated protection by increasing awareness of a geographical indication notified to the register. It would create a database that any examining authorities anywhere could consult to determine the existence of a geographical indication. All WTO Members would therefore have at their disposal much more information on the status of names used to describe wines and spirits around the world. This information would enable US national offices to make better informed decisions with regard to providing protection for both trademarks and geographical indications. This would not only be helpful, but unprecedented in IP systems today, and would be undertaken while maintaining the current balance of rights and obligations in the TRIPS Agreement. She urged others to engage more on the joint proposal to help resolve issues they had with this system.

85. The representative of Chile said that all WIPO systems mentioned by the European Communities respected the principle of territoriality. If they foresaw opposition mechanisms, those were to take place at the national level within the respective IP offices of their member countries. In fact, the Madrid system, which the European Communities said was the basis of their proposal, provided that "the protection of the mark in each of the Contracting Parties concerned shall be the same as if the mark had been deposited direct with the Office of that Contracting Party". In other words, what the Madrid System simply did was to facilitate: a notification would arrive at the international office, which would send it to the designated national office, which henceforth would simply process this notification as if it had come from inside that country, including with the possibility to lodge oppositions. This was different from the unprecedented effects proposed by the European Communities.

86. The representative of New Zealand said that his delegation was fully aware that some Members might not like the way in which the joint proposal facilitated protection of geographical indications, but it did so in an effective way, as required by the mandate, by linking domestic administrative procedures with a global database of geographical indications. This would be a more appropriate way of achieving the mandate to facilitate protection in the intellectual property context than other proposals, which carried more substantive implications for GI protection. The joint proposal could be implemented by Members without necessarily requiring them to amend their legislation. The fact that this proposal could be adaptable to the different systems operated by different Members was indeed an advantage. For example, if the registrar of trademarks of New Zealand were required to consult a WTO GI database on receipt of trademark applications at the national level, then this might help it when considering some of the criteria for trademark protection in New Zealand, such as the ability of the trademark to distinguish a product in trade or the capacity to cause consumer confusion.

87. The representative of Australia associated herself with the comments made by Canada, Chile, New Zealand and the United States on the way in which the joint proposal actually added value and facilitated protection. In Australia, such a proposal would provide a transparent mechanism with easy access to information through its national patent and trademark office. The basic principle had always been the same: one would not give trademark rights in a sign that other traders were likely to need for a particular product. The precise mechanisms for enacting that principle were different but it was a fundamental and shared principle. In Australia, existing practice gave examiners a semi-automated tool to search dictionaries and atlases when looking at trademark applications. In certain circumstances, examiners could elect to search additional resources. So, for example, for a trademark application in class 33, which was the class for wine in Australia, they would click on a box to add a search on the Wine and Brandy Corporation register of protected names. Australia could use the same system in relation to the GI register. For example, if the mark was in class 33, the examiner would

then look at the link to the WTO database and be able to gain additional information on geographical indications protected by other Members.

88. One of the reasons her delegation believed that the joint proposal facilitated protection was because it actually addressed one of the major concerns that led to the in-built mandate on this issue in the TRIPS Agreement. Australia's understanding was that one of the major concerns of GI proponents was to ensure that trademarks were not registered containing or consisting of earlier geographical indications, which would then prevent GI owners from selling their products in other markets. This was a concern that had been raised at the most senior levels, including by Commissioner Mandelson. The mandate in Article 23.4 reflected concerns that because not all WTO Members protected geographical indications through a registration system, lack of information would put GI right holders, as opposed to other IP right holders, at a disadvantage *vis-à-vis* trademark holders in protecting and enforcing their rights. Australia believed that the joint proposal would address this concern by providing information to IP officers when making decisions regarding the registration and protection of trademarks and geographical indications for wines and spirits in accordance with their national legislation. Despite all this, the only concern that the European Communities and Switzerland had raised in relation to the joint proposal, besides the question of reliability of information, was that this proposal would not be effective or sufficient. Her delegation was therefore willing to look at ways to improve the joint proposal and welcomed any suggestions to this effect, taking into account the fundamental concerns that many delegations had raised with respect to presumptions and their legal effects.

***Final remarks by delegations***

89. The representative of the European Communities said that despite the indication by other Members that they were engaging constructively in these discussions, he was in fact under the impression that his delegation was the only one being flexible. This was so because his delegation was the one who had entrusted the Chairman with the task of proposing a compromise, an attitude which, by definition, indicated that it was not looking for a solution involving the incorporation of the totality of its proposal. This was different from the approach taken by the proponents of the joint proposal, who had decided to adopt a "take-it-or-leave-it" attitude in relation to their proposal.

90. The representative of the United States said that characterizing the comments made by Members of the joint proposal as a "take-it-or-leave-it" approach was not in itself a very constructive attitude on the part of the EC delegation. In fact, such a comment missed the point of many statements that had been made by the Joint Proposal Group, which had never said "take it or leave it" but rather that it would prefer a bottom-up approach to the future working document. A number of proposals had been made to either update pre-existing documents or take into account suggestions made, for example, by the European Communities for the proponents of the joint proposal to look at different ways of indicating further flexibilities. It seemed therefore that the European Communities was in fact the one Member who had said that it had one single approach it would like others to follow. He said that the United States would be happy to work with the Chairman in any consultations that he might hold and to work across the board, not only with the fellow supporters of the joint proposal, which included a broad number of Members, but also with the European Communities.

***Chairman's report on consultations held on 12 June***

91. The Chairman said that he had held consultations on the afternoon of 12 June with a group of delegations on two issues. One was to see whether it would be possible to make headway on the key issues in a somewhat smaller setting, in particular that of legal effects or consequences of a registration. The second issue was that of the nature of the working paper which the Special Session

should produce by the end of July, and how the Special Session might best organize its work over the coming weeks in order to be in a position to produce this paper.

92. In regard to the key points of difference, the discussion focused largely on three questions: what was meant in the group's mandate by "facilitate protection", including whether this should or should not entail legal presumptions; territoriality; and the integrity or reliability of data in the register. He believed that it was fair to say that the discussion covered much the same ground on these points as had been formally discussed in the present meeting. He was afraid that, both in the consultations of 12 June and in the consultations that he had held in a number of formats since the last meeting of the Special Session, he had not been able to identify new points of convergence. Positions on key issues clearly remained far apart and it remained difficult to identify where the "landing zone" for these negotiations might lie. Some Members had indicated a readiness to consider, at least to some extent, ways of taking account of the concerns of other delegations, but often with the proviso that this would depend on reciprocal movement by those other delegations and/or on the overall progress of the Round. It was also not clear to him how far the flexibility to which some delegations had alluded would, if realized, go in bridging the gaps that existed.

93. With regard to the second issue on which he had held consultations on 12 June, namely the nature of the working paper which the Special Session should produce by the end of July and how the Special Session might go about this, he recalled that the "Timelines for 2006" paper in JOB(06)/13 provided for a working document of the Special Session to be on the table by July 2006. He believed that it remained the expectation that this group should be in a position to produce such a paper by the end of July. He also recalled that, at the Special Session meeting in March, he had said that, bearing in mind the end-of-year deadline for the Doha negotiations as a whole, he considered that it would be necessary to have, before the summer break, a working document which could be used as a basis for the final product and in respect of which there would be a good degree of understanding among delegations as to where the main outstanding difficulties to be resolved lay. He had further said that, in order to achieve this by July, it would be desirable to have made progress in unblocking, well in advance of that time, the key difficulties that had impeded the work so far.

94. He said that during the present Special Session's formal discussions a range of views had been expressed on the nature of the working document that should be produced. These included the idea that the Chairman might produce a compromise proposal and the notion that the side-by-side document might be annotated, for example through an annex setting out the points raised by delegations in regard to its various elements. The situation remained essentially unchanged following the consultations of 12 June consultations. One new element was the possibility of a Chairman's reflections paper.

95. He believed that, in the interests of this negotiation and in the Round as a whole, it was important that the working document that could be produced by the end of July would be more than an options paper which set out the different proposals on the table. He was looking to delegations over the weeks following the present meeting to be creative in finding new flexibility so that this negotiating group could be in a position to play its part in contributing to the progress that was necessary in the Round as a whole by that time. He did not believe it would be possible to find a solution unless all delegations were willing to move.

96. With regard to process, he believed that there was a general willingness to intensify consultations over the coming weeks and it would be his proposal that the Special Session schedule another formal meeting for 19-20 July. He would hold consultations in a range of formats, including with individual delegations, in small groups and in open-ended format. However, perhaps even more important was an intensification of consultations between delegations holding different views in order to make progress on the key issues and to identify the "landing zone".

C. OTHER ISSUES

97. The Chairman said that he believed that there was agreement with the proposal that he had made to hold an additional meeting of the Special Session on 19-20 July and that consultations be intensified in the meantime.