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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 29–30 April 2003

Chairperson: Ambassador Eui-yong Chung (Korea)

A. ADOPTION OF AGENDA

1. The sixth Special Session agreed to adopt the agenda as set out in WTO/AIR/2078.

2. The Chairperson proposed to address first the issue of observer status for intergovernmental organizations.

3. It was so agreed.

4. The Chairperson suggested that, as in previous meetings, the International Bureau of WIPO be invited to participate in its capacity as expert in the discussions regarding issues such as notification and registration procedures.

5. It was so agreed.

B. OBSERVER STATUS FOR INTERGOVERNMENTAL ORGANIZATIONS

6. The Chairperson said that there had been no developments at the TNC and General Council level; he therefore proposed reverting to this matter at the next session in the light of any new developments in these bodies.

7. It was so agreed.

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

8. The Chairperson said that there were three new documents: a proposal from Hong Kong, China for a multilateral system of notification and registration of geographical indications under Article 23.4 of the TRIPS Agreement ("Hong Kong, China proposal") (TN/IP/W/8); a note by the Chairperson containing a Draft Text of Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits ("Draft Text") (JOB(03)/75); and a communication from the European Communities on the subject of traditional expressions (JOB(03)/76). He suggested dealing first with communications from Members and general statements or comments concerning these communications and the Draft Text. After that, delegations might address each of the specific aspects of the Draft Text, using its headings, and make any more detailed comments that they might have on the way in which the aspect was addressed in the Hong Kong, China proposal.

General comments

9. The representative of Djibouti said that any future multilateral system must be voluntary. He was concerned that many developing and least-developed country Members, in particular those from the African region, were entering into an area of negotiations without being fully aware of the consequences. His delegation could not appreciate the importance of geographical indications, in either the trade or legal area, and thought that technical assistance was essential for his country to understand better the repercussions. He indicated that Djibouti had recently requested that a joint regional seminar be held by the WTO and WIPO in 2004 for French-speaking African least-developed countries as well as a national seminar, possibly this year, in Djibouti. It was essential that technical assistance be given, otherwise countries concerned might think that they had signed a blank cheque without any funds to back it up.

10. The representative of the European Communities said that the European Communities and also many of their member States had had programmes of technical cooperation for many years and these programmes also included assistance in the area of geographical indications. He asked the

representative of Djibouti what the European Communities could do in order to enhance this assistance.

11. The representative of Argentina, referring to Djibouti's blank cheque analogy, said that these negotiations were an opportunity for countries, in particular developing and least-developed country Members, to attempt for once to guide the direction of these negotiations towards results that met their needs and interests and that could be implemented. This was one of the reasons why her delegation was actively participating in these negotiations.

12. The representative of Djibouti, referring to the European Communities' statement, said that he would appreciate increased technical assistance, in particular to help authorities from his capital grasp the consequences of the ongoing negotiations in the WTO and of various proposals tabled by Members. Technical assistance would help his country become a fully fledged member of the multilateral system. It would also help weaker countries to understand their interests better and negotiate more effectively.

13. The representative of the European Communities took note of the comments by Djibouti regarding the need for technical assistance, and asked the Permanent Delegation of the European Commission in Geneva to follow up with the representative of the Government of Djibouti regarding the strengthening of bilateral cooperation, particularly in the area of intellectual property. He would also ask member States of the European Communities about how they could strengthen technical cooperation in the area of intellectual property.

Communications by Members

Hong Kong, China proposal (TN/IP/W/8)

14. The representative of Hong Kong, China said that Hong Kong, China did not have any substantive commercial interest in geographical indications, but rather a systemic interest in meeting the negotiating mandate under Article 23.4 of the TRIPS Agreement and paragraph 18 of the Doha Ministerial Declaration. He recalled that, in January 2003, his delegation had informally floated some ideas with a number of delegations. It had further presented these ideas in a detailed statement at the fifth Special Session in February. Since then, a number of delegations had expressed an interest in looking into his delegation's ideas in further detail. In response, his delegation had tabled TN/IP/W/8. He described the key elements of the proposal. First, the multilateral system being envisaged would involve only a formality examination of the geographical indication which was subject to notification. Provided that basic information identifying the geographical indication, its ownership, and the basis on which it was claimed to be protected in the country of origin was submitted to the administering body, the indication would be entered on the register. In terms of formal legal effect, registration on the multilateral register would constitute prima facie evidence: (a) of ownership; (b) that the indication was within the definition of "geographical indications" under Article 22.1 of the TRIPS Agreement; and (c) that it was protected in the country of origin. The effect of the registration would be that the three issues would be deemed to be proved unless evidence to the contrary was produced by the other party to the proceedings. If the other party adduced evidence to the contrary, then the court would weigh the totality of evidence produced by both sides and decide whether the issues and questions were proved to the standard required in the proceedings. In other words, a rebuttable presumption would be created in relation to the three relevant issues. The proposed tool would therefore help the assumed owner of the geographical indication discharge the legal burden of proof on the three issues in the course of domestic proceedings if such burden lay on him under domestic law. This would in turn facilitate the protection of geographical indications through each Member's domestic legal system. The proposed framework would not change the substantive legal rights of either party to a proceeding. For instance, any question relating to the conformity of a geographical indication with Article 22.1 would be left to the local jurisdiction in accordance with one's domestic legal regime. Questions relating to the applicability of the exceptions under Article 22.4 of the TRIPS

Agreement would continue to be decided by Members' domestic authorities, having regard to the relevant local circumstances. Registration in the multilateral register would not have any legal effect or create any presumption in relation to these issues, except as it related to Article 24.9. The system would also not deal with competing claims for geographical indications; these would continue to be dealt with under national laws. Under Hong Kong, China's proposed framework, the legal effect of registration would be limited in scope. Hong Kong, China did not see the need to put in place a process of substantive examination or opposition at the multilateral level.

15. With regard to participation, he said that Hong Kong, China proposed a voluntary system under which Members should be free to participate and notify geographical indications protected in their territories. The obligation to give legal effect to registration under the system would only be binding on those Members choosing to participate in the system.

16. With regard to costs, he said that Hong Kong, China appreciated the concerns of many Members, in particular those that were not users of geographical indications, that they would be asked to shoulder the cost for the setting-up and running of the system. Hong Kong, China therefore proposed a user-pays principle and that the system operate on a full cost-recovery basis. The cost of operating the system should be shared between Members on the basis of the number of applications they file. In other words, Members who were not users of geographical indications would not be asked to share the costs. Regarding the question of how to manage the workload, he said that one further option for consideration would be to set a limit on the number of applications to be processed each year. As an illustration of the cost implications, Hong Kong, China had looked at its own experience of operating registries based on formality checking. Some figures were presented in Annex B of TN/IP/W/8. They were rough estimates, based on Hong Kong, China's own experience; obviously, the number of notifications to be handled each year would have a direct impact on the level of fees to be charged for each application.

17. The representative of Chile expressed appreciation for the constructive contribution made by Hong Kong, China. The paper had several interesting elements. The approach adopted a general premise which Chile shared: the establishment of a voluntary multilateral system for notification and registration that was easy, simple to use and did not involve heavy costs and additional burdens. The five points set out under "Purpose" were a rough guide for the negotiations. Intellectual property rights were essentially territorial in nature, in this proposed system as in other intellectual property agreements. Annex A set out the different parameters of participation and highlighted the voluntary character of the system. It then made clear that each participating Member had the right to participate through notifying geographical indications and that only those who participated could give legal effect to the geographical indications. This approach was the only possible approach, given that the system to be established should not add to existing obligations. Unlike other proposals, Hong Kong, China made it clear in paragraph A.1 that the notified geographical indications should be protected under their domestic legislation, judicial decisions or administrative measures. He further asked for a clarification: while the Hong Kong, China proposal recognized that the differences between geographical indications should be covered by exceptions according to domestic legislation, it also suggested that the burden of proof be reversed on the notifying party. For Chile, this would mean additional rights or obligations.

18. The representative of New Zealand expressed her delegation's appreciation to Hong Kong, China, for its consolidated, clear and structured communication which touched on many of the necessary elements for the eventual register. The submission was helpful in trying to put existing proposals into perspective. It also made a good effort at coming up with a number of elements that fitted squarely within the negotiating mandate as far as the most important issues were concerned: the right of Members to implement the TRIPS Agreement in accordance with their own legal systems and practices; the territorial nature of intellectual property rights, including geographical indications; the idea that disputes about individual cases should continue to be resolved at the national level; and the principle that there should be no legal obligations for those Members not participating in the register.

In those respects, the Hong Kong, China proposal tended to reflect the views of a broad range of Members. It compared favourably with the Draft Text, which had to include proposals by some Members that clearly went beyond the mandate of negotiations. However, the Hong Kong, China proposal was outside the mandate of negotiations with regard to the idea that registration would constitute prima facie evidence of a number of elements. As stated by Chile, there was some contradiction between the stated objective of not increasing or detracting from existing legal rights or obligations under the TRIPS Agreement and the reversal of the burden of proof, which was an element also present in the European Communities proposal and which had caused a number of concerns in the past.

19. The representative of Mexico shared the views expressed by other delegations that the Hong Kong, China proposal would help Members discharge their obligations. While it contained positive points, there were others which required greater explanation, such as the burden of proof, which seemed to create additional obligations.

20. The representative of Uruguay said that the Hong Kong, China proposal contained elements that were closer to her country's expectations than some other proposals. Her delegation welcomed its truly voluntary system of participation, i.e., one without legal effects for those who did not participate.

21. The representative of Japan expressed his delegation's appreciation of the Hong Kong, China proposal. His delegation needed further time to study the proposal, especially the legal effect of registration.

22. The representative of Canada associated her delegation with the comments made by Chile, New Zealand and Mexico. The Hong Kong, China proposal recognized: the voluntary nature of the multilateral system; the right of Members to implement TRIPS Agreement obligations in accordance with Article 1.1 of the Agreement; and the territorial nature of geographical indications. However, her delegation had some concerns about some other aspects of the proposal, including the cost-estimate. Although it was useful to have a cost-estimate, this estimate did not factor in any of the arbitration situations that, in Canada's experience, would surely result.

23. The representative of Australia said that the proposal tabled by Hong Kong, China confirmed his delegation's thinking that there was still time between this meeting and Cancún to encourage delegations to come forward with ways of assisting the Special Session in complying with its mandate. As had been underscored by Chile, Mexico, Uruguay, New Zealand and Canada, the mandate established the core principles on which Members had agreed to base their negotiations. The first principle related to the type of legal effect that the system should have on Members that decided to participate in it. In this regard, there was a clear recognition amongst delegations that the multilateral system should facilitate the protection of geographical indications for wines and spirits in accordance with Articles 22 to 24 of the TRIPS Agreement and not impose additional substantive legal obligations or confer additional legal rights on Members beyond those already contained in the TRIPS Agreement. Legal effect clearly would be an important issue which would determine the outcome of these negotiations. The second core principle related to participation. Article 23.4 provided that Members had a choice of whether or not to participate in the system and Members therefore should be free to choose whether they would make notifications to the system. This principle would be perfectly consistent with other comparable intellectual property treaties such as the Lisbon Agreement, the Madrid Agreement in the area of trademarks, and the Patent Cooperation Treaty. Members would also be free to choose whether they would use the system when making decisions about the recognition and protection of geographic indications, which were territorial in nature. Another principle against which Australia would be judging these negotiations was that the system to be established should be a system of notification and registration only and should not contain any procedure of negotiation or arbitration or any other procedure regarding decisions on opposition or other measures as to how geographical indications were territorially applied. Regarding the legal effect of the registration, his delegation was of the view that the Hong Kong, China proposal was

inconsistent with the mandate: it changed the substance of the TRIPS Agreement. Regarding the Annex on cost estimates, his delegation also thought that, while the cost estimates would be useful to provoke participants to start thinking about the issue, this would probably be a gross under-estimate of the costs of the future system.

24. The representative of the Czech Republic said that her delegation continued to support the European Communities' approach and shared their concerns. The Hong Kong, China proposal could not meet the objective of Article 23.4 of the TRIPS Agreement, that is the facilitation of the protection of geographical indications.

25. The representative of Colombia said that his delegation shared Chile's concerns about the legal effect of registration.

26. The representative of Costa Rica said that his delegation agreed with certain aspects of the Hong Kong, China proposal, such as the voluntary nature of the system and the territorial character of geographical indications. However, it could not share the approach regarding the legal effect of the registration: the rebuttable presumption would have an impact that went beyond the purview of the Agreement.

27. The representative of Hungary said that the Hong Kong, China proposal contained some useful elements and generally was in the right direction. However, other aspects concerned his delegation. It might not have the multilateral character it claimed and some clarifications would be necessary with regard to legal effects.

28. The representative of Argentina said that her delegation agreed with Hong Kong, China's recognition that: participation should have a voluntary character; the legal effects of registration would apply to participating Members only; Members should have the right to determine the appropriate means for implementing the TRIPS Agreement; Articles 22 and 24 were fully applicable; and the territoriality principle must be respected. However, her delegation shared the concerns expressed by others on the legal effects of a registration, which went beyond the current provisions of the TRIPS Agreement.

29. The representative of Cuba said that the Hong Kong, China proposal was in various aspects a balanced one and contained features of fundamental importance to Cuba's approach to the negotiations, such as a voluntary nature. However, it would support the request of other delegations for clarification regarding the reversal of the burden of proof. The proposal also contained other points going beyond the mandate of negotiations and which could not be accepted by her delegation. The purpose of the system was to facilitate protection and not to create additional obligations.

30. The representative of Switzerland said that the Hong Kong, China proposal was well-structured and coherent. Compared to the Draft Text, the proposal had the advantage of being presented in one go. The Annex on costs was a new and concrete step in addressing the issue of costs. He wondered whether some of the elements contained in the Hong Kong, China proposal could actually achieve the purpose of the multilateral system as mandated in Article 23.4 and in paragraph 18 of the Doha Declaration, such as the issues of participation and legal effect. While agreeing that there was a voluntary element insofar as Members should be free to notify and register their geographical indications, he believed that, if the multilateral system only had legal effects for some Members, it would be a plurilateral rather than multilateral instrument. With regard to the formal examination of three issues as proposed by Hong Kong, China, his delegation did not think that such a simple examination would achieve the goal of facilitating protection. There would be a risk that such a system would contain unreliable information. For example, expressions such as those of concern to Australia, might be recorded on the register and there would be no means to remove them and have a coherent register at the multilateral level. He had also noted that Hong Kong, China had proposed a renewable term of protection of 10 years. This seemed to be inspired by a certain

perspective and a certain system of protection. In that regard, he recalled a point of the utmost importance to all delegations: nothing in the future system should prejudice the means by which Members implement their obligations under the TRIPS Agreement.

31. The representative of the United States expressed his delegation's satisfaction with the constructive Hong Kong, China proposal. He appreciated the provisions that were consistent with the mandate under Article 23.4, such as those on the voluntary nature of the system as shown in Annex A of TN/IP/W/8. However, his delegation had concerns about the legal mechanism and costs.

32. The representative of the European Communities said that, unlike for trademarks, the TRIPS Agreement did not require registrations of geographical indications to be renewed. On the contrary, geographical indication protection under the TRIPS Agreement appeared to be available as long it was given in the country of origin. For his delegation, a renewal system would make protection more difficult and costly and not facilitate it. If the purpose of such a renewal was only to obtain extra fees, his delegation would feel more comfortable. For example, such a requirement could be linked to a requirement for the payment of a fee, the issuance of a certificate of registration or modifications of existing registrations. With regard to the number of geographical indications to be notified, he understood that the number of notifications admitted into any system of a multilateral register might be a concern when there was a system of examination and opposition. Indeed, an excessive number of notifications could be difficult to be absorbed by any administration. However, as under the proposal from Hong Kong, China there was no system of examination and opposition, the question of excessive notifications was moot. This being said, he thought that the idea of some limitations in terms of numbers should be explored. His delegation was examining the parts of the Hong Kong, China proposal dealing with exceptions and formality examination.

33. The representative of the Philippines asked whether there was any implication under the TRIPS Agreement of a presumption of protection in a multilateral system. If not, it would seem that the creation of such a presumption would entail an additional substantive right in favour of a notifying Member and, as a corollary, an additional substantive legal obligation on other participating Members, which would contravene the purpose of the system as recognized by Hong Kong, China in Section 3, paragraph 4, of TN/IP/W/8. This being said, he was of the view that the paper provided a constructive and useful basis for continuing discussions, particularly given its relatively simpler and more concrete elements.

34. The representative of Chinese Taipei welcomed the Hong Kong, China proposal insofar as it contained points to be further explored: voluntary participation; withdrawal from the system; recognition of the territorial character of geographical indications; and recognition of geographical indications as intellectual property rights and of their territorial character.

35. The representative of Brazil said that Brazil's participation in the Special Session reflected its openness on how to fulfil the negotiating objectives. The general parameters of his delegation's position with regard to the multilateral system were given by those principles which had been reproduced under the heading "Purpose" in TN/IP/W/8, namely: to facilitate protection of geographical indications in accordance with the relevant provisions of the TRIPS Agreement; to preserve the freedom of Members to determine the appropriate method of implementing the provisions of the Agreement; to recognize that intellectual property rights were essentially territorial in nature; not to impose additional obligations nor confer additional rights; and not to impose undue financial or administrative burdens on Members choosing to participate in the system. These were only general principles. While his delegation welcomed their incorporation in the Hong Kong, China proposal, this should not imply that his delegation necessarily agreed with all of the operative parts of that proposal. He appreciated that concrete proposals and texts enabled Members to test their own flexibility. Brazil was not a demandeur in this exercise but was willing to make a genuine effort to accommodate the interests of other Members. His delegation would therefore be ready to make positive linkages in the expectation that others would be prepared to reciprocate. With regard to costs,

his delegation had concerns about the cost of administering the system and the domestic burden imposed on Members. Many WTO Agreements cost little to the WTO as an organization but entailed significant costs to Members to implement. For example, it had been estimated that the implementation of the Agreement on Customs Valuation would cost over US$20 million for Angola. His second comment related to the question of whether a multilateral system was necessarily a universal system. Article 23.4 provided for the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system. If the word "multilateral" in Article 23.4 had been meant as a synonym for "universal", then that last clause of Article 23.4, namely the words "in those Members participating in the system", would be redundant. Therefore, to read "multilateral" as meaning "universal" in Article 23.4 would be contrary to the customary rules of treaty interpretation laid down in the Vienna Convention on the Law of Treaties. The Special Session was not mandated to conclude a universal registry. This should be a subject for negotiation and could not be presumed. Regarding the comments made about the impending Cancún deadline and the lack of progress, he quoted a Brazilian saying that a "shared disgrace, as opposed to a lonely disgrace, would be half of the way to happiness".

36. The representative of Costa Rica said that the Hong Kong, China proposal was a useful one and contained some aspects that were acceptable to his delegation and some aspects that were not.

37. The representative of Hong Kong, China, in response to the question by Chile, said that the idea of prima facie evidence on a few aspects on geographical indications was consistent with the notion in paragraph 3(iv) of TN/IP/W/8 that the system "shall not impose additional substantive legal obligations beyond the TRIPS Agreement". The proposal did not entail a substantive requirement on the part of the participating Member as far as the reversal of the burden of proof was concerned. The requirement was only procedural: it would assist the geographical indication owner to discharge his or her evidentiary burden of proof in a Member's domestic court. The two fundamental principles under the proposal were still that intellectual property rights were territorial in nature and that any disputes should continue to be settled in Members' domestic courts.

38. On the term of registrations and renewals, he said that the aim of his proposal was to help update the multilateral register, and not to change each Member's own domestic laws on geographical indications. It did not impose any expiry on the term of geographical indication protection.

39. With regard to formality examination, he said that the primary objective of the proposal was to ensure that the notifications were complete, particularly if there was an agreed standard format for making notifications. There were similar practices in other areas of intellectual property protection like petty patents and industrial designs, where registrations were made on the basis of formality examination.

40. The representative of the European Communities expressed concern that some delegations seemed not to make any distinction between notification and registration. Supposing that a Member notified, knowingly or not, a name which in practice constituted a misuse of a geographical indication in Europe, this name would be on the website, everyone would look at it, but it could not be challenged. It would be given even more publicity. Such a system would be counterproductive and would be the opposite of "facilitation".

41. The representative of Malaysia welcomed the fact that the Hong Kong, China proposal had reiterated: that the purpose of the multilateral system was to facilitate the protection of geographical indications; that Members would be free to determine the appropriate method of implementing the provisions of the Agreement within their own legal system and practices; and that the system should not impose any legal obligations. A number of features, such as the formality examination of notifications and the legal effects of registrations would need clarification. One clarification would be that these features only applied to participating Members.

Communication from the European Communities (JOB(03)/76)

42. The representative of the European Communities said that the communication contained in JOB(03)76 had been triggered by Australia's need to ensure that traditional expressions did not find their way onto the wine and spirits register that was being negotiated multilaterally. His delegation had repeated its view on traditional expressions in the course of the last few months. It noted the comment made by India that it was not appropriate to work with footnotes in order to make certain clarifications of the TRIPS Agreement. As indicated in the last paragraph of JOB(03)/76, the European Communities did not believe that the mandate contained in Article 23.4 of the TRIPS Agreement allowed Members to modify or to add footnotes to the TRIPS Agreement. Therefore, should any such footnote be included, if at all, it would have to be inserted in the framework of the agreement establishing the multilateral system of notification and registration rather than in the TRIPS Agreement itself. He also referred to the last paragraph of the cover page of the Draft Text which addressed the issue of traditional expressions.

43. The representative of Chile, referring to the comment made by the European Communities delegation that the mandate contained in Article 23.4 did not allow Members to modify or add footnotes to the TRIPS Agreement, pointed out that this logic also meant that the mandate in Article 23.4 of the TRIPS Agreement did not allow Members to add any obligations to existing ones.

44. The representative of Australia said that the communication made by the European Communities confirmed that there was a real problem in this area, which could not be resolved simply by a unilateral statement read out at the time that a register would come into being. The European Communities delegation had asserted that the reasoning put forward by Australia in relation to traditional expressions applied equally to certification marks. This assertion was very troubling and confusing. It was troubling because the European Communities appeared to be saying that, in their view, certification marks should not be eligible for registration on the multilateral system just as in Australia's view, traditional expressions should not be eligible for inclusion in the system. The problem was that a number of Members did protect geographical indications through certification or collective trademarks; they had chosen this form of protection in accordance with their rights under the TRIPS Agreement to determine the appropriate method of implementing the provisions of the Agreement within their own legal systems and practice. It appeared that for some Members this was not good enough, and that another system of protection, one that involved a registration system, must be used by all Members. That seemed to be the message that was coming from the European Commission. This would mean that a number of Members would be prohibited from notifying a geographical indication protected by way of a certification mark. When such a statement was coupled with the European Communities' view that participation in the system should be compulsory for all Members, it became even more worrying. The same Members that would be prohibited from notifying their own domestic geographical indications would have absolutely no choice but to recognize and protect the geographical indications notified by those Members who operated a registry system. In other words, Members would have to recognize all the European Communities' geographical indications but they and no-one else would have to recognize any of the geographical indications that were protected by countries such as New Zealand, Australia, Canada, the United States, which used other systems. The communication was confusing because it suggested that traditional expressions could be compared with certification marks. On what basis could such a comparison be made? Certification marks were intellectual property. Traditional expressions were not. Certification marks could be used to protect geographical indications but traditional expressions could not be used to protect geographical indications. Certification marks were used by Members to protect geographical indications. Traditional expressions were not used by Members to protect geographical indications. A certification mark referred to a type of intellectual property protection. A traditional expression was simply a specific term recognized in the domestic legislation of one Member. In other words, there were simply no grounds on which a comparison could fruitfully be made. He reiterated that before signing up to a multilateral system of notification and registration of wine and spirits, it would be necessary to have a clear idea of what geographical indications would be

eligible for notification. Otherwise it would be impossible to gauge the full ramifications and implications of what was being proposed. He took the example of the ordinary English words, "ruby", "tawny" and "vintage". While the European Communities was describing these terms as "traditional expressions", Australia was of the view that traditional expressions should not be eligible for notification to this system. His delegation had thought that the European Communities had agreed on that point. However, the European Communities had explained that these terms were not geographical indications and as long as they were not geographical indications they would not be eligible for notification, implying that in the future they might become geographical indications and hence notifiable. He referred to a statement made by European Communities Commissioner Fischler that there were some traditional expressions so closely associated with geographical indications that they themselves had become geographical indications. It had also been suggested that a re-classification process was under way within the Commission and within the European Communities. If that was the case, there were a huge number of traditional expressions that should be scrutinized very carefully. In effect, these lists of traditional expressions were actually lists of future possible geographical indications. If ordinary English words could be turned into geographical indications, then any other matter could be turned into a geographical indication as well. One Member might feel that certain types of grape varieties, for example, could also constitute geographical indications; this had been mentioned by France and the OIV in the last meeting of the WIPO Standing Committee on Trademarks, Geographical Indications and Industrial Designs (SCT). What struck him was that the core element of the definition of geographical indications, the linkage with the geographical place was not mentioned but "production method", "plant species" or some other non-geographical attribution. This was a matter of concern because it expanded the scope of this exercise quite dramatically. He said that the European Communities had tried to confirm in their statement that traditional expressions could not be subject to notification under the multilateral system and could never be in the multilateral register as indicated in JOB(03)/76; however, the paper did not refer to Article 24.9. This would mean that if a traditional expression was protected in the European Communities, then the European Communities would have the right to notify it and put it in the register. This was not acceptable. He finally said that the suggestion made by the Chairperson in the cover page of his note would not solve the problem.

45. The representative of New Zealand said that her delegation was shocked that the European Communities was explicitly proposing to exclude collective and certification trademarks from a register when in fact these tools were being used by a number of different Members to implement their existing geographical indication obligations. This ran counter to the firm position of her delegation that nothing regarding the future multilateral system should prejudice Members implementing systems of geographical indication protection that differed from the European Communities' own system of geographical indication protection, particularly those countries such as New Zealand, with a common law system.

46. The representative of Canada said that Canada had implemented its TRIPS obligations regarding geographical indications for wines and spirits through the Canadian Trademark Act. Therefore, the future multilateral system was another approach that could be used to facilitate that type of protection and in that regard it was not meant to incur a "TRIPS plus" obligation in any way.

47. The representative of Hungary, in response to the intervention made by Australia on additional rights and obligations, said that it was generally agreed that Article 22.1 was clear enough and could be accepted as it stood without change. He did not therefore see the point of dealing again with the issue of definition in a footnote to the TRIPS Agreement as proposed by Australia. Regarding the concern expressed by Australia that some Members might propose to notify traditional expressions, he was of the view that this was precisely one more reason to support the proposals regarding a mechanism of opposition. Such a procedure would allow the question of whether a notified term met the definition of Article 22.1 to be considered. He saw in the suggestion made by Australia a contradiction: based on the internal legislation of the European Communities, Australia seemed to be proposing to pre-negotiate what the European Communities and other Members might

or might not put forward. He wondered whether this would not be an interference with the internal system of a Member, an argument which was put forward by a number of delegations.

48. The representative of Argentina shared Australia's concerns about traditional expressions. In the penultimate phrase of the last paragraph of JOB(03)/76, the European Communities had indicated that traditional expressions could not be considered as geographical indications and that certification/collective marks could not necessarily be considered in all circumstances as geographical indications either. She asked whether the European Communities were implying that if certain European Community traditional expressions were accepted as geographical indications, they would in turn accept certain certification/collective marks from other Members?

49. The representative of Switzerland thought that the European Communities communication had made it clear that traditional expressions were not a subject of the multilateral system and hoped that the issue was now settled.

50. The representative of the United States noted that the European Communities delegation was reluctant to add footnotes to the TRIPS Agreement on the ground that it might exceed the mandate. This was an ironic situation since much or all of the European Communities proposal exceeded the mandate under Article 23.4. Regarding collective marks and certification marks as mentioned in the European Communities communication, he pointed out that all Members had an obligation to protect collective marks under Article 7*bis* of the Paris Convention. On the other hand there was no obligation to recognize a term that was utterly divorced from geography such as "vintage", "ruby", or "viejo". He asked whether the assurance given by the European Communities meant that if a traditional expression were to become protected within one of the European Communities member States as a geographical indication, it would become "eligible" for notification and registration under the multilateral system.

51. The representative of the European Communities recalled that his delegation's position had been spelt out at several meetings of the Special Session and reflected in the minutes as well as in JOB(03)/76. He reiterated that traditional expressions were not part of the notifiable subject-matter of the future register. Turning to certification marks, he stressed that in his delegation's view these marks were not necessarily notifiable subject-matter in all circumstances. This did not mean that the European Communities were, as a matter of principle, always going to object to this type of protection. The background for such a statement was the following: some months previously, his delegation had scrutinized the legislation of several Members and came up with questions. These questions remained unanswered. The European Communities' impression was that in certain Members adequate protection had not been granted with regard to geographical indications if these Members had opted to do so under certification or collective marks. It would therefore be impossible for the European Communities to assess whether those Members granting protection through a system different from the European Communities were actually meeting the requirements of the TRIPS Agreement.

52. The representative of the Philippines welcomed the clarification by the European Communities regarding its commitment never to notify and seek protection for traditional expressions under the proposed multilateral register. What caused concern to his delegation from a systemic point of view was the implied connotation that certification or collective marks, which might be used as a means of protecting geographical indications for wines and spirits, were of the same nature as traditional expressions and could therefore be excluded from the register the same way as traditional expressions. For his delegation, this seemed to miss an important dichotomy between traditional expressions on one hand and collective/certification marks on the other. Collective/certification marks reflected not mere words or expressions but were a means of protecting geographical indications and as such they were an inherent part of the system. The situation regarding traditional expressions was different: as such they did not necessarily attach to a system but merely related to certain notions which were being proposed to be eligible for protection under the future multilateral system.

53. The representative of Chinese Taipei fully supported the comments made by Australia, Argentina, New Zealand, and the United States.

54. The representative of Australia said that the suggestions made by some delegations that traditional expressions were an area where future differences would need to be resolved multilaterally through negotiation, arbitration or both were not about solving the problem. They were the problem. This perception was increased if some delegations considered that any notification of a certification mark to the multilateral system might be also be subject to negotiation and arbitration. This was precisely the situation which must be avoided.

55. The representative of India recalled his delegation's position reflected in paragraph 46 of the minutes of the fifth meeting (TN/IP/M/5). It would therefore go along with the Chairperson's suggestion that since "traditional expressions" did not have any established meaning in WTO or other multilateral law and seemed to derive essentially from the legislation of one Member, it might be difficult to address them in any instrument to be negotiated.

56. The representative of the European Communities said that his delegation had not proposed to deal with the issue of traditional expressions through a unilateral declaration but rather supported the suggestion made by the Chairperson in the last paragraph of page 1 of JOB(03)/76.

Chairperson's Draft Text (JOB(03)/75)

57. The Chairperson said that the Draft Text was based on the Elements/Options paper that he circulated on 20 March 2003 (JOB(03)/60) and on the discussion that Members had had on the basis of that text.

58. The *Preamble* was self-explanatory. The language in the sixth consideration, which was in square brackets, corresponded in effect to the Option A equivalent of the Option B proposals for challenge and other mechanisms to address possible differences regarding eligibility for protection found in paragraph 3.1. At the top of page 3 of the English text, the nature of the action to be taken, for example whether to "decide" or to "adopt" had been left open. In the same vein, at the top of page 2 the body which would take this action had been left unspecified. This was in order to avoid prejudging the type of legal instrument, for example whether it would be a decision or an agreement.

59. In regard to paragraph 1 on *participation*, the action to be taken by a Member wishing to participate in the system had been left unspecified for the same reason.

60. The section on *notification* attempted to take into account the discussion that had taken place on the basis of the Elements/Options paper. In the chapeau to paragraph 2.1 and also in paragraph 12, the question of the "body administering the system" had been left open, whether for example this might be the WTO Secretariat or the International Bureau of WIPO. The second part of subparagraph (a) of paragraph 2.2, which referred to transliteration into Latin characters, attempted to take into account points that were made about the difficulties that could arise from the use of different types of characters in the various languages of origin. The proposed approach was drawn from the experience of WIPO under some of its registration treaties. For the second part of subparagraph (b) of paragraph 2.3, the text had also drawn inspiration from WIPO experience in order to respond to some points that had been raised about the feasibility of notifying information on the natural or legal persons that had the right to use the geographical indication. In paragraph 2.5, and also in paragraph 9.2, there was a reference in square brackets to the "committee responsible for managing the system". Obviously, this question of the appropriate intergovernmental committee of the participating Members that would have this responsibility would be linked to that of the administering body and might also be linked with that of the legal form and perhaps participation. Options for such a committee could include the TRIPS Council, a newly created subsidiary body of the TRIPS Council, a body in WIPO or some other body; it was deemed preferable to leave this matter open. The issue of the committee

responsible for managing the system was flagged in square brackets in paragraph 11, as a matter for further discussion in due course.

61. Under *registration*, there were two main options for paragraph 3.1. Option A was based on the Joint Proposal. Option B reflected the proposals put forward by the European Communities and Hungary, with this option bifurcating into an Option B.1, that put forward by the European Communities, and an Option B.2, that put forward by Hungary. The Chairperson said that, obviously, the European Communities and Hungarian ideas took more space, because they were more complex. However, he said that delegates were too sophisticated to think that a mere difference in the number of lines reflected any difference in the respective importance of options.

62. The notation for the various options under *legal effects* in paragraphs 4 and 5 were the same as for paragraph 3.1.

63. Paragraph 8 concerned arrangements for *withdrawals of notifications and registrations.* Some specific ideas were put forward for consideration.

64. Paragraph 13 dealt with the possible *withdrawal* of a participating Member from the system as a whole. Since this matter was linked with that of legal form and with the procedures by which a Member opted to participate in the first place, the Draft Text only flagged the issue for discussion at the appropriate stage.

65. Paragraph 14 related to the issue of the *review* of the instrument after a certain period had elapsed. The text referred to the "competent committee" rather than the "committee responsible for managing the system" because it could be that the review would be undertaken by another body, for instance at a higher policy level.

66. The Chairperson finally recalled that the text remained exclusively on his own responsibility and did not prejudice the position of any delegation, in accordance with the normal WTO practice that "nothing is agreed until everything is agreed."

67. The representative of Chile said that the Draft Text would contribute to helping participants focus discussions and make progress. While there seemed to be widely divergent views on some points, achieving a common denominator was possible if certain elements could be brought together. He was of the opinion that it was legitimate for the Chairperson to prepare a paper which reflected the different positions expressed by Members and that such a paper could be termed a negotiating basis. For his delegation, it would not be unreasonable to ask participants to take the Draft Text as a basis for negotiations even if it contained elements which went beyond the purview of the mandate in Article 23.4. The Special Session was still in a phase of negotiations in which different positions should be able to mature and it should be able to ensure that the different elements of the text fell within the scope of the mandate.

68. The representative of Uruguay said that her delegation agreed with the approach of reflecting and giving shape to the various options. However, it found that there was some imbalance between the options, in particular with regard to paragraphs 3 and 5. Because of some options reflected in the paper, it would not be possible for her delegation to consider the paper as a compromise text until a decision on the legal effect on non-participating Members had been taken.

69. The representative of Japan stated that his country was fully committed to engage in a constructive discussion to find a solution by the deadline set by the Doha Declaration and hoped that the Chairperson's note would help delegations focus on the differences and find possible solutions even though the differences were still very wide. He reiterated that Japan believed that the Special Session should establish, as elaborated in the Joint Proposal (TN/IP/W/5), a system that facilitated the current level of protection of geographical indications for wines and spirits and at the same time did

not have any legal binding effect and minimized the burdens and costs for Members. He further asked how to interpret the relationship between the third paragraph of the preamble which says that "the purpose of the multilateral system of notification and registration of geographical indications for wines and spirits shall be to facilitate the obtaining of the level of protection which is provided for in the TRIPS Agreement for geographical indications and not to increase that level of protection" and the additional legal effects under some options under paragraphs 4 and 5 of the Draft Text, which might expand the scope of protection under the present TRIPS Agreement. Another question was how to interpret the relationship between the multilateral legal effects proposed under a couple of options and Article 1.1 of the TRIPS Agreement, which stated that "Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice".

70. The representative of Costa Rica said that the purpose of a multilateral system should be to facilitate the level of protection which was established in the TRIPS Agreement and not to increase the level of protection. This had been made quite clear both in paragraph 3 of the Preamble of the Draft Text as well as in paragraph 3(i) of the Hong Kong, China proposal. In this respect, the Joint Proposal (TN/IP/W/5) was consistent with the mandate of the Special Session. He expressed support for the question raised by Japan with regard to the relationship between paragraph 3 of the Preamble of the Draft Text and the provisions of the same Draft Text relating to legal effects. Costa Rica gave its support to the establishment of a multilateral notification and registration system which was voluntary, was in accordance with the mandate under Article 23.4 of the TRIPS Agreement, would not create new obligations, and would make it possible to reduce the existing national structure regulating matters like examination, challenge and registration. The system should also be inexpensive. He added that Costa Rica had no commercial interest but rather a systemic interest.

71. The representative of Australia said that on legal effects the Draft Text contained elements that actually represented amendments to the TRIPS Agreement. Presently, Members had an obligation "to provide the legal means for interested parties to prevent the use of geographical indications identifying wines and spirits not originating in the place identified by the geographical indication"; the key obligation was "to provide the legal means". However, the Chair's text clearly stipulated exactly what those means had to be, and how and when to make use of the exceptions. On participation, the Draft Text provided a single text in paragraph 1: this way of proceeding incorrectly suggested that there was agreement on the issue. Moreover, although the mandate was clear enough that only notification and registration procedures were covered, the majority of paragraphs contained provisions providing for negotiations and arbitration, which had nothing to do with notification and registration.

72. The representative of Colombia said that the Draft Text prompted considerable concerns about certain options which actually entailed new obligations, which Colombia was not prepared to accept and which did not correspond to the mandate of negotiations. Colombia was currently shouldering the burden of meeting its obligations under the TRIPS Agreement, for example in the area of trademarks. For this reason Colombia had co-sponsored the Joint Proposal, which was characterized by voluntary participation and would not impose additional burdens particularly for countries like Colombia, which did not produce nor export wines or spirits, and which did not entail new rights or obligations. In accordance with Article 23.4, negotiations should have the purpose of facilitating the protection of geographical indications for wines and spirits eligible for protection in the participating Members. The Joint Proposal reiterated the voluntary character of the future system and determined the scope and coverage of the multilateral system for notification and registration. She recalled that Article 1.1 of the TRIPS Agreement established that Members could freely adopt the appropriate method to apply the provisions of the Agreement within the framework of their own system and practice. Concerns raised by the Draft Text related to the legal effects of participation and the challenge procedure, which would result in an accumulation of repercussions and obligations that did not stem from the Doha mandate and which would not be attractive for those countries wishing to

have a system that facilitated the protection of geographical indications and that would essentially be informative in nature.

73. The representative of Hungary welcomed the Draft Text as a well elaborated text which built usefully on previous informal papers and discussions and also provided clarity about the goals of the negotiations and the range of options as well. The paper was correctly termed a note; it could not be the Chair's proposal while there were still various proposals on the table. However, he was disappointed that the Special Session, within four months of the Cancún deadline, was still working on a paper with options, including some which clearly did not even come close to meeting the mandate. He nevertheless accepted the Chair's approach to have all options presented and was surprised by some delegations' statements that they could not accept the Chair's note as a basis for further discussions. Compared to the process of negotiations in agriculture, the Special Session was in the phase of an overview paper; delegations would have to take positions and the Chair would subsequently present a text which would be the real starting point of negotiations. He viewed the discussions in this session as an exchange of views. Regarding the multilateral nature of the system, he could accept the notion that participation would be voluntary. However, this did not mean that there would not be any effects whatsoever on non-participating Members. A multilateral system should cover at least the 146 Members. Otherwise, it would be a plurilateral system, which would not correspond to the mandate. He reaffirmed Hungary's position that countries could choose to join the system and, if they chose not to joint it, it would mean that they forgo the right to notify and register names of wines and spirits; in that event, they clearly would not have to take part in covering the costs. However, this did not mean that there were no effects on the non-participating countries. Hungary had on previous occasions indicated which effects should be on Members.

74. The representative of Argentina said that certain options put forward by the Chairperson were not an acceptable basis for negotiation. The document reflected that there was still no consensus, not even about a small part of it. It was littered with options that went beyond the mandate of the Doha Declaration, such as those relating to challenges, to settlement of disputes with binding legal effects, to mandatory effects for all Members and to removing competence from national jurisdictions. Nothing in Article 23.4 or elsewhere in the TRIPS Agreement provided a basis for negotiations to create an instrument which would remove from national authorities the competence of deciding, according to their national legislation, the eligibility of geographical indications for protection. For Argentina the system resulting from these negotiations should operate quite independently of how Members applied their obligations under the current TRIPS Agreement. For example, the challenge system clearly proposed standards of protection far beyond those set forth in the Agreement and which would involve a renunciation of sovereignty by Members. After so many years of discussions, where some delegations had repeated that the system would be voluntary, they had finally given clear signals that the system should be a system which is not voluntary. The proposals of these Members had affected the Draft Text, in particular Option B in paragraphs 4 and 5. In this regard, Argentina had indicated in previous informal consultations that depending on the proposals submitted, the distinction between legal effects for participants and for non-participants was absolutely artificial. Another important point was the distinction to be made between the right to participate and the will to participate in a system: a Member could elect to participate without being affected by the legal effects under the system.

75. The representative of Switzerland said that the Draft Text provided the Special Session with the basis to enter into real negotiations and in view of the timeline of Cancún, this was the last chance. He further expressed concerns about the statement made by Chile that the Draft Text could not be considered as a basis for negotiation because some elements or options went beyond the negotiating mandate. He hoped that this did not mean that Chile was actually refusing to enter into negotiations on this text when the Special Session had only a few months left to accomplish its task.

76. The representative of the United States said that his delegation considered that JOB(03)/75 was out of step with the balance of the room. Many comments made over the past couple of months

did not seem to be adequately reflected. The amount of detail offered on proposals that were clearly outside of the mandate far outweighed the treatment of the Joint Proposal, which his delegation considered to be within the mandate. His delegation wished to stress that it intended to work within the mandate of Article 23.4. Since many Members had stressed at this Session the need to have a system with voluntary participation, without any "TRIPS plus" elements, his delegation wished to see this adequately reflected in the text. Responding to Switzerland's and Hungary's comments regarding the Joint Proposal, he said that all Members were required to participate in negotiations to establish the multilateral system as set out in Article 23.4. Under the Joint Proposal, all Members would have access to the information in the system once it was established and all Members could participate in the system at any time by notifying domestic geographical indications. At the same time, the Joint Proposal was consistent with the mandate to establish "a multilateral system of notification and registration of geographical indications for wines and spirits eligible in those Members participating in the system". Clearly the drafters of Article 23 did not intend to compel all Members to participate in the system. In this sense the Joint Proposal would be multilateral in the same way as the multilateral Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 of the Agreement on Technical Barriers to Trade, which was open to acceptance by the standardizing bodies of any Member but was not compulsory for all Members.

77. The representative of Chile, responding to the comments made by Hungary and Switzerland, said that Chile did want to comply with the obligations as contained in Article 23.4 as expeditiously as possible, and in the most simple and easy way as possible. However, it was not prepared to accept additional obligations through these negotiations. Therefore the responsibility for the limited progress of these negotiations did not lie with Chile, but with those who tried, through the back door, to put more obligations on Members. He would challenge any delegation to say that Chile was not complying with its obligations. He noted that Hungary and Switzerland were seeking an agreement which would have impact on non-participating Members. In this connection, he said that he could understand the delegation of Djibouti when it said that it did not understand these negotiations. Least-developed country Members, which did not have any obligations until 2006, found themselves in a position where they witnessed the negotiation of a system in which they might not be interested in participating but which contained obligations binding upon them, whether they liked it or not. In international law, to impose obligations on third countries not participating in a legal system would be "illegal". It would be contrary to any domestic legal system and to international law. He doubted that it was possible to continue in a negotiating process which was not legal and which was in fact contrary to the legal system established and built up within the WTO. He supported the comments made by the United States regarding the effects on non-participating Members. If this was not sufficient, it would be necessary to have a study on what would constitute a multilateral agreement or not. He wondered how one should consider the Patent Cooperation Treaty, which had 121 Contracting Parties: a plurilateral or multilateral treaty? For Chile, it was quite clear that within the legal order of the WTO the fact that a system of registration had only effect on those wishing to participate through notification would not in any way diminish the multilateral character of that system, which would be open to participation by all countries. He cited the example of anti-dumping rules: they were binding on those countries who wished to apply anti-dumping duties but countries were not obligated to have anti-dumping legislation. This was the case of Switzerland, who did not want to apply anti-dumping duties. The agreement did not lose its multilateral character because it did not have any effect on countries which had not included this possibility in their domestic legislation.

78. The representative of the European Communities said that the Draft Text accurately reflected the points of convergence that had emerged during the last months of discussion. At the same time, it also carefully reflected the points of divergence, in particular with regard to the paragraphs dealing with legal effect and participation. Most of the options, if not all, which had been discussed to date had been reflected in the Draft Text, with the exception of ideas amplified in the Hong Kong, China proposal (TN/IP/W/8). Regarding the substance of the Draft Text, he said that ideas contained in paragraph 9 were interesting ones. While the issue had not been dealt with in an elaborate way in the

proposals, with the exception of TN/IP/W/8, his delegation welcomed the pro-active initiative taken by the Chairperson to bring new ideas, which fell within the tasks attributed to the Chair. The question of fees and more generally the question of how to ensure a financially self-supporting multilateral register was indeed an important one that has been acknowledged by many delegations, including his. The possibility of providing for an exemption of fees for least-developed country Members was also important. He regretted that the Chairperson had not taken the same pro-active approach when dealing with the two most contentious issues, legal effects and participation, and had limited himself to reproducing the extreme positions. In this regard, he would consider the paper as more of an options paper rather than a common negotiating basis. In spite of this, some delegations were still objecting to some parts of the text, which he regretted. He thought that the paper deserved full attention and discussion. This being said, he thought that it would be necessary to reflect on the next steps, that is the real negotiating phase where the Special Session would discuss a text with a compromise language. In this connection his delegation would not be in a position to accept that the Chairperson remove certain parts reflecting the proposals made by some Members. Turning to Chile's comment on participation, he recalled that Hungary had repeated the same point for the last three years. He was concerned that in spite of efforts made by the Chairperson to produce a new paper delegations were only repeating their positions. He reiterated that the Joint Proposal did not actually meet the mandate. For example, "registration" based on the Joint Proposal meant that any notified name would be automatically registered; no distinction had been made between notification and registration, contrary to the mandate.

79. The representative of the Philippines also commended the Chair for the Draft Text. Obviously it incorporated elements which were problematic for several Members, including the Philippines, but this was necessitated by the need to accommodate a broad platform of elements as a starting point for negotiations. He looked forward to pruning it down to a framework which met the mandate of Article 23.4 in a more precise fashion. He further said that the mandate referred to the establishment of a multilateral system and Article 23.4 of the TRIPS Agreement unequivocally referred to "protection in those Members participating in the system". His delegation had always thought that it was clearly understood by all delegations that, while every Member had a right to contribute to the negotiations leading to the establishment of such a system, the system need not necessarily result in all Members, whether they chose to participate or not, acquiring or suffering, as the case may be, the same rights and obligations as each and every other Member. In other words, the phrase "protection in those Members participating in the system" should be interpreted as offering some sort of carve-out for Members which chose not to participate — probably because they were non-wine producing and therefore did not have anything to submit for protection — and acquire rights. Conversely and more importantly for such non-participating Members, the carve-out should also result in such Members not assuming obligations similar to those obligations assumed by Members participating in and acquiring rights under the system. However, based on the proponent's suggestions which had been incorporated in the Draft Text, it would appear that this would not be the case: the legal consequences on non-participating Members were not substantively differentiated from those on participating Members. If this were the case, the value of a voluntary system as espoused by most developing countries, especially those which might not have that much to gain from the system by participation, would be virtually null and illusionary. Indeed, while the Philippines welcomed the notion suggested by the delegation from Djibouti regarding the provision of technical assistance, at the end of the day, what would result from such technical assistance would be an increased understanding that non-wine producing countries would have no rights but only obligations.

80. The representative of Chinese Taipei said that his delegation's concerns about the voluntary nature of the system and the legal effects on non-participating Members had not been fully reflected in the Draft Text and that the arbitration system as had been proposed in that text was outside the negotiating mandate.

81. The representative of Barbados associated her delegation with the comments made by the delegation of the Philippines, in particular with regard to the multilateral character of the register. As

far as the settlement of differences regarding the eligibility for protection was concerned, Barbados had reservations about the idea of a multilateral system for arbitration. Under its existing legislative procedures, her country did provide for a challenge procedure; she would at this stage want to err on the side of caution. On the question of the effects on non-participating Members, she would refer to the comment made by the Philippines and express concerns about the automatic effect of registration even for non-participating Members. As a final remark, she said that it would be necessary to be careful of the administrative and financial costs of any system; it should be as economically and administratively feasible as possible.

82. The representative of Malaysia said that it was her delegation's contention that the system must be voluntary, as was clearly stated by Article 23.4. The system was to facilitate the protection of geographical indications for wines and spirits and was not meant to create additional rights and obligations. She further noted that the discussion so far, as well as the options provided in the Draft Text, did not reflect the legal dichotomy between participation and non-participating Members or the difference between a voluntary system and a system that was applicable to all. Malaysia wished to see the notions of participation and non-participation clearly spelt out in terms of legal effects, fees and costs as well as administrative requirements. The current negotiations on the multilateral system should recognize the intent of Article 23.4, namely, "protection in those Members participating in the system" would mean offering some sort of a carve-out from the multilateral nature of the system. As a result, this would mean that there would not be any additional rights or obligations.

83. The representative of Panama said that the system should be voluntary and should not entail undue costs and additional obligations to non-participating Members.

84. The representative of Colombia reiterated her country's position as reflected in the Joint Proposal: the system must be voluntary and not increase the existing obligations under the TRIPS Agreement. She expressed concerns about certain options contained in the Draft Text: the binding effect of registrations on non-participating Members; and the opposition or challenge procedure, which would create obligations and implications beyond the Doha mandate and would not be attractive for countries preferring a system facilitating protection and essentially informative.

Preamble

85. The representative of Australia said that the function of a preamble was to establish the principles on which the remainder of the text was based. This was the basis on which the preamble should be judged. The fact that a great part of the rest of the text did not live up to the principles set out in the draft preamble was causing problems to Australia.

Third paragraph

86. The representatives of Colombia, supported by the delegations of Canada, New Zealand, Australia, Argentina, the Philippines, Costa Rica, the United States, Malaysia, Mexico and Panama said that the third paragraph of the recital should state that "the purpose of the multilateral system of notification and registration of geographical indications for wines and spirits shall be to facilitate the protection of" and not "to facilitate the obtaining of the level of protection".

87. The representative of the European Communities, supported by the delegation of Slovenia, opposed the suggestion made by Colombia on the ground that this paragraph had been drafted in a fairly skilful manner and reflected that the subject-matter was actually the facilitation of the obtaining of the level of protection.

88. The representative of the Philippines, responding to the comment made by the European Communities, said that it would be preferable to adhere to what was in the clear letter of the

Agreement itself. Furthermore, there was nothing in the TRIPS Agreement which seemed to indicate any particular level of protection.

89. The representative of Argentina suggested that the words "obtaining the level of protection" be put in square brackets if the suggestion made by Colombia and supported by Argentina were not adopted.

90. The representative of Bulgaria said that, if the suggestion by Colombia were retained, then the words "not to increase that level of protection" should also be put in square brackets so as to keep the balance in the paragraph.

Fourth paragraph

91. The representative of New Zealand, supported by the delegations of Argentina, Chile, and the Philippines, suggested including in the Preamble a reference to TN/IP/W/8, in particular its Sections II and III. Although the Draft Text already mentioned in the fourth preambular paragraph that the system should not prejudice any right already afforded to a Member under the provisions of the TRIPS Agreement to the protection of its geographical indications for wines and spirits, New Zealand was of the view that it would be necessary to have a more general preambular paragraph stating that "there will not be additional substantive legal obligations or detractions from rights".

92. The representative of the United States underscored in particular paragraphs 3(iii) and 3(iv) in Section II of the Hong Kong, China proposal that referred, respectively to the territorial nature of geographical indications and the idea that the mandate of Article 23.4 was neither to create new substantive legal obligations nor or derogate from existing legal obligations.

93. The representative of the European Communities could accept the draft language proposed in the Draft Text but not the wording suggested by New Zealand.

94. The representative of Switzerland said that the suggestion made by New Zealand seemed to be repetitive and pointed out that paragraph 3 of the Preamble already stated that the future system should not increase the level of protection.

Sixth paragraph

95. The representative of Canada, supported by the delegations of New Zealand, Australia, Chile, Costa Rica, the United States, Malaysia, Mexico and Panama suggested the removal of the square brackets on the ground that each Member could determine which form of protection would be the most suitable. She also suggested a new paragraph indicating that for both participating and non-participating Members the notification of a geographical indication would not preclude its protection under the domestic system or any other means.

96. The representative of the European Communities, supported by the delegations of Switzerland, Hungary and Slovenia, said that the square brackets should be retained since the text had been put in square brackets to reflect Option A of paragraph 3.1, which was still under discussion.

97. The representative of Argentina said that it would be more appropriate to replace in the second line the words "applicable law" with "national law".

98. The representative of the European Communities said that for his delegation the word "applicable" had the meaning of "national" or "domestic". He would prefer that at this stage the word "applicable" be retained. He further suggested to add a sentence indicating that the instrument should be in accordance with the TRIPS Agreement, otherwise it could be interpreted that national or domestic law could have primacy over the TRIPS Agreement. Finally, the suggestion made by

Australia to add a paragraph indicating that disputes should remain essentially at the level of national law would not take into account the Hungarian proposal.

99. The representative of Bulgaria agreed with the European Communities that the word "applicable" should be maintained to reflect situations that were actually more complex.

Proposals for new paragraphs

100. The representative of the European Communities said that, although this part of the Draft Text was not the most important one, his delegation would suggest adding to the recitals a paragraph indicating that Members recognized that Section 3 of Part II of the TRIPS Agreement already applied to all Members, except those benefiting from a transitional period, namely least-developed country Members. His delegation was of the view that least-developed country Members who had decided to develop intellectual property legislation, including on geographical indications, should have the right to participate. His delegation would propose wording on the next occasion.

101. The representative of Malaysia suggested adding a new paragraph which would take into account that the system would be voluntary. It would read as follows: "Recognizing also the voluntary nature of the system and that Members are free to participate or not to participate in the system;".

102. The representative of Argentina suggested adding a new paragraph which would clearly indicate that protection of geographical indications was within the competence of the national legal systems of Members.

103. The representative of the Philippines suggested to add a reference that the future system should not impose on Members, in particular non-participating ones, additional substantive legal obligations or confer any additional rights on Members which would be beyond the TRIPS Agreement. This notion had been well captured in paragraph 3(iv) of the Hong Kong, China proposal.

104. The representative of the United States, supported by the delegations of Switzerland and Slovenia, recalled that the purpose of a preamble was to highlight guiding principles, although perhaps not to state every principle that informed protection of geographical indications. In that spirit, her delegation noted two guiding principles: the idea that intellectual property rights were private rights; and the idea that geographical indications were, for purposes of the TRIPS Agreement, intellectual property rights. These principles had not been reflected in the draft Preamble; their addition would add value to the text.

105. The representative of the European Communities, supported by the delegation of Bulgaria, expressed concerns about the number of additions and amendments to the Draft Text while there had not yet been any discussion on the operative parts, where the Chairperson had left open the various options. If other delegations continue to make amendments reflecting only their proposals, he then would propose to add a paragraph stating that the system should be multilateral with legal effects on non-participating Members.

106. The representative of South Africa said that if the EC's suggestion were to be retained there should be a reference to the exemption in favour of Members under transitional periods.

107. The representative of Argentina agreed with the Chairperson's note on page 1 of JOB(03)/75 that those provisions on which a single set of paragraphs had been drawn up did not in any way imply any degree of acceptance by participants in the Special Session. In response to the comment made by the European Communities, she pointed out that nothing prevented a delegation from making suggestions for additions or amendments.

108. The representative of Malaysia pointed out, in response to the suggestion made by the European Communities, that the content of her suggestion for a paragraph on the voluntary character of the system was not new since it was already in Article 23.4, whereas the European Communities suggestion would definitely prejudge the discussions. If the European Communities proposal were to be retained, then Malaysia would request that there be an alternative sentence that "the multilateral system should not have any legal effects on non-participating Members".

Paragraph 1: Participation

109. The representative of Uruguay said that on a first reading paragraph 1 did not present any problems. However, this provision should not be read in isolation. Her delegation would have difficulty in having paragraph 1 saying that participation was open to all Members and at the same time paragraph 5 dealing with legal effects on non-participating Members. Her delegation would therefore prefer Section E of Annex A of the Hong Kong, China proposal.

110. The representative of Australia said that the way paragraph 1 was presented — a single draft text — suggested that there was far more agreement on this issue than actually existed. He observed that some delegations had made it clear that their agenda was actually to provide legal effects on non-participants, which would clearly be outside the mandate. Paragraph 1 as it stood left open the question of what participation would ultimately mean in the context of the register. It did not make clear that participation should be entirely voluntary, namely that Members had the right to notify geographical indications protected in their territories and to choose whether they wanted to be involved in any outcome of the system. To the extent that the system involved obligations, those obligations should not be imposed upon Members who did not choose to participate in the system. It should be made clear that Members had the right to participate at any time and importantly to withdraw their participation at any time. The way that Hong Kong, China had expressed its views on participation was interesting. It seemed to be simpler, clearer and more in line with the mandate, with the exception of provisions on the legal effect of registrations. Paragraph 4(viii) referred to the system being entirely voluntary at the outset and the scope of the system being revisited. His delegation might have problems with this proposal because it suggested that voluntary participation could be reviewed further down the track.

111. The representative of Chile concurred with Australia on the question of participation and the need for a clearer link with legal effects, especially for non-participating Members. Hong Kong, China's wording in Section E of Annex A of TN/IP/W/8 was much clearer.

112. The representative of the European Communities agreed that there was a linkage between paragraph 1 and the rest of the text. However, his delegation could accept the draft as it stood, with the formula regarding the notification requirement, provided that this was without prejudice to the fact that the protection to be facilitated under Article 23.4 already applied to all Members, except for the least-developed country Members. This should therefore be duly reflected by the functioning and the scope of the register.

113. The representative of the United States said that her delegation also thought Article 23.4 was quite clear regarding the voluntary character of participation and that the meaning of the term "voluntary" was self-evident. "Voluntary" implied an affirmative act or election to participate and failure to take that affirmative act would mean that one was not participating in the system. For example, the United States would accede, with effect on November 2, to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. The United States will take an affirmative act to become a party to that treaty. Non-treaty countries did not need to take an affirmative act to prevent trademarks from having legal effects in their territories. In other words, if a country was not participating in the Madrid system it had not volunteered to participate, it did not need to do anything to preserve its rights outside that system; there would not be any legal consequences. In that respect, a clarification could usefully be made in the Draft Text, similar to

Section E of Annex A (on participation) in the Hong Kong, China proposal. Both texts could be improved by a very clear and simple statement that participation would be voluntary and that there would be no legal effects for a decision not to participate in the multilateral system of notification and registration of geographical indications for wines and spirits under Article 23.4.

114. The representative of New Zealand thanked the United States for their explanation and supported the call for something similar to Section E on participation in the Hong Kong, China proposal to be included in the Draft Text. She echoed Australia's concerns about the issue of participation being reviewed further down the track after the implementation of the register. She did not object to a review of the register as a whole, but could not support identifying particular aspects of the register that would be a focus of review.

115. The representative of Malaysia, referring to Australia's comment on the exact nature of participation as provided for in paragraph 1, said that the proposal by the United States would adequately clarify what participation or non-participation meant and therefore strongly supported their proposal for clarification.

116. The representative of Switzerland stated that although many delegations made a close link between participation and legal effect, he understood that it was the intention of the Draft Text not to prejudice the different positions and options regarding the issues that appeared in the later part of the paper. The proposed wording could prejudice legal effect and participation in that multilateral system. Therefore he proposed that instead of writing that "Members may elect to participate in the multilateral system", the more neutral words "Members may elect to notify and register their geographical indications in the multilateral system" should be used. This would not prejudice Members' positions on legal effect. The "affirmative act" to indicate participation would be the notification of geographical indications.

117. The representative of Argentina agreed with other delegations that there was an inseparable link between participation and legal effect, and that Article 23.4 contemplated a voluntary register. Her delegation supported the proposal for clarification made by the United States. The Draft Text must clearly reflect that participation would be voluntary and that there would not be legal effects on non-participating Members. Her delegation agreed with the United States that a voluntary system required an express affirmative act by Members before any obligations could be imposed upon them.

118. The representative of Colombia supported the United States' request for clarification that participation was on a voluntary basis and required a clear and positive act. The geographical indication notified must also be one eligible for protection under national law. She also wondered about the exact implication of the footnote concerning the relationship between the procedure of participation and the legal form of the multilateral system.

119. The representative of Bulgaria supported the intervention of Switzerland. An alternative means to achieve the same result would be to replace "action to be taken" with "notification under paragraph 2" and to delete "('the participating Member')".

120. The representative of Chile stated that it was his understanding that delegations were not in a drafting session to add or remove brackets. Text without brackets had not necessarily been agreed upon either. Given the complexity of the text and the limited participation in the discussions, adding options to the text was useful to clarify the problems and options and improve understanding. It was an act of transparency and fairness for officials from capital and for Members that could not attend all of the discussions. He also pointed out that any text would be carefully scrutinized in the framework of the Dispute Settlement Mechanism and therefore it should be carefully defined, fully understood and agreed upon by all Members. Members could no longer afford to paper over the cracks.

121. The representative of Canada associated her delegation with the intervention of Chile. There was no agreement on participation and including additional options improved clarity. She also supported the suggestion of the United States to clarify that participation was voluntary since the true intention of some of the language was unclear.

122. The representative of Djibouti supported the intervention of Chile for measures to clarify the text and to make it understandable to negotiators.

123. The representative of Japan stated that a very simple and clear definition of participation was required because participation was closely linked to other difficult issues. He believed that under Article 23.4 of the TRIPS Agreement participation should be voluntary and the Draft Text needed to be very clear about this. He also flagged his concern about the possible effects on non-participating Members.

124. The representative of Costa Rica stated that his delegation would like a clear statement that Members might freely participate in a multilateral system as established in Article 23.4 of the TRIPS Agreement and as proposed by the Hong Kong, China delegation in Section E of its proposal. He also supported the requests of other delegations to define the form in which Members should express their will to participate in the system and clarify that non-participating Members would have no rights or obligations under the system.

Paragraph 2: Notification

Paragraph 2.1: Substantive conditions

125. The representative of Australia stated that paragraph 2 must take account of the different means by which Members protect geographical indications. The emphasis should be on the fact that the geographical indication was protected in the territory of the notifying Member. Australia was concerned that paragraph 2.1(b) might take the decision about whether a term was a geographical indication out of Members' hands and put it under multilateral scrutiny in the manner suggested by some delegations. Paragraph 2.1(b) seemed to repeat the wording of Article 22. He wondered whether that paragraph was necessary.

126. The representative of Chile stated that neither the Joint Proposal nor the European Communities' proposal was clear about what geographical indications should be notified under the system. The Draft Text stated that the geographical indication must be protected in its territory which was not as clear as the text in the Hong Kong, China proposal, which specified that the geographical indications to be notified should be domestic ones.

127. The representative of Bulgaria proposed that references to "a wine or a spirit" in paragraph 2.1(a) and elsewhere in the text be changed to "product protected under Article 23 of the TRIPS Agreement".

128. The representatives of Turkey, Switzerland, the European Communities, the Czech Republic, Kenya, India, Thailand, Mauritius, Hungary and Slovenia expressed their support for the proposal made by Bulgaria.

129. The representative of India said that there was no questioning of the mandate, which remained a registration system for wines and spirits. These were the only products covered by Article 23. The Bulgarian proposal would only add simplicity by referring to the products covered by Article 23.

130. The representative of the United States noted that Article 2.1(c) created a requirement for notification that the geographical indication be protected in the territory of the notifying Member and have not fallen into disuse in that territory. Article 24.9 of the TRIPS Agreement stated that there

"shall be no obligation ... to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country." The reverse was not mentioned in the TRIPS Agreement. It did not prohibit the notification or the assertion of rights pertaining to a geographical indication which was not protected in its territory and which had fallen into disuse. This indicated the difficulty in establishing limitations on notifications that did not appear in the TRIPS Agreement. Members had concluded a number of bilateral agreements where terms were protected as geographical indications although they did not appear to be used in the territories of the notifying Members. Presumably those Members would want to preserve the right to notify those terms as geographical indications and leave it to other Members to determine whether they were protectable in their territory. This explained why the paragraphs relating to notification should be considerably simplified and it should be made clear that a participating Member was entitled to notify geographical indications for wines and spirits.

131. The representative of New Zealand, supported by the delegation of Colombia, stated that her delegation could not support the proposal by Bulgaria to replace the reference to "wine or a spirit" with a reference to products covered by Article 23. The supporters of the Bulgarian proposal clearly hoped that Article 23 would eventually extend beyond wines and spirits. However, the mandate covered only wines and spirits. She noted that if the Bulgarian proposal was pursued her delegation would suggest that every reference to a geographical indication in the Draft Text be clarified to be a geographical indication for a wine or spirit.

132. The representative of the Philippines stated that his delegation would have substantial difficulty in accommodating the Bulgarian proposal. He noted that Article 23 clearly referred to additional protection for geographical indications for wines and spirits and should not entail anything more. He also suggested that the language in paragraph 2.1(b) concerned the definition of a geographical indication specified in paragraph 1 of the Article 22 of the TRIPS Agreement. This language should be changed to avoid the suggestion that notification conclusively established that a wine or spirit actually met the definition of a geographical indication. In that respect his delegation favoured wording similar to that contained in Section A.2(a) of the Hong Kong, China proposal. This would make the issue clearer and more explicit for all parties.

133. The representative of Argentina associated her delegation with the statement made by the United States regarding paragraph 2.1(c) in relation to Article 24.9. This would preserve options and flexibility for Members. It would also ensure that countries that lacked a specific system to protect geographical indications had options and could still participate in the system. She also associated her delegation with New Zealand regarding the Bulgarian proposal and stated that if the Bulgarian proposal was pursued she would also ask for "and spirits" to be placed in square brackets, since Article 23.4 only mandated the establishment of a register for wine. Proposals such as the Bulgarian one would hold back negotiations.

134. The representative of Bulgaria stated that his proposal did not change the system to refer to products beyond the mandate. He agreed with India that no change would be made to the mandate. Unless there was an agreement on extension, the system would only cover wines and spirits. His proposal made the Draft Text more neutral and did not prejudice the position of any Member on the extension of protection of geographical indications.

135. The representative of the European Communities noted that when the Joint Proposal was first made it was left neutral so that developing countries could seek to have geographical indications protected for products other than wines and spirits. He asked whether the sponsors of the Joint proposal could now support the proposal of Bulgaria.

136. The representative of Chile stated that the Bulgarian proposal was not neutral, helpful or constructive and did not simplify matters. If the proposal was pursued his delegation would need to completely reconsider its position because the products that could be involved would need be assessed

as well as the new economic, social and constitutional consequences. If delegations wished to be constructive they should stick to wines and spirits.

137. The representative of Argentina stated that the Joint Proposal as described in TN/IP/W5 contained a clear reference to a register of geographical indications for wine and spirits.

138. The representative of South Africa stated that the Bulgarian proposal created problems rather than solving them.

139. The representative of Chinese Taipei stated that the Bulgarian proposal created significant difficulty for his delegation. He asked what kind of products should be protected.

140. The representative of Australia noted that certain delegations had stated that the registry must be compulsory, must have legal effects, and would amend the TRIPS Agreement. The new proposal that the system be applied to products other than wines and spirits raised fundamental questions about the negotiating process and was not a constructive approach.

141. The representative of the United States stated that wines and spirits constituted a reasonably clear category of goods, although she acknowledged that there was sometimes difficulty in categorizing a good as either a wine or a spirit. In contrast, "product" was unclear. In some Members, certain categories of products, such as mineral waters, were excluded from protection as geographical indications, so the use of the term "product" might make it unclear which products were eligible for protection.

142. The representative of Australia said that his delegation had set out quite clearly the basis on which it was engaging in these discussions. It had been playing an active role in discussions on the register consistent with Australia's commitment to move the discussions forward in a manner consistent with the Doha mandate. This was the very basis behind Australia's continuing support for the Joint Proposal (TN/IP/W/5). He also noted that some other Members, notably Hong Kong, China, had also been making valuable contributions to try to achieve progress despite the very different views existing between Members. What his delegation had made abundantly clear was that it was not prepared to countenance a register that went beyond the mandate of Article 23.4 of the TRIPS Agreement and paragraph 18 of the Doha Ministerial Declaration. It was not prepared to consider anything that would make this exercise a "TRIPS plus" one: this was one of the key reasons why his delegation had stated its strong reservations to the Draft Text. It came as absolutely no surprise that the proponents of a TRIPS plus register included issues that would take the Special Session even further outside the mandate. That was a pretty standard tactic when the discussion was starting to go against one's interests, as was clearly evidenced by the large number of delegations who had spoken out in support of a less burdensome register. He asked those delegations who expressed their support for a register that would extend beyond wines and spirits whether they were also supporting additional amendments to the TRIPS Agreement, an international dispute settlement system exclusively for geographical indications and compulsory participation in the system. While his delegation continued to be prepared to engage in these discussions, it wondered about the value of the exercise when some Members were so brazenly prepared to ignore the mandate given by Ministers, for example by suggesting that "voluntary" meant "compulsory" or that "wine and spirits" meant "other products". In a sense, his delegation should not be surprised because it had seen in a number of other parts of the WTO that the European Communities and their supporters had been prepared to pay no more than lip service to the clear mandate set out by Ministers in Doha. For his delegation, it was needless to say that the direction in which some Members would like to take this discussion was completely unacceptable. This made Australia question the very basis on which the Special Session was engaged in these discussions and was another example of the erosion of trust that was a major reason for these negotiations being in such a difficult position. His delegation wondered what the value was of continuing to engage in these discussions and whether the best approach would not be to refer the whole issue to Ministers for discussion in Cancún. There seemed little prospect of real progress

before then with the European Communities and their supporters being prepared to go so flagrantly outside the mandate with their "TRIPS plus" register proposal. His delegation would continue to engage constructively in these discussions in an attempt to make progress. However, it had very strong concerns about the Special Session's ability to make progress when some delegations appeared so unconcerned about dismissing the very clear directions of the mandate as irrelevant. He recalled that the Chairperson had set out very clearly in paragraph 11 of TN/IP/W/7 that: "Members have a very clear mandate to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference. The Special Session is required to fulfil the mandate in its entirety and not go beyond the mandate". This was the basis on which his delegation would continue to engage in the discussions.

143. The representatives of Canada, Argentina, Chile, New Zealand, the United States, Chinese Taipei, Colombia, Costa Rica and Mexico associated their delegations with the statement made by Australia.

144. The representative of the European Communities said that his delegation would continue to engage constructively in the discussions on a multilateral register and that the European Communities had from the outset wanted a meaningful register with legal effect in such a way that the Membership of the WTO was engaged.

145. The representative of Switzerland said that it was the nature of negotiations to have divergent views. To reproach some delegations for having divergent views would not be constructive. He understood that the intervention made by Bulgaria was not to extend the mandate but to formulate the wording in the Draft Text in such a way as not to prejudice any delegation's position in the Special Session or in any other WTO negotiations.

146. The representative of Australia said that the last intervention made by the delegation of Switzerland represented the start of the spin he had mentioned in his earlier intervention. He reiterated that paragraph 18 of the Doha Declaration contained an extremely clear mandate.

Paragraphs 2.2 – 2.3: Contents of the notification

147. The representative of China asked for some elaboration on the provisions of paragraph 2.2 that, it had been said, drew upon the practice of WIPO.

148. The representative of the Secretariat explained that when the Chairperson referred to drawing on the experience of WIPO in paragraph 2.2(a), he was referring to the part of that paragraph that read "where the geographical indication uses characters other than Latin characters the transliteration into Latin characters using the phonetics of the language in which the notification is made". The other elements of this paragraph were drafted on the basis of the discussion on the Elements/Options Paper.

149. The representative of Argentina stated that in paragraphs 2.2(a) and (b) her delegation would like the words "in the country of origin" replaced with "in the Member making the notification" consistent with paragraph 2.2(d). The examples in paragraph 2.2(c) were unnecessary and the text was confusing. The mention of "a reference to the legal instrument" and also "the text of the legal instrument" created uncertainty as to whether a reference or just an introduction to the text was required. The paragraph should be deleted. Paragraph 2.2(e) should be included as an optional rather than substantive requirement. The determination of the geographical area where the wine came from was not one of the requirements stipulated in the TRIPS Agreement.

150. The representative of Australia stated that some of the elements in paragraph 2.2 had a level of detail that made the system more cumbersome and were only relevant to a system that created legal effects not envisaged by her delegation. Her delegation believed that the notification section should be kept simple. Paragraph 2.2(a) should state that no specific legal effects were attached to

transliteration. In paragraph 2.2(c), the reference to the legal instruments by which the geographical indication was protected in the notifying Member should be removed. Such a reference was not supported by those delegations sponsoring the Joint Proposal. Previously her delegation had stated that a list of geographical indications recognized as eligible for protection under a Member's legislation could be submitted, which would obviate the need to refer specifically to the legislative act, judicial decision or administrative measure that gave right to use the term. In the current Draft Text, Members with common law systems might be prejudiced because in their systems the right to use a term could arise simply from its use over time. In this case, it would not be possible to notify the specific instrument that gave right to use the term. The Draft Text also left open the possibility that bilateral, regional and/or multilateral instruments might qualify as legal instruments sufficient for the purpose of establishing that a geographical instrument be recognized or protected. Article 24.9 of the TRIPS Agreement mandated that protection be granted in the country of origin of the geographical indication. This provision must be fully realized in the contents of the notification section in the Draft Text. The Hong Kong, China paper appeared most cognizant of this issue. It provided Members with the option of notifying relevant domestic legislation or judicial decisions but did not require Members to provide that information. Her delegation asked how the information mentioned in paragraph 2.2(e) would be used and whether that level of specificity was required. That information was included in some systems that did have legal effect, but her delegation did not understand why it would be required in a system that did not have legal effect.

151. The representative of the European Communities stated that the Draft Text contained the minimum elements necessary for a predictable, working registry. He stated that the task was to include enough information to make the system work without it being too cumbersome.

152. The representative of New Zealand stated that paragraph 2.2(c) must not prejudice Members with a common law system. In those Members, a particular geographic indication was often not protected by a particular legal instrument but was simply eligible for protection under generic legislation, e.g. on passing off, in the event that the right holder decided to pursue protection for that geographical indication.

153. The representative of Argentina pointed out, with regard to paragraph 2.2(d), that Articles 24.4 and 24.5 of the TRIPS Agreement stipulated specific dates where TRIPS obligations became applicable to Members under two specific circumstances. This point should be reflected in the Draft Text.

154. The representative of the United States said that the trend in international intellectual property protection was towards simplification and reduction of formalities. Any system which proposed certifications or formal statements executed by documents seemed to be inconsistent with this trend. She agreed with the delegations of Argentina, New Zealand, Australia and others that certain paragraphs appeared to prejudge the legal systems under which notifications would be made. She recalled that there was no international harmonization in the area of geographical indications and that it appeared from discussions in the WTO and WIPO that there was little common understanding about eligible subject matter for protection as a geographical indication. Therefore any multilateral system for notification and registration of geographical indications for wines and spirits must accommodate existing domestic systems for the protection of geographical indications which might be quite different. She noted that paragraph 2.2(c) appeared to require the notification of a specific legal instrument under which the geographical indication was protected. However in common law systems use created the rights. It was possible that there would not even be a relevant judicial decision if there had been no conflict or controversy with respect to the claimed geographical indication. She concurred with Argentina with respect to the amendment of paragraph 2.2(a) of the Draft Text. The language should be the language of the notifying member. She also agreed with Australia that translation and transliteration should have legal effect only as determined by domestic law and not as imposed by an international system. The mandatory elements should be as simple as possible. She pointed out that, even in Section A.2(b) of the Hong Kong, China proposal, something as seemingly

innocuous as the name and contact details of the owner could create a legal conclusion under certain legal systems. In the United States, trademark registration was prima facie evidence of ownership. The decision that some entity was an owner was a legal conclusion. In Section A.2(e) of the Hong Kong, China proposal, the requirements for formal statements executed under government seal, relevant domestic legislation or judicial decisions seemed to contradict the international trend towards simplification and making it as easy as possible for those wishing to participate in the system to enter it. She also noted that most functioning self-supporting systems provided for the payment of a fee for entering into the system as contemplated by Section A.2(g). A number of delegations referred to a multilateral register, which appeared to presuppose a finite list of terms. She understood that for delegations that sought a system with mandatory legal effect for all Members it would be desirable to have as much specific information as possible included in any notification so that the registration of terms on this list would be as complete as possible. However, the mandate in Article 23.4 was not for a multilateral register but for a multilateral system of notification and registration of geographical indications for wines and spirits. This was quite distinct from a multilateral register. She also noted that neither the Draft Text nor the Hong Kong, China proposal accommodated the important intellectual property and TRIPS principle of intellectual property rights as private rights. Geographical indications were indeed intellectual property rights and therefore any multilateral system had to accommodate private rights whether they were asserted by natural or legal persons, such as collectives, governments and associations.

155. The representative of Chile stated that the information contained in paragraphs 2.2(a)-(e) was too complicated and that a simpler format was required. Each notifying Member should be able to decide whether any additional information might be useful. Paragraph 2.3 could be recast and the chapeau text could stop at "geographical indication".

156. The representative of Hungary stated that paragraph 2.2 contained all of the elements necessary for notification, but suggested that some information be included concerning the linkage between the quality, reputation and other characteristics of the product and its geographic origin. This could be done with a cross-reference to the document establishing that linkage.

157. The representative of the European Communities agreed that there was no movement towards the international harmonization of geographical indications. However, Section 3 of Part II of the TRIPS Agreement contained a definition of geographical indications. He wondered whether there was a contradiction in the argument of some delegations that the requirements for registration should not be cumbersome but that there should be a finite list of terms. He believed that the proposal for a finite list of terms would further complicate negotiations and wondered whether it would be possible to agree on a certain number of terms before Cancún. He suggested that it would be useful if the United States indicated what terms required a consensus in order to have a meaningful multilateral system of notification and registration. He was encouraged to hear the United States refer to notification and registration because he was concerned that the American and some other delegations did not give any legal effect to the term "registration". He said that the Draft Text contained the minimum elements required and he agreed with the distinction made between compulsory elements ("shall include") and optional ones ("may also include"). The Draft Text recognized that a minimum was required but that the notification could be made more useful, and the opposition process facilitated, if Members provide the maximum information possible.

158. The representative of Canada stated that Members had taken on their TRIPS obligations concerning geographical indications in good faith and had fulfilled these obligations in different ways domestically. Recalling that Canada used the Trademarks Act and certification marks to protect geographical indications, she said that the fact that other countries adopted different approaches did not mean that Canada's measures did not comply with its TRIPS obligations. The Special Session should not try to create a one-size-fits-all system.

159. The representative of the United States stated that Article 23.4 did not mandate a finite list of terms. On the contrary, she believed that any working system for intellectual property protection must be able to accommodate as many applications as were received. The US Patent and Trademark Office could receive as many as 396,000 trademark applications in a year and for 2003, 265,000 trademark applications were expected. A functioning intellectual property system must be able to handle these volumes and on a timely basis. Therefore, her delegation rejected the notion that Article 23.4 was a mandate for a finite list of terms. However, the reference of the European Communities to a registry suggested a finite list of terms and she thought that some delegations might be interested in a finite list of terms that would have an absolute legal effect in all Members, whether they chose to participate in the multilateral system of notification and registration of geographical indications for wine and spirits or not. She noted that a European Community regulation had been recently amended to exclude mineral waters as a product category that could be eligible for geographical indication protection because of the inability of the European Community's system for the protection of geographical indications to process the number of geographical indication applications for mineral waters. This created the link between the European Community's use of the term "registry" and a finite list of terms.

160. The representative for Kenya agreed with the approach taken in paragraph A.2(g) of the Hong Kong, China proposal in relation to fees, in particular the footnote that consideration should be given to least-developed country Members and developing country Members in relation to the payment of fees. He asked the United States whether a multilateral system of notification and registration presupposed a multilateral register. He noted that most systems for the protection of intellectual property rights used a register.

161. The representative of Japan stated that his country could accept paragraph 2.2 but felt that further consideration and discussion was needed to ensure that the system accommodated those Members with a common law system. It was also important to clarify in paragraph 2.2 that geographical indications were private rights as indicated in paragraph 2.3(b) and suggested by the Hong Kong, China proposal in Section A.2(b) of Annex A.

162. The representative of the United States said that, while a register might be the result of a system, the mandate was for the negotiation of the system itself, i.e. the mechanism by which Members might be able to assert rights in geographical indications and request their protection in participating Members. There was no mandate to negotiate a list of terms that would have international protection.

163. The representative of the European Communities acknowledged that there was special treatment of mineral waters but reassured that there was no problem handling the number of geographical indication applications. He also recalled that the United States delegation had mentioned some hundreds of thousands of applications under the trademark system. He asked Members with a common law system to provide examples of the problem they had raised and proposals to resolve it.

164. The representative of Switzerland, in response to Chile's intervention, said that paragraph 2.3 gave a non-exhaustive list of examples of additional information which could be provided. These examples were appropriate and useful and should be retained. Regarding the point of the United States that a register referred to a limited list of terms, he said that his delegation was using the term "register" to refer to an open instrument, such as a trademark register.

165. The representative of Australia expressed concern about the information stipulated in paragraph 2.3. There was nothing in the TRIPS Agreement or any of the proposals that would prevent a notifying Member from providing information to another Member which might be useful to facilitate protection of the notifying Member's geographical indication. Enshrining the right to provide unlimited additional information as part of the notification would create legal uncertainty. It also had the potential to increase the cost and complexity of administration. It was also unclear what use would be made of this additional information. An adequate reference to the provision of further information already existed in Article 63 of the TRIPS Agreement. She repeated her delegation's request for the deletion of the notification requirement for bilateral, regional and multilateral agreements. She asked how this information would be used. If the purpose was to facilitate multilateral challenge and opposition procedures then her delegation considered it unnecessary. It was also clear that a bilateral agreement was insufficient by itself to invoke the protection of Article 23. The geographical indication must be protected in the Member's territory.

166. The representative of Argentina agreed with other delegations who had stated that the information contained in paragraph 2.3 was unnecessary. The register should be as simple as possible. The notification of bilateral agreements was particularly problematic.

Paragraphs 2.4, 2.5 and 2.6: Language of the notification; form of the notification; circulation to Members; publication of notification

167. The representative of Argentina asked about the link between paragraph 2.4, which stated that the notification, with the exception of the geographical indication itself, should be translated by the administering body into the other two official languages, and paragraph 2.3(a) which referred to translations that the Member might provide under paragraph 2.2(a). She asked what the legal effect of translations would be and what would happen if there was a discrepancy between the Member's and the Secretariat's translation.

168. The representative of the Secretariat explained that paragraph 2.4 required the notification, with the exception of the geographical indication itself, to be translated. Under the Draft Text, the administering body would not translate the geographical indication itself into the two other working languages. Any such translation would be the responsibility of the notifying Member under paragraph 2.3(a) or 2.2(b). Therefore there could be no issue of conflict or contradiction between translations. The issue of legal effect would depend on other parts of the Draft Text.

169. The representative of Canada stated that the language concerning modifications to the format by the committee responsible for managing the system was confusing. She asked whether the modifications would be simply to the two-page format or whether the committee had some broader authority to make modifications. Any change to the system should be the responsibility of the TRIPS Council and not the committee responsible for managing the system. She considered that a limitation on the number of annual notifications should be considered, as it was in the Hong Kong, China proposal. Also each notification should be for an individual term; there should be no bulk registrations.

170. The representative of Switzerland agreed with Canada that modifications to the system should be the responsibility of the TRIPS Council.

171. The representative of the United States, noting the trend toward the simplification of international systems, proposed that the notification provisions focus on data elements, i.e. the mandatory and optional information, rather than the format of forms. This approach would be more flexible and less likely to require changes.

172. The representative of Chile agreed that the translations in paragraph 2.4 had to be in one of the WTO working languages but was concerned about the translation costs for the administering body. The issue would need be considered together with other proposals, such as a limit on the number of notifications as proposed by Hong Kong, China. The costs for non-participating Members should also be assessed. She shared the concerns of Canada and Switzerland in relation to modifications by the responsible committee and believed that such modifications should be the responsibility of the TRIPS Council. She also supported the Hong Kong, China proposal for a periodic review.

173. The representative of the European Communities stated that the composition of the committee responsible for managing the system was important since it was given the power to modify the format of notifications. Although minor adjustments to the format could be left to an administering committee, substantive changes should be put to the TRIPS Council.

174. The representative of Argentina agreed with the United States that a set format might not be required, especially since the relevant information was not complex or lengthy. Paragraph 2.2 could state what information should be included in the notification and its length. She proposed that the TRIPS Council replace the committee in paragraph 2.5 because changes could alter the nature of the system. Paragraph 2.5 should also include a reference to the voluntary nature of participation and distinguish participating Members from other Members.

175. The representative of Australia stated that her delegation was still considering paragraph 2.4. She considered there to be three options with different costs and benefits. The first was for the notifying Member to provide the translation. This option was simple and placed the cost on the benefiting party. However, the translation would need to be without prejudice to the right of other Members to challenge it. These points applied to translations generally. The second was for the administering body to do the translation. This option would significantly increase costs. The third option was for each participating Member to do its own translation. This option would have a significant disadvantage in that it would shift the costs to Members providing the protection but would have the advantage of leaving translation questions in the hands of Members. She supported the United States' proposal to focus on data elements rather than on format. She also stated that her delegation could not agree to grant authority to a committee until its composition was understood and the issue of participation was resolved.

176. The representative of the European Communities considered it appropriate to provide a specific format for notification. He also considered it appropriate to establish a committee responsible for managing the system although its authority needed to be explored and refined, including its link to the TRIPS Council.

177. The representative of Argentina asked the European Communities to clarify the committee's powers and composition.

178. The representative of Colombia concurred with Chile that translation costs should be part of the overall costs of the system and not borne by non-participating Members. It was unclear in paragraph 2.5 whether the format of notification referred to the length of an individual notification or the total number of notifications. She considered that Members should be able to agree to a format for notifications which would facilitate setting up a database. She also requested that the European Communities explain why the committee responsible for administering the system should not be the TRIPS Council.

179. The Chairperson suggested that the composition or establishment of the committee be discussed under paragraph 11.

180. The representative of Malaysia stated that the form of notification should be as simple as possible. Without prejudice to what information would be included in paragraphs 2.2 or 2.3, it would

need to correlate with the form of the notification in paragraph 2.5. Perhaps the format could be more easily understood if it was clear that it included the elements under paragraphs 2.2 and 2.3. For Malaysia, translation costs should be borne by participating Members. However, it was unclear whether only the notification needed to be translated or whether the accompanying documents also needed to be translated.

181. The representative of the Secretariat stated that, under the ideas in the Draft Text, the major documentation which might be referred to in a notification, but not contained in the two-page notification, would probably be the legal instrument forming the basis for protection of the geographical indication at the national level, as provided under paragraph 2.2(c). This documentation would be referred to, but not attached to the notification or translated. Only the reference to the document, but not the document itself, would be translated. If the reference was to an existing WTO document, and to the extent that it had already been translated, those translations would be available.

182. The representative of Kenya asked whether the circular to all Members under paragraph 2.6 would be in electronic or paper form.

183. The representative of the Secretariat stated that, if the administering body was the WTO Secretariat, and if Members decided normal WTO practice would apply, a special documentation series would be established containing the notifications made under the register and this would be circulated in the normal way for WTO documents, in electronic and paper form to Members as well as made available to the public on the WTO website.

184. The representative of Kenya requested that circulation be in paper form because internet accessibility was low, slow and expensive in some Members.

Paragraph 3: Registration

Paragraph 3.1: Options A and B

185. The representative of the European Communities stated that he understood that the options in this section reflected the three distinct proposals made before the Hong Kong, China proposal had been received. Option A referred to the Joint Proposal from the United States and others, Option B1 to the European Communities' proposal, and Option B2 to the Hungarian proposal. For his delegation, Option A was unacceptable because it disregarded the distinction between notification and registration as embedded in Article 23.4 of the TRIPS Agreement. Under Option A, all notified geographical indications would be registered without giving third countries the possibility to provide valuable information on whether protection could eventually be available in their territory to a notified geographical indication. Permitting Members to indicate whether protection was available for a particular notified geographical indication under national law would make the system more useful and reliable. Without a challenge or opposition system the information in the system would not be reliable. Under Option A, all geographical indications that were notified would also be automatically registered, including those that might been regarded as generic terms. They all need to be taken into account by national courts. This Option might give rise to different decisions on whether a geographical indication might be protected, which would be bad for trade and business and might frustrate investment. A system of opposition would permit Members to inform a notifying party whether protection was available or not. This would be no different from the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. Members that, after an examination, determined that protection was not available would oppose the notification. This would result in the registration being annotated and producers of the notified Member not relying on being protected in those Members. The opposition system offered transparency and legal security, which was needed for business.

186. The representative of Argentina noted that Option A, which her delegation supported, stated that "the administering body shall, immediately after receipt of a notification, circulate it to all Members and publish it on the Internet." This paragraph should become the first paragraph of Option B in the Registration section. Without this change, the Draft Text assumed an opposition or challenge mechanism. Therefore, the two options should be Option A, which was that registration must occur immediately after notification, and Option B, which would be that after a notification was received, it would be circulated and might be challenged. Her delegation also noted that Option B2 went far beyond existing obligations: nothing in the mandate required the establishment of an international dispute body or mechanism for these challenges.

187. The representative of Australia stated that the negotiating mandate required Members to agree to a system of notification and registration. What some delegations were proposing was a system of notification, negotiation, arbitration and registration. Option B was predicated on bilateral negotiations and multilateral arbitration which was not part of the mandate. Nothing in the mandate required this discussion. Option B had nothing to do with the registration section and would be more appropriately placed in an annex or separate document. It should also be made clear that Option B rendered the choice about whether to participate in the system a fiction. Option B did not make clear that what was really being requested was a fundamental amendment to the TRIPS Agreement. On that basis Australia rejected that text. Option A, which established a simple notification and registration system, allowed participating Members to notify information regarding their domestic geographical indications without undue cost or complexity. It would allow the same, or similar geographical indications to be submitted by more than one Member, consistent with Article 23.3 provided that the geographical indication was recognized by each notifying Member in accordance with its national regime. Option A was consistent with the operation of the TRIPS Agreement which allowed for the grant of protection for geographical indications at the national level. If any interested party objected to the registration of a geographical indication by a notifying Member then the interested party might oppose the recognition of that geographical indication in accordance with the laws of the notifying Member.

188. The representative of Kenya stated that any system of registration should provide an opportunity for notified Members to challenge that notification. This challenge should be at the national level and not at the international level.

189. The representative of the European Communities stated that he would object to putting the contents of Option B in a separate document. Annexing Option B would be inconsistent with previous practice of having proposed texts reflected and create an imbalance between proposals. He asked Australia to clarify whether Option A texts would require an amendment of the TRIPS Agreement.

190. The representative of Chile stated that paragraphs 3.1.1 to 3.1.4 were beyond the mandate and should be moved into an annex. Any difference regarding a geographical indication should be covered under the domestic legislation of each Member and should not have effect on non-participating parties. His delegation was concerned that difference would create uncertainty on the markets and distort trade flows. Even if a proposal such as the European Communities' were to fall within the mandate, and this was far from being the case, its complex nature meant that it would be impossible to negotiate within the time limits set by Ministers.

191. The representative of Australia stated that Australia was not interested in exceeding the mandate or enhancing the level of protection and was not seeking an amendment of the TRIPS Agreement. Therefore, there was nothing in the Joint Proposal requiring such an amendment.

192. The representative of Argentina stated that Article 23.4 was a mandate to facilitate the protection of geographical indications through the negotiation of a multilateral system of notification and registration. There was no mandate to negotiate a new agreement or renegotiate the section on geographical indications.

193. The representative of the United States asked the delegations sponsoring Option B to confirm that they were satisfied with the Option B text and that it fully reflected their position. She supported the proposal that the opposition aspects of Option B be placed in an annex. This did not mean that they would be removed from the text, but rather that there would be a reference in the text incorporating by reference the annex. This would go a long way in addressing the concerns of an imbalance in the Draft Text. Also, incorporation by reference would highlight the commonality in positions regarding notification and registration. Option B was explicit that the registration system would be mandatory and that its legal effects would apply to all Members. She also noted that paragraph 3.1.2(d)-(e) in Option B1 presented TRIPS entitlements as options. She asked whether some delegations believed that certain current TRIPS commitments were optional.

194. The representative of Switzerland stated that his delegation had consistently held that a meaningful multilateral system to facilitate protection of geographical indications needed a system of opposition and its own dispute resolution mechanism. Article 23.4 clearly distinguished between notification and registration phases. That implied that between these phases there must be an opportunity to oppose the registration of a notified geographical indication to keep the multilateral register free of non-reliable information. Only by ensuring that solely reliable information was included in the register could it have added value and fulfil the purposes of transparency and legal security. His delegation therefore supported Option B. His delegation also supported Option B2's dispute settlement system, to be used when agreement could not be achieved between the parties after the opposition procedure had concluded. Bilateral negotiations were useful and helpful but in order to guarantee a level playing field for all Members, from a procedural and negotiating view point, it would be important to have a multilateral dispute resolution mechanism.

195. The representative of the European Communities stated that if Option B was placed in an annex, Option A should also be placed in an Annex. Option A fell short of the mandate of Article 23.4 and would not lead to a system that would facilitate geographical indications obtaining the level of protection they deserved and on which agreement had been reached in the Uruguay round. The question of whether Option A would require an amendment to the TRIPS Agreement needed to be addressed.

196. The representative of the Czech Republic stated it was necessary to make a distinction between the two phases of notification and registration to create a meaningful system. Such a distinction can be created with an opposition procedure which would effectively protect the legitimate interests of Members. Since Option A did not make this distinction it was unacceptable.

197. The representative of Argentina noted that Option B2 raised systemic issues about the appropriateness of a separate dispute settlement system for a particular type of intellectual property right. For her delegation, it was important to understand the implications of such a system. The proposal that Members could exercise rights through the challenge procedure on any of the grounds set out under Option B created a major legal problem. She recalled that such rights were enshrined in the TRIPS Agreement and had been transposed into national legislation. Option B changed the existing balance of rights and obligations for Members, which was unacceptable. It would require an amendment to the TRIPS Agreement, which was beyond the mandate of Article 23.4. She wondered why a Member should engage in negotiations with a view to resolving a disagreement regarding a challenge based on that Member's inalienable rights. She asked Switzerland to clarify what it meant by unreliable or inaccurate information.

198. The representative of Canada stated that it was very clear that the mandate was to develop a system of notification and registration to facilitate the protection of geographical indications for wine and spirits and not to amend the TRIPS Agreement. Her delegation supported Option A. She suggested that the arbitration and dispute settlement discussion be moved to the Special Session of the Dispute Settlement Body. The proposal on dispute settlement was complex and might make it difficult to conclude negotiations in a timely manner.

199. The representative of Switzerland stated that the opposition procedure should not be relegated to an annex. It should be treated like any other option and placed in the text itself. For his delegation, the main grounds for challenge in the opposition system were 3.1.2(a)–(c) and noted that the issue was closely related to that of legal effect.

200. The representative of Hungary associated her delegation with the intervention of the European Communities regarding Option A. Under Option A, registration would be automatic and lack any real legal effect. Therefore it would constitute a mere notification system which could serve as a database, but under which the act of registration would not add any meaningful value to the notification. Without a true registration element, Option A would not meet the mandate of Article 23.4 of the TRIPS Agreement. Challenges should be based on all of the grounds contained in paragraph 3.1.2. Successful challenges based on paragraph 3.1.2(a) and (b) would be of an *erga omnes* nature. Successful challenges based on paragraph 3.1.2(c)–(e) would only be *inter partes*, i.e. between the successful challenger and the notifying Member.

201. The representative of the European Communities, reacting to Canada, stated that his delegation had not proposed to renegotiate Section 3 of Part II of the TRIPS Agreement. Rather it wanted to ensure that the rights granted in Section 3 were properly implemented

202. The representative of the United States stated that under Option A participating Members would review the registrations, and at the national level refuse to grant rights in trademarks and refuse entry of goods at the border for wines and spirits that contained misleading geographical indications based on the terms registered. Therefore, for participating Members there would be substantial legal effects in their country based on the use of this information.

Paragraphs 3.2 – 3.3: Form of the Register and contents of registration

203. The representative of Kenya stated that because of low internet connectivity in many least-developed country Members and developing Members he would prefer the database to be available not just online but in formats such as CD or DVD-ROM.

204. The representative of Australia stated that translations in paragraph 3.3(a) should be without prejudice to the right of Members to determine their accuracy. Also, national legal instruments should not be included in paragraph 3.3(c). These provisions created difficulties for common law countries. The reference in paragraph 3.3(f) to annotations derived from bilateral negotiations and multilateral arbitrations was unacceptable. There was no mandate for creating a complex system of negotiations and arbitrations and therefore no mandate for this requirement. Until the composition of the committee in paragraph 3.3(g) had been discussed, it was premature to consider its powers.

205. The representative of the European Communities stated that the registration requirements in paragraph 3.3 were necessary, including paragraph 3.3(f).

206. The representative of the United States registered her delegation's concern with paragraph 3.3(c), (d), (e) and (g). Paragraph 3.3(d), which was in mandatory form, was a concern since it was possible that in some systems the precise date on which a geographical indication first received protection could not be identified. She expressed her delegation's concern about the form and composition of the committee in paragraph 3.3(g). In relation to Annex A of the Hong Kong,

China proposal she was concerned if Section B.4(a) referred to anything other than the geographical indication being notified. She was also concerned about the legal conclusion of Section B.4(c), and said that Sections B.4(b), (f), (g) and (j) were also areas of concern.

207. The representative of Switzerland stated that it would improve the comprehensiveness of the register if the following paragraph were included: "Any information referred to in paragraph 2.3 that the notifying Member considers might be considered useful in illustrating the protection of the registered geographical indication."

208. The representative of Argentina stated that the register should be as simple and short as possible to make it a useful database. She flagged her concern with paragraphs 3.3(f) and (g). She also requested clarification from the Secretariat about the information that would be included on the register from notifications.

209. The representative of the Secretariat stated that the Draft Text envisaged that the register would not contain all the information in the notifications, only information that could be readily made available in a systematic way. However, there would be a reference to the document containing the notification itself, which might include additional information.

210. The representative of Hungary noted that the debate about the contents of the register related to different views about the underlying nature of the register and more broadly about the multilateral system of notification and registration. Some delegations could not see the difference between a system of notification and a system of registration. Those delegations were proposing a system of notification for transparency purposes which would amount to nothing more than what already existed under the TBT or SPS code. These notifications did not meet the function of a register or the mandate.

211. The representative of the United States stated that the Joint Proposal envisaged that decisions with respect to extension of protection of notified geographical indications would take place at the national level in participating Members so that the registration would reflect over time whether protection was extended in certain participating Members. For example, if a notified geographical indication was successfully challenged at the national level the participating Member would notify the result of that challenge to the administering body and presumably the registration would be removed. Therefore there was a lively difference between notification and registration, and registration would reflect activity at the national level with respect to opposition and challenge.

212. The representative of Argentina asked whether the WTO Central Registry of Notifications, described in TN/IP/W/4/Add 1, was not a type of register similar to the one envisaged under Article 23.4.

213. The representative of Hungary noted that other registries existed, but they were not for the purpose of "facilitating" the protection of geographical indications. He did not consider that the United States had clarified the difference between notification and registration under the Joint Proposal. The information that would placed in the register was that contained in the notification. It performed no additional function and could not facilitate the protection of geographical indications according to the mandate.

Paragraph 4: Legal Effects in Participating Members

214. The representative of the European Communities stated that Option B1 accurately reflected the position of his delegation and that option A was totally unacceptable. Simply requiring Members to consult the Register did not guarantee that geographical indication protection would be facilitated. It would seem impossible to ensure that national authorities actually did consult the Register and took it into account. It might even be detrimental to the extent that it would make information available to all Members that might adversely affect certain right-holders in other countries.

215. The representative of Australia stated that Option A was the only acceptable option. She stated that the purpose of the multilateral system was to facilitate the existing level of protection in the TRIPS Agreement and not to enhance it as noted in paragraph 3(iv) of the communication from Hong Kong, China. Option B contained prescriptive rules regarding how Members should protect geographical indications which went beyond the requirements of Article 23 of the TRIPS Agreement, which clearly stated that "Members shall provided the legal means". It required participating Members to institute a rebuttable presumption of the eligibility for protection of terms on the Register and not to refuse protection on certain grounds. It was predicated on a multilateral opposition procedure which would lead to bilateral negotiations followed by multilateral arbitration. These were all beyond the mandate. Option B was therefore unacceptable to Australia. She said that although paragraph 3(iv) of the Hong Kong, China proposal, adequately spelt out the purpose of the system it might not fulfil the stipulated purpose but go beyond it.

216. The representative of Argentina stated that Option A was the only acceptable option. She stated that Option B was beyond the mandate. She requested clarification from the European Communities of a number of aspects of their proposal, in particular the scope of the presumption of eligibility for protection. It was unclear to her delegation which kind of legal effects were envisaged by the words "shall not refuse protection" for grounds covered by Article 22.1 or the words "subject to" for grounds under Article 24.4 and 6.

217. The representative of Mexico indicated her delegation's support for Option A. This Option was consistent with the mandate, being to create a system of notification and registration that facilitated the protection of geographical indications but did not create additional obligations or limit existing rights under the TRIPS Agreement.

218. The representative of Hungary stated that Option A, which merely required participating Members to consult the register along with other sources of information, fell short of facilitating the protection of geographical indications and was unacceptable. He referred to Article 10.6 of the TBT Agreement as similar to Option A. His delegation could accept either Option B1 or B2, which were similar and were the only ones to meet the mandate.

219. The representative of Japan declared his support for Option A. He did not want any additional legal effects except those under the present TRIPS Agreement.

220. The representative of the Czech Republic stated that Option A could not meet the objective of the mandate and was unacceptable.

221. The representative of New Zealand confirmed her support for Option A. Responding to Hungary, she stated that although there was nothing in the text of the TBT Agreement that specifically mirrored Article 23.4 of the TRIPS Agreement, the notification system used in the TBT Agreement had an effect similar to the intended effect of the mandate in Article 23.4 of the TRIPS Agreement. In practice, the systems of notification and registration under the TBT Agreement, which was similar to the one envisaged by the Joint Proposal, did have great added value both in its own right and as a means to help Members to implement their wider legal obligations under the TBT Agreement at the national level and therefore to facilitate the adoption of technical regulations that were consistent with that Agreement as a whole. Option A would facilitate the protection of geographical indications through information-sharing and by assisting Members to better implement their geographical indication obligations under the TRIPS Agreement. The TBT system of notification and registration facilitated adherence to TBT disciplines and ensured that technical regulations were designed in a least trade restrictive manner because there was an obligation for a Member to notify draft regulations to the WTO and then to refer to feedback from Members when further implementing the notified subject-matter. It was also clear that the notification and feedback process assisted Members in fulfilling a much wider range of TBT obligations than simply their obligation to make a notification. Through the comments of other Members on its notifications, the notifying Member often became

aware that its notified regulation might not meet WTO disciplines, for example because it might have overlooked a relevant international standard. This process "facilitated" the crafting of least trade restrictive measures through the sharing of experiences in implementing TBT obligations in similar areas at the national level. The value of this process was suggested in part by the limited number of dispute settlement cases in the TBT area. This preventative effect would be the same under the Joint Proposal, which would assist Members to better implement their Section 3 obligations and hence facilitate the protection of the relevant wines and spirits geographical indications.

222. The representative of Canada associated herself with the intervention made by New Zealand and supported Option A.

223. The representative of the United States associated her delegation with the New Zealand intervention. Option A was the only option that was consistent with the mandate. Options B1 and B2 appeared to be exercises in the substantive harmonization of law in respect to geographical indications in as much as they set forth legal presumptions that would be created by a notification or registration under the system and also limited domestic bodies, whether they be courts or other administrative bodies, in the type of refusal of protection that could be made. Her delegation had the same concerns with respect to Section D in the Hong Kong, China proposal. Although the Hong Kong, China proposal clearly stated that participation in the system would be voluntary, it set forth a specific legal standard. Specifically, registration of a geographical indication would be required to constitute prima facie evidence: of ownership; that the geographical indication notified was a geographical indication for the purposes of Article 22.1 of the TRIPS Agreement; and that the indication was protected in the country of origin. Those were significant legal presumptions akin to the legal presumptions granted to trademark registrations. Any legal presumption of that nature with respect to geographical indications would have to be considered in connection with the existing obligations to the owners of registered trademarks under Article 16.1 of the TRIPS Agreement. She asked what the legal repercussions at the domestic level would be of two equally valid presumptions – one for a trademark and another for an identical geographical indication. Both in the Hong Kong, China proposal and in Options B1 and B2 were proposals for a substantive harmonization in legal standards and legal effects which could not be accepted. Option A was the only proposal that was consistent with the mandate.

224. The representative of Chile stated that Option A was the only acceptable option. Options B1 and B2 exceeded the mandate and created a "super" category of intellectual property. It was a concern that Option B limited the possibility of requesting nullification or elimination of geographical indications on the register after 18 months since many of the exceptions covered by the TRIPS Agreement could not be invoked after that time. Therefore, if a Member did not use the exceptions during this period they would be obliged to give the geographical indication everlasting protection. They could not object, for example, that it had become a common name or no longer met the requirements of Article 22.1. This issue would be a stumbling block in the negotiations. He also noted that the proponents of Options B1 and B2 did not intend to extend the mandate in respect of the legal effects only but also in respect of the scope of products. The principle of territoriality in the international intellectual property framework was indispensable to any multilateral registration system set up in the WTO.

225. The representative of Switzerland stated that Option A did not facilitate the protection of geographical indications at the multilateral level. Under Option B, the legal effect of registration was a rebuttable presumption extending to the legal contents of Articles 22.1, 22.4 and 24.6 of the TRIPS Agreement. By this presumption and the resulting reversal of burden of proof, a facilitation of protection of geographical indications was achieved at the national and international level. However, such facilitation could only be achieved if the legal effect of registration applied to all Members. Since the goal and the mandate of this system was to facilitate the level of protection that applied already there was no reason to distinguish between Members that made active use of the system and those that did not as regards the legal effect of such a registration.

226. The representative of the European Communities said they would formally table a paper that they had circulated at previous informal consultations and which concerned the issue of legal effects in participating and non-participating Members. The substance of the paper had not changed.

227. The representative of Costa Rica stated that Option A was the only option consistent with the mandate. Option B went beyond the rights and obligations deriving from the Agreement and in this respect he joined the statement by Chile.

228. The representative of Turkey associated his delegation with Switzerland and the Czech Republic in relation to the non-acceptance of Option A.

Paragraph 5: Legal Effects in Non-Participating Members

229. The representative of Colombia stated that any legal effect on non-participating Members was unacceptable and therefore her delegation rejected Options B1 and B2 and could only accept Option A.

230. The representative of Brazil asked whether the Secretariat was aware of any provisions similar to Options B1 or B2 in other legal instruments providing for legal effects on non-participating countries.

231. The representative of Indonesia associated her delegation with the statements made earlier by Australia, the United States, New Zealand, Canada and Malaysia that the legal effects of the system must fall within the mandate. The multilateral system must be voluntary and there must be no legal effects for non-participating Members other than those already stipulated in the TRIPS Agreement. Option A was the only acceptable option.

232. On behalf of her delegation, and the delegations of Malaysia, Singapore, Brunei Darussalam and Indonesia, she proposed that the issue of legal effect for non-participating Members be addressed in paragraph 1 on "Participation", making it clear from the outset that the system was voluntary and that there were no legal effects on non-participating Members. This would permit paragraph 5 to be deleted. If Option A paragraph 5 were to be retained, the title "Legal effects in non-participating Members" should be changed to "Use of the Register for non-participating Members" since there was no obligation to refer to the Register.

233. The representative of Argentina referred to the question by Brazil and stated that she did not believe that there was any clause in other legal instruments which created obligations on non-participants. To create effects for non-participating Members would be an attempt to create a category of countries which would be merely passive recipients of obligations. Therefore, Option A was the only acceptable option. Under Option B the distinction between participating and non-participating Members was illusory because there were no substantive differences between the legal effects created by the system for the two categories of Members.

234. The representative of Chile stated that she was not aware of any treaty which contained provisions similar to Options B1 or B2. She invited the delegations that generated these Options to indicate precedent for them. She noted that they appeared to be inconsistent with the provisions of the Vienna Convention on the Law of Treaties regarding "Treaties providing for obligations for third States" (Article 35), which stated that obligations for third States needed an explicit acceptance in writing.

235. The representative of the United States associated her delegation with the concern of the delegations of Brazil, Argentina and Chile about the lack of precedent for imposing legal effects on non-participants. She requested that the Secretariat prepare a document describing any existing systems which provided for obligations for non-participants, together with a brief description of those

systems including the number of participants. If the Secretariat was unable to find such a precedent, she would then request that the Secretariat make that finding explicit in writing. She associated her delegation with the statement made by Indonesia, in particular for the heading "Legal effects in non-participating Members" to be changed to "Use of the Register for non-participating Members".

236. The representative of the European Communities reiterated that the provisions of Section 3 of Part II of the TRIPS Agreement already apply to all Members with the exception of least-developed country Members. Under Option A, the word "Legal" should be deleted from the title of paragraph 5 or changed to "Non-Legal". His delegation considered that Option A was unacceptable because simply encouraging Members to refer to the Register did not guarantee that protection of geographical indications would be facilitated. The information that would appear in the Register would be largely irrelevant to determinations for protection of geographical indications under national law; it would only be relevant to situations which fell under Article 24.5 and 24.9 of the TRIPS Agreement. Many countries did not even need this information. He pointed out that under the United States' Lanham Act there seemed to be no provisions reflecting Article 24.9. With regard to Article 24.5, there seemed to be a corresponding provision under the Lanham Act to letter (a) of Article 24.5 only. Consequently the information provided under the database would be completely useless to make the determinations in the United States. Under Option A, having a geographical indication registered did not mean that the geographical indication was considered as such in another country. With regard to the analysis that some delegations were calling on the Secretariat to undertake, he did not consider that another paper would be useful at this stage of the negotiations.

237. The Chairperson said that, for the Secretariat to provide the suggested paper, a mandate from Members would be necessary.

238. The representative of Kenya stated that his delegation was not aware of any multilateral system that imposed legal effects on non-participants. His delegation therefore rejected both Options A and B.

239. The representative of Australia associated her delegation with the request by the United States for the Secretariat to provide a paper on systems that imposed obligations on non-participants. If such a paper had already been prepared she asked the Secretariat to make delegations aware of it. She supported the proposal made by Indonesia for changing the title from "Legal effects in non-participating Members" to "Use of the Register for non-participating Members". Her delegation could only accept Option A and considered that Options B1 and B2 were inconsistent with the mandate.

240. The representative of Switzerland stated that the question raised by certain Members as to whether there was a precedent for an agreement imposing obligations on non-participants was not appropriate because no new international agreement was being proposed. Rather it was an agreement to facilitate the protection already provided under the TRIPS Agreement, to which all Members were already parties. His delegation considered that legal effects should apply to all Members and that the distinction between notification and registration was important to maintain.

241. The representative of Canada stated that if a paper had already been prepared on agreements which imposed obligations on non-participants it should be circulated again and perhaps expanded. She considered that it needed to be very clear that non-participating Members did not take on new obligations. For this reason the text of Option A should remain although her delegation would not object to the heading being changed as proposed by Indonesia.

242. The representative of the United States, while clarifying that she was not suggesting that other Members adopt the United States system for protecting geographical indications, mentioned the case of *Institut National Des Appellations d'Origine* v. *Brown-Forman Corp*, 47 USPQ2d 1875, (TTAB 1998), where in accordance with Article 24.5(b) of the TRIPS Agreement, the United States system provided the legal means for the owner of the geographical indication to identify the date on which it

was protected in its country of origin. An application to register the trademark "Canadian Mist and Cognac" had been rejected in recognition that Cognac was a geographical indication for a type of brandy from a particular area of France. She suggested that this case illustrated that geographical indications could be protected in a number of ways and that there was no mandate to develop a harmonized system. Her delegation believed that Article 23.4 did provide a framework in which Members could facilitate the protection of geographical indications for wines and spirits. She reiterated that any system under Article 23.4 of the TRIPS Agreement had to be voluntary without any legal effect for non-participants. She asked for clarification of the precise legal effect envisaged under Options B1 and B2. For example, under Option B1, if a term for wines and spirits was generic in a non-participating Member and was not challenged, would the non-participating Member be able to refuse protection of the geographical indication in its territory on the grounds that it was generic?

243. The representative of the European Communities associated his delegation with the statement made by Switzerland concerning the appropriateness of the question.

244. The representative of Argentina associated her delegation with the request of the United States for a paper to be produced by the Secretariat and agreed with Chile that the compatibility of Options B1 and B2 with the Vienna Convention on the Law of Treaties was an important issue. She pointed out that the paper which was being requested was simply a document of clarification and therefore it did not require a consensus.

245. The Chairperson suggested asking the Secretariat to gather information and to deliver an oral report on this issue at the next meeting.

246. The representative of the European Communities said that he could not agree to the suggestion made by a delegation that, if the Secretariat was unable to find any precedent in any existing systems, it make that finding explicit in writing. He did not think that it was the role of the Secretariat to make this kind of statement. He reserved his delegation's position in this respect because he did not know the details and scope of the question which had been raised.

247. The Chairperson said that he understood that a number of delegations had asked the Secretariat to provide them with information on any existing international agreements that entailed obligations or legal effects on non-participating countries.

248. The representative of New Zealand, supported by the representative of Canada, stated that her delegation supported the idea of having an oral report by the Secretariat at the earliest opportunity.

249. The Chairperson stated that the Secretariat would consider the question put by a number of delegations and make itself ready to share that information with delegations, perhaps at the next open-ended informal meeting.

250. The representative of the European Communities stated that his delegation had no objection to the Secretariat gathering information, but would continue to reserve his delegation's position as explained previously.

Paragraph 6: Legal Effects in Least-Developed Country Members

251. The representative of Argentina asked the Secretariat two questions. The first was whether paragraph 6 meant that least-developed country Members could make notifications without themselves experiencing legal effects from other Member's notifications. The second was what would happen to Members who wished to become participants after the system had been established. The system did not include any exception or safeguard for them and it would appear that under Option B they would have no right to challenge the registered geographical indication and would therefore be forced to provide protection for all registered geographical indications.

252. The representative of the Secretariat said that, on the basis of the current Draft Text, least-developed country Members could become participating Members and make notifications under the system from the outset although paragraph 6 would mean that notifications by other participating Members would have no effect upon them until their transition period expired. Second, if a system with a challenge mechanism were agreed, it might be necessary to provide for special challenge arrangements for Members joining the system after it had entered into operation, and for least-developed country Members after their transition period expired.

253. The representative of the European Communities stated that special provision should be made for least-developed country Members. However, least-developed country Members that had elected to apply the provisions of Section 3 of Part II of the TRIPS Agreement during their transition period should be treated like other Members. He suggested that the Secretariat might be able to inform Members how many least-developed country Members had implemented Section 3 of Part II of the TRIPS Agreement.

254. The representative of Australia stated that she considered that the European Communities' concerns would have already been met in relation to paragraph 6, which stated: "'when that Member is required to apply the provisions of Section 3 of Part II of the TRIPS Agreement".

255. The representative of the United States viewed the discussion as indicating the complexity of trying to create new international instruments and also the importance of stressing the voluntary nature of Article 23.4 of the TRIPS Agreement. If the legal effects for least-developed country Members in the Draft Text were unclear to the Secretariat then there would be difficulties for all Members in understanding the legal effects in a mandatory system. Her delegation repeated that it was important that the system was voluntary with regard to notification and with respect to legal effects from notifications and registrations under the system.

256. The representative of Argentina stated that allowing least-developed country Members to make notifications with legal effects for others, while potentially not facing any legal effects themselves, was problematic. Under Option B all other Members would be obliged to examine the geographical indication and lodged a challenge. Presumably least-developed country Members would also get involved in the challenge process where their notifications were challenged. She also understood that under Option B legal effects would arise for non-participating Members from notifications and registrations. This compelled them to participate and challenge notifications if they wished to avoid these legal effects. In her view, this would be harmonization of rights concerning geographical indications at the international level.

257. The representative of the United States associated his delegation with the statement made by Argentina.

Paragraph 7: Modifications of Notifications and Registrations

258. The delegate of Argentina stated that if Option B were adopted, the modification procedure would create significant uncertainty for third-parties, because it triggered the paragraph 2 to 6 procedure, including its challenge procedure. This was another example of the importance of whether Option A or B was adopted.

Paragraph 8: Withdrawals

259. The representative of Australia stated that it should be made clear in the text that the conditions for protection of geographical indications were those established by the TRIPS Agreement and not by the multilateral system. Also, the reference to "Member" in paragraph 8.2 should be changed to "participating Member" and "participation" should be understood to relate both to notification and any consequences of the system.

Paragraph 9: Fees and Costs

260. The representative of Argentina stated that the choice of options was very relevant to the issue of fees and costs. For example, Option A established a simple system and Option B2 involved a complex system with international arbitration. Her delegation considered that it was very important that costs were borne by the central budget of the administering body. She asked what the estimates were for the initial cost for the system and whether each of the options could be financed. Her delegation considered it indispensable to know the fee and cost implications of each option.

261. The representative of Turkey welcomed the exemption, in the Draft Text, of least-developed country Members from payment of fees. Although paragraph 9.2 left the fixing of fees to be determined by the committee responsible for managing the system, his delegation felt that it was essential that the costs of the system be borne by the Members that use it, and that special and differential treatment provisions also apply to developing country Members.

262. The representative of Canada agreed with the delegation from Argentina that there would be a cost to the body administering the system. However, there would also be an enormous cost to national governments if Option B was adopted because the process of checking each geographical indication that was notified would be costly and burdensome. Her delegation appreciated the estimates put forward by Hong Kong, China, but felt that they probably underestimated the costs involved. The system should operate on a cost-recovery basis and that fees should be on per-geographical indication basis, with no bulk rate for notifications.

263. The representative of Colombia associated herself with the delegation of Argentina and stated that the fees charged should cover both the initial establishment costs and subsequent on-going costs.

264. The representative of Kenya referred to paragraph A.2(g) in the Hong Kong, China proposal and stated that it was essential that developing countries were accorded special and differential treatment in regard to fees.

265. The representative of Australia associated herself with Argentina's statement. She considered that further work would need to be done on the type of costs involved in the system as well as mechanisms for setting, reviewing and revising fees. The number of notifications was likely to influence costs and fees and so it would be important that Members that would be high users of the system provide estimates about their notifications. She also reiterated her delegation's concern about the composition of the "committee responsible for managing the system".

266. The representative of the Secretariat clarified that paragraph 9.2 was drafted with the intention that fees should cover all of the expenses incurred by the administering body in connection with the administration of the system. Paragraph 9.3 addressed the problem that the administering body would need to incur some expenses before it began to receive fees and that there would be some initial costs the administering body would have to incur, for example in relation to staff and facilities. The paragraph stated that these initial costs should be factored into the level of the fees. Therefore, the fees should not then cover only the ongoing administrative costs, but also reimburse any initial costs that were incurred.

267. The representative of Chile associated her delegation with the statement of Canada. She expressed her concern about how the system would be financed in years when there were insufficient notifications or renewals.

268. The representative of the United States echoed the concern of Canada, Colombia and other delegations that paragraph 9.3 appeared to state that initial costs would be borne by all Members. She suggested that fees should recover the initial costs and that fees could be reduced once initial costs were recovered. Her delegation was concerned that the initial costs might not be recovered if an

insufficient number of Members participated in the system. She appreciated Hong Kong, China's cost estimate, but agreed with Canada that costs would accrue to national governments as well as the administering body. She noted that Hong Kong, China's cost estimate assumed a maximum capacity of 10,000 registered geographical indications and a workflow of 1,000 applications per year. She questioned the usefulness of a system that set a cap on the number of intellectual property rights that could be protected. She considered that on the basis of bilateral arrangements for geographical indications, individual Members might want to notify approximately 6,600 geographical indications. She also noted that Hong Kong, China's proposal was based on formality checking but that, at least in the United States, the examination would go beyond mere formality. The United States would review applications for absolute and relative grounds of refusal with respect to trademarks and whether the notification met the requirements or the definition of Article 22.1 of the TRIPS Agreement. She anticipated that additional examiners would need to be hired and noted that this issue was not addressed in the Hong Kong, China cost estimate. For these reasons, her delegation was concerned that the Draft Text and the Hong Kong, China proposal would involve significant costs for the administering body and for the national governments of participating Members. Her delegation held the view that these significant costs should not be borne by non-participating Members.

269. The representative of Mauritius welcomed the proposal under paragraph 9.1 that least-developed country Members be exempted from payment of fees. Her delegation suggested that similar facilities should be extended to other vulnerable groups among the developing country Members.

Paragraph 10: Contact Point

270. The representative of Argentina queried why non-participating Members should notify a contact point under paragraph 10.1. Since under Option B participating and non-participating Members would be required to lodge a challenge to avoid the legal effects of notification, she considered the distinction paragraph 10.1 made between the two classes of Members illusionary.

271. The representative of the United States concurred with Argentina.

Paragraphs 11– 15

272. The Chairperson said that paragraphs 11–15 flagged a number of issues which might have to be addressed in due course. As indicated on the cover page of JOB(03)/75 these matters might be better discussed when delegations had a clearer idea of the substance of the system. However, delegations might have some points which they would like to share at this stage. Some of the views had already been expressed on a number of issues, e.g. with regard to the "committee responsible for managing the system".

273. The representative of Argentina asked for clarification about the origins of the proposal in paragraph 11 to create a *committee responsible for managing the system* as well as its composition and function. She asked whether the proposal was meant to confer the task of that body to WIPO. In this connection, she recalled that WIPO was undertaking a constitutional reform aiming at simplifying the structure of the organization and of the various unions it was administering. Since the constitutional reform process, which was a complex one, was going on, she saw some difficulty in trying at this juncture to transfer such responsibility to WIPO. She also asked whether the proposed committee would be like one of the WIPO assemblies.

274. Regarding paragraph 13 on *withdrawals*, she asked for clarification of the intention behind that paragraph and its *modus operandi* under Option B. Under that Option all Members had an obligation to make an examination and challenge; she did not see how it would be possible to totally withdraw from the system.

275. She finally asked whether the *review* would concern the notification and registration procedures, the format of notification or substantive provisions.

276. The representative of the European Communities stated that the *administering body* would be responsible for: (1) receiving notifications; (2) translating notifications into other WTO official languages; (3) circulating notifications and publishing them on the Internet; (4) receiving and annotating challenges and subsequent withdrawals; and (5) receiving and circulating notifications of contact points.

277. The *committee responsible for managing the system* would, for example, be responsible for: (1) modifying the format of notifications which had first been agreed to by the TRIPS Council when it considered it appropriate; (2) supplementing the information recorded on registration in Article 3.3 if it considered it necessary; and (3) fixing the amount of fees to be paid so as to cover the administration of the system. He agreed that more work was required on the tasks and composition of both bodies.

278. With respect to the question of *withdrawals* from the system, he said that a similar system as that foreseen for indicating the participation in the system should be provided for in the Draft Text. It seemed logical that any such declaration should result in removing that Member's geographical indications from the register. Likewise, the legal effect stemming from the registration of geographical indications in other Members might be adjusted to reflect the new status of the Member that had withdrawn from the system.

279. With regard to *review by a competent committee*, he suggested that provision be made or may have to be made in order to establish a periodic review – say every five years of the functioning of the system.

280. Regarding the *date of entry into operation* of the system, he said that the system should enter into operation six months after the date it had been agreed upon to allow sufficient time for logistics.

281. The representative of Hong Kong, China stated that the notification and registration system, in particular the scope of participation, could be reviewed every four years.

282. The representative of Canada agreed that regular *review* would be useful and that the competent body might be the TRIPS Council. The Hong Kong, China's suggestion was a good idea and the competent body should be the TRIPS Council.

283. Regarding suggestions made by the European Communities concerning *withdrawals*, she said that these might duplicate the procedure under paragraph 8.

D. OTHER BUSINESS

284. The Chairperson thanked the delegation of Hong Kong, China for its proposal and all delegations for their detailed comments. These comments showed that, while delegations might be closer to agreement on some aspects, they were still far apart on a number of critical issues, including legal effects, ways of settling differences and participation. There was a considerable amount of work to do in a relatively short period of time in order to complete the mandate by the Cancún Ministerial Conference in September. One more meeting of the Special Session was scheduled for 2-3 July before the Cancún Ministerial Conference. At that stage, delegations should have ideally completed their work and forwarded the results of their deliberations to the Trade Negotiation Committee for the Cancún Ministerial. However, the possibility that work would need to continue after the July meeting could not be ruled out. In any event, the Chairperson hoped that by the July meeting Members would be able to consider a text with a single set of ideas rather than a text with widely divergent proposals. With a view to being in a position to have such text by the July meeting, the Chairperson would

continue to consult intensively with delegates in a variety of formats, having regard to the need to ensure transparency. As a first step he would hold an open-ended informal consultation with the idea of having an exchange of views on the main points of difference that had come to the fore more prominently at this meeting. He pointed out that consultations by themselves could hardly achieve progress if delegations remained entrenched in their current positions. He hoped to see a greater degree of flexibility and willingness to compromise from all sides in the coming weeks.

285. The representative of the European Communities asked whether the Chairperson intended to review the Draft Text to include the Hong Kong, China proposal, so as to enable the Special Session to work with a single document comprising all the proposals.

286. The Chairperson said he would carefully analyse all the comments made by the delegations and attempt to come up with, if possible, some ideas to share with participants in an informal setting before the next formal meeting in early July. He would take into account comments and proposals which had been put forward so far by the delegations, including the one put forward by Hong Kong, China.