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

MINUTES OF MEETING

Held in the Centre William Rappard
on 7 April 2004

Chairperson: Ambassador Manzoor Ahmad (Pakistan)

<u>Subjects discussed:</u>	<u>Page No.</u>
A. ELECTION OF CHAIRPERSON	1
B. ADOPTION OF AGENDA	1
C. NEGOTIATION OF THE ESTABLISHMENT OF A MULTILATERAL SYSTEM OF NOTIFICATION AND REGISTRATION OF GEOGRAPHICAL INDICATIONS FOR WINES AND SPIRITS.....	1
D. OTHER BUSINESS	12

A. ELECTION OF CHAIRPERSON

1. The Special Session elected Ambassador Manzoor Ahmad (Pakistan) as Chairperson of the Special Session of the Council for TRIPS.

B. ADOPTION OF AGENDA

2. The Special Session agreed to adopt the agenda as set out in WTO/AIR/2272.

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

3. Introducing a joint paper from the delegations of Argentina, Australia, Canada, Chile, Ecuador, El Salvador, New Zealand and the United States regarding a multilateral system of notification and registration of geographical indications for wines and spirits (TN/IP/W/9), the representative of Chile said that the discussions in the Special Session were a delicate matter and that many delegations had at times reacted emotionally to what was a serious issue in the WTO. Even though they might be seen as only affecting wines and spirits, these discussions might have wider implications in the future and certainly had some legal connotations which in some cases the delegations submitting this paper wanted to avoid. The communication, presented in the form of "Questions and Answers", sought to provide straightforward answers to the numerous questions that

had been posed with regard to the Joint Proposal for a Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits (TN/IP/W/5). Given the long break in the negotiations, the co-sponsors of the communication thought that it was appropriate to remind all Members about the scope and content of the Joint Proposal. He said that, as the paper stated, the Joint Proposal fulfilled the negotiating mandate that was contained in Article 23.4 of the TRIPS Agreement and paragraph 18 of the Doha Declaration. It aimed at establishing a system which, according to the wording of Article 23.4 of the TRIPS Agreement, would facilitate the protection of geographical indications for wines and spirits. Participation in this system would be voluntary, as had been envisaged in that Article, and each Member, whether or not it was a wine producer, exporter or importer, could choose to participate at any time. Participation in the system would neither add to nor diminish a Member's rights or obligations under the TRIPS Agreement. This point was a fundamental rule of the game and of these negotiations. His delegation would never envisage a negotiation to add to or diminish rights and obligations, but only a negotiation to implement an already existing obligation. The examination of and decisions regarding the use, recognition or protection of geographical indications would remain in the hands of national authorities as was the case with all other intellectual property systems, whether they were trademarks or patents. In the process of writing the paper, the co-sponsors had realized that there were still many unanswered questions regarding practical details of the process of notification and registration of a geographical indication as well as the costs that a system would entail for Members. They thought that it was time for Members to focus on these relatively unexplored areas, and find some common ground that would allow them to progress towards the conclusion of the negotiations. This would allow Members to finally comply with Article 23.4 of the TRIPS Agreement.

4. The representative of Australia associated her delegation with the intervention made by Chile. She said that, for some time now, it had seemed to the co-sponsors of document TN/IP/W/9 that a critical mass of delegations, whether or not they had directly co-sponsored the Joint Proposal, had supported the creation of a system that was in accordance with certain principles which had also been provided for in the mandate for these negotiations. The system that Members would agree to would not alter the TRIPS Agreement as it was presently constituted, nor would be a means of amending the TRIPS Agreement. In other words, the system would not alter the current balance of rights and obligations that was presently found in the TRIPS Agreement. By that, her delegation meant that the system would not be a de facto means of amending the TRIPS Agreement. It would provide individual Members with a choice about whether or not to be a participating Member. In simple terms, participation in the system would be voluntary. The system would not prevent Members from determining the appropriate method for implementing their obligations under the TRIPS Agreement in accordance with the principle of territoriality. That also meant that the system would not take the ultimate decision about whether or not a term was a geographical indication out of the hands of national decision-making authorities. Geographical indications would not be set above, and apart from, other forms of intellectual property which were ultimately determined by national decision-making processes. There were other points of the proposed system on which the co-sponsors thought there was a good deal of convergence, namely the minimization of the level of bureaucracy and regulation that was required to protect geographical indications and as far as possible of the costs that were associated with the recognition and protection of geographical indications.

5. The representative of Canada said that, in the past Special Session meetings, there had been some questions raised by other Members about the Joint Proposal (TN/IP/W/5) in particular as to how it would work in practice, how exactly it would facilitate the protection of geographical indications for wines and spirits, how it would fulfil the mandate with respect to participation and the multilateral nature of the system, what its legal effect would be, how disputes would be resolved, etc. What the co-sponsors had tried to do with document TN/IP/W/9 was to answer some of these questions in a straightforward way. He said that the co-sponsors hoped that delegations would find it useful and would also find the responses convincing. They would be happy to answer any outstanding or further

questions at the present meeting where possible or to take them on board and come back to them at a future session.

6. The representative of the United States said that his delegation fully supported the statements that had been made by the delegations of Chile, Australia and Canada. The paper helped to underscore and clarify many important elements of the Joint Proposal that fitted the negotiating mandate. Participation in the proposed multilateral system was voluntary under the Joint Proposal, as required by the Article 23.4 mandate. Participation in the multilateral system would facilitate the protection of geographical indications in the WTO Members that consulted the system for information about geographical indication rights claimed by those participating in the system. Using this system, however, would not pre-empt decisions regarding geographical indication protection at the national level. As intellectual property rights were territorial, decisions regarding protection would be made under national law. Nothing in the Joint Proposal would usurp the operation of national law and national sovereignty. This indeed was a key feature of the proposal and of the TRIPS Agreement more generally. As was known, the establishment of an intellectual property right in a territory, as well as the adjudication of conflicting intellectual property rights in such a territory, would be handled by national law, national offices and national courts in the jurisdiction where protection was claimed and not by the WTO. Adjudication would be left to each Member's national courts and other implementation systems. As WTO Members were free to implement the TRIPS Agreement in a myriad of ways, the Joint Proposal respected the flexibilities that were inherent in the TRIPS Agreement and preserved the integrity of Members to choose the method of implementation of the geographical indication obligations under the Agreement. Yet the Joint Proposal would allow national intellectual property offices to make more informed decisions regarding trademark and geographical indication applications by giving valuable information in a centralized location about geographical indication rights claimed in other territories - thereby facilitating the protection of geographical indications and also promoting the transparency of geographical indication systems around the world.

7. The representative of the European Communities said that for the past couple of years the Special Session of the TRIPS Council had worked intensively in order to fulfil its mandate and had counted on the very useful guidance of the Chairman and the support of the Secretariat. Recalling that the European Communities had taken a very active and constructive role in these debates, he said that they remained fully committed to the process, that they considered the establishment of the multilateral system of notification and registration of geographical indications an essential element in the overall balance of the Doha Development Agenda and that they approached this new period of negotiation in a constructive and open-minded mood. His delegation encouraged other Members to also take part in these talks with the same attitude. He said that, as some other delegations had said before, his delegation would wish to arrive at a final result that was both acceptable to all Members and within the mandate. In past discussions, his delegation had clarified a number of important issues and thought a fair amount of common ground had been established. Without being exhaustive, he recalled a few areas of such common ground. Delegations had been able to agree on the geographical indication definition that was applicable, that it was for national authorities to determine whether a term met the relevant criteria of national legislation and that the purpose was to facilitate, through the appropriate procedures, the obtaining of the level of protection for geographical indications that was already provided under the TRIPS Agreement. They also agreed that the exceptions that were provided for in Article 24 of the TRIPS Agreement continued to be valid and relevant once the system would be established. He was certain that delegations all agreed that they wanted a useful and reliable system. The European Communities proposal perfectly fitted the mandate. The system proposed by the European Communities would be truly multilateral as had been mandated in Article 23.4 of the TRIPS Agreement because it would have certain legal effects on all Members. The system would thus facilitate the obtaining of the protection that was already available under the TRIPS Agreement and would therefore favour legitimate users of geographical indications, consumers and

administrations alike. It would also guarantee legal certainty as one of the key elements of the multilateral system.

8. His delegation thanked the co-sponsors for the clarifications and also for the user-friendly format of document TN/IP/W/9. He would give some preliminary comments on the paper and use it to highlight where his delegation agreed and where the European Communities proposal added value and would ensure the multilateral nature of the system. As far as the first section was concerned regarding the current obligations on geographical indications, he thought that all delegations agreed. Commenting on footnote 1 of TN/IP/W/9, which said: "The new kind of protection provided in Article 23.4, for goods falling under just two tariff lines, was a specific and limited concession granted in the context of a larger negotiating package during the Uruguay Round", he said that this point was specially relevant for a matter discussed in a different forum, namely extension, since it highlighted the discrimination that existed between wines and spirits and other goods. Regarding the negotiations on the register, he said that all the delegations agreed that the mandate was clearly established in Article 23.4 of the TRIPS Agreement and in paragraph 18 of the Doha Declaration. It had been said that participation in the system would be voluntary, but not that there was a clear link between participation and legal effects and the current TRIPS obligations that already applied to all Members. The mandate was to establish a system that genuinely facilitated the protection available under the TRIPS Agreement. His delegation also agreed with the co-sponsors of TN/IP/W/9 regarding the freedom of Members to determine whether or not a term would be qualified for protection in their territory. This was also fully compatible with the European Communities proposal.

9. As regards the question "How would the Joint Proposal facilitate the protection of wines and spirits?", he said that the proposed solution, the establishment of a searchable database of all geographical indications for wines and spirits which could be used by national offices when making decisions, posed some problems. The automatic inclusion of every name notified onto the register, even if it was clear that the notified name was not a geographical indication, was certainly a problem for the reliability of the information on the database. A second problem was that the Joint Proposal did not provide for a procedure for challenge based on the name notified being a geographical indication or on the exceptions in Article 24 of the TRIPS Agreement. Again, the Joint Proposal would create a potential for unreliable information being displayed on the database. The third problem related to the use of the searchable database by national offices. Under the Joint Proposal it would be actually impossible to know whether national offices would be using the database or not. The result would be legal uncertainty - from the use of unreliable information and from establishing a requirement in the multilateral system that it would not be possible to monitor. The presumption of eligibility in the European Communities proposal would be a useful tool for legitimate users before national authorities and national courts when trying to assert rights regarding geographical indications. Regarding the idea that had been presented by the co-sponsors of TN/IP/W/9 that, since under the Joint Proposal there would be a single place to look for information, and there would be more information on the status of names available, national offices would be able to make better informed decisions, he said that his delegation had serious doubts that there would be any advantages, given the potential of the Joint Proposal to let unreliable information into the system. His delegation had the impression that these advantages would, to the contrary, be a feature of the European Communities proposal. This would provide for much more accurate information on the status of the different names.

10. As regards the legal effects of the Joint Proposal, he said that the mandate in Article 23.4 of the TRIPS Agreement was clear and called for a multilateral system. In WTO terms, that meant that it should have effect on all Members. This aspect would not be met through the Joint Proposal. The communication by the co-sponsors suggested that the European Communities proposal would be TRIPS-plus and therefore would not fit the mandate. In fact, the European Communities proposal perfectly fitted the mandate and would not add substantive obligations to those that Members already had at this stage under the different articles of the TRIPS Agreement. It had been said in document

TN/IP/W/9 that clearly the drafters of Article 23 of the TRIPS Agreement did not intend to compel all WTO Members to participate in this system. He believed that it would be more accurate to say that the drafters of Article 23 had been thinking of a system that covered all WTO Members, but possibly only including geographical indications of Members who wished to participate in this system. His delegation reiterated that the system to be established should be truly multilateral in the sense that it would have certain legal effects on all Members.

11. The representative of New Zealand associated her delegation with the comments made by Chile, Australia, Canada and the United States. The co-sponsors believed that the mandate in Article 23.4 and in the Doha Declaration was simple and clear. Their position remained that the Joint Proposal was the only proposal that was within the mandate. Other proposals fell well outside that mandate and would fundamentally change the careful balance of rights and obligations in the TRIPS Agreement. They disregarded the sovereign rights Members currently had to implement the provisions of the TRIPS Agreement and what they considered appropriate within their own legal systems and practice. As the "Questions and Answers" paper stated, the mandate provided a system that facilitated the implementation of Members' obligations for the protection of geographical indications for wines and spirits. The mandate did not envisage a system that encouraged additional legal requirements or removed rights that were otherwise available, as had been noted by Chile. The "Questions and Answers" paper also looked at the fact that the Article 23.4 mandate referred to a multilateral system, and also to its voluntary character. The Joint Proposal met this aspect of the mandate and did cover all WTO Members because it was open to all Members to participate, while remaining voluntary. The simple nature of the Joint Proposal met the needs of small countries like New Zealand. The co-sponsors wanted a system that allowed them to continue to meet their TRIPS obligations without having to change their national systems and without having to increase the regulatory burden of protecting geographical indications. The provisions of Article 1.1 of the TRIPS Agreement were very important to New Zealand, which was concerned that some of the other proposals that had been put forward could undermine its sovereign rights.

12. The representative of El Salvador said that, as a co-sponsor, his delegation believed that TN/IP/W/9 clarified the scope of the Joint Proposal which had been presented some time ago by a number of countries including El Salvador. It was important for these Members that the system comply with the mandate received; that it be voluntary for all Members of the WTO who wished to participate in it; that it be adapted to the different regimes of protection that were used by WTO Members for geographical indications; and that it neither created new obligations nor diminished current existing obligations. The Joint Proposal complied with these characteristics and document TN/IP/W/9 reiterated such a scope and clarified doubts that had been raised during the course of the debate. As had been pointed out by the representative of Chile, there were still a number of outstanding points that remained to be clarified. Bearing that in mind, he said that delegations should focus on these points.

13. The representative of Colombia said that her delegation would cooperate to ensure that the paragraph 18 mandate of the Ministerial Declaration of Doha was complied with. She said that Colombia was one of the countries that had sponsored the Joint Proposal. Colombia was not a producer or exporter of wines and spirits. It mainly imported these products. Colombia did not have geographical indications of its own. It was against the background of its national system that Colombia had defined its position in the negotiations. Its interest from the outset had been to comply with Article 23.4 of the TRIPS Agreement and with the Doha mandate through the establishment of a system that would facilitate the registration of geographical indications for wines and spirits, which would be voluntary, would not have legal obligations for those who did not wish to participate in the system and which would not increase the obligations that Members currently had under the TRIPS Agreement. She said that the "Questions and Answers" paper would help clarify a number of points of the Joint Proposal.

14. The representative of Korea said that document TN/IP/W/9 was a timely contribution after the long break since the last meeting of the Special Session. He made a few preliminary comments. The document showed lucidly why the mandate for the negotiations, including Article 23.4 of the TRIPS Agreement, called for a notification and registration system for geographical indications for wines and spirits without binding legal effects. Regarding the relationship between participation and enhancing the protection of geographical indications for wines and spirits, he said that there was no doubt that Article 23.4 pointed to a system with voluntary participation, as had been clearly underlined in the paper. But another requirement of Article 23.4 was that the system must enhance the protection of geographical indications for wines and spirits. The paper explained that the system that had been envisaged by the Joint Proposal enhanced this protection by providing much more information than was currently available regarding the geographical indications under protection in other Members. Indeed, having such information would help Members who had to refer to the list as participants in the system, or even non-participating Members who chose to refer to that information. The question was how such a system could enhance protection in non-participating Members who chose not to use the information available. This question would become more important in a situation where only a small number of Members participated in the system and the majority of non-participating Members chose not to use the available information. He asked whether or not it could be said that the system in such a situation enhanced the protection within the meaning of Article 23.4. If not, how could one ensure a broader participation of Members in the system so that they could meet the requirement of Article 23.4 on a more collective basis? What were the options to meet the requirement of Article 23.4 without prejudicing the voluntary nature of participation? His delegation looked forward to hearing the views of the Joint Proposal group and of other Members.

15. The representative of Japan said it was important to seek a multilateral system that would not impose excessive burdens upon Members, as this would be inconsistent with Article 23.4 of the TRIPS Agreement and paragraph 18 of the Doha Declaration. In this context, his delegation appreciated and welcomed the input that had been made by Chile, in introducing a paper with a view to helping Members better understand the Joint Proposal. He reiterated his delegation's commitment to engage in the discussion in a constructive way to establish a multilateral system which would be acceptable to all Members.

16. The representative of Ecuador said that the document on "Questions and Answers" was relevant and interesting with regard to the mandate of the TRIPS Agreement. He recalled that Ecuador advocated a voluntary system of registration of geographical indications and that this was one of the various flexibilities that existed in the TRIPS Agreement which clearly stood out in document TN/IP/W/9. The argumentation in favour of voluntary registration had been presented in the Joint Proposal, that had also been co-sponsored by Ecuador. Document TN/IP/W/9 further clarified, confirmed and expanded in a clear way the argumentation in regard to a voluntary registration of geographical indications for wines and spirits. It was important to highlight that the document again emphasized, in addition to the flexibilities that were present in the TRIPS Agreement, the fact that there should be no penalties for those who did not participate in the system and also the role that national offices and authorities had, despite the fact that it would be an agreement to be reached within a multilateral system. Another important point of this document was its emphasis on the fact that the proposed registration system would not raise the current standards of protection in the TRIPS Agreement. In other words, it would not be TRIPS-plus. He said that there should be no new obligations imposed, especially no costly obligations imposed upon developing countries.

17. The representative of Hungary said that it was useful to look again at the fundamentals of the negotiations and see what were the points of agreement and what were the points of difference. Clearly, there was a difference in the understanding of the mandate between at least two groups of delegations. But there might even be other shades. The representative of the European Communities had done good work in going through the various elements of the paper and in analysing it from the point of view of those delegations who did not have this understanding of the mandate as had been

expressed in TN/IP/W/9. Regarding the issue of change in the rights and obligations under the TRIPS Agreement, he agreed that there was no such intention, even behind those proposals put forth by the European Communities and a number of other countries. The mandate clearly used two terms, notification and registration. The basic problem was that the sponsors of document TN/IP/W/9 simply equated these two terms. As had been pointed out by the European Communities, there were a number of elements in the database proposal that might create problems. Under this proposal, any name notified automatically became part of the database, and of the system of registration. There would not be any challenge possibility. For example, if there was no process foreseen to deal with homonymous geographical indications, he did not see how the proposal could facilitate their protection. Therefore, the proposal met one part of the mandate, that was the notification system, but did not meet the other, namely, a system of registration. Regarding the understanding of the term "multilateral", he said that for the sponsors of TN/IP/W/9, "multilateral" meant that Members were free to participate in negotiations but could also join later. Referring to the intervention made by Korea, he said that one could foresee a situation where there was just one participant that chose to notify names. The question was then how this would facilitate the protection of names as had been foreseen in the mandate. His delegation's understanding was that the decision not to make use of the system was fully voluntary. It was up to Members to choose if they wanted to put any names into the system. But once the name became part of the system of registration, it should have an effect on all Members. Otherwise, the system would be a plurilateral one, and this was not Hungary's understanding of the mandate. It was not without reason that this had also been made one of the subjects of the Singapore Ministerial Decision and of the Doha Development Agenda. While the paper had the merit of looking at the fundamentals of the Joint Proposal, the answers to some of them were not satisfactory and did not seem to meet the mandate. He thought that it was important to have further discussions about the key aspects of legal effects and participation, as well as about other aspects. One important consideration was to avoid undue burdens, especially for those who did not notify any names. As was known, the European Communities and a number of other participants had also put forward proposals under which the costs of the operation of the system would not fall on countries which did not use the system. They had also proposed various ways and means of alleviating burdens on developing countries, through, for example, technical assistance. All these elements should not, however, question the basic understanding and basic meaning of the mandate.

18. The representative of Switzerland said that the work in the Special Session had been blocked for many months and clearly Members must make renewed and sustained efforts to make progress and conclude these negotiations in due time. From this perspective, his delegation welcomed the communication from Chile and other Members. His delegation took it as a sign of readiness to enter into substantive negotiations again. He noted that TN/IP/W/9 listed a number of points and on some of them his delegation had different views. However, as the representative of the European Communities had pointed out, delegations should not forget that in the course of their work they had also been able to identify points of convergence. He further said that Switzerland had throughout these negotiations taken the view that only a meaningful and truly multilateral system could fulfil the mandate that had been contained in the built-in agenda of the TRIPS Agreement in Article 23.4, namely to truly facilitate the protection of geographical indications at the WTO level. To reach this goal, the multilateral system needed to have legal effects which eventually extended to all Members. A simple database without any legal effects and applicable only to certain Members in the WTO was neither of multilateral character nor would it help facilitate WTO protection for geographical indications. Having said this, his delegation agreed with others that participation in the sense of making active use of the multilateral system by notifying and registering geographical indications should be of voluntary nature. In order to ensure the good functioning of the system once it was established, Switzerland had also supported a proposal to provide for a simple and time-efficient dispute resolution mechanism in the course of notifying and registering geographical indications in the system.

19. The representative of Hong Kong, China said that document TN/IP/W/9 had been set down in a user-friendly question and answer format. His delegation could agree with the co-sponsors' statement that the notification and registration system should be voluntary. That should be the case at least at the outset. The question of the scope of participation could be posed once the system had been up and running for a number of years. Referring to New Zealand's intervention that the Joint Proposal could meet the mandate under Article 23.4, he recalled that Hong Kong, China had tabled a proposal in document TN/IP/W/8. This proposal put forward some ideas as to how to strike a balance between having some legal effect to facilitate the protection of geographical indications in the domestic courts of participating Members, and not imposing an undue and excessive burden on the Members. The Hong King, China proposal could fulfil the mandate for the negotiations and would be, in some aspects, more effective than the Joint Proposal, which only foresaw a searchable database. Furthermore, it would not impose excessive costs on the membership as a whole. It had struck a delicate balance. His delegation still recommended this proposal to the membership.

20. The representative of Argentina, a co-sponsor of TN/IP/W/9, said that the communication covered all the key issues and questions that had arisen throughout this whole process. It was quite straightforward and drafted in simple terms, and made it easy for all delegations to better understand exactly what were the characteristics and effects of the Joint Proposal, as well as what the mandate was for the negotiations. The mandate under Article 23.4 instructed Members to negotiate a voluntary system that would protect the rights and obligations under the TRIPS Agreement and abide by the principles of the Agreement such as the principle of territoriality, which gave full national jurisdiction to WTO Members to deal with the grant and use of intellectual property rights. As Australia had rightly said earlier, her delegation too agreed that through these negotiations Members should not surreptitiously try to alter the TRIPS Agreement. These negotiations were not about a negotiation of different approaches to the mandate, but a negotiation mandated by Article 23.4, in other words a negotiation within the legal framework of the TRIPS Agreement. So, unlike other negotiations, the TRIPS Agreement had clearly defined how far Members could go. They had no mandate or authority to amend the TRIPS Agreement, either with regard to its provisions or concerning the principles that governed intellectual property rights. In reaction to the statements made by some delegations that there was common ground between the various positions, she expressed some disappointment. She thought that document TN/IP/W/9 had clearly explained why there were differences, such as in regard to the exceptions under Article 24 and the territoriality principle under Article 1.1. There was no common basis on some points such as the question of national authorities determining whether or not a given term would be characterized as a geographical indication in its territory. In response to the comment made that under the Joint Proposal the information regarding notified geographical indications would be unreliable, she asked how, if a Member had notified a geographical indication after it had been recognized as such by the national legislation, could such domestic decisions be qualified as giving rise to unreliable information. To think otherwise about the eligibility of a name was to create a concept that would erode the sovereignty of Members to decide about the eligibility of a name as a geographical indication in their territories.

21. The representative of Malaysia, speaking on behalf of the delegations of Brunei Darussalam, Indonesia and the Philippines, said that document TN/IP/W/9 put forward clearly issues where these delegations shared a number of similar views. In considering the multilateral system, delegates should first reflect on the elements of protection that were already existing in Articles 22 and 23 and then consider how a multilateral system could facilitate this protection, taking into account that the multilateral system was only applicable to participating Members without enhancing the legal obligations of Members. Protection of geographical indications under Articles 22 and 23 basically referred to the prevention of the misleading use of these geographical indications and also looked at unfair competition and the prevention of the use of geographical indications that were accompanied by certain expressions and so on. She said that, in light of this, the multilateral system should only complement the legal means that were already available under the TRIPS Agreement for the protection of geographical indications for wines and spirits, but with no further legal effects since it

was only meant to facilitate the existing legal means of protection under the mandate of Article 23.4. The four delegations agreed with some others that these negotiations were not meant to have an entirely new system of protection for geographical indications for wines and spirits. In this context, they were of the view that notifying and registering geographical indications for wines and spirits would not only help to meet the objectives of furthering the prevention of misleading use and those other uses prohibited under the TRIPS Agreement, but would also enhance transparency. This would also assist interested parties in preventing misleading use in the sense that they would have easy access to the information. The notified geographical indications would be centralized in one place. Should any legal recourse be thought necessary, there would be a possibility of seeking recourse under national laws. The four delegations were of the view that some of the reasons that had been put forth in document TN/IP/W/9 did provide an answer to the question of the multilateral nature of the system in the sense that the system would have been negotiated in a multilateral context under the WTO. It would be open to all Members to participate and be open to use by all Members, hence meeting the multilateral character of the system. Lastly, the system should not be more burdensome and costly than necessary, particularly on non-participants.

22. The representative of Canada, reacting to the comments made by the European Communities on the multilateral character of the system under the Joint Proposal, said that New Zealand and Malaysia had responded adequately to that point. On another point raised by the European Communities about how to handle situations where a notified geographical indication was not eligible for protection or where there were differences regarding a notified geographical indication, he said that there were already systems in place by which parties, individual private parties and Members, could challenge geographical indications and the way Members were implementing their TRIPS obligations. If a party wanted to challenge the eligibility for protection of a notified geographical indication, it could do so in accordance with the legislation and domestic procedures of the Member notifying the geographical indication in question. There would be no need to establish a new international dispute settlement procedure given that the responsibilities for enforcing protection remained grounded in national law. There were domestic procedures available to challenge the eligibility of geographical indications; there had been examples raised in earlier meetings of the Special Session about some of the procedures that had been ongoing in the European Union, for example with respect to feta cheese. Internationally, if a Member believed that another Member was not fully implementing its obligations under the TRIPS Agreement, it could make use of the provisions of the WTO's Dispute Settlement Understanding and there too there were examples. The Special Session was not the place to try to resolve such disputes. It did not have a mandate to do that. Referring to the statement of the delegation of Korea, he said that Korea had identified a conundrum in this negotiation: there was a mandate to negotiate a voluntary system and, at the same time, a mandate to negotiate a system that facilitated protection for geographical indications. Korea had asked how the facilitation of the protection of geographical indications would be ensured if there was not a high level of participation in the system. It seemed to him that the way to address this problem was not to try to change or reinterpret the mandate in some way, but rather to try to build a system that would be useful, that would facilitate geographical indications and that would be non-burdensome. In this way, more Members would be attracted to participate in the system. If Members built up a complicated system that was so administratively burdensome, costly, and difficult to work out that, for example, technical assistance or transition periods would be required, then obviously they would run into the problem of making the system much less attractive. Fewer Members would participate and consequently there would be a lower level of facilitation of the protection of geographical indications.

23. The representative of Australia said that Canada, Malaysia and Argentina had covered some of the issues that she wanted to address, in particular the comment that the system, supported by Australia and others, was somehow not a multilateral system. The system would result from a multilateral negotiation in which all WTO Members had participated and which would be agreed by consensus by all WTO Members. She associated her delegation with the comments that had been

made by others in that regard. Canada had also covered what was a non-issue from the perspective of the Joint Proposal, that of the so-called unreliable information. It was clear from Australia's perspective that legal certainty came through the use of national administrative and judicial processes and that was how Members could achieve the outcome they were looking for. Comments had been made that there was no intention on the part of some of the proponents of more cumbersome and costly systems to change the current rights and obligations of the TRIPS Agreement. For her delegation, it was very difficult to fully comprehend those comments in light of the proposals on the table. For example, there was nothing in the current exceptions under the TRIPS Agreement that required Australia to enter into bilateral negotiations whenever her national authorities decided to invoke such an exception. Such an obligation would exist under other proposals. For Australia, it would be like a new Article 24.10, which would state that, notwithstanding these exceptions, Members might only invoke them subject to a bilateral agreement between the parties in conflict as to whether or not a term was a geographical indication. She said that this was a legal matter and that it was very difficult for her delegation to understand how that was not fundamentally altering the TRIPS Agreement and creating an increase in the level of protection afforded to geographical indications.

24. The representative of Bolivia associated her delegation with some of the statements made by the European Communities and Hungary. With regard to document TN/IP/W/9, her delegation believed that some of the answers to the questions were not completely clear. As a preliminary remark, she said that the arguments of the co-sponsors contained some contradictions, for example with regard to the question of legal effects as well as with respect to the multilateral, but at the same time non-obligatory, nature of the system that was being negotiated. It was also important to discuss the distinction between registration and notification. For her delegation, they were not the same. Her delegation did not fully agree with Argentina's statement that differences between the requirements of registration procedures at the domestic level of Members could influence the international register.

25. The representative of Bulgaria said that he had some difficulty in finding out whether, formally speaking, the co-sponsors of TN/IP/W/9 perceived it as a new proposal or just as a clarification to the Joint Proposal circulated in document TN/IP/W/5. He did not detect anything new which his delegation could take into account for the "July package". Geographical indications were certainly an area which his delegation would be looking at when it considered the package. As regards substance, he expressed support for the points made by the European Communities, Hungary and Bolivia. Referring to the third question of TN/IP/W/9 – "What is the 'Joint Proposal' and how it would facilitate the protection?" - he asked who could use the system. The Joint Proposal assumed an existing national administration and registration system, the operation of which would facilitate that system. It would not facilitate the protection of geographical indications of developing countries who did not have such a system. The proponents of the Joint Proposal had been arguing that the setting up of such a national system would be administratively burdensome. He recalled that Members would be perfectly entitled to have the national registration system financed by those who would be using it.

26. The representative of the European Communities said that, contrary to the comments made by some speakers, his delegation had provided ample explanation of the points it had made at the present meeting and in many of its papers, starting with the European Communities proposal and other papers that they had submitted in the course of the discussions, such as IP/C/W/133/Rev.1, JOB(02)/44, JOB(02)/70 and JOB(03)/123. His delegation confirmed that the European Communities proposed system respected the principle of territoriality. Determinations regarding the eligibility for the protection of geographical indications in accordance with national legislation would continue to take place at the national level. The proposed challenge procedure would allow Members to take into account and assert their territorial specificities in order to ensure the reliability of information in the system. The European Communities did not think that that would be contrary to the principle of territoriality. Their proposal would also avoid conflicts. The dispute resolution system of the Joint Proposal would be basically based on the national system plus the WTO dispute settlement system. It would make sense to have a system of resolving those differences within the multilateral system of

notification and registration because the objective was to avoid as many dispute settlement cases as possible. As regards other comments, he said that he would not restate the European Communities' well-known positions.

27. The representative of Turkey said that his delegation was in favour of a meaningful system that would facilitate the protection of geographical indications. Turkey was a modest producer of wines and spirits, and both a modest importer and exporter of these products. Concerning the issue at hand, his delegation would like to highlight three points. First, the way the system foreseen both in the TRIPS Agreement and in the Doha mandate called for a multilateral system of notification and registration: as far as the WTO terminology was concerned, if the system was intended to be of a purely voluntary nature, then it would have been referred to as "plurilateral", as was the case for some other WTO arrangements such as the Government Procurement Agreement. Second, his delegation would like to highlight the importance of the principle of the territoriality of all intellectual property rights. Third, there were important elements of the system, particularly administrative costs, that needed to be addressed. His delegation expected a useful discussion on this important dimension as well as on technical cooperation.

28. The representative of Chile said that he believed that other delegations that were co-sponsoring TN/IP/W/9 had already answered a number of the questions. The paper had served the purpose of motivating a dialogue on the issue. In response to Bulgaria's comment, he said that the text had the objective of simply explaining the Joint Proposal, not adding anything new. Noting that the representative of the European Communities had once more pointed out that there was discrimination in favour of wines and spirits, he said that this merely reflected the outcome of the TRIPS negotiations. If the European Communities or any other Member would like to avoid discrimination, one way of doing it would be to remove the additional protection for wines and spirits. Regarding the multilateral character of the system, document TN/IP/W/9 clarified this and gave some very concrete examples of systems that could be multilateral but could nonetheless entail a voluntary participation. He asked where, in international public law, there were legal instruments which made it possible for a group of countries to undertake commitments and obligations and impose them on others who were not participants in that system. In 2003, the Secretariat had prepared a note that had given delegates some explanations on this issue. His delegation and others had put forward TN/IP/W/9 because they wanted to obtain positive, practical and quick results in the negotiations. They were willing to discuss the details of the matter and to work in the most efficient way to reach those results, but they were not ready to go beyond the obligations currently imposed upon them by the TRIPS Agreement. He had not heard from the European Communities, Hungary and others any new element of flexibility which would unlock this negotiation. He said that his delegation had expected that delegations would find points in common and a greater movement towards flexibility. He regretted to see that there were no such signs of flexibility so far.

29. The representative of Brazil said that Brazil believed that a multilateral system of notification and registration should be voluntary in nature. His delegation did not agree that the term "multilateral" in Article 23.4 of the TRIPS Agreement necessarily meant "universal", as it had already pointed out in previous meetings of the Special Session. It agreed with the argument that the system should not impose new obligations on WTO Members. The system should not be TRIPS-plus in nature and, in this regard, his delegation had taken note of the fact that some delegations had referred to important principles, such as the need to safeguard national flexibilities in the implementation of international intellectual property obligations and the importance of taking fully into account and respecting the territoriality principle. These principles in fact were pertinent not only to discussions on the multilateral system of registration of geographical indications for wines and spirits but also to discussions on other intellectual property-related matters such as patents, both in the WTO and in other international fora such as WIPO. He further said his delegation had found that the explanations that had been given by the co-sponsors of document TN/IP/W/9 were interesting.

30. The representative of Hungary said that some of the arguments he had heard were contradictory. The first contradiction concerned obligations. The Joint Proposal contained as a minimum two obligations: to notify and to commit to consulting the system. This was in contradiction with the TRIPS-plus argument of the sponsors of the Joint Proposal, which implied that the only acceptable outcome of these negotiations would be no agreement, because anything that would be agreed would be more than the existing provisions of the TRIPS Agreement. The second contradiction related to the multilateral character of the system. In his delegation's understanding, participation in the form of using it actively was totally voluntary and countries could choose whether they wished to notify and register geographical indications for wines and spirits. It was, however, another matter whether or not a multilateral system that had been agreed on multilaterally could have effect only for a limited number of Members; in this case, Ministers would have given Members a mandate for a plurilateral agreement. Turning to Korea's question as to how a system with a small number of participating Members could facilitate the protection of geographical indications in accordance with the mandate and the reply by Canada that the lower the burdens were, the more attractive the system would be, he did not believe that the protection would be actually facilitated if there were a number of countries which were misusing European names. As had been pointed out by the European Communities, protection would be facilitated only if the system was truly multilateral and had effects in all Members.

31. The representative of the European Communities associated his delegation with the comment made by Hungary on the concept of TRIPS-plus. On the comment that had been made that through their proposal the European Communities were attempting to impose certain legal effects on Members without having the consent of these Members, he recalled the fact that all Members had accepted the mandate to put in place a system to facilitate protection under the TRIPS Agreement and that all Members had accepted the protection that was currently included in the TRIPS Agreement with regard to geographical indications including the protection in Article 23. As he had said at the beginning, the European Communities' attitude was going to be a constructive and open-minded one. They would, however, have been pleased if there had been substantial changes in position in TN/IP/W/9, which they thought was not the case.

32. The representative of the United States said, in response to the comments of Hungary and the European Communities, particularly with regard to TRIPS-plus, that the text of Article 23.4 was clear and that his delegation did not see any inconsistency or any contradiction between negotiating a system of notification and registration and the equally important principle that this system should not add to or diminish Members' existing rights and obligations under the TRIPS Agreement. His delegation did not see that a system of notification and registration such as that proposed in the Joint Proposal would necessarily add any obligations. Indeed it was exactly the Joint Proposal that resolved those two issues in a satisfactory and helpful manner. In response to the European Communities' comment on constructiveness, he said that his delegation came with the same intention, even if it had different views on this issue. With regard to the concerns expressed by the representative of Australia concerning new TRIPS obligations, he said that his delegation had been reviewing the paper of June 2003 submitted by the European Communities (JOB(03)/123). It saw many examples which were giving it great concern, such as the challenge system that, as noted by Australia, might be going well beyond the current level of obligations of Members.

D. OTHER BUSINESS

33. With regard to the organization of work, it was agreed that a formal meeting would be held back to back with the regular session of the Council for TRIPS, scheduled for mid-June.
