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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 18 June 2004

Chairperson: Ambassador Manzoor Ahmad (Pakistan)

Subjects Discussed: Page No.

A. ADOPTION OF AGENDA

1. The Special Session agreed to adopt the agenda as set out in WTO/AIR/2327.

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

2. The Chairman said that, by way of a communication circulated in document TN/IP/W/9/Add.1, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu had requested that it be added to the list of sponsors of document TN/IP/W/9, namely the paper entitled "Questions and Answers" relating to the "Joint Proposal for a Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits" and which was submitted by Argentina, Australia, Canada, Chile, Ecuador, El Salvador, New Zealand and the United States.

3. The representative of Argentina recalled that at the April meeting the EC delegation had said that its proposal ("EC proposal") did not constitute TRIPS-plus in the sense that it did not go beyond the TRIPS provisions and did not therefore alter the existing balance of rights and obligations. Like many other Members, Argentina was of the opposite opinion: the EC proposal would actually alter the balance of rights and obligations negotiated in the Uruguay Round by creating new obligations impairing the rights acquired under the TRIPS Agreement and modifying its basic principles.

4. Besides the obligation to maintain bilateral negotiations among Members, the "creation of an 'opposition procedure' and/or an ad hoc dispute mechanism" as indicated in the EC proposal (IP/C/W/107/Rev.1) would create a quasi-judicial procedure departing from the WTO dispute settlement system. Such a procedure could not be adopted through a notification and registration

system but only in accordance with the provisions of Article X of the WTO Agreement. In the TRIPS Agreement, the right to challenge a GI or the application of exceptions of Article 24 for example were not subject to any international opposition procedure or to compulsory bilateral or multilateral negotiations. The EC proposal would impair and even nullify the flexibilities obtained in the Uruguay Round by affecting not only the provisions of Section 3, Part II, but also other provisions of the TRIPS Agreement. Under Articles 22 and 23, Members only had the obligation to provide the legal means for right holders from other Members to seek protection. In other words, as for other categories of IPRs under the TRIPS Agreement, right holders from a Member must obtain the grant of their rights in other Members on a country-by-country basis due to the territoriality principle, which was inherent to all IPRs, including GIs. The EC proposal, which attempted to create a kind of international application for protection of a GI and a right to universal validity based on the extraterritorial application of a national legislation, would eliminate the territoriality principle. It would deprive Members of their rights under Article 1.1 of the TRIPS Agreement. The European system of protection of GIs was developed following changes in the Common Agricultural Policy, namely the subsidization of quality and of product differentiation instead of the subsidization of quantity. This was not necessarily the policy of other WTO Members.

5. The EC proposal would increase the obligations of Members with the establishment of a new system of protection that created legal presumptions, including irrebuttable ones, with effects such as the reversal of the burden of proof. It required the elimination of the exception under Article 24.6 regarding generic names after a certain time-limit, and undermined Article 24.5 regarding prior trademarks by privileging GIs to the detriment of prior trademarks with consequent losses to producers who had been legitimately using their registered trademarks in trade. With such presumptions, the EC proposal undermined the right of individual parties under a Member's national law to invoke the TRIPS exceptions at any moment in that Member's jurisdiction. It also restricted in terms of time-limits the possibility for individual parties to invoke exceptions in other jurisdictions, allowing only governments to invoke them at the international level. There were no such time-limits under the TRIPS Agreement.

6. As a result, non-European producers would lose the right to use generic terms or trademarks which they had been legitimately using in third markets, if not in their own. Those producers would lose sales and markets where they had often contributed to the dissemination of names and to consumer recognition of products by these names. Many of these names had been disseminated during the strong migratory currents from Europe to the rest of the world by the Europeans themselves, who had first used such names when they migrated and continued using them for products they consumed or produced. According to estimations, between the second half of the 19th century and the first half of the 20th century, 11 million Europeans emigrated to Latin America, out of which 38 per cent were Italian, 28 per cent Spanish and 11 per cent Portuguese. Half of them went to Argentina.

7. The EC proposal would create an unprecedented IP system, and, what was worse, it would be a system created in a vacuum. Recalling that under Article 1.1 of the TRIPS Agreement Members "[shall] be free to determine the appropriate method of implementing the provisions of [this] Agreement within the framework of their own legal system and practice", the representative of Argentina said that there was no harmonization, at the international level, of substantive law in the field of GIs, which would be the minimum requirement for any process with the kind of results sought by the European Communities. She recalled that there was no mandate for amending the TRIPS Agreement or for undertaking negotiations regarding a substantive harmonization in the WTO or in any other international forum. The EC were attempting to use their legislation as a basis for the grant and refusal of rights at the national level of each Member, going beyond the principle of territoriality and the private right character of IPRs. Through a negotiation aimed at establishing a procedural system, the EC were attempting to achieve a disguised substantive amendment to the TRIPS Agreement. Nothing justified the need for granting to owners of GIs a status higher than that granted to owners of other IPRs covered by the TRIPS Agreement.

8. The proposed system would entail significant costs both at multilateral and national levels. The representative of Argentina asked the European Communities to clarify what the cost would be of managing such a system and what the cost would be of re-conversion of products, i.e., of re-labelling and of marketing. For countries as yet without such a system, the examination of whether or not a GI notified under the multilateral system could be challenged would be extremely complicated and costly. It would not only be necessary to compare the registers of GIs and trademarks but also to verify for example whether or not a name had become generic. It would also be necessary to verify that the GI was not a protected grape variety or a name used by a person or by that person's predecessor in business. This complex information would require the use of a system and human resources with costs that not all Members would be able to bear and for which the TRIPS Agreement did not foresee any obligation. With all the examinations required under the EC system, producers in many countries would automatically lose any rights of protection and those countries would be obligated to protect the notified GI. The costs of such a system would be reduced only in favour of European producers because the actual costs for obtaining protection would be transferred to governments and producers of third countries. In this regard, developing and least-developed countries would obviously be the ones to suffer most from the prejudice.

9. European producers received substantial subsidies for the development of products protected by geographical indications, in some cases directly or through structural funds for the development of rural areas or for anchoring producers in those areas. Referring to the fact that the European Communities had identified certain geographical indications in their tariff nomenclature, the representative of Argentina said that if an analysis of certain products were made, it would be difficult to determine that they were not substantially-like products as defined by the GATT and the TBT Agreement. This discrimination in the nomenclature was another "plus" that the EC were attempting to add to IPRs. The multilateral trade system had the aim of increasing competition through the reduction of tariff and non-tariff barriers. With regard to IPRs, certain practices or protection systems might have adverse effects on trade. In the Preamble of the Marrakesh Agreement, Members had agreed to enter into reciprocal and mutually advantageous arrangements directed to the "substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations". The TRIPS Agreement, in addition to being covered by the objectives of the multilateral trade system, aimed "to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade". Moreover, Article 8 of the same Agreement stipulated that Members might adopt appropriate measures "to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology". Clearly, the EC proposal would unreasonably restrain legitimate trade of wine and spirits.

10. The representative of Argentina further referred to the 2002 report made by the Commission on Intellectual Property Rights ("CIPR") set up by the Government of the United Kingdom. The CIPR report indicated that only 20 countries, mostly developed ones, were party to the Lisbon Agreement and that by 1998 out of 766 appellations of origin protected under that Agreement 95 per cent belonged to European countries. The main message of the report was that developing countries should avoid compromise solutions that reflect the regimes of protection of IPRs in developed countries, which should not press for stronger procedures regarding IPRs. The report further suggested that new studies should be undertaken before developing countries could consider accepting new solutions within the WTO. Argentina fully shared the views expressed by the CIPR report.

11. The representative of the European Communities said that his delegation did not consider that the opposition and examination procedures in the EC proposal were TRIPS-plus to the same extent as the proposal sponsored by Argentina and other Members ("joint proposal" (TN/IP/W/5 and TN/IP/W/9)). He pointed out that under that joint proposal the national authorities would have an

obligation to look into a database, and that there was no such obligation included in the TRIPS Agreement either.

12. He disagreed with the representative of Argentina that bilateral negotiations or the ad hoc dispute mechanism proposed in the EC proposal was another TRIPS-plus element, given that this idea was a mere repetition of the existing obligation under Article 24.1 of the TRIPS Agreement. The EC proposal did not undermine the principle of territoriality given that the EC proposal allowed Members and national authorities to make a thorough examination of notifications according to their own laws and to the principle of territoriality to finally decide whether or not to protect a GI by making a challenge. With regard to the exceptions of Articles 24.5 and 24.6, although the EC proposal did not mention these provisions, it suggested that countries would have 18 months to examine the notified GI. Recalling that the Argentine legislation provided for a time-limit for opposition that did not exceed nine months, the representative of the European Communities said that this showed that the opposition challenge and the time-limit proposed by the EC proposal would not be such a burdensome obligation. His delegation would however be open to alternative solutions regarding the time-limit for opposition.

13. On the existence of a harmonized system of protection of GIs in Europe, he said that the system did not purport to protect farmers but to ensure free circulation of goods within the Community. As for the losses of rights and markets for producers, he said that the filing of a reservation or an opposition on the ground of genericalness would be sufficient to prevent such losses. On immigration matters, his delegation believed that immigration was not connected to the misuse of geographical indications. With regard to the point made that the European Communities were trying to export their model of protection of GIs, he said that the European Communities had never used the WTO Dispute Settlement system to complain against Members who had implemented the TRIPS Agreement in a manner different from the European model. Neither had his delegation expressed, in the course of the review of national laws in the TRIPS Council, any objection to other Members having different systems; it had been of the view that each Member should adopt the system that best fitted its own internal characteristics. Regarding re-labelling, he said that there were very few well-documented cases of countries that had given up the use of a GI. One famous example was the name "Cava" for Spanish sparkling wine, used to replace the term "Champagne". In spite of changes in labelling, the exports of "Cava" in the last ten years had increased by 1,000 per cent, meaning that what made the product successful was its quality and that the use of its own name made the product unique and recognizable.

14. On costs, he said he could not agree that costs would be transferred from European producers to producers in third countries, since his delegation adhered to the idea that those who benefited from the system should be the ones to contribute to it. His delegation remained open to proposals for other mechanisms to ascertain that no country should bear burdens beyond its capacity, and that the system established was feasible, functional and financially sound. He finally said that products bearing GIs normally did not benefit from agricultural subsidies and he did not understand how the customs nomenclature of the European Communities by including certain GI names would give European producers any advantage.

15. The representative of Bolivia recalled that Article 23.4 of the TRIPS Agreement stipulated that, in order to facilitate the protection of GIs, negotiations should be undertaken concerning 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". In conformity with the Singapore Declaration and with the first sentence of paragraph 18 of the Doha Declaration, Bolivia held the view that Article 23 already granted a high level of protection to GIs for wines and spirits and that this did not generate any additional burdens and obligations to Members, whose participation in the system should be voluntary. In addition, Article 1.1 of the TRIPS Agreement gave Members discretion regarding the implementation of the provisions of the Agreement, including those relating to GIs. This meant that the conditions for the grant and exercise of rights regarding the use of GIs

must be set out by WTO Members. The eligibility for protection of GIs for wines and spirits should be established by each Member within the framework of its own legal system and practices as well as of other agreements. Hence, the results of the negotiations on the multilateral system of notification and registration of GIs should not be onerous and should be voluntary. Without prejudice to these points, the provisions that were being negotiated should take into account special and differential treatment for developing countries as stated by the Doha Declaration. For this purpose, studies should be undertaken on the costs and consequences of a mandatory multilateral system of registration for developing and least-developed countries.

16. The representative of the United States said that his delegation shared some of the concerns raised by Bolivia and Argentina on the EC proposal. On the bilateral negotiations mentioned in Article 24.1, his delegation believed that such negotiations did not have to be concluded, and that, under the EC proposal, if a Member did not raise an objection within 18 months, that Member would lose the right to refuse protection of the notified term. His delegation believed that the European Communities were seeking to impose a harmonization process directly onto the WTO without the normal give-and-take that characterized negotiations of other intellectual property rights at the World Intellectual Property Organization. He also said his delegation was open to further discussions on the joint proposal.

17. The representative of Australia said that the issue of bilateral negotiations mentioned in Article 24.1 was an important one and had not been thoroughly discussed in the TRIPS Council. Her delegation believed that, as a result of the EC proposal, a producer who wanted to use a generic term would have to enter into a negotiation designed to increase the protection of the individual geographical indication regardless of whether or not the term was generic. This would be a situation her delegation could not agree with and would like to discuss further.

18. The representative of New Zealand said that the joint proposal proposed the creation of a searchable database which would provide information on GI rights claimed by producers in other Members and which national authorities could choose to use in their own domestic decision-making processes. The joint proposal did not create an obligation for national authorities to consider the database. The mandate only required the facilitation of notification and registration of GIs and the question of legal certainty should be left to Members at the national level. New Zealand agreed with Australia and the United States that there was a significant amount of work to be done across a wide range of issues, not only legal effects and participation, but also costs and burdens of an administrative system and notification procedures.

19. The representative of Nicaragua said that her delegation believed that a system according to the joint proposal would help fulfil the obligations under the TRIPS Agreement by providing Members with an automated search mechanism with easy access to information on names used to describe wines and spirits. For her delegation, the joint proposal maintained the balance between the rights and obligations under the TRIPS Agreement and responded to the mandate of paragraph 18 of the Doha Declaration. In this sense, her delegation was of the view that the voluntary nature of participation was in conformity with that paragraph and with Article 23.4 since it did not involve any increase or reduction in the rights and obligations and gave Members the possibility of electing to participate in the system at any point in time. In light of this, her delegation asked to be included in the list of co-sponsors of document TN/IP/W/9. Her delegation also shared the concerns expressed by Bolivia regarding special and differential treatment.

20. The representative of Switzerland said that, at a time when the substantive work of the Special Session seemed blocked and Members did not seem to be able to agree on any of the elements of the multilateral system, it might be useful to mention the areas of convergence before dealing with the controversial ones insofar as the latter seemed to be key elements of not simply establishing any sort of multilateral system, but one which was apt to actually fulfil the mandate of facilitating the protection of geographical indications for wines and spirits in the WTO.

21. Switzerland agreed with the co-sponsors of the joint proposal in respect of their outline on the protection granted by Articles 22 to 24 of the TRIPS Agreement. It also agreed that, according to Article 1.1 of the TRIPS Agreement, Members were free to determine the appropriate method of implementing TRIPS obligations at their national level, including the provisions on GIs. Thus, contrary to the point made by the authors of the joint proposal, the establishment of a national register of GIs was not a prerequisite for the establishment of a multilateral system with legal effects. Further, his delegation agreed that the system should not add to or diminish existing rights and obligations under the TRIPS Agreement but that it must effectively facilitate the obtaining of that protection. The rights of legitimate GI users were to get effective protection for their GIs in other WTO Members against abusive or false uses of their GIs. The obligation of WTO Members was to provide legal means to prevent usurpation and false use of GIs. This obligation must be looked at in combination with the right of the WTO Member where the protection of a GI was sought to invoke an exception under Article 24. Under the mandate, the Council's task was to define how these rights and obligations could be ensured and at the same time effectively facilitate the protection of GIs. For the sponsors of the joint proposal, it would be sufficient to establish a non-binding database in which any indication notified by WTO Members would be enlisted without any "substantive" examination of these indications as to their nature as a GI in accordance with the requirements set out in Article 22.1. While agreeing that such a database might perhaps fulfil the requirement of not changing the rights and obligations of Members under the TRIPS Agreement, he said that it would not facilitate their protection either at the national or international level. On the contrary, it would complicate and confuse the work of national authorities and courts because a list of designations which were not recognized as GIs for the purposes of the TRIPS Agreement would be useless when trying to establish whether protection should apply or not. His delegation believed that in order to effectively achieve the purpose of facilitating protection, Members needed to establish a system of notification and registration which provided for a certain procedure of examination and opposition while fully preserving the rights and obligations of Members under the Agreement. Such a system would allow each WTO Member which might choose to do so to notify its GIs. Before registration was undertaken, other WTO Members should have the opportunity to oppose the listing of an indication if it was not a GI according to TRIPS standards or to oppose the legal effects of the registration of that indication on its own territory by invoking the exceptions provided in Article 24.

22. For his delegation, a system effectively facilitating the protection of GIs should give a legal effect to the registration after examination and after the possibility of opposition; this effect should be the creation of a "rebuttable presumption" of the validity of the GI in all WTO Members that had not opposed its registration. Under this concept of "rebuttable presumption", a judgement at the national level could rebut the presumption of validity of the registered designation. Rights and obligations of WTO Members in Section 3, Part II of the TRIPS Agreement would therefore be preserved; they would not be increased or lowered. In the event that it would be necessary to enforce a GI right against illegitimate use, this reversal of the burden of proof would benefit legitimate GI users in their enforcement efforts, and the protection of that GI would be facilitated. With such a multilateral system, national administrations and producers in third countries would also have at their disposal a truly useful instrument, containing reliable information on the status of the protection of the registered GIs in the different WTO Members. Again, this would facilitate protection both at national and international levels. By equipping the multilateral system with an examination and opposition procedure and the creation of a presumption that could be rebutted at the national level, the register would also fully meet the legitimate preoccupation of the authors of the joint proposal that WTO Members should be free to determine for themselves whether or not a particular term qualified as a GI in their territory.

23. As for the costs of the multilateral system, he recalled that the point made by the co-sponsors of the joint proposal was that the searchable database would facilitate the current level of protection while minimizing the burden and costs for Members. For his delegation, it went without saying that the establishment of a multilateral system, of whatever nature, would result in certain costs. However, these costs needed to be considered in relation to the added value and advantages which would result

from such a system. Since a simple database system with neither legal effects nor a multilateral character would not result in any facilitation of GI protection, the costs for such a system would in any case be wasted. While he believed that Members agreed that the system should have a procedure as simple and straightforward as possible, he was of the view that it should ensure the following elements: first, to enable all Members to notify and register their GIs, thereby participating in the system without being deterred by formal requirements and excessive costs; second, to ensure that the registration of GIs respected some minimum formal requirements so that the register became a truly useful tool to facilitate the legal protection of GIs as required under Article 23.4 of the TRIPS Agreement. He said that just a list of names, the significance or legal value of which was not known, would not be able to fulfil the mandate.

24. On the question of participation in the system, he said that the words "eligible for protection in those Members participating in the system" in Article 23.4 of the TRIPS Agreement suggested that WTO Members were free to choose to make use of the multilateral system by notifying and registering their GIs. In this respect, his delegation agreed that participation was voluntary. When exploring further the meaning of "participating in the system", it was essential to also look at the term "multilateral". "Multilateral" stood in contrast to "plurilateral". In the context of the WTO, "plurilateral" was understood as referring to a system in which participation was entirely voluntary, for example the Agreement on Trade in Civil Aircraft or the Agreement on Government Procurement. Conversely, "multilateral systems" were understood to be instruments by which all WTO Members were bound or would be bound. There seemed to be agreement among Members that the register should not create new rights or obligations. At the same time, Members would agree that the rights and obligations to provide protection consistent with Section 3, Part II of the TRIPS Agreement continued to apply even after the establishment of the multilateral system. Accordingly, for his delegation, it seemed obvious that the legal effects of this system, which were not going beyond Section 3, Part II of the TRIPS Agreement, applied to all Members, whether they notified and registered their GIs in that system or not.

25. The representative of Chinese Taipei said that his delegation believed that, with regard to legal effects, voluntary participation was useful in the sense that it would allow each Member to determine whether the system was suitable or not, and would maintain the rights and obligations under the TRIPS Agreement, especially Article 1.1. He recalled that Article 23.4 provided Members with the choice of participation in the future registration system and that there was no mandatory participation in any other IP treaty-based registration system.

26. The representative of Canada recalled that the EC proposal submitted in document IP/C/W/107/Rev.1 stated that "the register should not ... require WTO Members to enact new domestic legislative or administrative structures and would allow them to make use of existing structures and facilities". In a non-paper circulated by the European Communities regarding the legal effects under their proposal (JOB(03)/123, dated 25 June 2003), it was indicated that "participating Members shall facilitate the protection of an individual registered geographical indication by providing the legal means for interested parties to use the registration as a presumption of the eligibility for the protection of the geographical indications". It was not clear to his delegation how to introduce such a presumption without changing the Canadian legislation because the concept of presumption of eligibility did not exist in Canadian law. The legal concept of "a rebuttable presumption of validity", explained by the Swiss representative, did not exist in Canadian law either. He asked the delegations of the European Communities and Switzerland to give clarifications on these two concepts. For Canada, to implement such proposals would imply some implementation costs and other consequences in changing regulations and administrative procedures. This was an implementation issue for further discussion.

27. His delegation was also concerned about how it would be possible for Members to examine and evaluate each GI proposed for protection without enacting new administrative procedures. He gave the example of the recent bilateral wine negotiations between his country and the European

Communities. Canada was first asked to protect more than 8,000 European wine names. It had taken some time to assess whether those names were eligible for protection in Canada. Canada had finally concluded that only some 1,500 of those names were eligible for GI protection. If the concept of legal presumption were applied in the context of those bilateral negotiations, then Canada's ability to evaluate those wine names expeditiously would have been different.

28. He expressed support of the suggestion made by Bolivia for studies regarding the potential costs for least-developed and developing countries, especially if the system was to be mandatory. His delegation believed that the joint proposal better reflected the fulfilment of the mandate. The fact that other delegations had asked to be included as co-sponsors of document TN/IP/W/9 showed that the paper was indeed useful.

29. Finally, he asked for clarification of the status of the proposal made by Hungary (IP/C/W/255) after it had joined the European Union.

30. The representative of Costa Rica said that his delegation agreed with the facilitation but not with the increase of protection of GIs and that participation in any future system of registration should be on a voluntary basis as stipulated by Article 23.4. He asked that Costa Rica be added to the list of co-sponsors of document TN/IP/W/9.

31. The representative of Australia disagreed with Switzerland that the joint proposal would complicate and confuse matters, considering the number of Members who supported it. She also agreed with Canada on the need for further clarification on the issue of legal presumptions.

32. The representative of the European Communities said that Article 24.1 was meant to increase the protection of the right holder of the GI, not to increase the rights of the generic producers. The idea of having bilateral negotiations in the procedure under the multilateral system was not new because it was already in the language of Article 24.1.

33. The common system of GIs in the European Communities was created to avoid the obstacles to trade that the lack of GI protection had caused in the internal market. Turning to the statement made by Canada on the concept of legal presumption in Canadian law, he said that this concept should have been introduced in the register created by Canada after the bilateral agreement with the European Communities.

34. He finally said that his delegation did not believe that, if the joint proposal were adopted, European holders of GIs would consider that the multilateral system would facilitate the protection of their GIs as required by Article 23.4 of the TRIPS Agreement.

35. The representative of Argentina said that for her delegation it was clear from Article 24.1 that no Members needed to enter into bilateral negotiations with any other Member to grant or obtain protection or to enable domestic producers to initiate legal proceedings at the national level. She asked the representative of the European Communities to give a clarification: if currently an Argentine producer or the Argentine Government wanted to enforce an exception under Article 24.4 before a court, should Argentina enter into negotiations with the WTO Member concerned by the exception prior to alleging that exception in its favour at the national level?

36. With regard to the bilateral agreement between Canada and the European Communities, the fact that Canada had to examine some 8,000 names before arriving at 1,500 names was a waste of time, money and human resources. In this regard, she said that only developed countries like Canada could afford such examination within a certain lapse of time. If a multilateral registration system like the one proposed by the European Communities were imposed, then every Member would have 18 months to examine a large number of terms with already 10,000 terms simply from the European Communities.

37. Her delegation did not believe that GIs protection facilitated mutual trade, since this was often done by reducing customs tariff and non-tariff barriers, like sanitary and technical barriers. She said that the national GI systems of some EC member States having created a technical barrier to trade within the European Communities, they had been expanded to the Community level to overcome such barrier. This was now being amplified to a global level.

38. The representative of Canada said that the 1,500 wine names listed under the Canadian-European Communities bilateral wine agreement were eligible for protection under that agreement. Nevertheless, there was no concept of presumption in Canadian law, namely the Canadian Trademarks Act, that would apply to GIs generally or to the list in the bilateral agreement. Therefore, to implement the EC proposal, it would be necessary to amend the Canadian Trademarks Act, which had not been the case for the conclusion of the Canadian-EC bilateral negotiations.

39. The representative of Australia said that Article 24.1 had nothing to do with the current negotiations. Since this provision had been mentioned on several occasions but not in any mandate, she said that further clarifications would be necessary.

40. The representative of the European Communities disagreed with the delegation of Argentina on the interpretation of Article 24.1: there was an obligation to enter bilateral negotiations if a Member asked for them. Responding to a request for clarification asked by that delegation on the need for a country to enter into negotiations prior to using the exceptions under Article 24 at the national level, he said that that would not be necessary. He further said that, between 1992 and 1994, not only GIs but also trademarks had been harmonized within the European Communities, showing that the harmonization process had nothing to do with the Common Agricultural Policy, but with a common policy in the field of intellectual property.

41. The representative of Malaysia said that, regarding Article 23.4, her delegation considered that the creation of an entirely new multilateral system of notification and registration for wines and spirits would go beyond the purpose of facilitating protection. The current TRIPS Agreement, as reflected in Article 1.1, Article 22.2 and Article 23.1, required Members to provide the legal means for protection of GIs. Any proposal for a multilateral system that would lead to presumptions of eligibility or requirements not to refuse protection would not only subordinate the obligation of Members to provide the legal means to the rule of adopting a system that would create new obligations but could also impose such a rule. As for participation, she said that it should be voluntary and hence have no legal effects on non-participating Members.

C. OTHER BUSINESS

42. The Chairman suggested that further meetings of the Special Session should take place back-to-back with the two meetings of the regular sessions of the TRIPS Council, which were scheduled for 21-23 September 2004 and 30 November to 2 December 2004.

43. In accordance with a suggestion from the Chair, the Special Session took up the question of the Chair's report to the TNC in informal mode.[1]

[1] This report was circulated as document TN/IP/10.