

**WORLD TRADE
ORGANIZATION**

TN/IP/20
22 March 2010

(10-1509)

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

**MULTILATERAL SYSTEM OF NOTIFICATION AND REGISTRATION OF
GEOGRAPHICAL INDICATIONS FOR WINES AND SPIRITS**

6. Tough, but useful technical discussions have taken place in the past years, more recently under Ambassador Clarke's chairmanship, around the three clusters of issues identified in the reports of my predecessors, i.e.:

- (1) legal effects/consequences of registration and participation, where profound differences remain;

- (iii) The territorial nature of intellectual property rights should be preserved.
 - (iv) The Register should not impose undue financial and administrative burdens on Members.
 - (v) Special and differential treatment should be precise, effective and operational.
9. My understanding is that TN/IP/19 has been well received by Members as a fair and balanced

examples of how the implementation of the proposals on the table would be implemented at their domestic level, and others expressing willingness to make similar contributions or further supplement them.

14. On the whole, the difficulty we are facing is a lack of convergence on a single textual basis for negotiations, which reflects both the differences in Members' positions and the different nature of the proposals on the table.³ Therefore, the "3-4-5" approach should help progress work towards *one* text on the basis of which all Members can agree to continue the negotiations. I believe that such a text is possible, and that exploring the flexibilities that already exist or could be envisaged in Members' national systems is one important step towards that objective. One possibility would be to construct at a certain point in time – strictly in pace with the overall process – a text from elements emerging from the delegations themselves.

15. Technical work should focus on the substantive issues, including in particular the question of the implications of a register entry, while using and building on the foundation established by Ambassador Clarke's work. There could be more exchange of technical information about how national trademark and GI authorities presently operate and how their operation would be affected by different proposed ways of "taking account" of the information on the register.

16.

ANNEX 1

**WORLD TRADE
ORGANIZATION**

TN/IP/19
25 November 2009

Communities in respect of its earlier proposals. At an open-ended informal consultation on 1 December 2008 the European Communities circulated a statement that paragraphs 1-3 of document TN/C/W/52 superseded all previous EC proposals, i.e. TN/IP/W/11 of 2005 and the so-called "new thinking" of November 2007. On 4 December, several Members of the Joint Proposal Group circulated a list containing 64 questions to the European Communities and the other co-sponsors of TN/C/W/52. Singapore also circulated a list of questions. At an informal meeting on 4 and 5 December, as well as at the formal meeting on 5 March 2009, there were intensive exchanges of questions and replies on the basis of the questions posed.¹ Speaking on behalf of the proponents of TN/C/W/52, the European Communities grouped its answers into the three categories identified by my predecessor in his report in document TN/IP/18, namely:

- (a) the two key issues of consequences/legal effects of registration and participation where fundamental differences remain;
- (b) issues of notification and registration; and
- (c) issues such as fees, costs and administrative burdens, in particular for developing and least-developed country Members, and special and differential treatment.

5. In 2009 I held four formal meetings, on 5 March, 10 June, 23 (continued on 28) October², and 27 November. Between those formal meetings, I held informal consultations, including open-ended meetings for transparency purposes. At the March and June meetings, discussions were structured around the three categories or clusters of issues mentioned above in paragraph 4. In order to move from a repetition of positions and proposals to a di

would best be left for discussions at a later stage after the main elements of the Register had been agreed.

PART C – THE WAY FORWARD

9. The mandate for the negotiations on the system of notification and registration of geographical indications for wines and spirits is contained in Article 23.4 of the TRIPS Agreement and the first sentence of paragraph 18 of the Doha Ministerial Declaration. Article 23.4 provides as follows:

"In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS 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."

The first sentence of paragraph 18 of the Doha Ministerial Declaration ind4 7F(ei)-2.35.8(caSTD00.002 c6(ind4 fo-11(a(n

another jurisdiction is practised under various international agreements and is the consequence of a sovereign decision by countries to do so.

- (iv) The Register should not impose undue financial and administrative burdens on Members.

With respect to financial and administrative burdens, Members seem to accept that *some* financial and administrative burden may be necessary to fulfil the mandate, but that it should as much as possible be proportionate to the use and benefits of the Register.

- (v) Special and differential treatment should be precise, effective and operational.

Special and differential treatment should be provided through precise and effective provisions targeting developing and least-developed countries, including those that wish to benefit from participating in the system.

ANNEX 2

**WORLD TRADE
ORGANIZATION**

TN/IP/18
9 June 2008

(08-2700)

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

New Zealand, Nicaragua, Paraguay, Chinese Taipei and the United States ("Joint Proposal Group") in TN/IP/W/10 and Addenda 1, 2 and 3; and the European Communities' proposal, contained in the Annex set out in TN/IP/W/11. More recently the European Communities has shared with the participants in the Special Session new thinking which it has presented as an effort to narrow the gap; the references to the position of the European Communities in this report are based on this new thinking. A detailed compilation, prepared by the Secretariat, of the points raised and views expressed on the proposals can be found in document TN/IP/W/12/Add.1 and Add.1/Corr.1 of May 2007.¹

4. The elements of a registration system that have been considered in the work can be put into three categories:

- (a) First, there are the two key issues of participation and the consequences/legal effects of registrations, where there continue to be fundamental differences, even if there has been some movement in the past months. In regard to these elements, I reproduce below the position of participants as reflected in the proposals submitted and discussions in the Special Session.
- (b) There is a second category of elements on which a fair amount of detailed work has been done. These are the areas of notification and registration. While most of this work is not all that recent and further work is clearly required, in particular because positions on these matters are linked to the treatment of participation and consequences/legal effects, my tentative appreciation of the points of convergence and divergence can be found below.
- (c) Third, there are a number of other elements which depend substantially on the key policy choices to be made, in particular on the questions of participation and consequences/legal effects, and which have thus been less fully discussed so far. These include such matters as: fees, costs, and administrative burdens, particularly as they impact on developing and least developed country Members, and special and differential treatment; as well as the duration of registrations and procedures for their modification and withdrawal; arrangements for review; and contact points. These are points that need further discussion.

5. No agreement has yet been reached on the legal form of the eventual outcome and on the institutional arrangements for its management and servicing. On the former question, the suggestions on the table include a TRIPS Council decision and the addition of an annex to the TRIPS Agreement through an amendment to it. On the latter question, delegations have not excluded the possibility of inviting the WIPO secretariat to play a role.

6. There are different views on whether the work of the Special Session should be addressed in the context of the modalities decision. Some Members believe that the issue of the GI register should be part of the horizontal process in order to have modality texts that reflect Ministerial agreement on the key parameters for negotiating a final draft legal text as part of the Single Undertaking. Some other Members believe that no further guidance is necessary since the existing mandate is sufficiently clear and technical work can and should be pursued intensively on this basis in order to fulfil the Doha mandate to which they remain committed.

7. This report does not describe the range of views that have been expressed on issues of linkage between work in the Special Session and work on the relationship between the TRIPS Agreement and the Convention on Biological Diversity and on GI extension, including in regard to the coverage of

the GI register and in regard to procedural parallelism between these three TRIPS issues. This is because the issues of GI extension and TRIPS/CBD relate to matters which go beyond the mandate of the Special Session, including its limitation to GIs for wines and spirits.

Participation

8. The Joint Proposal Group has proposed:

"In accordance with paragraph 4 of Article 23 of the TRIPS Agreement, participation in the System established by the Decision is strictly voluntary, and no Member shall be required to participate.

In order to participate in the System, a Member shall make a written notification to the WTO Secretariat of its intention to participate."

9. The European Communities has proposed:

"In accordance with paragraph 4 of Article 23 of the TRIPS Agreement, the system is multilateral, that is applicable to all WTO Members.

Participating Members are Members above a certain share in world trade."

Under the EC approach, all WTO Members would be entitled to submit notifications under the system.

10. Hong Kong, China has proposed:

"Participation in the system is voluntary which means that:

- (a) Members should be free to participate and notify GIs protected in their territories.
- (b) The obligation to give legal effect to registrations under the system will only be binding upon Members choosing to participate in the system."

Hong Kong, China has also proposed that "the question of scope of participation should be revisited as part of the review" of the notification and registration system that it is proposing should be held "after [four] years from establishment of the system".

11. The range of positions taken in regard to whether and, if so, in what way registration should have consequences/legal effects in non-participating Members is described in paragraphs 25-28 of this report.

Notification

12. On the notification by Members of GIs for inclusion in the register, earlier discussions indicated a fair measure of common ground on certain aspects, but significant remaining differences on some others. With regard to the content of notifications, there seemed to be significant common ground among Members that the notifying Member would be required to:

- (a) specify the name of the notifying Member;
- (b) specify whether the good for which the geographical indication is used is a wine or a spirit;

- (c) identify the geographical indication as it appears on or is protected for the wine or spirit in the notifying Member's territory;
- (d) where the geographical indication is in characters other than Latin characters, include a transliteration into Latin characters using the phonetics of the language in which the notification is made;
- (e) specify the territory of the notifying Member, or the region or locality in that territory, from which the wine or spirit must originate in order to be eligible in that Member to be identified by the geographical indication;
- (f) include, where available, the date on which the geographical indication first received protection in the notifying Member and, if applicable, any date for the expiration of the protection currently accorded.

On point (d) there were different views as to whether it should be specified that transliterations would be for information purposes only, and on point (f) whether the inclusion of the date of first protection should be obligatory or voluntary.

13. There were different views on whether notifying Members should be required to identify how the geographical indication is protected in the territory of the notifying Member including, as appropriate, the legal instrument that forms the basi

16. It is my impression that there is a large measure of common ground among Members regarding the following issues:

- (a) the notification shall be made in an official WTO language;

22. The European Communities has proposed:

28. The following positions have also been taken:
- the legal effects proposed by the European Communities for participating Members should apply also in non-participating Members;
 - there should be no national legal effects consequent on the registration of GIs in the register.
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