WORLD TRADE ORGANIZATION

RESTRICTED

TN/IP/M/1
22 March 2002

(02-2276)

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

MINUTES OF MEETING

Held in the Centre William Rappard
on 8 March 2002

Chairperson: Ambassador Eui-yong Chung (Korea)

A. ELECTION OF THE CHAIRPERSON

1. The Special Session elected Ambassador Eui-yong Chung (Korea) 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/1721.

3. The Chairperson proposed to address the issue of observer status under "Other business".

C. DATES OF MEETINGS

4. The Chairman recalled that in the informal consultations held by Ambassador Chidyausiku on 15 February 2002, delegations indicated a preference for holding the regular Council meetings and Special Sessions back-to-back. The TRIPS Council had agreed to hold three further regular sessions this year, in June, September and November. Taking into account the desire of delegations for the meetings of the two bodies to be held back-to-back and the other rules relating to the timing of meetings, including those as laid down by the TNC, he suggested the dates of 28 June, 20 September and 28 November for the Special Sessions. This would not rule out the possibility of the Special Session deciding, after consultations and taking into account the scheduling of the meetings of the various negotiating and other WTO bodies, to hold additional meetings if necessary.

5. The Special Session so agreed.

D. ORGANIZATION OF WORK

6. The Chairperson said that, based on the consultations he had had, he would like to start by making some suggestions on the organization of the work of the Special Sessions. He recalled that Members were required by the Doha Ministerial Declaration (document WT/MIN(01)/DEC/1) to complete their work by the Fifth Ministerial Conference, that is to have negotiated a multilateral system of notification and registration of geographical indications for wines and spirits. While the exact date of the Fifth Ministerial Conference was not known, it seemed that Members would have to plan on the basis that it would occur some time in the second half of 2003. The best way of considering the organization of the work in this body would seem to move backwards from the Fifth Ministerial Conference and consider what would need to be done in order to have completed the negotiations by that time. He said that the approach he was suggesting was based on three considerations. First, the time constraint, that is to say a clear mandate from Ministers to have negotiated a multilateral system of notification and registration of geographical indications by the Fifth Ministerial Conference. Second, there were constraints regarding the frequency of meetings due to the need for scheduling meetings of the various negotiating and other WTO bodies. Third, the Special Session of the Council for TRIPS had the advantage that Members had already discussed the issue for some time; it should build on the past discussions and ideas in the work during 2002.

7. He suggested that in the interest of the efficiency of the negotiations, the work be split into two phases. The first would be based on the discussions and ideas already put forward; if necessary, new ideas would have to be injected. In this phase, the discussions and ideas might help Members identify the options before moving into the second phase, that is the final negotiating phase aimed at finding mutually agreed solutions to points on which differences remain. Factual information might be needed to help Members in the process.

8. With regard to the first phase, he suggested three issues for consideration:

- First, how could Members organize a more structured and engaged discussion of the proposals on the table than had been possible so far in the Council? To that end, he proposed to submit to Members a brief note in advance of the June meeting of the Special Session that would identify a number of points and topics which he would invite participants to address at that meeting. While he intended to consult closely with delegations in the preparation of this informal note, the note would, of course, be on his own responsibility and without prejudice to the different positions that delegations held. The purpose would be to facilitate a more organized and engaged discussion.

- Second, it would be desirable that, to the extent possible, all the main proposals that delegations might put forward should have been tabled and fully discussed before the final negotiating phase got under way. The Special Session might establish a target of no later than the third meeting in 2002 for the submission of the delegations' main proposals, while encouraging Members to table their ideas before that time if possible and not ruling out the possibility of subsequent new or revised proposals at a later stage. Indeed, proposals aimed at bridging gaps would be an essential part of the final negotiating stage.

- Third, there was also the question as to whether Members might wish to ask the Secretariat to prepare any further factual information.

9. With regard to the second phase - namely the final negotiating phase - the Chairperson pointed out that this phase might take place in the last few months before the deadline for the negotiations. Usually, the final phase of a negotiation took place on the basis of a text which was treated by the various parties as a common basis for the negotiations. Given the deadline of the Fifth

Ministerial Conference, he suggested trying to ensure that such a common negotiating basis be available by the end of 2002 or early 2003, depending on the timing of the Ministerial Conference. By a common negotiating basis, he meant a single document which contained common language on the various areas where there would be essential commonality of position and identified options, for example through square brackets or alternatives, in regard to areas where significant differences remained. There were two ways in which such a text could come into being: one would be through a paper presented by some delegations which all delegations were willing to treat as a common negotiating basis; the other was through the Chairman, with the help of the Secretariat, tabling such a paper as a basis for the work. Obviously the former approach had many advantages. But if it did not prove possible, then he, in his capacity as Chair, would be ready to assume his responsibility and table such a paper.

10. The representative of Morocco said that it would be necessary to respect certain target dates so as to speed up the process. He agreed that the Special Session should use existing material and make progress. While he agreed that participants would have to show some flexibility in relation to deadlines, he held the view that this flexibility should benefit developing countries which had small delegations and had to cover negotiations in other negotiating bodies. Developing countries had great interest in relation to the establishment of a multilateral system. Perhaps their interests had not yet been clearly spelt out but they would become clearer when the issue of extension of protection of geographical indications for products other than wines and spirits would be discussed. He urged that developing countries' concerns be taken into account in the informal consultations and that these countries be kept informed of what was happening "in the corridors".

11. The Chairperson assured delegations of his intention to give due consideration to developing countries' concerns with regard to the timing, frequency of meetings and informal consultations.

12. The representative of Australia stated that, regarding the organization of work, his delegation had no major difficulty with the approach outlined for a period of further study based on a list of issues. It would, however, be most reluctant to impose deadlines for the submission of proposals, which it would regard as pre-emptive. In this respect, most of the qualifications used by the Chairperson were agreeable to Australia. It would not, however, be prepared to agree on when a comprehensive text should be prepared. This would depend very much on how the discussions would progress in 2002. It might not be until year 2003 that some text should be brought out. He was mindful of the risks associated with coming out with a negotiating text which would simply encourage the authors of texts to load them up with extraneous issues in the hope that they could trade them away in the process of negotiation; they would be on the defensive and be forced to defend them to their death. Those who experienced what happened in Seattle knew how a heavily square-bracketed text frustrated, rather than facilitated, negotiations. Australia believed it would be better, therefore, to gain some better understanding and agreement on the substance before rushing prematurely into a text.

13. With regard to commissioning any further technical work, the representative of Australia said that there was one area where there would be value in getting some more information for all participants. He suggested that the WTO Secretariat, in consultation, if necessary, with the International Bureau of WIPO, prepare an inventory describing in summary form how each of the developed and developing country Members of the WTO had implemented their obligations under Article 23. That summary should include a definition of a geographical indication and the relevant exceptions these countries had provided under Article 24. This would be helpful for the following reasons: (a) it would give all participants a better idea of how a multilateral system of notification and registration would be implemented; (b) it would give participants a better idea of whether the proposals they had in mind would be capable of attracting broad support; (c) it would help developing countries better assess the costs of implementing the outcome of any negotiations. He was aware that around 40 countries had already submitted to the WTO Secretariat information in response

to the questionnaire under Article 24.2, but that no record of experience had yet been received from some 60 countries. It would be helpful if such information could be received for the June meeting.

14. The representative of the European Communities emphasized that several delegations had already put on the table proposals and communications quite a long time ago, and that there had been many discussions and interventions. Looking back at the content of the proposals and communications, including the comparative table submitted by the EC and their member States (document IP/C/W/259), he believed there was already so much material that a significant amount of preparatory work would not be necessary. For his delegation, from this session until the Fifth Ministerial Conference, the process would be a single one, in other words there would be one round of negotiations. There was no question that a study phase should be entered. It was a negotiating process; if there were a need for study, it should have been asked for earlier since the issue had already been discussed for several years in the Council. The Special Session should not shy away from imposing target dates and it would be helpful for the Chair to remind participants that they should try to meet such dates. To his knowledge, it was also not uncommon in other areas to proceed in that way. Target dates were important for getting the process going and for getting end results some time in the Summer or Autumn of 2003, and also in light of target dates in other areas. It would be useful for the Special Session to know what was going on in these areas and to make sure that progress occurred in parallel. For these reasons he appreciated the Chair's efforts to be constructive in order to make sure that in the June meeting there would be a focused discussion that would help make progress.

15. With regard to the note identifying issues, he held the view that this was certainly one useful way of proceeding, but that another more ambitious way would be via an annotated agenda, which was not an uncommon way of proceeding in the WTO. He wished to add another element for consideration, namely the comparative table made by the EC and their member States. He recalled that, in order to be constructive, his delegation had suggested to have the Secretariat make a comparative table of the various proposals; this had apparently not been acceptable to the entire membership. The EC and their member States had themselves, therefore, decided to produce a table in an objective and neutral manner. No delegation had indicated to the EC that the table was biased and did not reflect the content of the various proposals. Inspiration could be drawn from this table for the drafting of the note on issues ahead of the June meeting - by the end of May, so that delegations would have enough time to prepare themselves in order to effectively use the paper. If Members had difficulties with the EC table, he would not object if the WTO Secretariat were asked to make such a table on an objective basis. With regard to the timing of papers, he would urge that proposals, if any, be made available as from this Session or at the latest by early September so that participants would have time to study them. With regard to the common negotiating basis for the final phase of the negotiations, he said it would be useful if the text could be produced for the November meeting, whether by the Chairperson on his own responsibility or on the basis of a paper by a group of delegations.

16. The representative of Bulgaria said that the future list of points and issues should be relevant to the mandate of the Special Session and not distract it from its main task. The proposal to have the Secretariat prepare a paper on the implementation of obligations under Article 23.4 by developed and developing country Members would indeed distract the Special Session from the work mandated. This kind of information could well be addressed under the review provisions of Article 24.2 in the regular session of the TRIPS Council.

17. The representative of Canada said that the Council had already had long and intensive discussions on the issue and positions were well understood. Canada shared the concerns about the additional burden that might be placed on individual Members and for this reason was fully supportive of a system that was voluntary, facilitative, simple, low-cost, and limited to wines and spirits only. The TRIPS Agreement clearly indicated a requirement for Members to negotiate a registration system to facilitate protection of geographical indications – not to obligate them. Canada

was supportive of the Chairperson's suggestion to organize the work in a two-phase approach. She would, however, have concerns regarding target dates, and thought that the Special Session should be flexible in this regard. Canada also supported Australia's suggestion for the Secretariat, along with WIPO, to prepare a summary of how Members had implemented their obligations under Article 23.4, and this would also include an indication of the definition of geographical indication that had been adopted. Canada also supported the Chairperson's proposal to prepare a list of topics for discussion or an annotated agenda to help delegations prepare for the June meeting. This should not mean that attention would not be paid to documents that had been previously tabled such as the report referred to by the EC or document IP/C/W/259.

18. The representative of Switzerland noted that there were already various substantive proposals on the table which were the result of years of negotiations. Switzerland therefore did not see the need for a lengthy phase of study. While this certainly needed to have its place in the work programme for 2002, the Special Session should expeditiously move forward on the proposals already on the table and not waste time in discussing general issues not directly linked to the mandate of this body. Proposals for commissioning technical work to the WTO Secretariat on the implementation of obligations under Section 3 by WTO Members could distract time and resources from the negotiations mandated for the Special Session. As far as the suggestion for a brief note on issues or an annotated agenda was concerned, Switzerland wished to have such a paper for the June meeting and believed that it could help Members to have a more substantive discussion. Such a list of issues or annotated agenda should be oriented along the lines of the proposals already tabled. Switzerland expressed the wish to be included in the informal consultations to be conducted by the Chairperson. With regard to the real negotiating phase, Switzerland believed, with regard to timing, that this body should not wait until the beginning of next year. An earlier target date should be set and as a mental benchmark, delegations should be invited to submit proposals if not in June then, at the latest, in September so that a common negotiating basis, by the Chairperson on his own responsibility or by a group of Members, could be established for the last session in 2002 and then be substantively discussed and amended in view of the first meeting in 2003, which should be convened early in March. Such timing would allow account to be taken of the state of play and progress of discussions and negotiations in other WTO bodies and negotiating groups relevant to the negotiations in this body. Switzerland supported the suggestion made earlier by the European Communities for a Secretariat table comparing the three proposals so far received. He said that the table from the European Communities and the new one from the United States would probably not be acceptable to all Members as regards objectivity and neutrality. It seemed, therefore, that it was only the WTO Secretariat who could produce such a table.

19. The representative of Turkey supported the Chairman's thinking and suggestions. In this context, he fully supported the two-phase approach and agreed there was a need for an annotated agenda and a single paper as the basis for negotiations. It was Turkey's sincere desire to engage in substantive negotiations as soon as possible in order to gain more time for this important exercise. His delegation knew that in order to enter into meaningful negotiations, a sound basis was necessary. However, taking into account the fact that the negotiations in this field started a long time ago as a built-in agenda item, there was already a sound basis which could easily be built on. Deadlines for the submission of proposals should be flexible and each delegation should have the opportunity to do so whenever it wished or deemed necessary. He underlined the utmost importance his country attached to the issue of extension of additional protection to geographical indications for products other than wines and spirits. His delegation wished to see the negotiations start on this issue as soon as possible. It associated itself with the statements made by the EC, Switzerland and Bulgaria.

20. The representative of Hungary expressed his delegation's satisfaction that there was a mandate in the Doha Ministerial Declaration to complete negotiations by the Fifth Ministerial Conference. This long overdue issue would be one of the early harvest issues of the round. Progress would have to be made to correct the imbalance emerging from the Uruguay Round, that is in this agriculture-related issue, which was important for Hungary. No meaningful progress had been made after so many years. The proposal for a work programme by the Chairperson to a large extent met the

expectations of his delegation; it had been carefully drafted. He understood that there was an opportunity to immediately start discussing the merits of the ideas and proposals that had already been submitted. He doubted that there was a need for further study by the Secretariat. With regard to the brief note foreseen by the Chairperson, his delegation would be glad to be involved in the informal consultations. He believed it would be helpful to see a compilation of the proposals made so far. In this respect, Hungary could support the suggestion to use the EC table but would also be open to the idea of having a similar compilation by the Secretariat. Regarding target dates, he agreed with the idea that delegations should be encouraged to submit proposals, if possible before the summer break or, at the latest, in September. He agreed with Switzerland about the need to have the opportunity to see in early March the outcome of the negotiations in a revised version which could serve as a basis for decision by Ministers. With reference to Australia's request for the preparation of a compilation by the Secretariat of the national systems of implementation of obligations under Article 23.4, he said the proposal itself was a good idea but should appear under Article 24.2 rather than Article 23.4. Hungary would not be opposed to having, in the context of the regular sessions, such a paper supplementing what had already been done by the Secretariat. It was, however, of the view that such a document should not be the subject of negotiations in this body.

21. The representative of New Zealand indicated that this issue was causing a great deal of concern in his country. He did not find very convincing the argument that the fact that proposals had been around for a long time supported a speedy solution, because everyone knew that there were substantial differences and there were good reasons why there had been little progress. He noted that linkages with other areas were being made. He wondered whether the kind of concessions certain delegations had in mind were at all consistent with the underlying WTO objectives. New Zealand would therefore adopt a very cautious approach and simply take note of the various procedural suggestions.

22. The representative of Guatemala said that for his delegation, it was important to have flexibility, in particular for developing countries and, among them, the small ones.

23. The representative of the United States fully associated himself with the intervention made by Australia, especially with respect to exercising some caution concerning deadlines. The WTO had yet to establish the date for the Fifth Ministerial Conference. He would be particularly concerned about any undue speed with which it might be sought to arrive at a common negotiating basis. In this respect, he shared Australia's observations about heavily-bracketed texts. Such a text would emerge at the appropriate time as one got closer to the actual deadline for concluding the negotiations. He was not particularly optimistic that the Special Session could achieve results this year.

24. The representative of Australia recalled, in reply to arguments put forward by some delegations about his request for information, that many developing countries had made the point about the cost incurred in implementing the TRIPS Agreement. The fact was that many of them had not yet fulfilled the obligations they were formally required to fulfil more than two years ago. Australia did not know which countries had yet to implement their obligations under Article 23.4 nor did it have, for the majority of them, an appreciation of their experiences in implementing the measures that they had enacted. Regarding the suggestion that the registration system be voluntary, he pointed out that that was not Australia's interpretation of the EC proposal. Indeed, as the paper recently tabled by the United States (document TN/IP/W/1) showed, the EC proposal would oblige all Members - developed, developing and least-developed countries - to protect notified terms as long as they did not challenge them or did not challenge them successfully. Australia's understanding was that the WTO Secretariat had the ability to obtain the information as to how WTO Members had implemented their obligations under Article 23 to extend a higher level protection to geographical indications for wines and spirits. Two of the criteria that many delegations had established for a successful negotiation on geographical indications for wines and spirits was that the outcome should be capable of securing wide participation, and it should be cost-effective and efficient. Australia did not want to risk wasting time negotiating another Lisbon Agreement, which had attracted a

participation of 20 countries. It did not want to wait until March 2003 to find out that 120 Members would opt out of the multilateral system that was going to be negotiated simply because they would then realize the onerous obligations that they would have to assume. The matter was therefore highly relevant to this exercise. It would help to know how one could implement the outcome of this negotiation. In regard to the request that the EC comparison of the proposals on the table become the debating point for the next meeting, the Chairperson was right in saying that this body should debate the list of issues; there were two comparisons of proposals and participants would need to have a closer look to see which one was correct.

25. The representative of Malaysia, speaking also on behalf of Brunei Darussalam, Indonesia, Myanmar, and the Philippines, said that the Special Session provided a good opportunity to hear a number of views from Members on how to carry out the mandate contained in the Doha Ministerial Declaration. In this respect, the five countries welcomed the Chairperson's two-phase approach. They held the view that, with sufficient preparation in the first phase, they would be in a better position to participate actively and effectively in the negotiations to achieve the outcome they were looking for. They were open to the dates suggested, considering that they were target dates and hence could be indicative. As to proposals by some Members that the Secretariat should compile information available to help delegations obtain the necessary facts, she said that this would help the Special Session to progress discussions in a constructive way.

26. The representative of Singapore said that his delegation broadly supported the organization of work, which was to start with a fact-finding stage followed by a negotiating phase. It was a business-like method of implementing the Doha mandate. His delegation agreed to the flexible approach suggested in regard to timing and could go along with the group, bearing in mind the time constraints. On the shape of the system to be adopted, Singapore's preliminary view was that it should be restricted to wines and spirits, be voluntary, simple, cost-effective and its implementation should not unnecessarily burden countries.

27. The representative of Argentina said that her delegation associated itself with the statements made by the representative of Australia. Looking at the problems of implementation facing many developing countries with respect to the TRIPS Agreement and the relevance of those issues in terms of negotiations and taking on board new obligations, it would be essential to bear in mind throughout the negotiations the costs of the various proposals. Her delegation had no difficulties with the programme of work proposed. It also agreed with other delegations that there should be a certain realistic level of flexibility both in terms of submission of proposals as well as deadlines. Like other delegations, it believed that the final text should follow the achievement of consensus on basic issues which, for Argentina, focused mainly on the nature and legal effects of the Agreement. With regard to documentation from the Secretariat or other organizations, her delegation would follow the consensus while not excluding the possibility of the need for technical assistance or technical documents regarding the issues. This was a completely new area to wine producing countries like Argentina. Therefore, it would be even more difficult to participate in the negotiations and the discussions for those countries that were not even producers of these kinds of products. All participants needed to know what they were discussing and negotiating along with what the implications would be for all of them. Those who needed to be most aware of the consequences were developing countries and LDCs.

28. The representative of the European Communities pointed out that neither the mandate under Article 23.4 nor the one contained in the Doha Declaration concerning that provision was conditional upon any completion of the review of legislation under Article 24.2 or on further examination of the implementation of other provisions of Section 3. Article 23.4 did not refer to other provisions of Section 3, so it would be difficult to defend the argument that other work should be undertaken. As far as developed countries and many developing countries were concerned, they had looked for a considerable period at the way the TRIPS had been implemented, including in the area of geographical indications. He would, therefore, refer delegations who wished to know more about the

implementation of Section 3 by a large number of WTO Members to look into the report prepared by the Secretariat (document IP/C/W/253) in the context of the review exercise under Article 24.2. Certainly delegates were also aware of numerous questions answered by Members within the framework of the Trade Policy Review Mechanism. He believed, therefore, that there was a lot of information available and looking at this information should not be a reason for delaying the work in this body. With regard to developing countries' concerns, he suggested that Members should look at the EC comparative table (document IP/C/W/259): it was simple, straightforward, objective and neutral, contrary to the table recently circulated by the United States (document TN/IP/W/1). For developing countries or LDCs which had difficulties regarding the implementation of Section 3 of the TRIPS Agreement, these difficulties could be addressed in technical assistance programmes undertaken by the EC and their Member States, by the WTO and WIPO. There was plenty of information to assist Members in their work on this issue.

29. The representative of the United States introduced document TN/IP/W/1. He explained that a communication made by the European Communities last year (document IP/C/W/259) had motivated the United States to produce the paper. If the EC table presented its perspective on the "Joint Proposal" by Canada, Chile, Japan and the United States (document IP/C/W/133/Rev.1), document TN/IP/W/1 reflected the United States' perspective on the various proposals that had been tabled. The first couple of pages teased out the principal issues under each of the proposals but, more importantly, the paper asked a number of very relevant questions about each proposal. One of the major concerns was whether or not the system was binding. It was very clear from the proposals who was free to participate and what participation actually entailed. There were other issues such as what happened when a particular name was challenged or not, and what the grounds for challenging a particular name were. Since the Chairperson had invited discussions on the issues to be addressed and suggested that he might develop an agenda under his own authority in close consultation with Members, the United States had, therefore, also produced a paper entitled "Issues for Discussion in the Negotiations Under TRIPS Article 23.4" (document TN/IP/W/2). Many of the issues included in the list appeared in the first paper but there were also additional issues, some of which had been raised by other interventions in the informal consultations, in particular by Malaysia. He expressed the hope that this contribution would find support or would attract constructive criticism and would provide the Chairperson with a concrete basis for the work he intended to bring forward for the next meeting. The first item, "Participating Members", was an important issue because it seemed to lead to various results in the proposals. The second item, "Notification Procedure", concerned steps to be taken if a participating Member wanted to notify a particular name. Another fundamental issue was which geographical indications for wines and spirits would be eligible for notification; there were discussions on what was a geographical indication and there was a need to understand what geographical indication would be eligible to be included in the list. Members would have to provide a certain amount of information when seeking a registration. What system would be put in place or had been proposed to enable oppositions to any name put on the list, and what would be the grounds for opposition and its interim effect? According to one proposal, the name would be allowed to remain on the list if the ground for opposition was of a particular nature. What would be the final registration of unopposed names and the legal effects of such registration on WTO Members' rights, namely those Members who had notified names and sought their registration and those who had not opposed any particular name? Under some proposals, it would appear that Members who had chosen not to notify any name might actually fall under some obligations. For this reason, the paper contained between parentheses the words "Participants/Non-participants". With respect to some proposals, this participation would rather be extensive, even burdensome. Finally, the system, if it were developed, would have to evolve, with membership evolving, so it would need to be modified and updated. The costs associated with any system developed was a relevant topic and those associated with the various proposals might differ greatly for the Members but also for the WTO Secretariat.

30. The United States supported the suggestions made by others that it was necessary to have a thorough understanding of the existing systems. The Secretariat had already given some information

in that regard but it would be necessary as part of these negotiations to develop further understanding at the national, regional and international levels.

31. The representative of Hungary pointed out that Article 23.4 said: "Negotiations shall be undertaken in the Council …". This provision had been adopted in 1994 as part of the Uruguay Round outcome. It was difficult to characterize these negotiations as anything other than mandated negotiations. They had been dragging for quite some time. There was a mandate to complete negotiations and this had certain implications for the work in the coming months. At this stage of the negotiations in the agriculture or services areas, proposals for studies or information on national systems had not been requested. It was not unusual to ask the Secretariat to make compilations of various proposals. The WTO being a Member-driven organization, Members' proposals formed a good basis on which to start. With regard to the paper submitted by the United States, Hungary would have some problems because it was not so much a factual reproduction of the proposals but the United States' appraisal of the implications of the proposals as that delegation understood them. As far as Hungary was concerned, certain aspects of its proposal had been misrepresented. It might be useful to work not with secondary but with original sources.

32. The representative of Argentina thanked the United States for its two documents. Her delegation thought that the list of issues was a good starting-point for the Special Session's work. With regard to some other points concerning the development of these negotiations, she said that Argentina had been an active participant in the negotiations that had taken place so far on a multilateral system of notification and registration of geographical indications for wines and spirits. Argentina intended to continue to work constructively. As for the parameters that should characterize this system, the procedures should be designed to facilitate protection without generating new obligations that could be an obstacle to the circulation of products that were the subject of protection. It was important for Argentina that the registration be voluntary, be based on Article 22.1 and be transparent. With regard to future work, it believed that, based on the Doha mandate, the work of the Special Session could be more focused. Issues that were outside the Doha mandate should also be outside these negotiations. The Special Session should respect the deadlines and come up with a negotiated agreement by the Fifth Ministerial Conference. Argentina had already indicated in the past that if the negotiating process had not significantly progressed, it was precisely because of the interference created by incorporating issues other than those relating to Article 23.

33. She said that Argentina had maintained that Article 23.4 provided that there should be negotiations for the establishment of a multilateral system of notification and registration of geographical indications for wines. Ministers in Doha had adopted a political decision that, in addition to the system provided for under Article 23.4 for wines, there should be a notification and registration system in the area of spirits. For Argentina, at a certain stage, whether in the list of issues or during the negotiations, the Special Session would have to provide for the modalities under which the new obligation to establish a register of geographical indications for spirits would be incorporated into the TRIPS Agreement. Such incorporation would mean that the obligation to provide for a register in the field of spirits would have the same status as other obligations deriving from the Agreement, once the negotiations had been finalized. The text signed after the Uruguay Round was not a political declaration but was a binding treaty ratified by parliaments, and, in the case of Argentina, incorporated into the national legislation. Argentina therefore raised, as a systemic concern, the question of the need for political decisions to be incorporated into the TRIPS Agreement in order to be legally binding.

34. The representative of Chile agreed with the programme of work suggested by the Chairperson for the next meeting. This issue was an important one for Chile, requiring many details to be studied further. His delegation hoped that the final result would be simple, would facilitate trade rather than create barriers. As regards Australia's proposal for the compilation of national systems of protection of geographical indications for wines and spirits, the EC had pointed out that information was already available, including in the Trade Policy Review documents. However, his delegation did not know

whether it was possible to check all the Trade Policy Review documents and to ascertain to what extent the information was correct. Therefore, it supported Australia's proposal. This question was very important for Chile and could not be excluded from the Special Session. He also found the United States' arguments very interesting.

35. The representative of Canada said that her country fully associated itself with the comments offered by the representative of the United States. It particularly appreciated the structure of the paper in that it was similar to others that had already been tabled in the Council because this would facilitate comparative evaluation. It also shared the perspective taken in the paper, particularly in relation to the way it had framed the responses to the questions. With regard to the list of issues for discussion, it believed it was a fair evaluation of issues covered to date in the Council's discussions.

36. The representative of the European Communities said that, to date, three different proposals on a multilateral register had been tabled: by the European Communities and their member States (document IP/C/W/107/Rev.1); by Canada, Chile, Japan and the United States (document IP/C/W/133/Rev.1); and by Hungary (document IP/C/W/255). The EC proposal envisioned a system where WTO participating Members notified their geographical indications, which would be subsequently examined and could be opposed by other WTO Members within a time-limit of 18 months following the notification. Opposition prevented any legal effect in the territory of the opposing country and called for negotiations to resolve the problem causing the opposition. The proposal also attempted to tackle a few shortcomings contained in Article 23 such as the lack of uniformity in the implementation of geographical indication protection and the associated costs of registering/defending geographical indications abroad by attaching a rebuttable presumption of validity in relation to WTO-registered geographical indications in WTO participating Members. It also tackled another shortcoming, namely the lack of predictability in geographical indication protection by preventing all WTO Members from refusing protection at the national level for unopposed registered geographical indication on the basis that (i) the name did not comply with the WTO definition of a geographical indication under Article 22.1, or that in the territory, the name was either (ii) generic or (iii) homonymous. Other exceptions such as prior use or prior registered trademarks remained unaffected by the operation of registration and, thus, remained available. Hungary tabled a proposal which largely supplemented that of the EC by advancing that issues causing a country to oppose registration of a geographical indication should be solved through compulsory arbitration. It should be noted that the EC proposal, contrary to what some had suggested, did not impose any definition of wine and spirit, did not touch upon the question of oenological practices or manufacturing specifications, and did not attempt to phase out existing usurpations of geographical indications. The system was forward-looking and intended to provide tools to avoid geographical indications being usurped in the future. Existing usurpations would be left to bilateral or multilateral negotiations under Article 24.1. The proposal did not replace a system of national protection but might facilitate access to it. It did not create obligations regarding the available level of substantive protection but only obligations of a procedural nature aimed at facilitating access by producers to the already existing level of protection under Articles 22 and 23. It surely fell squarely within the TRIPS framework insofar as it only attached procedural mechanisms to facilitate existing protection. Furthermore, the phasing out of the use of certain exceptions was covered by the mandate of Article 24.1. The system was not costly or cumbersome as it did not require specific administrative structures and it was up to WTO Members to implement their provisions in the way they saw fit.

37. With regard to the paper made available by the United States (document TN/IP/W/1), he held the view that this paper, rather than being objective and neutral, reflected the US vision of the existing proposals. On the other hand, the EC table did not treat the elements of the proposals from its perspective, but only tried to juxtapose them next to each other. He wished to inform delegations that the EC could not agree with several aspects of the paper. Under the section entitled "European Union Proposal", the third bullet wrongly attributed to the EC proposal that names that were not examined and challenged by a Member must be protected by that Member. As had already been indicated, the

EC proposal had as its main effect a presumption of validity in Members which had not opposed. This presumption was, however, rebuttable. In other words, domestic authorities might decide that, in light of evidence provided, the notified name should not be protected. Full protection could only be achieved via national registration. This was clearly illustrated by point D.3 of the comparative table prepared by the EC and their Member States (documents IP/C/W/259). For that reason, the EC proposal did not replace national registration. In the fifth bullet point, the United States seemed to claim that thousands of terms would be notified. The EC did not see why this would be the case under the EC proposal and not in others. In the fifth bullet point, it was also incorrect to say that reciprocal benefits would not be achieved by all Members; the EC did not see where in their proposal this had been stated. It would seem in any event that determining whether benefits were reciprocal could not be determined by the number of notified geographical indications but by their economic and trade significance. These were only a few illustrative examples. The EC would examine the paper in further detail. He further noted in the US paper under the heading "What happens when the term is not challenged?", the following answer according to the Joint Proposal: "No effect". One delegation had previously said that it would feel frustrated to learn that after months of negotiations a number of WTO Members would opt out of a voluntary multilateral register; he too felt frustrated about discussing a proposal which was meant to have no effect.

38. The representative of Australia stated, in reply to certain questions that had been implicitly posed by some delegations, that his country was fully committed to fulfilling the decision of Ministers to complete negotiations envisaged under Article 23.4 on a multilateral system by the Fifth Ministerial Conference. Australia's approach would be based on the following considerations: (i) that any system should genuinely facilitate international trade as opposed to protecting national markets or distorting international trade; (ii) that it would facilitate the protection of geographical indications provided for in the TRIPS Agreement; (iii) that it would not impose new obligations in relation to the protection of geographical indications; (iv) that the system would accommodate the diversity of national systems which WTO Members utilised to give effect to their obligations under the TRIPS Agreement; (v) that the system be capable of attracting broad support from all Members; and (vi) that the system be administratively simple and cost-effective. Australia was not able to accept the proposal put forward by one delegation because that proposal failed to meet most, if not all, of the above-mentioned considerations.

39. He said that most of the wine producing country Members were well aware of the significant differences of view which had emerged in recent years regarding the degree of government intervention and regulation in almost all areas of the production, distribution, labelling and marketing of wine in some major consuming countries. Those countries who were members of the OIV (Office International de la Vigne et du Vin) were aware of the significant differences of view which had emerged within their industries on the approach to international trade. New world wine producers had endeavoured to remove themselves from the yoke of intervention and regulation by formulating new approaches to standards and compliance systems which would help to facilitate trade, encourage innovation and investment, stimulate competition and bring to consumers a wider diversity of wines at competitive prices. Many countries had witnessed the substantial investments which European wine companies had made in new world countries in the last years. As one of those wine countries, Australia was not interested in seeking to adopt at a multilateral level a bureaucratic and costly regime of compulsory registration adopted by one albeit very large group of traditional wine producers whose approach to wine production, trade and marketing was steeped in a culture, tradition and custom very different from that which prevailed in Australia. Nor was it ready in the area of intellectual property rights to adopt an approach which would force substantial new obligations on Members and create a new form of unqualified intellectual protection. Australia was prepared to look at an approach based on the so-called "Joint Proposal" but only if it met the above-mentioned tests. He complimented the delegation of the United States for the two papers it had circulated and said that Australia would like to reflect on them.

40. The Chairperson said that he thought it was important to get, as a first step, a general understanding on the work programme. The next step, the fulfilment of the mandate, was a daunting one and would need concerted efforts by its membership; he hoped that this could be achieved before the Fifth Ministerial Conference. The mandate was very clear and very specific: the Special Session of the TRIPS Council was mandated to have negotiated the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Ministerial Conference. He thought at this Session there had been a very useful exchange of views and he took note of all the various positions not only with respect to the work programme he had suggested but also with respect to a number of substantive issues. After listening to various positions, he would not ask for endorsement of the work programme but would rather note on his own responsibility that there seemed to be a general understanding among the Members that the suggestions he had made were a useful way of organizing the work. These suggestions provided for flexibility, especially with regard to time-frames with soft target dates. The arrangements that had been suggested could be reviewed and improved as the work proceeded. As regards the meeting in June, he thought that the Special Session could proceed as he had suggested. He intended to hold informal consultations to prepare the second Special Session, including on the informal note listing points and issues for discussion at the next meeting. With regard to the inventory of information concerning the implementation of obligations under Article 23, he noted that there was no clear agreement among the Members and proposed to continue consultations on this issue.

E. OTHER BUSINESS

41. With regard to Ethiopia, the Holy See and Sao Tome & Principe, which had observer status in the WTO, but were not participants in the negotiations as defined in paragraph 48 of the Ministerial Declaration (document WT/MIN(01)/DEC/1), the Chairperson said that the question of observer status for them was likely to be addressed by the TNC at a later stage, and suggested that the Special Session wait for the decision of the TNC.

42. The Special Session so agreed.

43. The Chairperson recalled that there were a number of international intergovernmental organizations which had observer status in the TRIPS Council. These were: FAO, IMF, OECD, UN, UNCTAD, UPOV, World Bank, World Customs Organization, WIPO and WHO. One way of handling the issue of observers would be to simply grant these same organizations observer status in the Special Sessions of the TRIPS Council. It might be that not all of them would have a close interest in the subject-matter of the deliberations of the Special Sessions, but then such organizations would be unlikely to attend the meetings. This approach would have the merit of simplicity. An alternative approach would be for delegations to identify those organizations which they considered might be in a position to contribute towards the Special Session's work and for only those organizations to be invited. Another consideration that he wished to highlight was the special status of WIPO under the TRIPS Agreement as well as its extensive work and experience relevant to this mandate. The informal consultations indicated substantial support for the first of the options, but the view had also been expressed that this matter should be dealt with as a horizontal matter by the TNC. He, therefore, proposed that the Special Session come back to this matter at its next meeting in the light of any action taken by the TNC in the interval.

44. The Special Session so agreed.

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