



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

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD ON 3 MARCH 2011

Chairman: Ambassador D. Mwape (Zambia)

SUBJECTS DISCUSSED

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1 NEGOTIATION ON THE ESTABLISHMENT OF A MULTILATERAL SYSTEM OF NOTIFICATION AND REGISTRATION OF GEOGRAPHICAL INDICATIONS FOR WINES AND SPIRITS

1.1. The Chairman recalled that, as foreseen in the work programme circulated on 13 December 2010, he had held a series of drafting group consultations with a number of sponsors of the proposals on the table, namely the joint proposal, the proposal contained in TN/C/W/52, as well as the one by Hong Kong, China. The Least Developed Countries (LDC) Group had been added to this small drafting group for the last round of consultations in February. Since January, following the TNC's call to develop text in all negotiating groups before Easter 2011, this drafting group had worked through the list of six possible elements1 for a Register for Geographical Indications (GIs) for Wines and Spirits that the Chair had suggested on 7 December 2010. With respect to the organization of meetings, each series of drafting consultations in the small group had been followed by an open-ended informal meeting for the purposes of transparency and inclusiveness, at which the draft composite text had been shared with Members as it developed. Such open-ended meetings had been held on 13 January, 27 January and 11 February.

1.2. With respect to the composition of the drafting group, the Chair said he had applied the formula that Members themselves had chosen to use in the so-called "small brainstorming group" that had met outside the WTO. That formula was a balanced representation of the two sides to which Hong Kong, China had been added as a third proponent. After the LDC Group – together with other delegations – had made a textual proposal on the element of special and differential treatment it was also invited to join the small drafting group.

1 These six elements are: Notification, Registration, Legal Effects/Consequences of Registration, Fees and Costs, Special and Differential Treatment, and Participation.

1.3. The Chair emphasized that the small drafting group process should not be seen to preclude Members from discussing, coordinating or developing text among themselves and, on that basis, to table such agreed proposals in the consultations. In fact, he said, this process would still benefit if that could occur not only within the existing camps, but even across both sides of the debate, and he continued to encourage Members and group coordinators to create and utilize any such opportunity where possible. Regarding the mandate to produce a negotiating text, the Chair reiterated that any text should emerge – as much as possible – from Members themselves, in line with the general directions laid out for this phase of the overall negotiations. In the group consultations, delegations had the opportunity to make textual proposals or comments that built on all of the past experiences and achievements of the Special Session, including the so-called "3-4-5 approach" and previous textual proposals, as well as taking a fresh constructive look at the issues.

1.4. He said that since mid-January the drafting group had managed to follow the above methodology and completed the exercise by putting text on paper on all the six elements. In view of the Special Session's track record this was no small measure of success, and he thanked all delegations for their patience and engagement. The state-of-play of the drafting group's work was reflected in the paper that had been circulated to delegations on 28 February 2011. With regard to the drafting group's paper, he recalled the two important points of principle of this organization that applied in particular to the work the group had undertaken. First, the composite text had emanated exclusively from Members themselves, not from the Chair. Second, the draft composite text represented work in progress and was without prejudice to Members' positions on the overall outcome of the negotiations. Members were working on the understanding that nothing was agreed until everything is agreed, and that Members could revert to any issue of the text at any time.

1.5. He said that, although this process had progressed quite far, it still remained fragile and delicate, which was why he suggested to maintain the format of small group meetings for the time being. Seeking Members' indulgence and understanding in that respect, he said that it continued to be his intention to open the text up to drafting suggestions from the entire membership once that stage had been reached before the Easter deadline. However, looking at the number of square brackets in the current text, he did not believe this would be constructive at the present stage, and he therefore did not intend to open the text for amendments in this session. Furthermore, the purpose of this formal meeting was for delegations – particularly those not present in the drafting group – to be able to put on record their views on the progress of the consultations and the current composite text.

1.6. In view of past experience he reminded delegations that the mandate in this Special Session was for negotiations on the establishment of a multilateral system of notification and registration of GIs for wines and spirits. He said that, despite having received repeated assurances from all sides that this would be respected, Members had still spent considerable time talking about whether or not the composite text should be neutral with respect to possible GI extension or not. This was very unfortunate. Against that background – and although this issue has found its way implicitly into the draft composite text – he would like to ask delegations to keep this particular discussion outside this forum. He further suggested that delegations refrained from repeating known positions and focussed their comments on the current state-of-play and the composite text. To quote the TNC's Chairman, "please keep your answering machines turned off".

1.7. The representative of Canada, speaking on behalf of the Joint Proposal Group, said that a revised version of the joint proposal was available in the room and would be submitted to the Secretariat for translation and circulation at the end of the meeting. The new version of the joint proposal, TN/IP/W/10/Rev.3, had been reformatted to be consistent with the overall structure found in the draft composite text and it included the new textual proposals on special and differential treatment provisions that the joint proposal co-sponsors had recently provided in the informal drafting group process. He said that, as pointed out in the cover note and towards the end of the first paragraph of the document, the Joint Proposal Group remained very much committed to the Chair's process and to the overall shared objective of formulating a single text without square brackets, but believed it would be helpful to provide the Membership with a revised joint proposal in order to illustrate more clearly what were the two different visions on the table: one which stayed fully within the mandate – namely the joint proposal, and another which was not compliant with the mandate.

1.8. In introducing the new text of special and differential treatment in Section E of the document, he said that the Joint Proposal Group had always viewed their proposal to be the most development-friendly one on the table, in large part because – consistently with the mandate – Members could choose whether or not to participate in the system. That said, the group had also listened intently to the perspectives of others as Members had engaged more concretely in the idea of special and differential treatment. It had clearly emerged that the decision whether or not to participate in the system was a policy decision, and that developing countries, and particularly LDCs, should be able to make that policy decision without being constrained by capacity issues. For that reason the group had come up with specific measures that would help to ensure that developing countries, including LDCs, interested in participating or in consulting the registry would have special and differential treatment (S&D) provisions to draw from.

1.9. The joint proposal text had been divided into two sections - one dealing with transitional time periods, and another with technical assistance. The language was familiar to Members as it was largely drawn from Articles 66 and 67 of the TRIPS Agreement. With respect to the transitional time periods, the new proposal was consistent with the mandate in that it was based on voluntary participation. Another proposal, from the LDC Group, the African Group, India, Brazil, China and others, also proposed transition periods of 10 and 20 years respectively, but in that proposal the clock started immediately upon operationalization of the system. The Joint Proposal Group, in contrast, was of the view that developing countries, and particularly LDCs, consistent with the voluntary nature of participation, should have additional flexibility to decide for themselves when they wanted to have that clock start running. The designation of the number of years for the transition period had deliberately been left as "x" and "y", because the group would appreciate the opportunity to hear from developing countries, particularly LDCs, as to what they believed a transitional time period should look like. While the Joint Proposal Group was made up of developed and developing countries, there were at present no LDC Members part of that group, and it would therefore be very interesting to hear those delegations' perspective on how "x" and "y" should be defined.

1.10. The portion dealing with technical assistance was also very straightforward. It was based on TRIPS language and it was worth pointing out that technical assistance would be available to developing and particularly least-developed country Members seeking assistance with respect to participating in or even just consulting the Register itself.

1.11. Another representative of Canada said that her delegation welcomed the circulation of the draft composite text for a GI register for wines and spirits. Although getting to this point in time had been a challenge, she was pleased that Members had been able to follow through on the Chair's step-by-step work plan on the six elements plus a preamble text. As a co-sponsor of the joint proposal, Canada was particularly pleased to have contributed to the text proposals on S&D. For the first time in these negotiations, Members had been able to assess the GI register for wines and spirits in light of tangible provisions related to S&D. Overall, the draft consolidated text was a document Canada could work with. She was hopeful that it would be possible in the near term to achieve the ultimate goal of establishing a multilateral system for the notification and registration of GIs for wines and spirits.

1.12. However, she said, no obstacle to achieving this objective was bigger and more problematic than the insistence of a few Members to ignore the mandate captured in Article 23.4 of the TRIPS Agreement, which had been agreed to again by Ministers in paragraph 18 of the Doha Declaration, and reinforced by Ministers for a third time in paragraph 29 of the Hong Kong Declaration. Members had been specifically charged with the responsibility of establishing a multilateral system where participation was voluntary and the scope of product coverage was expressly limited to wines and spirits. There were two visions on the table: one that was completely within the mandate, the joint proposal, and another that was not compliant with the mandate, the EU proposal. While populating the consolidated draft text was a notable achievement, it would ultimately be of little consequence if Members could not take the next step of converging on the text. Canada was ready and willing to help in this effort, but could only do so if there were clear and identifiable assurances that the mandate for these negotiations was fully respected by all Parties. The issue of mandate was often characterized by the differences of view pertaining to scope and participation. However, Canada was also concerned with the EU's interpretation of the terms "facilitate the protection" contained in Article 23.4 which it had transformed in their proposal into a "TRIPS plus" legal effect. Two specific concerns for Canada in this regard were the concepts of *prima facie* evidence and genericness.

1.13. The EU proposal sought to create a system in which the placing a term on the register would constitute *prima facie* evidence that the term met the TRIPS definition of a GI in all markets. Given its difficult experience in the bilateral context, Canada was not ready to accept as *prima facie* evidence that a term constituted a GI in its country of origin, let alone in any other markets. She recalled that a few years ago the EU had attempted to register in Canada many terms that did not meet the criteria of a GI in their own country of origin. In fact, only one quarter of the thousands of terms that had been presented to her delegation as GIs had actually qualified as GIs in their domestic territories. This had been problematic then, but what was even more problematic today was that the EU now went one step further and asked Members to blindly accept that the registered terms qualify as a GI not only in its domestic territory but also in the territory of all other Members. This would interfere with the sovereign authority of a Member to implement its own application process, as it would constrain domestic verification procedures. This was in direct contradiction of the fundamental TRIPS principle of territoriality. Canada was of the view that every Member must retain its ability to screen, verify and oppose terms that it deemed should not receive GI protection.

1.14. The EU proposal also modified the applicability of Article 24.6, an exception for generic terms, by reversing the burden of proof. This reversal would shift the burden to Canadian administrative bodies and stakeholders, requiring them to prove that the term was generic, in order to prevent GI registration. This would alter the balance in the TRIPS Agreement, giving GI holders rights in all markets, without providing other legitimate users the certainty of legal process in rebutting the registration by the GI right holders. Canada would like to know why the burden of proof would be shifted to third parties using generic terms that were in the public domain, as opposed to requiring the right holders to prove that they should own a monopolistic right. This was contrary to the ideology of intellectual property rights. Canada could not accept a registry that would affect the rights of its citizens and stakeholders to use certain terms that it deems generic.

1.15. In conclusion, she said Canada remained committed to making progress in these negotiations, but a number of obstacles had to be overcome in order to achieve this objective. Canada was also highly committed to a transparent negotiating process in which Members were able to discuss their specific concerns openly. To this effect, she said that her delegation was available to engage in discussions with any Member who might have questions or comments on the joint proposal.

1.16. The representative of the European Union said that his delegation appreciated the Chair's efforts, patience and guidance for delegations in developing the draft composite text which had now been circulated to the entire membership. Completing the program established at the end of 2010 and developing the draft that was being circulated had not always been easy, but he believed that the outcome fairly reflected the views expressed throughout the consultation process. This was also the reason why the draft contained a substantial number of brackets. This Special Session meeting was a good opportunity to share the outcome of the informal consultations with the rest of the membership and to ensure full transparency. His delegation was ready to explain the proposals on the table, to answer any question and to consider any suggestion to improve the quality and the clarity of the text. It was also important to note that the composite draft was a work-in-progress document and that the readability of the draft and the clarity of the text would certainly need to be improved. Nevertheless, at this stage, the draft reflected the main approaches that had been discussed during the consultations.

1.17. He said that it was apparent from the draft that the EU's approach was fully in line with the communication from July 2008 when there had been broad consensus among two thirds of the Membership on the approach described in document TN/C/W/52 ("W/52"). Mindful of the efforts all Members of the coalition had made to agree on a common platform, the EU's approach in the draft composite text faithfully transposed the W/52 principles. That being said, the EU was of course open to improving the language to clarify any doubt that could arise. Although his delegation had understood that this meeting was not intended as a drafting session, it was his impression after the last intervention that the EU's proposal was still unclear to some delegations. He would therefore like to clarify the ideas behind the EU's drafting proposals as they appeared in the draft composite text.

1.18. Regarding the preamble, he said that, as currently it was still unclear what exact structure, format or instrument would embody the result of these negotiations his delegation did not see a need for a preamble. However, once the content of the legal text had become clear, and if

Members still felt the need, his delegation would be prepared to consider the content of a preamble.

1.19. Regarding participation in the Register, the question of whether participation should be voluntary or mandatory had been extensively discussed in previous meetings of the Special Session and in the current process. The EU's position remained clear and unchanged. The Register was to be a multilateral system – otherwise it would have been specified as "plurilateral" – and, in principle, all WTO Members should be part of the system. The idea that a voluntary Register would be an adequate S&D measure has been rejected by both developing and least developed countries. The rationale of the EU's position was clear from the proposed draft in B1 and in D1: Members "may" notify a GI and "shall" consult the Register and take its information into account when making a decision on GIs and trademarks. The principle has been extracted from these two paragraphs and recalled in the specific paragraph A1 related to participation. This also strictly reflected the position established in TN/C/W/52. While it had been argued in the past that the Register should be voluntary because of costs and burdens to Members, it was now clear from the proposal on the table that the Register that was being proposed would entail very limited costs or administrative burdens to Members.

1.20. Concerning notification and registration, he said that the main idea in paragraph B1 was that, in line with TRIPS Article 22.1, Members would be able to notify GIs to the Register which were protected in their respective territories. Members would only notify GIs that were protected domestically, according to the domestic rules implementing the TRIPS Agreement. In order to address concerns over the transparency and reliability of the register his delegation had suggested including in the draft a few elements to ensure that the register would provide reliable information. However, knowing that such provisions also had to fit into all Member's legal systems, the drafting had tried to cater for such differences. For instance, information on the date of protection received in the country of origin or the date when such protection ceased was considered useful and should be communicated to the Register, only if that was available under the respective domestic systems. If not, then obviously there was no obligation to notify such information. This was the case in the EU: there was no date of expiration of a GI protected under the GI legislation and there was therefore no obligation to notify this information. The provisions on updating the register related to modifications that might be made to the register information and to the possible removal of a previously notified GI.

1.21. He said that, although his delegation had explained on numerous occasions the objective of the proposal and the intended effects of the register, it was ready to further clarify should there be any remaining doubts. It was also useful to recall what effects the Register did not have. The Register did not grant automatic protection. It did not change the current rules in the TRIPS Agreement on protection or the exceptions available. It was up to the domestic authorities in each Member to apply the TRIPS Agreement and its domestic legislation. The Register did not change the means of protection used by Members. The content of the register would be taken into account by the domestic authorities in charge of taking a decision in a specific case. This is why the Register would not create additional burdens or costs: authorities would look at it as part of their existing domestic processes.

1.22. He said that the effect was simple: if there was no proof to the contrary, the GI was considered a GI as complying with the TRIPS definition. Two of the three proposals in the composite draft text referred to the concept of *prima facie* evidence. This was not a new legal term or an unknown concept. Domestic authorities would be the ones to decide whether they had proof to the contrary regarding whether or not a term met the GI definition within the normal procedures already available in each WTO Member. With regard to the draft composite text on genericness, the objective was simply that those relying on that exception had to substantiate their assertion. Interventions during previous TRIPS Special Sessions had confirmed that Members were already operating in such a way: exceptions invoked had to be substantiated. This simply encapsulated a general principle of good administration and common procedural requirements in Members' systems.

1.23. With respect to concerns regarding a possible extra-territorial effect of such a proposal he said that his delegation's proposal did not contradict the principle of territoriality: the domestic authorities were the ones that would take the decisions: they would decide if there was proof that the term in question was not a GI, and they would then decide whether or not the GI should be protected according to their own domestic rules. The register would not affect the ability of

domestic authorities to decide that a term was generic in their territories or that prior rights applied. The current approach of simple effects had gathered the broad support of two thirds of the Membership in TN/C/W/52 and the drafting in the composite text reflected this approach.

1.24. On costs and fees, he said that they had not yet been fully assessed, which was why the provisions were meant to remind Members to tackle this point once the exact shape of the Register was known. His delegation, just like other Members, aimed at a simple and easy to use system as foreseen on the basis of TN/C/W/52.

1.25. With respect to the provisions on S&D, he said that GIs had the potential to transform traditional know-how into intellectual capital and that this was precisely why GIs offered an interesting asset to DCs and LDCs. The link between agricultural products' quality and reputation and their territorial origins offered a means to promote small businesses, exports and rural development. DCs and LDCs had a natural advantage in that regard and many examples and practical experiences of producers confirmed that GIs were an asset for DCs and LDCs. The development characteristics of GIs were often mentioned by a wide range of sources which highlighted a number of benefits linked to the overall sustainability of a territory: the emphasis on localised production fostering rural integration because producers, traders, exporters and supply chains interacted at local or regional level; the positive impact on job development; the development strategies for multifunctional rural development, including regional cooperation between local partners; the positive identity of regions leading to development of tourism, improvement in the general infrastructure and in rural services. It was therefore no accident that TN/C/W/52 had attracted the support of a large number of DCs and LDCs.

1.26. He said that, as clearly established in TN/C/W/52, provisions on S&D were an important element of the proposed draft, and the EU was fully in line with that approach.

1.27. The representative of Australia said that the text-based discussions over the last months had usefully allow Members to clarify the meaning and impact of various proposals on the table, and to consider the relative benefits, costs and risks associated with each one. While this process had helpfully led to the creation of a single consolidated text and had enabled Members to engage in a meaningful technical consideration of these important issues, it had also increased his delegation's real concerns regarding what was being sought by the European Union in these negotiations. Australia had previously outlined its strong concerns about the proposed legal effect to the EU text, which he believed was inconsistent with the fundamental TRIPS principle of territoriality and would create a system in which a placement of a term on a register would constitute *prima facie* evidence that the term met the TRIPS definition of a GI in all markets. That was simply not an issue of definition only. As Members were required to protect GIs under the TRIPS Agreement, if there was a presumption that a GI met the definition of a GI in all markets, then Members were indeed required to protect it.

1.28. He said that the proposed legal effects would also limit the Article 24.6 exception for generic terms by reversing the burden of who would need to establish that a term is generic. His delegation believed these significant legal effects would upset the balance of rights and obligations in the TRIPS Agreement and significantly increase rather than facilitate protection granted to GIs and impose undue costs and administrative burdens on all Members, especially developing country Members. In practice, the EU proposal would require all WTO Members to protect thousands of GIs regardless of whether they would normally be eligible for protection under their own laws and regulations and give GI holders presumptive rights in all markets, creating uncertainty and risk for other legitimate users.

1.29. He said that Australia was also deeply concerned that the European Union continued to insist on elements of the register which were outside the scope of the mandate for these negotiations. The linkage drawn between the register for wine and spirit GIs and GI extension had significant implications for the nature and the scope of the register and would make it increasingly difficult for his delegation to engage in technical negotiations on the register. To be clear, Australia was not willing to negotiate a register for all products. Australia was a proponent of the joint proposal for a voluntary register that met the mandate of these negotiations and respected the principle of territoriality while adding real value to the current system and facilitating protection of wine and spirit GIs without imposing unreasonable burdens on governments and industry. His delegation strongly supported the revised version of that text tabled today, which had been amended to incorporate additional language on S&D, specifically in relation to implementation

periods and technical assistance. In his view it was clear that Members faced a stark choice between the kinds of registers proposed and Australia would encourage all Members to seriously consider the implications of the proposals on the table.

1.30. The representative of Japan said his delegation welcomed the circulation of the draft composite text and the introduction of the revised joint proposal TN/IP/W/10/Rev.3. His delegation would like to take this opportunity to make a couple of points regarding the multilateral system on notification and registration of GIs for wines and spirits. He said that it was evident from the two different titles at the top of the draft composite text that there was a fundamental difference in views on what was being negotiated in the Special Session. The proposal from the European Union, Switzerland and some other Members went far beyond the negotiating mandate given by Ministers. That mandate from the Doha Ministerial Conference was clear: to negotiate the establishment of a multilateral system of notification and registration of GIs for wines and spirits. It was important to be consistent in that mandate, and in that context Japan appreciated the title of the Chair's cover page of the room document which clearly reflected the accurate mandate.

1.31. Regarding substantive provisions of the draft composite text, he said that the legal effects or consequences of registration, especially the so-called *prima facie* evidence was a concept which did not exist in the joint proposal or other proposals. It was the understanding of his delegation that a *prima facie* case had to be based on sufficient evidence and legal argument, and that when a *prima facie* case was made, the burden of proof moved to the other party. *Prima facie* evidence by itself established a "*prima facie* case" in the absence of proof to the contrary, and therefore had to be legally equivalent to sufficient evidence with legal argument and only that could justify the legal consequence of shifting the burden of proof. However, this was not the case here. Both, the EU proposal and the Hong Kong, China proposal suggested that registration of GI information notified by a Member which protected the notified GI in its territory would be considered as *prima facie* evidence that the registered GI met the definition of a GI of Article 22.1 in all other WTO Members. In these proposals, a GI registration was automatically considered *prima facie* evidence without sufficient legal argument to raise a presumption, although the said notification and registration could not be considered sufficient evidence to support the claim that the registered GI met the definition of a GI under Article 22.1 in all other WTO Members. Therefore, the proposal which automatically considers a mere notification and registration of a GI of a notifying Member as *prima facie* evidence could upset the balance between a person claiming GI ownership and a third party and would therefore be unreasonable. Such a reversal of the burden of proof was not acceptable for his delegation.

1.32. He said that, through bilateral negotiations, Japan had some experience with this burden of checking a number of GIs in order to determine if these GIs should be considered as GIs in Japan. It had been a heavy burden for Japan, and such burden could be put on each WTO Member if the so-called *prima facie* evidence concept were to be applied. Japan would therefore like to encourage all Members to carefully consider the proposals on the table. While there was no proposal by the W/52 Group, which was often reputed to represent more than two thirds of WTO Members, there was an EU proposal supported by some W/52 proponents on the key issue of legal effects and/or consequences of registration. The joint proposal on the other hand was more Member-friendly. It did not imply *prima facie* evidence effect, which meant that it was much less burdensome, and its principle of voluntary participation provided complete flexibility for Members. The revised version now had newly introduced S&D provisions, which gave more comfort to Members. It was therefore obvious that the joint proposal was the most valuable option for Members within the scope of the mandate. His delegation would continue to engage in discussion on this important matter.

1.33. The representative of China said that her delegation welcomed the draft composite text on the multilateral system of notification and registration of GIs as a basis for future consultations on this issue. While her delegation had well understood the Chair's comments on the mandate for the Special Session, it was against discriminating between wines and spirits and other products and would therefore like to restate its position on this issue. China supported negotiations on all three TRIPS issues, namely, the GI register, GI extension and TRIPS-CBD, and that such negotiations should be held in parallel in different fora. With respect to the multilateral system of notification and registration of GIs, China believed it should apply not only to GIs for wines and spirits, but to GIs for all kinds of foods. At the same time developing country Members and LDCs should be granted S&D, including conditional time periods, exemption from registration fees, and technical and financial assistance. China would continue to actively engage in the future consultations on TRIPS issues and was looking forward to a comprehensive and fruitful result in this regard.

1.34. The representative of Argentina said that his delegation appreciated the consultations that had taken place on the multilateral Register. However, as the draft composite text was complex and difficult to read for those not participating in the consultations, the Joint Proposal Group had today circulated a revised version of its proposal (TN/IP/W/10/Rev.3) to give Members a clear idea of what exactly is being proposed. As Canada had explained, a new section E in the document contained provisions on S&D based on a transitional time period applicable to the obligation in paragraph D.1 of the proposal. That paragraph established the participating Member's commitment to ensure that its procedures include the provision to consult the Database when making decisions regarding registration or protection of trademarks and GIs for wines and spirits in accordance with its domestic law. The new joint proposal text also included provisions on technical assistance for Members participating in the system and for non-participating Members wishing to consult the Database.

1.35. He said that, as noted by Canada, Australia and Japan, the joint proposal was the only one conforming to the mandate of Article 23.4 of the TRIPS Agreement, which prescribed voluntary participation in the Register. The EU proposal entailed serious legal consequences for Members. These consequences were even more serious for developing countries, which, under the EU proposal, were required to bear the heavy burden of proof in determining, on the basis of information not easily available to them, whether or not the registered GI complied with the GI definition in Article 22.1 of the TRIPS Agreement. Members had to be clear on this point: if a developing country, regardless of its efforts to do so, could not find the evidence necessary to make this determination, or if there was no evidence at all, then according to the EU proposal it had no other choice but to grant the GI concerned the special protection under Article 23 of the TRIPS Agreement. This not only resulted in an unacceptable modification of the rights and obligations under the TRIPS Agreement, but also in an intolerable burden for developing countries, which had neither the capacity nor the resources to conduct such investigations.

1.36. He said that the proposal on S&D circulated by the African Group, the LDC Group, Brazil, China and India reflected the views they had on the consequences of the EU proposal by requesting implementation periods of between ten and twenty years.

1.37. He said that the Joint Proposal Group stood ready to continue the negotiations. However, Argentina was concerned that the question of the mandate had now crept into the text and how that would further impact on the outcome of the negotiations. Although he would heed the request not to address this matter now he wished to express his delegation's hope that a way would be found to address this matter, in line with the TRIPS mandate and the mandate conferred by the Ministers.

1.38. The representative of Malaysia said that his delegation welcomed the initial results of the consultations in the form of a draft composite text on all six elements of the proposed multilateral register. While the text was still being studied in capital, his delegation would like to make some preliminary comments, in particular on the subject creating the greatest difficulty for Malaysia, i.e. legal effect or consequences of registration. In that respect, his delegation's particular concern was paragraph D.1. Malaysia did not agree that Members should be obliged to consider that the inclusion of a term in the register constituted *prima facie* evidence that the term fulfilled the definition of a GI under the TRIPS Agreement. This would assume that just because a term was a GI in one country, it was also a GI in another country. This argument was flawed as words could mean different things to different people in different places.

1.39. He said that his delegation had further difficulties with accepting the contents of the register as *prima facie* evidence. Firstly, this would go against the principle of territoriality of IP protection. To give an illustration, he said the current position was that, in order to obtain GI protection in Malaysia, the applicant would have to submit his application in Malaysia and, once his application was approved and included in the Malaysian register, the applicant would be issued a certificate of registration. This certificate was then *prima facie* evidence that the term fulfilled the definition of a GI in Malaysia. However, if the register would constitute *prima facie* evidence that the term fulfilled the definition of a GI, this would mean that the GIs included in the multilateral register would have the same legal weight and value as a GI that had been registered in Malaysia. Hence, there would no longer be a need for any foreign GI owner to seek registration of a GI in Malaysia to obtain protection there. They would simply register their GI in their country of origin and then, once the GI had been notified to the WTO and included in the WTO register, the owner would have

the same legal rights and effects as if he had registered the term in Malaysia under the Malaysian law.

1.40. Secondly, the proposal also reversed the burden of proof. While normally, in order to obtain IP protection, the burden was on the applicant to prove that the subject-matter fulfilled the required criteria, this burden was reversed in paragraph D.1. This paragraph introduced a presumption that the term was indeed a GI and it was for others to prove that the term was not a GI. This reversal of the burden of proof was inappropriate and could have serious consequences on the protection of the public domain. When an IP right was granted, it came at a cost to the public. The public suffered a loss because the subject-matter was taken away from the public domain and exclusive rights over it were given to an individual. Therefore it was important that there were safeguards that prevented the public from suffering any unnecessary losses and that those who sought to obtain a right should prove that they were deserving of this right. Placing the burden to prove that the subject-matter fulfilled the criteria to receive IP protection on the applicant safeguarded the interest of the public because it ensured that a subject-matter would be taken away from the public domain only in cases where the applicant deserved holding their IP rights. Reversing the burden of proof as suggested would therefore have serious implications for the rights of the public and erode the safeguards that the law imposed.

1.41. He noted that, under the current draft composite text, once a term was notified the administering body did not perform substantive examination, but only carried out formality checks before including the term in the register. This meant that accepting that registration had *prima facie* effects was equivalent to recognizing the original registration in the originating Member. This posed a problem for several reasons. As the registration of a GI was the end result of the registration process, Members were being asked to recognize this result without any assurances that the process of registration itself was credible. Currently Members used many different procedures for recognizing and registering GIs, including through a registration process, judicial decisions or through international agreements. Some of these procedures were stricter than others. For example, if a GI gained recognition through a judicial decision, the evidentiary and procedural requirements of judicial proceedings would apply, which would entail a high burden of proof. In contrast, if a GI gained recognition through a registration process, the burden of proof would be less since it was an administrative proceeding. The registration processes in Members also differed with respect to strictness. In light of the different procedures and systems that Members had in place in recognizing and registering GIs, it would be inappropriate that the same legal weight should be accorded to all.

1.42. His delegation also disagreed with the view that having a simple register with no legal effects would be ineffective in facilitating the protection of GIs. This could be illustrated by looking at the other branches of intellectual property. With regard to patents, when an examiner examined a patent application, he would have to determine the inventiveness and the novelty of the invention. Patent examiners normally searched on certain recognized databases, such as the databases of the European Patent Office, the US Patent and Trademark Office and of other offices such as those in Japan or Korea. This was currently the common practice in Malaysia. Nothing in Malaysian law required consultation of these foreign databases or obliged Malaysia to give certain weight to them. However, as a matter of practice, they were almost always relied on by examiners and had proved to be useful. Hence even though there was no legal requirement to consult or give specific weight to the content of these registers, they were still useful in helping patent examiners making decisions regarding the patentability of the invention. His delegation believed that the same was true for the proposed GI register which, even without legal effects, would be useful and would facilitate GI protection. His delegation was looking forward to providing views on the specific drafting of the text in the next open-ended drafting session.

1.43. The representative of Chile said that, as a sponsor of the joint proposal, his delegation had participated constructively in the negotiating group. It had been open to suggestions and opportunities to improve the text, in particular with regard to its use by developing and least developed countries, and the result was reflected in an additional proposal on S&D. His delegation's aim was to have a negotiating text ready by the end of April; in this context, there were two aspects of particular importance for Chile.

1.44. First, with respect to the mandate, he said that for the Chairman and the Joint Proposal Group there was only one possible reading of the Special Session's mandate, namely to negotiate a multilateral system of notification and registration of GIs for wines and spirits which facilitated,

and not increased, the protection of such GIs. Chile was willing to work in that framework, but its flexibility to reach agreements and move forward was dramatically reduced if some Members change and broaden the negotiating mandate arbitrarily in order to address their interests in other areas.

1.45. Second, he said that, as the draft composite text might appear complex to Members that had not participated in the negotiating group, the Joint Proposal Group had circulated a third revision of their proposal (TN/IP/W/10/Rev.3), so that all Member were informed in a clear and transparent manner of the benefits of adopting either the simple and voluntary register described therein, or a more costly and complex one as that proposed by the European Union. In this regard, he would like to highlight, in a preliminary manner, some of the effects that certain elements of the EU's proposal could have on Chile's system in practice.

1.46. With regard to participation, he said that mandatory legal effects for all WTO Members proposed by the EU meant that all Members, including those with no GIs, had to take the responsibility for protecting the thousands of GIs belonging to the EU. Even though a major wine producer, Chile only had a limited number of GIs for wines and spirits, around 70 in total. Participation in a registration system was therefore something that required careful consideration and should certainly not be a mandatory obligation.

1.47. With regard to the consequences of registration, he said his delegation welcomed the EU's repeated and constant willingness to try and explain its proposal, although such explanations sometime complicated things. In the negotiating group, the EU had said that its proposal involved not one or two, but three legal elements or consequences for all Members: first, all WTO Members would be obliged to take into account the GIs on the Register when deciding on the protection of a trademark or a GI in their domestic systems. Second, the simple act of the EU notifying a GI into the Register would mean that within the framework of domestic protection procedures, the EU's GIs would enjoy a presumption of validity, thus transferring the burden of proving that the GI did not comply with the TRIPS definition, and the cost of doing so, to domestic applicants.

1.48. Third, additional requirements would have to be met if domestic intellectual property offices wished to apply the exception under Article 24.6 of the TRIPS Agreement regarding the genericness of terms. According to the procedure for registering trademarks and GIs in Chile, the genericness of a term was determined according to criteria applied by the National Industrial Property Institute. However, should the EU's proposal be accepted, the IP office would no longer be able to fully apply its own law to determine the generic character of a term, since it would only be able to determine genericness where a third party intervened and substantiated or proved such genericness, or where the office itself proved that the term in question was generic. These were additional requirements which did not currently exist in the TRIPS Agreement which would restrict the room for action of domestic offices.

1.49. With respect to S&D, he said that the Joint Proposal Group had made additional efforts in this area, and India, Brazil, the African Group and others had also submitted their proposal. He found it striking that the EU was referring critically to the voluntary nature of the joint proposal as a form of S&D when it had not made any proposal of its own in this regard.

1.50. Regarding the costs of the register, he said that, similar to the proposed legal obligations for all Members, the suggestion by the EU that all WTO Members should pay for the administration of this system in itself highlighted the burden of the EU's proposal. Such an arrangement would undoubtedly benefit those Members with a greater number of GIs. The costs of the system as proposed by the EU were substantial, especially considering all the translations that would be needed. In contrast, the administration costs of the proposed database would be minimal.

1.51. He said that, in short, although the EU claimed that the *prima facie* evidence applied only to the definition and not to the protection of GIs, it was crystal clear from its proposal that this meant automatic protection for EU GIs, the transfer of costs to producers and holders of local trademarks and GIs, and a limitation of the flexibility currently provided for under Article 24.6 of the TRIPS Agreement. In addition, the EU proposed that the cost of this be borne by the entire WTO Membership. His delegation could not agree to such a proposal, but would rather - in line with a Spanish saying - let someone else carry that particular burden.

1.52. The representative of Chinese Taipei said her delegation welcomed the circulation of the draft composite text as well as the revised version of the joint proposal as announced by Canada. While the initial reaction had been to recognize the achievement of the draft composite text - the first of its kind since the Round started almost ten years ago - as a positive sign for the negotiations, upon a closer look his delegation remained concerned with the numerous brackets throughout the text and the differing views still held by Members. She said that, although it could be pragmatic to display all the differing views in the first drafting phase, her delegation had particular concerns with regard to the issue of mandate.

1.53. As other joint proposal co-sponsors had done, Chinese Taipei wished to reiterate that, first, the scope of the mandate given to this negotiating group by Article 23.4 of TRIPS Agreement was to establish a multilateral system of notification and registration of GIs for wines and spirits. In this regard, her delegation appreciated the Chair's cover page with a clear heading. Second, Article 23.4 referred to GIs "eligible for protection in those members participating in this system", which meant that Members were free to choose to participate in the system on a purely voluntary basis. Lastly, the consequences of registration were meant to facilitate, not to increase, the protection of GIs for wines and spirits. The domestic examiner was obliged to consult the database before making any decision, but the importance of the information obtained from the database could be assessed on a case-by-case basis in accordance with domestic laws. The mandate spoke for itself very clearly with respect to scope, voluntary participation and the obligation to consult the database.

1.54. While the first phase of drafting work had been completed, a lot of work remained to be done. The issue of submitting the text by the Easter deadline was paramount, and the way in which Members would take this next step would be crucial. Her delegation appreciated the methodology currently applied in the drafting work. It continued to support the Member-driven and bottom-up approach, and recognized that the small group meetings were useful and efficient for producing a single text. However, it would like to stress that the results of the small group discussions had to feed into the multilateral process, so that the principles of full participation, inclusiveness and transparency would be respected throughout the process. Her delegation stood ready to work with Members and play a constructive role in the crucial next stage.

1.55. The representative of Singapore said that his delegation welcomed the circulation of the draft composite text dated 25 February 2011, and wished to make the following observations and requests for clarification.

1.56. With respect to the title of the text, he said that this should ideally reflect the mandate in paragraph 18 of the Doha Ministerial Declaration (WT/MIN(01)/DEC/1), where Ministers had agreed "to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits". Singapore believed that the title proposed by the Joint Proposal Group suitably achieved this.

1.57. With respect to participation, the draft text reflected two opposing positions. Singapore was of the view that participation should be voluntary. In principle, the issue of mandatory or voluntary participation should not be taken in isolation, but be considered along with the consequences of registration. His delegation urged that fellow WTO Members consider, in reviewing the overall effect of participation and the consequences of registration, the third guiding principle set out in Ambassador Clarke's report (TN/IP/19), which stated that the territorial nature of intellectual property rights should be preserved.

1.58. In relation to the element of notification, his delegation supported having a greater level of detail in the notifications as this would allow Members to have more information on the protection accorded to the term as a GI in the country of origin. In this respect, his delegation agreed with the inclusion of details such as the GI term being protected, the geographical region it related to, and the details of the notifying Member and right owners. It would further be useful for notifications to include details on how the requirements of TRIPS Article 22.1 were met. His delegation trusted that the small drafting group would continue its excellent work in identifying and scoping out the details required for notifications.

1.59. With reference to paragraph B.5 of the draft text, he said that Hong Kong, China had raised a valid concern as to the administrative capacity and resource constraints of the WTO Secretariat.

It might thus be appropriate, as suggested by Hong Kong, China, to limit the number of notifications or applications to be processed each year. Singapore would like to seek clarification from the small drafting group on whether the limits contemplated were aggregate limits for all countries or country-level limits, or both.

1.60. With respect to the element of registration, his delegation supported the concept of an on-line register open to all to access and search free of charge. The register should be updated from time to time to keep the information up to date. He also noted that in paragraph C.6 (a), Hong Kong, China had proposed a requirement for the registration to be periodically renewed. Such requirement would be useful to ensure that the register was kept updated and did not contain obsolete GIs, e.g. GIs that had fallen into disuse in their country of origin. It also complemented paragraph C.6 (f) of the draft text, which imposed an obligation on Members to notify the Secretariat of GIs that ceased to be protected, or that had fallen into disuse, in their country of origin. Singapore would nonetheless like to seek clarification from the small drafting group on whether or not there would be any measures to ensure compliance with the obligations under paragraph C.6 (f).

1.61. Regarding the consequences of registration, his delegation noted that there were broadly two differing positions. Under the first position, advocated by the Joint Proposal Group, registration did not automatically confer, at the domestic level, any enhanced protection in participating Members. Members only needed to consult the system when making decisions concerning the domestic protection of trademarks and/or GIs for wine and spirits. Under the second position, advocated by some members of the W/52 Group and Hong Kong, China, the registration would be *prima facie* evidence that the term in question met the requirements of Article 22.1 of the TRIPS Agreement. With such *prima facie* status accorded to the term, the party seeking protection of the term in another Member's territory no longer bore the initial burden of proving that the term met the definition of Article 22.1 of the TRIPS Agreement. Instead, the burden was shifted to the other Member to prove that the term did not meet such requirements. This reduced the flexibility of Members in deciding whether or not to grant GI protection to a term, and increased the rights enjoyed by the term in the other Members' territories.

1.62. His delegation urged that, in resolving the differences in positions, Members bear in mind the five guiding principles set out in Ambassador Clarke's report (TN/IP/19) and generally agreed to by WTO Members during the March 2010 TRIPS Council Special Session meeting. In particular, Singapore would like to highlight the first, third and fourth principles, which respectively stated that the purpose of the Register was to facilitate, not to increase, the protection of GIs for wines and spirits, that the territorial nature of intellectual property rights should be preserved, and that the Register should not impose undue financial and administrative burdens on Members. While his delegation believed that the register could be one of the sources Members could consult when making domestic decisions on the protection of trademarks and GIs, domestic decision-makers should be left with the flexibility to decide if and how much weight they should accord the information on the Register, in accordance with their domestic systems. His delegation believed that this approach would be more consistent with the generally agreed principles in TN/IP/19.

1.63. On the element of Fees and Costs, his delegation noted the two differing proposals on the table. One proposal had the cost of setting up and administering the system being borne by the central budget of the WTO Secretariat while the other proposal contemplated the costs of the system being fully recovered from its users. In resolving the differences in positions, and deciding if and how fees should be imposed and costs should be apportioned, Members might wish to take the following thoughts into consideration: fees, if set at an appropriate level, could serve to ensure that the administrative capacity and resource constraints of the WTO Secretariat were appropriately and efficiently utilised. This would complement any limits set on the number of applications to be processed by the WTO Secretariat each year. Furthermore, if fees were to be imposed, there should be transparency in how they were set. The fees set should also be fair to all Members, bearing in mind in particular that there would be differences in the number of applications filed, and hence the utilisation of the resources of the register, by each Member. Finally, his delegation would like to seek clarification on whether the document titled "Geographical Indications Registry for Wines and Spirits: Approximate Costing", currently annexed to the draft composite text, was intended to form part of the final text, or was only provided as an explanatory note.

1.64. His delegation hoped these comments would be useful to fellow Members, especially the small drafting group, and looked forward to receiving clarifications from the relevant delegations on the queries raised.

1.65. The representative of Switzerland said that, while delegations had managed in record time to lay the foundation of a text based on the different proposals on the table, the task was not over as the negotiating group would have to further engage in the negotiations on the register. Her delegation had hoped this would have already begun on some of the points, at least at the beginning of this year, but this had not been the case. Once again, the group had been confronted with delegations who had simply maintained their positions, well known since 2005, and which were actually a formalization of an older proposal, discussed in detail since 2002, and even before 1999. This "negotiating" mode and repetition of set positions over ten years had not enabled this group to reach consensus nor had it helped to make any meaningful progress. Clearly, it was not in this spirit - repeating a set position without trying to understand the needs of others within the framework of the group's mandate - that Switzerland had begun to negotiate. It was in a spirit of compromise that Switzerland had joined the W/52 proposal in order to find a solution to the register issue. The W/52 proposal contained a number of flexibilities and had gathered large support since 2008. It contained two other elements that were intricately tied to the register, namely the extension of Article 23 protection to GIs for all products, and the declaration of the country providing/the source of genetic resources, and/or associated traditional knowledge in patent applications. There was a negotiating mandate for these two issues in the Doha Declaration.

1.66. With the joint proposal, that had been resubmitted to the Special Session and presented in the drafting consultations at the beginning of the year, Switzerland had once again been confronted with a proposal that envisaged the establishment of a simple database, containing information which WTO Members could, if they so wished, consult, and with which they could do whatever they liked. Her delegation could not see how the repetition of these three elements would enable the Joint Proposal Group to respond to the mandate from the Uruguay Round in TRIPS Article 24.3, namely to create a multilateral – and not a plurilateral – system of notification and registration that would facilitate the protection of GIs. The joint proposal clearly did not fulfil the mandate.

1.67. In order to clear up any misunderstandings, she wished to reiterate the following points that her delegation supported with respect to the GI register, and as part of the W/52 proposal. Switzerland's objective continued to be the establishment of a system for notification and registration that was as simple, practical and non-bureaucratic as possible, while facilitating the protection of GIs pursuant to the Special Session's mandate. As stated in previous meetings, Switzerland proposed to extend this register to GIs for all products. It was with this in mind that her delegation had continued to propose specific elements of the register. She did not see which elements would be specific to GIs for wines and spirits only and could not be applied to GIs for other products should there be an agreement on GI extension. The Special Session's mandate was to establish a multilateral register, which logically meant that all WTO Members, except those benefitting from a transition period, had already the obligation to provide protection to GI, and should therefore be bound by the effects of registration.

1.68. She said that S&D measures would have to be established as indicated in the W/52 proposal, and the views of the W/52 proponents had already been reflected in the composite text. However, only once the different elements of the register had been put together could this group to know in more detail how to adjust the S&D provisions to the beneficiaries' needs.

1.69. She said that in order to respond to the mandate of facilitating the protection of GIs, it was indispensable to go beyond the mere mandatory consultation of a source of information. At the level of register there needed to be a clear insurance that national authorities dealing with the protection of GIs, be they GI or trademark examiners, judges or any other administrative bodies, would have not only an obligation to consult the information on the multilateral register, but also to take due account thereof when taking their decisions by giving that register content the necessary weight in their own domestic procedures. Her delegation wondered how the protection of GIs would be facilitated if there were no obligations for Members to consult the register and no specific value of information consulted in their territory. Only providing for certain consequences from consulting the register would lead to an actual facilitation of the protection of GIs.

1.70. The two elements proposed in the W/52 proposal and reflected in the composite text concretized the objective of facilitating protection. Both elements were in the strict framework of the current TRIPS rights and obligations and respected the current balance. The first element consisted in attaching to registrations the effect of a *prima facie* evidence regarding the GI definition under TRIPS Article 22.1. This *prima facie* evidence could be challenged at any time in all WTO Members and would not automatically create protection in any WTO Member, as national procedures would have to be respected in order to obtain specific protection. The second element consisted in considering claims of genericness only if they were substantiated. This element reflected what was already set out in most national procedures for GI or trademark protection where the examining authority or the third party claiming genericness had to explain why the term in question was considered generic.

1.71. She said that these two elements would facilitate the protection of GI right holders without preventing any Member from applying the exceptions under the current TRIPS Article 24 or calling into question the principle of territoriality, as the decision to protect a specific GI would be made at national level in the Member where protection was sought in accordance with its national procedures.

1.72. She hoped that these explanations had helped clarify the proposed elements on the register that her delegation supported as one of three prongs of the W/52 proposal. Her delegation hoped that the Special Session would see some changes in the Joint Proposal Group's positions so that negotiations could begin towards a compromise solution that would facilitate the protection of geographical indications.

1.73. The representative of South Africa said that his delegation, like Canada, had gathered valuable experience in its long history of negotiating certain bilateral instruments with the European Union. South Africa fully subscribed to the joint proposal and to all views expressed and documents circulated in this context. It also rejected the "horizontalization" that the W/52 proposal had introduced into the current debate, and reiterated the view expressed at previous meetings that there was, as stipulated in Article 23.4 of the TRIPS Agreement, no mandate to negotiate on issues other than GIs for wines and spirits.

1.74. Whilst welcoming the draft composite text, his delegation was of the view that certain elements still required clarification, and that positions on many of the technical issues were still far apart as shown by the number of square brackets. The mere fact that the draft composite text of 23 February 2011 had two headings showed that Members still did not agree on a mandate that was obvious. While his delegation was not adverse to the establishment of a voluntary register, it had also raised certain points in relation to the nature and administration of the register, which had been embedded in the draft composite text. His delegation had always indicated that the issues of costs and capacity needed to be taken into account and therefore welcomed the additional provisions on S&D. South Africa had also indicated in the past its substantial difficulty with the issue of legal effects of the register, which had not been conclusively dealt with in the draft composite text. In this regard, his delegation was concerned by the effect that the provisions on the burden of proof and the obligation to consult the register would have on the respect for the territoriality principle and the domestic capability of sovereign countries to impose and inspect conditions they deemed applicable.

1.75. The representative of Turkey said that that the work program from January until March and the six elements proposed by the Chair in their sequence had facilitated the negotiations, and that timely open-ended meetings had contributed to the transparency of the process. Her delegation was of the view that the draft composite text would serve as a useful basis for further negotiations. Turkey had always held the view that there was parallelism between the three TRIPS issues of the GI Register, GI Extension and TRIPS-CBD. Recalling that the W/52 Group was expected to provide a joint text on the GI-Register as soon as possible, she said that consultations within the group were still ongoing in view of the importance of all three TRIPS-related subjects. Clearly, due to the large number of sponsors and the potential consequences of the issues tabled in the W/52 proposal, coordination was taking time. With respect to the GI-Register, her delegation was pleased to see that the composite text covered textual proposals aiming at extending the register to all products. A register limited to wines and spirits would be a repetition of a shortcoming of the Uruguay Round which kept meaningful TRIPS GI protection to geographical indications for wines and spirits only.

1.76. The representative of the European Union said that his delegation supported the statements made by other W/52 sponsors and in particular the additional elements given by Switzerland, and would briefly focus on a few points.

1.77. The first point related to the two different approaches to the mandate: one was the Joint Proposal Group's position, which had remained unchanged for some ten years. The other one was the W/52 proposal, by delegations which had all shown flexibility – in order to join the W/52 proposal, and some also before even joining it – and had tried move the negotiations forward. He said that it was difficult to imagine that this ship would ever reach port unless delegations from the Joint Proposal Group were ready to move from positions they had held, and from a text where not a comma had been changed, for ten years. The fundamental question regarding the mandate was whether or not the joint proposal actually met the minimum level required by the mandate. The answer was clearly negative. As had already stated, it was very difficult to argue that a voluntary system, i.e. a system where Members could consult a register, and then do whatever they wanted with that information, would actually facilitate the protection of geographical indications. This point was being shared by several other delegations. Whilst the Joint Proposal Group had on a number of questions orally indicated that this information had to be taken into account, its proposal did not state that clearly.

1.78. In response to delegations from the Joint Proposal Group which had alluded that the mere fact that a GI, once it was entered into the Register, would trigger an avalanche of examinations in all the WTO Members, he said that this would not be the case. It would only be in the context of the examination in their domestic systems that they would have to consult the register.

1.79. With respect to the numbers of GIs to be examined, he invited members to consult the EU website, which showed that the exact number was well below the exaggerated figures cited by some delegations. That being said, even for those GIs included in the EU register, the assumption that all of them would necessarily be registered in all WTO Members was dubious.

1.80. In response to Argentina's implying that the necessity for countries to assess whether or not a term complied with the GI definition would be an additional burden, he recalled that Members to which the TRIPS provisions applied already had to make that kind of assessment today. One could perhaps argue that giving the registration the status of *prima facie* evidence would simplify rather than complicate the matter, but this did not change the fact that assessments were already now taking place in the context of Members' domestic procedures, whatever those domestic procedures might be.

1.81. On Malaysia's question of whether or not the inclusion of a GI in the register would be "the end of the story", he said that that was not the intention of the proposal. On the contrary, it would be the beginning of a process. First of all, the GI notified for registration would trigger a national process: for example, an application for registration in Malaysia. The fact that a GI was included in the multilateral register would not obviate the need to seek protection under Malaysia's particular domestic rules. What it did was to ensure that there was a register to consult and that the effects of the register were limited to constituting *prima facie* evidence that the term notified satisfied the definition of a GI in the country in which it originated. That did not mean that it necessarily satisfied the definition in a third country. This was a matter for national authorities to examine when the request was presented for protection. The process of examining was typically a two-step process: first, to determine whether the registered GI did satisfy the definition; and second, to determine whether it deserved protection.

1.82. In response to the comment made by Chile in relation to the burden of proof regarding genericness, he said that it was the EU's understanding that claims of genericness already had to be substantiated in all systems. Chile would be the first exception where a particular claim that a term was generic did not have to be substantiated. The draft proposed did not change anything from current practices, if not in all then at least – after Chile's intervention – in the vast majority of Members.

1.83. The representative of the United States welcomed this meeting of the Special Session to take stock of the negotiations on the establishment of a multilateral system of notification and registration of GIs for wines and spirits. His delegation fully appreciated that the establishment of the multilateral system of notification and registration would be part of the single undertaking, and

was committed to fulfilling the mandate of TRIPS Article 23.4. The consultations had resulted in delegations from different sides coming together for the first time to create a consolidated bracketed text. The discussions in the small group consultations over the past few weeks had also been enlightening and informative. In that connection, his delegation wished to give other delegations not represented in the small group consultations a sense of the negotiations to enable them to make their own decision about what type of multilateral system would be most appropriate for their countries.

1.84. The Joint Proposal Group had put forward a simple, cost-effective and uncomplicated proposal that clearly fulfilled Article 23.4 mandate and would provide good value in assisting WTO Members in their domestic decisions in a manner that clearly facilitated protection. Indeed providing for an international database for examiners to use that all WTO Members had set up would be a feature that did not yet exist. As indicated by the representative of Malaysia, this was equivalent to other systems of intellectual property, as there was no reason to treat GIs differently.

1.85. Whilst appreciating the efforts by the European Union to present its own ideas for texts, he said that regrettably these proposals would dramatically exceed the TRIPS Article 23.4 mandate and require fundamental changes to the national legal systems of many Members. If the Joint Proposal Group had continued to support the same approach for such a long time, it was because the mandate had remained the same since the beginning of the Doha Round. It was not only the Joint Proposal Group which was troubled by the scope and breadth of the EU's proposals, but many other delegations within the W/52 Group had raised serious concerns with the EU's proposals.

1.86. His delegation welcomed the S&D provisions, reflected in the third revised text of the joint proposal (TN/IP/W/10/Rev.3), and aligned itself with Canada's comments. The Joint Proposal Group developed this text, consistent with principles of voluntariness underlying its approach, after close consultation within the group and in particular with developing country Members. He noted that there had not been any S&D proposal from the European Union.

1.87. Through the small group meetings, his delegation had been able to get a clear sense of the EU's objectives in this negotiation, and wished to share some of its concerns. The explanations given by the EU representative in this session simply did not match up with the composite text circulated. First, the EU delegation had confirmed that its proposal was intended to go beyond the Article 23.4 mandate, and provided for the notification and registration of terms other than those related to wines and spirits, as reflected by the EU's support of the title in brackets. When the EU delegation had been asked about the extension of Article 23.4 mandate, the response was that its interpretation of the mandate was different. The representative of the United States wondered then how much clearer the Article 23.4 mandate could be. The only way to interpret the Article 23.4 mandate as including more than wines and spirits would be to ignore the words "wines" and "spirits" clearly expressed in that Article. Moreover, the EU's proposal would appear to extend to a potentially limitless array of products, well beyond the wines, spirits, agricultural products and foodstuffs that were currently covered in the EU. Were there any goods that would not be included? Would the register cover EU's industrial GIs, for example textiles or manufactured goods?

1.88. Secondly, he said, the EU delegation had confirmed that its proposal would give extraterritorial legal effect to EU GIs. This would unacceptably override the fundamental territoriality principle underpinning the global IP system, and cross the boundaries of the Article 23.4 mandate to "facilitate" protection. Although the EU delegation's interventions appeared to suggest that there was no extraterritorial effect, this was contradicted by the draft composite text. In Section D.1, the EU proposed text provided for a *prima facie* presumption that an EU GI would be a GI in other Members' national systems, and shifted the burden of proving the contrary.

1.89. Thirdly, based on the EU delegation's interventions, it was clear that the EU proposal could significantly burden domestic systems. For example, in many systems, the burden was on the party requesting protection to prove that it had the exclusive right to use the GI, and not up to everyone else to prove that no such right existed. The EU proposal would reverse that burden on right holders, examiners, and the general public in other Members to prove that the foreign GIs were not eligible for protection in their respective territories. He asked delegations to imagine the burden on their domestic systems if they were confronted with hundreds, if not thousands, of GIs that the EU or another WTO Member would request to be registered when the proposed

registration system came online. How would their national authorities cope with such a request and how would their producers react?

1.90. The EU proposal appeared to also shift the balance of rights and obligations in the TRIPS Agreement so that those using generic terms or common names for certain goods or services would bear the burden to affirmatively prove that those terms were in fact generic or common. The language of Section D.1(a) and (b) in the draft composite text led off with the *prima facie* presumption that it "satisfies the definition of 'geographical indication' laid down in Article 22.1 of the TRIPS Agreement" and followed with the provision that genericness must be "substantiated".

1.91. As said earlier by the EU delegation, this meeting had been set aside for Members' questions. The first set of questions related to the excessive burden on each Member's domestic system, both in terms of resources and costs that would be caused by the EU proposal. How much would the EU proposal cost globally for WTO Members, consumers, trademark holders and generic producers? How much would it cost WTO Members, particularly those with no domestic industry associated with GIs, to create and sustain a system for what seemed to be the protection of European GIs and the defence of trademarks and generic terms already on the market?

1.92. A second set of questions related to why the EU proposal shifted the balance of rights and obligations and upended the principle of territoriality. These questions arose from the EU proposals on legal effects in Section D. Why were GI holders absolved of the obligation to establish GI protection in each market in which they desired to be protected and to sell products, while pre-existing trademark holders and producers of products whose names were generic were required to defend, at great cost, a right they already possessed? Why was a presumption favouring GIs established for all WTO markets, based on consumer perception in a single market? Why was the presumption not as it currently was, i.e., the priority of trademarks, GIs and generics was decided in and by each WTO Member? How did the burden shifting proposed by the EU impact on consumers? Why should consumers in markets with pre-existing trademarks and generics be required to accept the perceptions of consumers from foreign markets? In other words, why should a consumer in South Africa, Chile, Australia or Jordan who perceived a reputation in a trademark, be asked to suspend that perception and accept as a given that a GI notified in Northern Italy necessarily had a given reputation? Why must consumers bear the burden of this kind of reputational fiat? Indeed, as said by the delegation of Malaysia, words could mean different things to different people in different places.

1.93. Responding to the EU comment that these questions would be a matter of domestic law and implementation, he said that, without knowing the answers to these questions, Members' understanding of the EU proposal would be incomplete. His delegation would welcome answers from the EU and its supporters in the coming weeks to these and other questions, and would work closely with Members not involved in the small group consultations to ensure that their questions are answered and their concerns taken into account.

1.94. The representative of India said that, whilst he was aware of the Chair's reminder of the precise mandate of the Special Session and the dislike manifested by other Members with regard to the issue of GI extension, he wished to reiterate his delegation's view that negotiations on the GI register confined to only wines and spirits would be incomplete and create further discrimination between product categories. He agreed with comments made by the delegation of the United States that GIs should not be treated differently. Other IPRs did not differentiate between product categories, so why should GIs? It should be borne in mind that most of the GIs of interest to developing countries were not for wines and spirits, but for other products. India had 149 registered GIs, which were mostly for handloom textiles, handicrafts and agricultural products.

1.95. India, along with Brazil, China, the LDC Group and the African Group, had proposed texts on S&D, reflected in the composite text of 28 February. It was in keeping with the Doha mandate of paragraph 44 that S&D provisions would be an integral part of WTO Agreements. The proposed S&D provisions included specific transition periods for developing countries and LDCs, provisions on exemption from registration fees, technical assistance from the WTO Secretariat and from developed country Members in accordance with Article 67.

1.96. On the Chair's observation that the composite text was "work in progress", he said he was doubtful about progress. In light of the statements made by other delegations, he saw the challenge for the Chair to come up with a text by Easter.

1.97. The representative of Peru said the draft composite text represented "work in progress" with a great number of square brackets, and could be used as a basis for the establishment of the GI register. Even though it was a complex issue in and of itself, with already many interests at play, this issue was linked to the other two TRIPS issues, TRIPS-CBD and GI extension. This linkage existed in the view of more than two-thirds of the WTO Members, and could not be ignored, especially if Members wanted to achieve agreement over the coming months. The delegations which had co-sponsored the W/52 proposal had both offensive and defensive interests on the three issues. In order to get results on these issues, it was necessary to find an appropriate balance between the needs and the interests of many developing countries.

1.98. With regard to the multilateral register, there still was a great deal of work to carry out on the text: the compilation of different proposals on the table was just the first stage. The time had come to move into the negotiation process and to have a polished draft enabling delegations to move to a horizontal process. As regards future work, his delegation trusted that, whatever path would be chosen to move forward, the Chairman would lead the group through its work, ensuring a transparent and inclusive process, where nothing would be agreed until everything was agreed, and where Members would be able to raise any question on any part of the text at any time.

1.99. The representative of Cuba said that the participation of Members in a notification and registration system must be voluntary because the mandate under TRIPS Article 23.4 referred to "those Members participating in the system" and not to all Members of the WTO. For Cuba, voluntary participation meant that Members who did not participate in the system did not have any obligation to consult the GI register. Nevertheless, non-participating Members could, if they so wished, consult the register. The simple act of consulting the register did not mean that the non-participating Member would be bound to apply any consequences or legal effects of presumption of extraterritorial nature. Such effects would imply that the non-participating Member had accepted, and committed itself, to consider a GI on the register as *prima facie* evidence that it was a GI under Article 22.1 of the TRIPS Agreement. Merely consulting the register also did not mean that the Member had to provide proof to the contrary to reverse the presumption if administrative or judicial decisions to grant or to reject a trademark or a geographical indication had not taken into account a geographical indication on the register. He said that the system could not violate the principle of territoriality. Therefore there was no obligation for Members' national authorities to automatically recognize GIs on the register as fulfilling the requirements of Article 22.1. The existence and functioning of the register could not imply that the burden of proof should be reversed, thus favouring the foreign applicant seeking protection of a GI. A principle and legal practice recognized in intellectual property and in the TRIPS Agreement was that applicants seeking protection for their trademarks and GIs in a country had to prove that they fulfilled the requirements for such protection under that country's domestic legislation.

1.100. He said that Cuba supported the proposed provisions on S&D, which should at least give developing countries the freedom to decide themselves on their participation in the system.

1.101. The representative of Barbados said that, with regard to participation, the system to be established would actually facilitate the protection of GIs by providing information to Members on whether, for example, a trademark contained, or consisted of, a GI for a wine or a spirit. This information was intended to, and should, assist Members in complying with their obligations under Article 23 of the TRIPS Agreement. Thus, regardless of the language contained in Article 23.4 of the Agreement, her delegation supported the establishment of a system of notification and registration in which all WTO Members would participate.

1.102. Turning to the scope of the system, her delegation acknowledged that the mandate contained in Article 23.4 of the TRIPS Agreement and paragraph 18 of the Doha Declaration made provision for negotiations on the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits. Should there be agreement among Members to extend Article 23 protection to all goods, consideration should be given to widening the scope of the register to include all products in order to facilitate their protection.

1.103. On legal effects, her delegation believed that there was greater consensus on this issue than appeared at first sight. Members would consult the register and take the information on GIs into account. This information could influence, but need not determine, the outcome of a decision-making process to, for example, register a trademark consisting of, or containing, a GI. Her delegation therefore supported the approach that Members should take into account the information in the register in their decision-making processes, as well as the rebuttable presumption that terms in the register met the definition in Article 22.1 of the TRIPS Agreement. This definition should be the same in all WTO Members.

1.104. With respect to S&D, she said that, since the register was expected to facilitate the protection of GIs not only from developed but also from developing countries, it would be necessary to provide S&D in the form of technical and financial assistance to, and reasonable transitional time periods for, developing countries, as appropriate.

1.105. Finally, on the issue of fees and costs, her delegation noted that in Section E.2 of the composite text there was a proposal that registrations be "subject to the payment of the requisite fee". Her delegation was of the view that, should there be consensus on this proposal, the fee system should not be based on *per capita* income, as such a system would discriminate against Barbados and other high income vulnerable economies in the Caribbean.

1.106. The representative of Thailand said his delegation believed that the composite text was an initial step towards agreement on the negotiations on the register, and that the TRIPS negotiations should deal with all three TRIPS issues, GI register, GI extension and TRIPS-CBD, in parallel in different forums.

1.107. The representative of Brazil said that her delegation remained committed to addressing the three TRIPS issues, the GI register, GI extension and TRIPS-CBD in parallel and in accordance with the mandate on implementation issues, which formed an integral part of the single undertaking of the Doha Round.

1.108. Regarding the issues of costs and fees, whether it was a register or an online database, the economics remained the same, i.e., there was no "free lunch". If the resources were to come from the WTO budget, this necessarily meant that the WTO would take that money from one basket to put it in the GI register basket. In Brazil's view, it seemed fair that those countries that had more GIs to register would have to pay more for the establishment and maintenance of the register.

1.109. Regarding S&D the proposal put forward by a large number of developing countries, including Brazil, provided for a transitional period during which developing and least developed country Members would be permitted to include their GIs in the register, but would not be requested to consult it in their domestic procedures. In other words, during that period, the provisions on legal effects would not apply for these countries.

1.110. The representative of New Zealand said that his delegation aligned itself broadly with the previous statements by Canada, Australia, Argentina, Malaysia, Chile, Japan, Chinese Taipei, Singapore, South Africa, the United States and Cuba. Admittedly, those countries did not count as two-thirds of the Membership but several could represent two-thirds of world trade in wines and spirits, and certainly all constituted more than two-thirds of Members who cared enough about this issue to participate actively in this process.

1.111. There were broadly two options on the table for most of the key elements in the consolidated text. Given the jumble of square brackets, it was sometimes not easy to identify those options. For this reason, the Joint Proposal Group had circulated a third revision of its text, i.e. TN/IP/W/10/Rev.3, to present one option clearly.

1.112. Regarding the EU option and the consolidated text, he recalled that in the past the European Union had requested Members to look at how they would implement its proposal in their national systems. His delegation had already responded to the request at previous meetings. He would reiterate a few observations. The starting point was to consider how registration and protection of GIs were currently provided. There were a number of different avenues in New Zealand, i.e. through the trademark system, the consumer protection legislation, such as the Fair

Trading Act, and also through common law, in particular, provisions relating to unfair competition. The key element of all of these systems was that the GI applicant or the person seeking protection of the term bore the burden of proof. This meant that in the TRIPS context the GI applicant had to prove that the GI met, in New Zealand, the definition requirements of TRIPS Article 22.1: the term for which the applicant was seeking protection had to "identify a wine or a spirit as originating in a certain place," and there had to be proof that a certain quality or reputation of the wine or spirit was essentially attributable to that geographical origin. It went without saying that an applicant seeking protection in New Zealand needed to prove that the term had an identifying impact for consumers in New Zealand. In other words, the applicant must prove that these consumers associated the term with the claimed quality or reputation. So, in order to implement the EU proposal, New Zealand would actually have to turn its current system on its head, i.e., to reverse the burden of proof. Rather than the GI applicants bearing the burden of proving that their terms met the TRIPS Article 22.2 definition in New Zealand, that burden would fall on examiners and third parties in New Zealand to prove that the terms did not meet that definition. This would amount to automatic protection: if a term met the Article 22.1 definition in New Zealand, then New Zealand was obliged under TRIPS to protect that term. The EU proposal dictated to New Zealand's decision-makers to determine whether or not that definition was met. His delegation's concern was not an abstract legal one.

1.113. He said that the EU option would also entail substantial burdens and costs because the reversal of the burden of proof also meant a reversal of the burden of costs. As already noted before, the burden would be less on the EU GI owner and more on other WTO Members' IP examiners and third parties. He could see the attraction of such a system for Members that were large exporters of wine and spirit GIs. On that count no Member could compete with the European Union.

1.114. Recalling that the EU had assured delegations earlier in this meeting that there would be less than 10,000 terms concerned, he said his delegation did not take comfort from such assurances, judging from a 380-pages long list of EU GIs for wines only, not to mention GIs for spirits.

1.115. To conclude, his delegation welcomed the composite text as the conclusion of phase 1 of the Special Session's work, which was in itself a significant achievement. With regard to phase 2, which would be the refinement of the composite text, his delegation would be willing to be flexible in finding convergences and enabling a refinement of the text. However, there would be no point in embarking on phase 2 if some participants were not prepared to work within the mandate of this negotiating group, particularly on its scope. In that regard his delegation welcomed the Chairman's assurances at the beginning of the meeting. Unfortunately some Members' interventions appeared to disregard the Chairman's instructions and the negotiating mandate. His delegation urged those Members to review their positions to enable the Special Session to move forward.

1.116. The representative of Ecuador recalled that the negotiation was about the establishment of a system of notification and registration of GIs for wines and spirits. For Ecuador, the adoption of unbalanced commitments in the intellectual property area would not be an option. Ecuador would have to assess the results in the intellectual property area that adequately reflected the fundamental principle underlying the Doha Round negotiations, i.e. the development dimension. Accordingly, any commitments emerging from the intellectual property negotiations should contain "plus" components for developing country Members, such as non-mandatory participation in the system, and precise, effective and operational S&D provisions. The draft composite text contained proposals for such provisions. While they could indeed be improved, they tended to reflect the mandates set forth in paragraph 44 of the Doha Ministerial Declaration with respect to developing and least developed countries. As understood by his delegation, the proposed text contained binding provisions on transition periods for Members who opted to undertake commitments and would therefore be given time to adapt gradually to the new rules, as well as provisions on commitments to supply technical and/or financial assistance aimed at capacity-building and facilitating the use of a system of notification and registration of GIs for wines and spirits. His delegation urged all developing and developed country Members to examine the proposed texts on S&D to find common ground and common objectives.

1.117. He said that, for Ecuador, the final results reached in the negotiations of this Special Session would also depend on the assessment of the overall balance under the principle of the "single undertaking".

1.118. The representative of El Salvador said that her delegation supported the statement made by Canada on the revised joint proposal, and was satisfied with the momentum achieved in the "bottom-up" process resulting in the draft composite text.

1.119. On S&D she said that the co-sponsors of the joint proposal submitted a text with two components: transitional time periods and technical assistance. In the negotiating process, these components would provide a good basis for enriching future discussions and Members' contributions.

1.120. As a complementary comment she said that the developing or least-developed country Members that opted to participate in the multilateral system would be able to benefit from training and/or capacity-building during the transition period to enable them to implement the commitments deriving from their participation, so that once the multilateral register applied, those Members would have the adequate tools and capacity to apply the provisions agreed upon for the register. In light of these considerations, her delegation encouraged Members to continue with the ongoing constructive process in order to conclude the negotiations within the time line and mandate agreed upon by all Members.

1.121. The representative of Bangladesh, speaking on behalf of the LDC Group, said that as it was the first time that a composite text was produced, it was his group's understanding that it remained work in progress, without prejudice to Member's positions on the overall outcome of the negotiations, that nothing would be agreed until everything had been agreed, and that Members could revert to any issue of the text at any time. In spite of human and financial capacity constraints, his group had started working on the elements of the Draft Composite Text, especially with (1) legal effects/consequences of the registration, (2) fees and costs, and (3) S&D, and would come up with specific positions in the coming days.

1.122. The representative of Hong Kong, China said that her delegation believed the composite text formed a useful basis for developing the multilateral system of notification and registration of GIs for wines and spirits. The covering note of the composite text reflected that the text was "work in progress" and the comments that Members made in this meeting would no doubt contribute to make the text more comprehensive. In order to bridge the divergent views of Members, Hong Kong, China had tendered a text proposal which reflected the general practice of WTO Members on formality examination and the special practice of evidential legal provisions in Hong Kong. Both the formality examination and the evidentiary legal provision had been operating in Hong Kong, China for over ten years. Its purpose was to obtain long-term efficiency with minimal immediate investment. The overriding consideration was that the proposed system should work. It was in this context that Hong Kong, China had structured and submitted its proposal with the following guiding principles: (i) the purpose of the system was to facilitate the protection of GIs for wines and spirits; (ii) Members shall be free to determine the appropriate method of implementing the provisions of the TRIPS Agreement; (iii) intellectual property rights were of territorial nature; (iv) the system shall not impose additional substantive legal obligations or confer additional legal rights on Members beyond the TRIPS Agreement; and (v) the system shall not impose undue financial and administrative burdens on participating Members, in particular those Members who did not have many GIs to notify.

1.123. She said that, instead of focussing on one or two particular aspects of the composite text, this negotiating group should look at the composite text as a whole to see what the overall effect would be. Under Hong Kong, China's proposal, Members could choose to participate freely under the proposed system, which was entirely voluntary. This had been reflected in Section A.1 of the composite text. As reflected in Section C.1, the proposed multilateral system would involve a formality examination of the notified GIs. The notified GI would be entered on the register by the WTO Secretariat upon submission of some basic information, such as details of the GI, ownership and the basis on which it was claimed to be protected in the country of origin, and upon payment of the requisite fee, as reflected in Section B. The formality examination would only involve checking of the documents submitted by the notifying Member to make sure the minimum formal requirements were met. The register would contain the information of the registered GIs and would be made available to participating Members, e.g. through an internet website.

1.124. The registration, she said, would then be accepted by the domestic courts, tribunals or administrative bodies of the participating Members to prove three issues, namely (i) ownership, (ii) that the indication was within the definition under Article 22.1 of the TRIPS Agreement, and (iii) that the GI was protected in the country of origin. These three issues would be deemed to have been proven unless evidence to the contrary was produced by the other party to rebut it. In other words, the registration would give rise to a rebuttable presumption over these three issues. This was reflected in Section D.1 of the composite text. The aim of the proposal was to assist the owners of the registered GIs to discharge their burden of proof on the three relevant issues in domestic proceedings. This would in turn, her delegation believed, facilitate protection of GIs as mandated under Article 23.4 of the TRIPS Agreement. The balance of Members' rights and obligations under the TRIPS Agreement would not be affected under the proposed system. Questions on conformity of GIs and competing claims for GIs would continue to be dealt with under Member's domestic legal systems, as the registration could be challenged in national courts and other authorities. The exceptions under Articles 22-24 of the TRIPS Agreement would continue to be applicable and decided in accordance with Members' domestic regimes, having regard to the local circumstances. Parties' substantive rights under the domestic proceedings would not change and the territoriality principle would be respected. Under Hong Kong, China's proposed system, the legal effects of the registrations would be limited in scope and there would be no legal effect on non-participating Members, as reflected in Section D.4 of the composite text. She recalled that her delegation had developed four hypothetical case studies in a room document dated 28 October 2009 to illustrate how its proposal would work.

1.125. She said Hong Kong, China had also proposed that a GI registration would have to be renewed every ten years in order to remain on the register, thus ensuring that the register would be up-to-date, that the costs of operating the system - based on user-pay principle - be shared among participating Members on the basis of the number of applications filed by each of them. This was reflected in Sections C.6 and E.2 respectively in the composite text. In response to Singapore's question, she recalled that her delegation had provided a model in Annex B of TN/IP/W/8, later updated on 2 February 2011 in a textual proposal in the small drafting group to explain the user-pays principle. Her delegation hoped that the proposal as well as the room document would help Members to focus on the issues that merited discussion and exploration so that the system would be as comprehensive as possible.

1.126. Her delegation was ready to work with all Members to improve on the draft composite text, including on S&D. It welcomed and had benefited from the comments expressed by Members on its proposal. The draft composite text was work in progress, and Members should continue working towards the target of early conclusion of the negotiation on the GI register for wines and spirits.

1.127. The representative of Nigeria, speaking on behalf of the African Group, thanked the Chairman for his efforts to ensure that a composite text was drawn from Members' contributions. The African Group was studying the text and would come back with more detailed comments.

1.128. The African Group had co-sponsored the proposal on S&D as reflected in Section F of the composite text. The proposal provided for transition periods for developing and least developed country Members, technical and financial assistance by developed country Members and an exemption from registration fees. He said that a reading of the composite text clearly showed that there was no common position on any of the six topics from the proponents of the W/52 proposal. This was due to the fact that the African Group was still working on three texts, i.e. on TRIPS-CBD, GI extension and the multilateral register together and he hoped that whatever would be agreed as a W/52 proposal would then be included in the composite text.

1.129. The African Group was concerned with the issue of costs relating to the administration of the register, as an increase of Members' annual contribution to the WTO would not be acceptable to them. As indicated by the delegation of Brazil, this would lead to taking money from one basket to another, and could affect the WTO current technical assistance programs to developing countries and LDCs.

1.130. The representative of Kenya said his delegation, as a sponsor of the W/52 proposal, supported a one-pronged approach on the three issues of GI extension, TRIPS-CBD and GI register. Kenya was ready to support the establishment of a multilateral system of notification and

registration of GIs and consider participating in it if, and only if, such a system also covered products beyond than wines and spirits.

1.131. The representative of Costa Rica said that the draft composite text undoubtedly represented an important step forward. His delegation supported the statements made by previous speakers from the Joint Proposal Group, and supported the third revision of the joint proposal, as well as the textual proposals submitted by the Joint Proposal Group during the small group consultations. Costa Rica also supported the text on S&D, which was based on the various elements of Articles 66 and 67 of the TRIPS Agreement but which, more importantly, kept intact the principle of voluntary participation, unlike other proposals which departed from that principle of the Article 23.4 mandate.

1.132. As mentioned by other co-sponsors of the joint proposal, if this negotiating group really wanted to progress to the next stage of the negotiations and eliminate square brackets, it would have to focus on the mandate. His delegation was opposed to extending the scope of the register to products other than wines and spirits and recalled that it had already been very flexible on that issue: some delegations had forgotten that Article 23.4 only referred to GIs for wines, and as part of the Doha Declaration balance the scope had been extended to cover spirits.

1.133. His delegation could not support the proposals contained in the composite text that aimed towards shifting the burden of proof, giving a registered GI the effect of *prima facie* evidence. This would go beyond facilitation of protection and alter the balance of rights and obligations in the TRIPS Agreement. His delegation could only accept, for Members participating in the register, the obligation for domestic authorities to consult the database when taking decisions in accordance with their domestic legislation, respecting the balance of rights and obligations in the TRIPS Agreement, in particular the principle of territoriality. The joint proposal met this objective, and was the only text that reflected the mandate. His delegation wished to thank the Chairman for the assurances that the negotiating mandate would be respected, and trusted him to ensure that this would be the case.

1.134. The representative of Canada recalled that the representative of the European Union had mentioned twice that the registration of a GI would create a *prima facie* evidence that the term met the definition of a GI "in the country of origin". The EU had proposed in Section D.1(b) of the composite text dated 28 February that the registration of the GI would mean that it satisfied the definition of a GI "in that Member". In the small drafting group, the EU had indicated that "in that Member" meant "in the consulting Member". For Canada, this seemed different from "in the country of origin". If, as mentioned by the EU twice, the presumption concerned the country of origin, why did the EU not accept the terms proposed by India, spelling out clearly that the presumption would be "in the notifying Member"?

1.135. With respect to the number of GIs that were being protected in the EU, she said that this issue was troublesome because during the negotiations of the bilateral agreement between the EU and Canada, Canada had received a list of 10,000 names that were supposed to be GIs for wines and spirits in Europe. If, as indicated by the EU delegation, there would be just some 2,000 GIs, why had the EU presented such a long list of names to Canada?

1.136. In response to a comment made by the EU on Chile's system, the representative of Chile referred back to paragraphs 78 to 80 of the minutes of the last Special Session of the Council for TRIPS (document TN/IP/M/27), which reflected the description of Chile's legal provisions regarding genericness.

1.137. Recalling the EU's comment that its proposal did not add new requirements nor restrict the application of TRIPS flexibilities, he asked why this provision would then be necessary and use up Members' scant time and resources negotiating provisions which according to their own proponents did not make any changes to the current system.

1.138. The representative of Korea said that the composite text represented meaningful progress and could be a good basis for further discussion. However, for her delegation, the consultations were still at an early stage and would require considerable effort to make substantive progress and remove square brackets as much as possible. Concrete work plans on how to proceed with consultations before Easter were necessary. In this regard, she said, although further text-based

negotiations could be done in a small group setting in order to expedite discussions, those discussions should be shared with the wider membership in order to enhance transparency.

1.139. She recalled Korea's general position that the creation of a register system should be in line with the mandate and consistent with the territoriality principle of the TRIPS Agreement. Above all, the multilateral register should not impose heavy burdens on developing countries. Her delegation further had concerns regarding the statement made by the EU representative on certain elements of the W/52 proposal, such as mandatory participation and legal effects of registration.

1.140. The representative of the European Union, in response to the comment that the text proposed by the European Union would amount to a dramatic reversal of the burden of proof on genericness, said that – as already indicated on previous occasions – the decision would rest entirely with the national authorities.

1.141. The representative of Angola expressed his delegation's full support for the statement by Bangladesh as coordinator of the LDC Group. He said that the draft composite text was the first one to emanate from Members themselves and, in spite of the great number of square brackets, this text constituted at least the first step towards real negotiations. The second step should be to focus on how to remove the square brackets and find appropriate language to accommodate the concerns expressed by different Members. The LDC Group had proposed and submitted, with other developing countries, language on S&D provisions and was still considering formulations in other areas.

1.142. Angola continued to be of the view that the three TRIPS issues were linked together and required an appropriate solution.

1.143. The representative of the European Union said that, whilst the experience of bilateral negotiations was apparently painful for some countries, these negotiations did often end up in agreements which apparently were satisfactory enough to be signed by the two parties. Without dwelling too long on the issue, he said that there were many explanations, including historical ones and the bilateral context of negotiations, which was different.

1.144. With regard to Canada's question on the country where the presumption would apply, he said that the EU proposed wording could not mean "the originating Member" since there was no *prima facie* evidence required for a GI which was already protected there. So, clearly, the term should "in the consulting Member".

1.145. The Chairman said that the brackets around the words "wines or spirits" in the composite text obviously invited comments. This issue would have to be addressed before the process could make any meaningful headway beyond just putting differences on paper. However, as the Chair of this negotiating group, he felt it was his duty to stave off this encroachment and focus on the issues within the mandate and especially certain issues, such as participation and legal effects.

2 OTHER BUSINESS

2.1. On further work and on how to make best use of the time until Easter and make as much progress as possible, the Chairman said that the group should - as suggested by several delegations - use this period to clean up the text, in preparing for any horizontal process that might begin in the context of the wider process after Easter. In that regard, he said that he had his own ideas and considered it his preserve to use any format of consultations that he felt would be appropriate in view of the overall process. Absent any suggestions from Members, he said he would continue his group consultations, to be followed by transparency meetings.

2.2. The Special Session took note of the statements made.
