



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

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD ON 18 OCTOBER 2017

Chairperson: Ambassador Dacio Castillo, Honduras

SUBJECTS DISCUSSED

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1 NEGOTIATIONS 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 indicated in his fax to delegations dated 18 September 2017, the purpose of this meeting was to permit delegations to put on record their views regarding the negotiations on the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits ahead of the 11th Ministerial Conference in Buenos Aires.

1.2. He recalled that his own past efforts to facilitate re-engagement in the work of the Special Session, as well as his assessment of the state of play of these negotiations, were reflected in two written reports that he had made on his own responsibility - namely TN/IP/23, dated 3 December 2015, and TN/IP/24, dated 8 December 2016.

1.3. In those interventions he had shared his assessment that the situation in the TRIPS Special Session had not advanced, and that delegations on both sides had shown little appetite to engage in substantive work in the TRIPS Special Session in the context of the overall negotiating landscape.

1.4. He said that the traditional *demandeurs* supporting the modalities set out in TN/IP/W/52, had continued to emphasize the importance of the TRIPS negotiations and the role of the TRIPS Special Session, but had considered the overall negotiating context as unfavourable for substantive engagement in this area. More recently, this group had informed him of their internal discussions to reinvigorate the TRIPS Special Session work, which had – however – so far not developed into concrete initiatives in this forum.

1.5. With a view to preparations for the Ministerial Conference in Buenos Aires in December, he also recalled the Director General's intervention at the informal Heads of Delegation meeting on 21 September 2017. In that meeting, the Director-General had called for a "moment of truth" when delegations should make a reasonable assessment of what could – and what could not – be achieved at MC11. In light of the experience at the Nairobi Ministerial, the Director-General had urged Members to prioritize and focus negotiations only in the most promising areas. With respect to negotiating issues that were judged as not advancing fast enough to be resolved by MC11, he had suggested that delegations could focus on how to take this work forward after the Ministerial Conference. Any such guidelines or programmes for post-MC11 work could then be adopted in Buenos Aires, and appropriately reflected in any outcome document.

1.6. While, he said, it was his impression that the GI Register negotiations were not currently a priority for delegations, he was nevertheless keen to ensure that they would prepare for the Ministerial meeting in the best possible manner. This meeting should therefore not only be seen as an occasion to formally record delegations' positions, but also as an occasion to explore options for the future, in light of the DG's suggestions for MC11.

1.7. Against this background he encouraged delegations, when making their interventions, to cover the following two issues:

- What role the Members see for the work of the TRIPS Special Session in the preparations for the Buenos Aires Ministerial Conference; and
- How they see the GI Register negotiations continuing after MC11.

1.8. The representative of Switzerland thanked the Chairman for convening the formal meeting of the TRIPS Council Special Session and for his specific questions on the way forward for this negotiating group in view of MC11 and beyond. He referred to the workshop on geographical indications, genetic resources and traditional knowledge, which had taken place on the previous afternoon, and had been co-organized by several members of the W/52 coalition. This event had aimed at highlighting how fairness and transparency in the use of these IP rights were key elements to promote an inclusive development that benefits consumers, producers and local communities alike. Several case studies, including from an LDC representative, had shown how relevant the protection of these IP rights was for the trade development of these countries today more than ever.

1.9. He assured the Special Session that Switzerland would remain committed to continue to work with other members of the W/52 coalition to find the best way to resume substantive discussions on the three TRIPS issues as reflected in document TN/C/W/52. His delegation recognized the need to take into account the current environment of negotiations at the WTO in the preparation for MC11 which might not be the most conducive to resumption of such substantive discussions before Buenos Aires. However, he added, it was important to look beyond MC11. The workshop held on the previous day had illustrated the many developments in this area at the national and international levels, and their increasing relevance for the development of developing and least developed countries in particular. He emphasized that as the key international organization dealing with world trade issues, the WTO was the right place to work out solutions on trade-related aspects of intellectual property. He assured that the Chairman could count on his delegation's engagement to take the necessary initiatives to ensure that the WTO remains a forum where Members can seek parallel progress on the so-called three TRIPS issues.

1.10. The representative of Haiti, speaking on behalf of the LDC Group, said the LDC Group wished to indicate it was in the process of studying the submission TN/C/W/52, dated 2008, including the issue of the GI register under TRIPS Article 23.4. It noted that the work had been

extended to spirits pursuant to positions taken in 1996 at the Singapore Ministerial Conference and codified at the 2001 Doha Declaration.

1.11. He said that it should be of no surprise to Members that LDCs were surveying their interests across a number of areas in a manner to enhance LDC industries, value addition and industrialization. Regardless of the framework of deliberations or negotiations in the WTO, the LDC Group, he added, must assess areas of importance to their sectors and industries.

1.12. He said that the Group expected its internal consultative process would allow it to come forward with a common position of the LDCs Group. In this regard, the LDCs Group supported the continuation of the negotiations in the framework of the TRIPS Special Session.

1.13. The representative of South Africa recalled the intervention of Switzerland regarding the workshop held on the previous day, which had indicated that a broad sector of WTO Members had an interest in these issues including, but not necessarily limited to, the GI Register. He underscored that other issues were linked to the GI Register, and his delegation believed that continued engagement on these issues remained relevant given this context.

1.14. Regarding the Chair's question on the TRIPS Special Session's role in the preparation for MC11, his delegation believed that, while other matters could perhaps be included in the current discussion. It was not currently the right time to put forward any further modalities in respect of this particular issue.

1.15. More importantly, however, his delegation believed, that after MC11 there should be many ways in which Members could actively engage, and that the workshop held on the previous day had indicated the broad interest that Members have in some of the issues. In this light, South Africa believed that there was still some interest to discuss these matters but that the issue should not necessarily form part of any formal representation made in respect of the Ministerial outcome. His delegation nevertheless remained open to work with other Members to achieve consensus on issues that remained outstanding.

1.16. The representative of Brazil said that his delegation supported the simultaneous, parallel and joint treatment of the three TRIPS issues, namely TRIPS/CBD, the GI register and GI extension. Document TN/C/W/52 was an inclusive and balanced proposal because it encompassed the main demands and concerns regarding these three TRIPS issues.

1.17. He also referred to the workshop organized by the W/52 coalition on the previous day, where Members had had a fruitful exchange of views on how fairness and transparency contributed to inclusive international trade. He recalled the CBD Secretariat's intervention on recent developments following the adoption of the Nagoya Protocol, and on how the process for private parties to comply with rules about prior informed consent (PIC) and access and benefit-sharing (ABS) were not cumbersome. His delegation thus reiterated its view that Members should advance towards the adoption of an amendment to the TRIPS Agreement that would provide a basis for necessary measures to prevent biopiracy.

1.18. While recognizing the political environment for MC11, his delegation stood ready to continue its engagement in order to advance the TRIPS issues.

1.19. The representative of the United States said that the longstanding divergence of views among delegations on the mandate of Article 23.4 had led to little likelihood that progress could be achieved on this issue. The United States maintained that the *demandeurs* needed to respect the mandate of the Special Session, which was limited to a GI Register for wines and spirits. More generally, his delegation did not support intensification of work on GIs in the Special Session which was a highly sensitive issue, where overcoming divergences and reaching consensus was challenging. He said that it was particularly unrealistic to conceive of revived work in the Special Session in the absence of any sign of prospects for active negotiations in virtually any other negotiating group falling under the TNC. He said that his delegation agreed with others that this was not an area where Members could realistically achieve consensus outcomes for the 11<sup>th</sup> Ministerial Conference.

1.20. The representative of the European Union said that the EU's position remained unchanged for the moment. His delegation remained committed to the W/52 coalition and would wish to see parallel progress in the WTO on the three TRIPS issues. Members of the W/52 coalition had regular contact on the matter and he believed that the event of the previous day, as well as the successful developments in WIPO and in many bilateral agreements, that Members were negotiating and had successfully negotiated, were testimony to this. In his view, one could say that there seemed to be some sort of global consensus emerging on the question of GIs. At the present stage, however, given the state of negotiations in other areas of the WTO, the EU did not have any concrete proposals to table. Since there was no momentum in the negotiations and in the current WTO context, his delegation saw no urgency to raise the profile of the TRIPS issues in Buenos Aires. His delegation believed, however, that the three TRIPS issues should be kept in the agenda in order to continue working on them after MC11, and that Members should be open in this regard.

1.21. The representative of Thailand expressed her appreciation to the Chairman for his efforts in reaching out to Members for a renewed discussion in the TRIPS Special Session. As a co-sponsor of document TN/IP/W/52, her delegation attached great importance to the issues of the GI Register, GI extension and the relationship between TRIPS and CBD. Thailand wished to discuss these three TRIPS issues together and in parallel at the TRIPS Special Session. However, taking into account the reality in the negotiation landscape, especially the differences in the well-known positions between the two groups, she said they were also open to considering other constructive ways forward. In this regard, she welcomed the opportunity for Members to share experiences and best practices in GI protection and registration, seeing that the outcome of this could further contribute to their negotiation process.

1.22. As MC11 was fast approaching, she said Members should try to identify practical outcomes for Buenos Aires. While she was aware that delegations were currently far from reaching consensus, she hoped to see the Ministers at least reiterate their commitment to advance negotiation on the TRIPS issues, including guidelines on the modalities. Her delegation stood ready to work closely with the Chairman and other Members to ensure a meaningful outcome for MC11.

1.23. The representative of Japan thanked the W/52 coalition for organizing the informative side event held on the previous day, but emphasized that his delegation was not in a position to support proposal W/52. He wished to stress that any negotiations on this matter in the future would need to be strictly in accordance with the mandate for establishing a multilateral system of notification and registration of geographical indications for wines and spirits.

1.24. The representative of the Republic of Korea said that due to the divergence of views on different mandates he believed there was little chance for a realistic outcome in this area at MC11. His delegation was not supportive of using the TRIPS Special Session for exchanging views on the path of negotiated outcomes for MC11, but was open to consider new ideas and proposals that respected the mandate of the TRIPS Special Session.

1.25. The representative of Cambodia thanked the Chairman for the specific questions on the way forward for the negotiating group in the view of MC11 and beyond. He referred to the workshop on geographical indications, genetic resources and traditional knowledge that had been organized by several members of the W/52 coalition on the previous day. This event had highlighted how openness and transparency in the use of the IP rights were a key element to promote an inclusive development that benefitted consumers' use and local communities alike. Several case studies, including from Cambodia, had shown how relevant the protection of the IP Rights was for the trade development of these countries today.

1.26. He wished to assure Members that his delegation remained committed to continue working with other members of the W/52 coalition to find the best way to resume substantive discussions on the three TRIPS issues reflected in document TN/C/W/52. In their reflection, he said, Members needed to take into account the current negotiating environment in the preparation for MC11 which might not be the most conducive to seeing a resumption of a discussion on the substance of this issue before Buenos Aires. However, he added that it was important to look beyond MC11. The workshop had elucidated many developments in this area at the national and international level, and that they were increasingly relevant for the development of developing and least-developed countries. He said that as the key international organization dealing with world trade issues the WTO was the right place to discuss them. The Chairman could count on Cambodia's

engagement to take the necessary initiatives to ensure that the WTO remained the forum where delegations could seek parallel progress on the so-called three TRIPS issues.

1.27. The representative of Chile thanked the Chairman for his leadership and for the meeting held to prepare for this session. She said that the questions the Chair had put forward allowed Members to clearly focus in the discussions in this meeting. With respect to the role of the TRIPS Special Session in preparing for the Buenos Aires Ministerial Conference, Chile believed that the work carried out to date would not play any meaningful role in the run-up to December's Conference. As reflected in previous Chair's reports, Members had not managed to hold substantive discussions in this regard in recent years.

1.28. After the 11<sup>th</sup> Ministerial Conference, she said, it would be advisable to reflect on the expectations and goals of this negotiation, and what would be possible to achieve. This would allow Members to focus realistically on fulfilling the negotiating mandate that was being granted to them. Her delegation's view remained unchanged in that work should continue within the specific mandate granted to the TRIPS Special Session.

1.29. The representative of Canada said that her delegation had been an engaged participant in the TRIPS Special Session from the beginning. Canada remained a co-sponsor of the joint proposal and had consistently noted its openness to participating in discussions in line with the mandate. Having noted the slowed pace of negotiations and the absence of substantive exchanges among Members, she said her delegation welcomed the Chairperson's questions as an opportunity for all to reassess the status of their work. With respect to the Chair's first question, Canada's view was that Members had not sufficiently advanced the work of the Special Session since MC10 for them to expect to deliver significant outcomes at this Ministerial Conference. As such, and in light of the broader negotiating context, her delegation did not see a prominent role for the Special Session in Buenos Aires.

1.30. With respect to the second question on the future of the negotiations, she welcomed the Chairman's invitation to reflect on the future of the TRIPS Special Session. Canada believed it to be important for Members in this and other fora to periodically take stock of Members' efforts and to benchmark their progress. She added that a more complete answer to the question would require significant internal reflection and consultation. In continuing that reflection, however, she said that Canada saw value in the Membership participating, following the Ministerial, in an evaluation of the prospects for progress in the Special Session, given the current pace of discussions.

1.31. The representative of India said his delegation supported the statements made by Switzerland, South Africa, Brazil, the European Union, Thailand, Cambodia and other W/52 coalition members. He thanked everyone for their support for the workshop, co-organized by several members of W/52 coalition on geographical indications, genetic resources and traditional knowledge which took place the previous day.

1.32. He recalled that India was a member of W/52 coalition and reiterated its position that the three TRIPS issues (GI Register, TRIPS-CBD and GI Extension) as reflected in document TN/C/W/52 were closely linked, both from a substantive and a procedural point of view. He said that work on the three TRIPS issues should therefore continue in parallel and together. This, he added, could be done most usefully and inclusively in the TRIPS Special Session. He said his delegation was ready to constructively engage to see how parallel simultaneous progress could be achieved on all three issues.

1.33. The representative of China said that her delegation was committed to participate in discussions in the TRIPS Special Session both before and after MC11. She wished to echo the position of over 100 other W/52 coalition members in firmly supporting that the three TRIPS issues, namely GI Registry, GI Extension and TRIPS/CBD disclosure, were closely linked together and should be moved forward in parallel. She added that the broad support of this position could also be observed from the workshop held the previous day on the topic of Fairness and Transparency in Intellectual Property Rights for an Inclusive International Trade. She said that China remained open to any discussion on the three TRIPS issues.

1.34. The representative of Argentina thanked the Chairperson for the questions put forward. With regard to the first question, she said her delegation believed that in the current context the prospect of a contribution by the Special Session of the TRIPS Council to the forthcoming Ministerial Conference appeared problematic. With regard to the continuation of negotiations after the Ministerial Conference, Argentina promised to be open to any proposals that respected the mandate set forth in Article 23.4 of the TRIPS Agreement, which was very clear and referred only to wine and spirit GIs.

1.35. The representative of Australia said that her delegation, over the years, had been a constructive participant in the negotiations on the establishment of a multilateral system for notification and registration of geographical indications for wines and spirits within the mandate. However, in light of the divergent views regarding the progress for the GI register for wines and spirits today, she said, it was difficult to see the TRIPS Special Session having a role in the lead-up to MC11 or achieving any realistic outcome at the Ministerial Conference itself.

1.36. She said that Australia had always been open to considering constructive proposals within the mandate. However, negotiations on the GI Register for wines and spirits had stalled for some time in the absence of engagement on proposals for future work within the mandate. She said that her delegation saw value in assessing future prospects for negotiation after Buenos Aires.

1.37. The representative of Nigeria thanked the Chairman for his comprehensive and balanced report on the state of play which showed the positions of various groups and Members. As co-sponsors of TN/IP/W/52 as the African Group, he said his delegation would continue to engage on these negotiations. He said he agreed with others who had suggested that the three TRIPS issues had to be treated in parallel. Concerning the issue of the current environment leading up to the MC11 preparations, he concurred with the statements by Switzerland, South Africa, the European Union, Brazil and India.

1.38. The representative of Indonesia said that, as a member of the W/52 coalition, its position had not changed. Indonesia was supportive of advancing the discussion on the three TRIPS issues – the GI Register, the CBD Disclosure as well as the GI extension.

1.39. The representative of Colombia thanked the Chair for the summary of the general positions. He said that, as a member of the W/52 coalition, his delegation also considered that the three issues should be progressed upon at the same time.

1.40. The Chairman thanked the delegations who had taken the floor for their statements. As regarded further work in the near term, he recognized that there were different views on the utility of further meetings ahead of MC11. However, he said, he would remain in contact with interested delegations and any Members that would have constructive suggestions on how to reflect the TRIPS Special Session negotiations in any Ministerial outcome. He would consider calling consultations or other meetings in the coming weeks if they were likely to advance the negotiations mandated in the TRIPS Special Session ahead of Buenos Aires.

1.41. He thanked all delegations for their thoughts and views on the matter and said he would reflect these in any reporting to the TNC that he may be called upon to do in the run-up to the Ministerial Conference. As in the past any such reports would be expressly be made on his own responsibility and without prejudice to the positions of delegations and to the outcome of the negotiations.

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

## **2 OTHER BUSINESS**

2.1. As no delegation wished to take the floor under this item, the Chairman closed the meeting.

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