WTO NEGOTIATIONS ON THE ESTABLISHMENT OF A MULTILATERAL REGISTER FOR GEOGRAPHICAL INDICATIONS OF WINES AND SPIRITS

PROGRESS REPORT – JANUARY 2005

TABLE OF CONTENTS **Page**

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1. Introduction

WTO Members, in the framework of the Doha Round, are continuing the negotiations on the establishment of a multilateral register for geographical indications (GIs) of wines and spirits, which started in 1997. Although the Doha Ministerial Declaration set the WTO Ministerial Conference held in Cancun, Mexico in September 2003, as the deadline for completing the talks, WTO negotiators were unable to meet this target date. Extensive discussions have also taken place on extending the scope of additional protection currently available exclusively for GIs of wines and spirits to those of other goods. Serious disagreement exists, however, as to whether this issue is part of the ongoing round of negotiations. GIs are also heatedly debated in the agricultural negotiations.

The register negotiations are important for business actors that produce wines and spirits because their outcome can influence the conditions under which high-value commercial denominations associating quality wines and spirits with a geographical area of production could be protected against abuse.

At the end of July 2004, WTO Members managed to take important decisions and put the multilateral round back on track. This report describes the state-of-play at the end of 2004, outlines the prospects for the coming period and analyzes the potential business implications of a multilateral register. The paper also touches on the discussions on scope extension and the GI-related element in the agricultural talks. It builds on the previous reports by ITC on these negotiations.[1]

2. Background

2.1 The Agreement on Trade Related Intellectual Property Rights (TRIPS Agreement)[2]

The TRIPS Agreement, which entered into force on 1 January 1995, is the most comprehensive multilateral agreement on intellectual property. It covers the main categories of intellectual property rights, establishes minimum standards of protection as well as rules on enforcement, and provides for the application of the WTO dispute settlement mechanism for the resolution of disputes between WTO Members. The intellectual property areas covered are: copyrights and related rights; trademarks; geographical indications; industrial designs; patents; the lay-out design of integrated circuits; and undisclosed information (including trade secrets).

2.2. Geographical Indications

Geographical indications are distinctive signs that associate products of quality and reputation with their place or area of production and thereby help identifying and distinguishing such products on the market. Scotch (whisky), Tequila (spirit), Bordeaux (wines), Roquefort (cheese), Havana (tobacco), Tokaj (wines), Antigua (coffee), Bukhara (carpets), Basmati

[1] The papers are available on the World Tr@de Net page of ITC: http://www.intracen.org/worldtradenet/
[2] More detailed information about the TRIPS Agreement can be found on the World Tr@de Net page of ITC and on the website of the WTO (http://www.wto.org). The text of the Agreement is accessible on the WTO site.

(rice), Ceylon (tea), Parma (ham) are prime examples of geographical indications as high-value commercial denominations.

GIs can be very effective and valuable marketing tools in the hands of producers. Products bearing a GI identifying it as having a specific quality or reputation normally fetch a premium on the market: consumers in many countries are prepared to pay more for such products knowing for certain that what they buy has traditionally high quality or some other special characteristics. GIs are used mostly in connection with agricultural and food products, handicrafts and artisanal goods.

An important feature of GIs as intellectual property rights is that they are "are based on *collective* traditions and a *collective* decision-making process"[3] and, accordingly, are normally not owned by a single right holder, but *collectively* by all producers of the good in question in a given geographical place or region. It is also to be noted that GIs "reward traditions while allowing for continued evolution and emphasize the relationship between human efforts, culture, land, resources and the environment".[4] GIs therefore are seen by many as an "unconventionally attractive intellectual property that can potentially serve distinct human development objectives."[5]

Effective national and international protection for GIs is in the interest of all producers seeking to differentiate their traditional quality products from the mass-produced competing goods. It is also in the interest of consumers who want labels that clearly identify traditional quality products.

2.3. The protection of geographical indications under the TRIPS Agreement

A whole section of the TRIPS Agreement is dedicated to geographical indications,[6] but WTO Members must also comply (in relation to GIs as well) with the general provisions and basic principles[7] laid down in the Agreement. The TRIPS Agreement defines GIs as indications that identify a good as originating in the territory of a WTO Member (or a region or a locality in that territory), where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. The provisions of the TRIPS Agreement on GIs - in accordance with the definition - cover only goods (and not services).

As a general obligation WTO Members have to provide the legal means[8] (to parties concerned) to prevent the designation or presentation of a good that would mislead the public as to its geographical origin; and to prevent any use constituting an act of unfair competition[9]. In addition, the Agreement provides for the refusal or invalidation of the registration of a trademark containing or consisting of a GI, which would mislead the public as to the true

[3] "Geographical Indications beyond Wines and Spirits", F. Addor and A. Grazioli, The Journal of World Intellectual Property, November 2002, p. 865-897
[4] Ibid, p. 866
[5] "Protection of Geographical Indications", M. Kumar, UNDP Asia Trade Initiative, Issue Paper, June 2003,p. 2
[6] Part II, Section 3 (Articles 22, 23 and 24) of the TRIPS Agreement is reproduced in Annex I.
[7] For example Members have to provide national treatment (Article 3 of the TRIPS Agreement) and most-favored-nation treatment (Article 4 of the TRIPS Agreement).
[8] The TRIPS Agreement does not specify the legal means to protect GIs, it is left to individual countries to decide the most appropriate method. WTO Members differ considerably in their approach, some operate GI registers, others use trademarks, consumer protection, unfair competition laws or a combination of these.
[9] The term "acts of unfair competition" is used within the meaning of Article 10bis of the Paris Convention (1967).

place of origin of the goods; and prohibits the use of literally true but misleading indications[10]. In other words, all GIs pertaining to goods must be protected against use, which would mislead the public or constitute an act of unfair competition.

WTO Members have agreed to provide a higher level of protection (called additional protection) for GIs for wines and spirits and basically waived these conditions (misleading of the public, unfair competition) in their regard. Accordingly, the TRIPS Agreement obliges WTO Members to provide the legal means (for interested parties) to prevent the use of GIs identifying wines (or spirits) for wines (or spirits) not originating in the place indicated, even where the true place of origin is indicated or the GI is used in translation or accompanied by expressions as "kind", "type", "style", "imitation", or the like.

The Agreement contains three exceptions applicable to both levels of protection. The first gives WTO Members the right to allow continued and similar use of a particular GI, provided that it was used at least 10 years prior to 15 April 1995 or in good faith for a shorter period preceding that date (Article 24.4). The second concerns trademarks. The GI-related provisions of the TRIPS Agreement do not prejudice the eligibility for or the validity of the registration of trademarks identical with or similar to GIs if, before the applicability of the TRIPS Agreement in the Member in question, the trademark was registered, or the application for registration was filed, or, where the right to a trademark is acquired by use, the trademark was used in good faith (Article 24.5). The third exception relates to generic terms, i.e. to terms that are considered to be customary in common language as the common name for goods (Article 24.6).[11]

Since the TRIPS Agreement is a minimum standards agreement[12] it is optional (and not obligatory) for Members to avail themselves of the above exceptions, when implementing their TRIPS obligations.

It is also to be noted that there is no obligation under the TRIPS Agreement to protect GIs, which are not, or cease to, be protected in their country of origin, or which have fallen into disuse in that country (Article 24.9).

3. Negotiations on the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits

3.1. Negotiating mandate

When concluding the TRIPS Agreement it was agreed that negotiations should be undertaken concerning the establishment of a multilateral system of notification and registration of GIs for wines (in short referred to as the multilateral register) eligible for protection in those Members participating in the system.[13] The stated objective of the multilateral register is to

[10] In accordance with the TRIPS Agreement the protection of GIs must be applied even when a GI is literally true as to the territory, region or locality in which the goods originate, but falsely represents to the public that the goods originate in another territory.

[11] WTO Members are also exempted from providing protection in respect to products of the vine for which the relevant GI is identical with the customary name of a grape variety existing in the territory of the Member in question as of 1 January 1995.

[12] In accordance with Article 1.1 of the TRIPS Agreement Members may implement in their laws more extensive protection than is required by the Agreement.

[13] Article 23.4 of the TRIPS Agreement contains the original negotiating mandate.

facilitate GI protection for wines. The TRIPS Agreement did not set out a timeframe for the completion of the negotiations.

Paragraph 18[14] of the Doha Ministerial Declaration adopted in November 2001 modified the mandate in three respects:

- The Fifth Session of the WTO Ministerial Conference, which took place in Cancun, Mexico from 10 to 14 September 2003, was set as the deadline for the completion of the negotiations;

- The establishment of the multilateral register was placed on the agenda of the new WTO round of trade negotiations and thereby linked to other negotiating issues. (These issues form a single undertaking meaning that the outcome of the round will constitute a set of rights and obligations that Members have to take on as a whole, i.e. in their entirety[15]), and

- The product coverage of the register to be set up was extended to spirits.

3.2. The state of play at the beginning of 2004

Since March 2002 the negotiations have been conducted in the Special Session of the TRIPS Council, which is dedicated solely to the establishment of the multilateral register. The Special Session reports to the Trade Negotiations Committee (TNC), the body established to oversee and direct the new round of multilateral trade negotiations launched at Doha.

So far the following three main approaches were suggested:

a, The EC proposal was tabled in 1998 and revised in 2000.[16] The draft agreement submitted is worded in a neutral (non-product specific) way to ensure the extendibility of the system to other products if the product scope of Article 23 is extended beyond wines and spirits.

The EC envisages multilateral registration as a three-step process. First, WTO Members wishing to participate in the system would notify their GIs that identify goods as originating in their territory. Relevant national legislations, administrative and judicial decisions, as well as bilateral, regional and multilateral agreements would also be notified together with the national provisions implementing the multilateral register. The WTO Secretariat would publish all notified GIs. In the second phase WTO Members would have 18 months to examine the notifications and ask questions related to them. All Members would have the right to challenge, in a duly justified manner,[17] the registration of a notified GI. In this case, the Members concerned would start bilateral negotiations aimed at resolving the disagreement. In the third phase (after the expiry of the 18-month period) the notified GIs would be entered on the multilateral register with reference to any challenge made.

[14] Annex II reproduces paragraph 18 of the Doha Ministerial Declaration.
[15] The concept of single undertaking was developed in order to maximize the results of negotiations by allowing for trade-offs between various negotiating subjects.
[16] IP/C/W/107 and IP/C/W/107/Rev.1. Annex III contains the list of WTO documents relevant to the negotiations. Those that are publicly available can be found on the WTO web site (http://docsonline.wto.org)
[17] That is in line with the relevant provisions of the TRIPS Agreement.

Registration, under the EC proposal, would create the following non-rebuttable and rebuttable presumptions as legal effects. Firstly, a registered GI could no longer be claimed (1) not to be in conformity with the definition of GIs in the TRIPS Agreement; or (2) to be false homonymous (literally true but misleading) or (3) to be a generic name (non-rebuttable legal effects).

Secondly, registration would create a rebuttable presumption of eligibility for protection under Articles 22 and 23.[18] Interested right holders (the "owners" of GIs) could use these legal effects engendered by the act of registration in the national processes; in the national registration of GIs[19] or in court cases when attacking misuse. To sum up, in the national processes the fact that a GI appears on the multilateral register would be decisive evidence that it fits the definition, does not constitute a false homonymous indication and has not become generic. Furthermore, registration would shift the burden of proof from the owner of the GI to the party that allegedly misuses it regarding eligibility for protection under Articles 22 and 23 of the TRIPS Agreement. Under the EC proposal every Member would be free to decide if it wished to participate in the system by making notifications. The above non-rebuttable legal effects engendered by registration, however, would apply in all Members that are under obligation to implement Section 3 of the TRIPS Agreement (the whole WTO Membership with the exception of least developed countries[20]).

In 2000 Hungary, based on the EC approach, tabled a communication on a possible opposition procedure to be included in the multilateral register. They proposed to combine direct bilateral consultations with a multilateral procedure for cases where direct discussions between the parties over a notified GI do not yield a bilateral settlement. Arbitration was suggested as a possible method for settling disagreements, with a final and binding result for the parties concerned. In addition, Hungary proposed that the effect of a successful opposition, in appropriate cases, should be *erga omnes*:[21] GIs successfully challenged claiming non-conformity with the TRIPS definition of GIs or in cases where the indication although literally true, falsely represents to the public that the goods originate in another territory would not be entered on the register. Furthermore, notified GIs successfully challenged referring to exceptions (regarding continuous prior use of GIs, the prior use of an identical trademark, as well as generic terms) should be registered and the legal effects of registration would be waived only in respect of those Members, which successfully challenged the registration.[22]

b, The United States and Japan tabled a proposal in March 1999 and were joined in July 1999 by Canada and Chile in re-submitting it in a slightly revised form.[23] The wording of the joint proposal is also neutral.

This proposal is less ambitious than that of the EC and clearly focuses on the notification element. Under the proposed system Members would be free to submit a list of domestic GIs, recognized as eligible for protection under their national legislation, indicating the expiry date

[18] It is to be noted that the legal effects under the EC proposal would not extend to exceptions relating to prior (good faith) use (Article 24.4) and prior identical trademarks (Article 24.5).
[19] In cases where WTO Members maintain national registries for geographical indications.
[20] In accordance with Article 66.1 of the TRIPS Agreement least developed countries (LDCs) may delay the implementation of the Agreement (including the provisions on GIs) until 1 January 2006.
[21] That is applicable in respect of all WTO Members.
[22] This, as Hungary explained, aims to reflect that the applicability of any of the three exceptions in Article 24 can only be determined on a case-by-case/country-by country basis.
[23] IP/C/W/133 and IP/C/W/133/Rev.1.

of protection, if any, and other multilateral agreements under which the notified indications are protected. The WTO Secretariat would compile a database of all notified GIs, circulate it to Members and make it accessible on the WTO web-site. There would be no possibility within the system to challenge a notified GI. The register would have no genuine legal effect: participating Members would only agree to refer to the WTO list, together with other sources of information, when making decisions on providing protection in accordance with their national legislation. Non-participants would be encouraged to refer to the database.

c, Hong Kong China, which admittedly does not have a direct economic interest in the negotiations, decided to offer a middle-of-the-road model in April 2003 to break the deadlock in the negotiations.[24] Under this proposal, a notified GI would only be subject to a formality examination. Provided that the basic information identifying the GI, its ownership, and the basis on which it is claimed to be protected in the country of origin was submitted (and a fee paid) the indication would be entered on the register. The system would not deal with competing claims for GIs, i.e. it would not include a substantive examination and opposition mechanism. According to the proposal, multilateral registration should be accepted by the relevant domestic courts and administrative bodies as *prima facie* evidence of (1) ownership; (2) that the indication meets the TRIPS definition of GIs (Article 22.1) and (3) that it is protected in the country of origin (Article 24.9). (In other words, registration would carry a rebuttable presumption on the above three issues.) All questions relating to the applicability of exceptions would continue to be decided by domestic courts and relevant administrative bodies. The system would be entirely voluntary at the outset, but the scope of participation could be revisited after four years. Registration would be valid for ten years with no limit on the number of renewals.

The major proponents of the EC and joint approach tried to gain increased support in the past three years. The EC, Switzerland and Hungary mostly concentrated on those Members that are interested in extending the scope of additional protection to products other than wines and spirits. Although they succeeded in gaining more active backing from Bulgaria, Cyprus, the Czech Republic, Georgia, Iceland, Malta, Mauritius, Moldova, Nigeria, Romania, the Slovak Republic, Slovenia, Sri Lanka and Turkey,[25] in the absence of progress on extension, some important delegations from this group, including India, China, Egypt, Pakistan and Thailand, remained silent on the register. The most vocal proponents of the joint proposal – the US, Australia, New Zealand, Canada and Chile - also managed to broaden their support base, mostly with the following developing countries: Argentina, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Namibia, the Philippines and Chinese Taipei[26]. The Hong Kong proposal did not manage to gain sizeable support, both camps attacked it on different elements.

Many analysts and trade negotiators were of the opinion after the Doha Ministerial Conference that the talks on the multilateral register would get a boost from the decisions taken, which set a deadline for the completion of the negotiations and clarified that the

[24] TN/IP/W/8. The approach suggested by Hong Kong is loosely modeled on their Designs Register.

[25] Bulgaria, Cyprus, the Czech Republic, the EC, Georgia, Hungary, Iceland, Malta, Mauritius, Moldova, Nigeria, Romania, the Slovak Republic, Slovenia, Sri Lanka, Switzerland and Turkey submitted TN/IP/W/3 broadly supporting the EC/Hungary approach.

[26] In 2002 Argentina, Australia, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Namibia, New Zealand, the Philippines, Chinese Taipei and the United States submitted TN/IP/W/5, which essentially reproduced the proposal tabled by the US, Japan, Canada and Chile in 1999.

register's scope would cover spirits in addition to wines. There was also agreement that the negotiations would benefit from being part of the single undertaking of the new round, which created the needed possibilities for trade-offs, because the division between the two major camps was enormous. Given the composition of the "two camps" and the negotiating history of the TRIPS Agreement's provisions on GIs, it seemed obvious that these trade-offs could come from the agricultural negotiations.

The Chairman of the Special Session[27] first structured the discussions[28] around the following five broad themes: eligibility of GIs for inclusion in the system; the purpose of the notification and registration system; the elements of notification and registration; participation; and procedural matters.

The discussions showed a great divide between the positions of the two camps on two key issues: the legal effects of registration (and the closely related issue of whether to include an opposition procedure) and participation:

- Regarding legal effects the main issue of contention was whether to have any genuine legal effect flowing from registration under the multilateral system. The EC and its supporters argued that the system could not meet the objective in the negotiating mandate (i.e. facilitation of protection) if it had no legal effects. In their view, the legal effects, as proposed by them, would be beneficial to the entire spectrum of interested parties: producers, consumers and public administrations, by making easier the implementation of GI protection for wines and spirits. The reversal of the burden of proof before local courts (the consequence of the presumption of eligibility for protection) would, in particular, result in cost savings for producers that own GIs when defending them worldwide. Occasional free-riding on registered names would be discouraged, as producers using GIs registered by other countries would have to prove their case before domestic courts, and incur the associated litigation costs. Consumer associations, often lacking adequate financial resources, would also be in a better position when taking steps to fight consumer deception. Finally, administrations would have a clear point of reference, for example, when refusing the registration or deciding on the invalidation of a trademark, which contains or consists of a GI identifying wines or spirits.[29] In addition, the EC and its supporters argued that a system without legal effects would violate the negotiating mandate, because "registration" in the IPR context always carried legal effects. The US and its supporters, in turn, suggested that the establishment of the system as a database to which national administrations or courts could refer would adequately fulfill the objective of facilitation. The US and its supporters stated that the legal effects proposed by the EC would violate the territorial nature of GI protection and compel Members to accept the extraterritorial application of national laws of WTO Members participating in the system.

[27] Ambassador Eui-yong Chung of the Republic of Korea served as Chairman of the negotiating group until February 2004.

[28] Previous papers by ITC on these negotiations describe in more detail the negotiating process leading to 2004, including on discussions under theses themes.

[29] In accordance with Article 23.2 of the TRIPS Agreement "The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, *ex officio* if a Member's legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin".

- Regarding participation Members debated what was meant in the negotiating mandate by, on the one hand, the requirement to establish a "multilateral" system and, on the other hand, the provision that it should relate only to GIs "eligible for protection in those Members participating in the system." According to the interpretation of the US and its supporters the systems should be entirely voluntary; WTO Members could decide not to participate, in which case registration under the system would have no implications/effects on them. They stated that all systems with the participation of more than two Members would meet the obligation that the system was "multilateral". The EC pointed out that in the WTO context only those agreements that have effects for all Members are called multilateral, therefore the system of notification and registration should have effects for all WTO Members. However, participation in terms of providing notifications under the system and, linked to this, contributing to its financing should be voluntary.

In 2003 discussion were centered first on a factual compilation[30] of points made on the five broad issues. Although one of the objectives in preparing the compilation was to reflect points delegations had already made during the negotiations so that participants could present new ideas or arguments, most delegations simply repeated their positions.[31] After discussing the compilation the Chairman decided to initiate work on the basis of a negotiating text. First he prepared an elements/options paper[32] and organized intensive informal consultations to receive guidance from Members on the content of the negotiating text that he intended to put on the table before April. The paper aimed at capturing elements that enjoyed consensus on some of the less controversial points (e.g. the system would be open to all Members for participation), made certain suggestions (e.g. on the form of the register, content of notification) and asked questions to be answered before a legal text could be prepared. However, on most of the substantive issues, where positions differed greatly (e.g. legal effects, settlement of differences), the paper simply outlined the options suggested by delegations and included questions for discussion. In the negotiations, the positions of delegations did not start to converge. Some Members, including the US, Australia, Chile, Argentina and Canada, felt that tabling a negotiating text would be premature. In response, supporters of a register with strong legal effects - the EC, Switzerland, Hungary and others - argued that since the deadline for the negotiations was only 6 months away drafting needed to commence immediately.

Before the April negotiating session, the Chairman prepared and circulated a draft negotiating text.[33] In light of the state of play, however, he did not draft a single set of provisions (a Chairman's proposal), but chose to translate the suggestions by delegations on all controversial issues into treaty language, and included them as options. In addition, the text only flagged some elements, such as the questions of institutional arrangements, legal form, final provisions, which Members needed to discuss once the decisions had been taken on the substance of the system.

The negotiating text addressed in a single set of provisions:

[30] Note by the Secretariat (TN/IP/W/7)
[31] Some comments were also offered on the compilation rectifying and explaining positions reflected in it. TN/IP/W/7 was slightly revised in light of theses comments.
[32] JOB(03)/60
[33] JOB(03)/75

- The entire notification part of the system (substantive conditions, contents, language, form, circulation of notifications). Notifications would not only be circulated to the Members, but would also be published on the Internet.

- The form of the register and the content of registration. The register would take the form of a searchable on-line database, freely accessible to Members and the public. The register, at a minimum[34] would contain the GI itself, the name of the notifying Member, reference to the document containing the notification and to the legal instrument by which the GI is protected, the date (where available) when the GI first received protection, as well as the date when its protection expires (if applicable).

- The legal effects for LDCs. The legal effects flowing from registration would only become applicable to an LDC Member when it is required to apply the TRIPS Agreement's provisions on GIs.

- The modification of notifications and registrations. Participating Members would have the right to modify a notification they submitted earlier. In such a case the notification process would restart.

- Withdrawals. Participating Members would be able to legally withdraw a notification they submitted earlier. Participating Members, in light of Article 24.9 of the TRIPS Agreement, would be obliged to withdraw a notification if the GI in question ceases to fulfill the conditions of protection, including if it has fallen into misuse. The withdrawal would result in the cancellation of the GI in question from the register.

- Fees and costs. Notifications would be subject to the payment of a fixed fee that should cover all the expenses incurred by the administrative body in connection with the administration of the system. LDCs would be exempt from the payment of the fee. In other words, participating Members on a *pro rata* basis (in proportion to the number of notifications made) would cover the entire cost of running the system.

- Contact point. Participating Members would be obliged to notify to the administering body a contact point at the national level, from which Members could obtain clarifications or further information on GIs notified by that Member. The list of contact points would be circulated and published on the Internet.

On registration and a possible opposition mechanism the draft reflected, as options, the negotiating proposals submitted by the US and co-sponsors, as well as the EC and Hungary.[35] On legal effects, in addition to presenting the ideas suggested by the EC and the co-sponsors of the joint proposal, it also included a third option reflecting the view Hungary and Switzerland expressed orally in the discussions. (In the negotiations these delegations indicated willingness to accept legal effects that would not go beyond a rebuttable presumption of eligibility for protection).

The draft was extensively discussed in April 2003 at a formal negotiating session, but did not lead to a convergence of positions, in particular on legal effects and participation. Part of the reason was that the negotiating atmosphere in Geneva was not conducive to progress, at the

[34] Some information may need to be added depending on the decisions over legal effects and opposition (e.g. annotations relations to challenges lodged).
[35] The Hong Kong China proposal was submitted after the circulation of the draft negotiating text.

end of March a pivotal deadline was missed in the agricultural negotiations, which is considered to hold the key to the success of the negotiating round.

Although in April the Chairman expressed hope to table a negotiating text containing a single set of ideas by July, in light of the status of the negotiations on the register and of the Doha round as a whole, he decided not to. Delegations clearly expressed in the informal consultations that they were not in a position to show sufficient flexibility and it became clear that bringing a single text could inevitably lead to rejection from various delegations. Therefore in August it became obvious that the deadline for the completion of the negotiations cannot be met. The time left before the Cancun Ministerial Conference was too short, positions were too far apart and the many open questions in other, key negotiating areas like agriculture, non-agricultural market access (NAMA), implementation[36] and special and differential treatment meant that the attention of negotiators had to be divided among a fairly large number of subjects, among which the register was not regarded, even by demanders, as the most important priority.

This situation was acknowledged during the consultations on the draft Cancun ministerial text,[37] where delegations debated whether, in addition to extending the timeframe of the negotiations, Ministers should provide substantive guidance on the issues of legal effects and participation. The EC and its supporters pushed for the inclusion of language to clarify that the register should have *legally binding effects* with respect to the eligibility of GIs for wines and spirits for protection in *all* WTO Members (under obligation to implement the TRIPS Agreement's provisions on GIs). The US, Canada, Australia, New-Zealand, Argentina, Chile and others rejected this proposal and were of the view that Ministers should only take procedural decisions: extend the negotiating mandate and set a new target date for their completion. There was no agreement among Members what this new deadline should be. While Australia, Argentina, the US, Chile and a number of Latin-American countries favored the end of the round, the EC, Switzerland, Hungary and their supporters, pointing out that Ministers in Doha decided to establish the register as an "early harvest" in the negotiating round, argued for a prior date. Some from this latter group of countries insisted that the new deadline should coincide with the new target date to be set for the establishment of modalities for future commitments in the area of agriculture in order that the necessary trade-offs can be realized.

The first revision of the draft ministerial text issued at the end of the preparatory work for the Ministerial Conference in Geneva, contained text that was to take note of the progress made in the negotiations and instruct the negotiating body to continue the work as mandated in Article 23.4 of the TRIPS Agreement and paragraph 18 of the Doha Ministerial Declaration. The text also indicated the intention to set a new deadline for the negotiations, but, similarly

[36] Issues and concerns related to the implementation of existing provisions of WTO Agreements were raised before the Doha Ministerial Conference (and in fact before Seattle) mostly by developing countries. Ministers at Doha addressed a number of issues and concerns by the adoption of a decision (WT/MIN(01)/10) and expressed their determination to find appropriate solutions to the outstanding issues. It was decided that in the areas covered by the Doha Round, outstanding implementation issues would to be taken up in the negotiating bodies, while in areas where there was no specific negotiating mandate these were to be addressed, on a priority basis, in the regular work of WTO bodies. In this latter case, reports had to be sent to the TNC by the end of 2002 for appropriate action. The TNC, however, was unable to decide over the fate of these issues, including on scope extension of additional protection for GIs for other products

[37] JOB(03)/150, JOB(03)/150/Rev.1 and JOB (03)/150/Rev.2. The second revision is also referred to as the Derbez-text.

to other paragraphs dealing with negotiating timeframes, no specific date was suggested yet. No attempt was made in the text to provide guidance on the two controversial issues.

At Cancun the Chairman of the Ministerial Conference[38] asked five trade ministers to facilitate discussions on various negotiating topics. The register was bundled together with non-violation complaints (under the TRIPS Agreement) and trade and environment and was not at the centre of attention. The facilitator organized one open-ended consultation, where the proponents of a register with strong legal effects repeated their proposal on substantive guidance and emphasized the substantive and procedural linkage with other negotiating subjects, in particular agriculture. The reaction from the other "camp" was the same as in Geneva. Besides the open-ended consultation, individual Members and interest groups also met the facilitator. On the basis of these discussions the draft ministerial text was further revised on 13 September ("Derbez-text"). The paragraph on the register was not changed except for a remark that the date to be filled in - the deadline for the talks - would be a "horizontal date". Given the arguments made on linkages with other negotiating subjects the change may be interpreted as an attempt to procedurally synchronize different negotiations and create the requested possibility for trade-offs. Since the same remark appeared in the text on the deadline for submitting improved market access offers in the services talks, it seems reasonable to assume that the deadline for establishing the register would have been earlier than the conclusion of the negotiating round.

The missing dates, however, were not filled in because Members could not bridge their differences over whether to move to negotiations on the so-called "Singapore issues" (trade facilitation, competition policy, investment and transparency in government procurement)[39] and wide gaps remained on other important areas, in particular in agriculture and non-agricultural market access and the Cotton-initiative.[40] The Ministerial Conference ended without agreement on 14 September and instead of the planned detailed ministerial text a very short declaration was put out by Ministers.[41]

The statement acknowledged that more work was needed in some key areas so that negotiators could proceed towards the conclusion of the negotiations and instructed them to continue working on the outstanding issues with a renewed sense of urgency. The Chairman of the General Council (GC),[42] working in close co-operation with the Director-General, was requested to co-ordinate this work and convene a meeting of the GC at Senior Officials level no later than 15 December 2003 with the objective of taking the action necessary so that Members can move towards the timely conclusion of the negotiations. In addition, Ministers made a political pledge to freeze elements of the text "in those areas where a high level of convergence was reached", but stopped short of indicating exactly which pieces of language they had in mind.

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[38] Dr Luis Ernesto Derbez Bautista, the Foreign Minister of Mexico.

[39] Since 1997 Members have been engaged in analysis and debate about these 4 issues in the WTO. Since the mandate for this work was agreed at the 1996 Singapore Ministerial Conference these subjects are often referred to as "Singapore issues".

[40] On 31 April 2003 four cotton producing African countries – Benin, Burkina Faso, Chad and Mali – introduced a sectoral initiative in favor of cotton (TN/AG/GEN/4). These countries demanded that all production and export subsidies in this sector be completely phased out between 2004 and 2006 and a transitional compensation mechanism be set up for the phase-out period. The initiative caused particularly significant difficulties for the US, the largest subsidizer in the sector, where cotton is the third most important crop.

[41] WT/MIN(03)/20

[42] Until February 2004 Ambassador Carlos Perez de Castillo of Uruguay served as the Chairman of the GC.

In October, on the basis of the mandate given by Ministers, the GC Chairman initiated intensive substantive consultations on the following four key areas where, in his opinion, substantial progress was needed for the negotiations to get back on track: agriculture, cotton, NAMA and the "Singapore issues". The purpose of the process started was to prepare and take the decisions Members planned to take in Cancun. When embarking on the consultations, it was stated that the initial focus on the four key areas in no way lessened the importance of other negotiating issues, including the multilateral register. The Chairman planned to take these issues up before the 15 December meeting, once progress has been achieved on the key areas. In the meantime, it was decided to momentarily discontinue the work in the negotiating bodies.[43] Accordingly, the Special Session of the TRIPS Council did not meet in 2003 after the Cancun Conference.

By the first week of December, when the discussion went deeper into substance and revealed persisting gaps between positions, it became evident that the progress made on the key issues would not enable Members by mid-December to take the decisions planned for Cancun. The Chairman, therefore could not to present a revised Ministerial text for the 15 December meeting and, instead, decided to give a detailed report on process and substance and suggested ways forward on each of the four key individual issues and the negotiating process as a whole. In this situation no discussion took place on other issues, including on the register.

In his statement[44] on 15 December the GC Chairman noted that during the consultations Members entered into substance, made progress in a number of areas and clarified some important aspects. However, gaps remained wide not only among positions, but also between generalized statements of commitment, engagement and flexibility, on the one hand, and concrete manifestations of those statements in negotiating positions on the other. His message was the following: in a short time considerable progress had been made towards getting the Doha Round back on track, but the Membership was not there yet.

Regarding the negotiating process he suggested to reactivate all negotiating bodies after the election of chairpersons in February 2004. He indicated that the horizontal overview of the process would remain an essential ingredient of success and noted the TNC's role in this regard. He suggested that objectives and benchmarks for the work in 2004 should be considered early. His suggestion to restart work in the negotiating groups was accepted.

Although the Special Session of the TRIPS Council was to restart its work in February 2004, real progress was only expected if Members managed to make headway in other important negotiating areas, in particular agriculture. Many analysts and trade negotiators were convinced that decisions about the two most important issues of contention, the legal effects of registration and participation, could only be taken in tandem with the adoption of a framework for modalities for future agricultural commitments, or the modalities themselves.

Many analysts pointed out at the same time that there would be a rather small window of opportunity for substantive decisions in 2004, a year in which elections were to take place in the US and India, and the EU was to be enlarged by ten new member states.

[43] With the exception of the negotiations on the review of the Dispute Settlement Understanding, which is outside of the single undertaking of the Doha Round.
[44] JOB(03)/212

3.3. Developments in the negotiations in 2004

3.3.1. Discussions in the negotiating group until the end of July

After intensive consultations, at its first meeting of the year (in February), the General Council elected Ambassador Shotaro Oshima of Japan as its chairman and approved the slate of chairpersons for the negotiating bodies. Ambassador Manzoor Ahmad of Pakistan was chosen to steer the Special Session of the TRIPS Council. The GC decision opened the door to the continuation of the negotiations on the multilateral register, however, no guidance was given for the discussions and no new deadline was set for their completion.

The Special Session of the TRIPS Council met twice in the first eight months of 2004 (7 April and 18 June). At the April meeting Argentina, Australia, Canada, Chile, Ecuador, El Salvador, New Zealand and the United States introduced a communication[45] on the joint proposal. The submission did not make any change to the proposal introduced earlier, its main purpose was to explain the proposal's main elements. The paper, written in a questions and answers format, also reacted to some of the questions put earlier to its co-sponsors. Interestingly some of the Members that submitted the joint proposal - Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Honduras, Japan, Namibia and the Philippines – decided not to co-sponsor this document. Most of them, however, expressed sympathy with it or supported parts of it. The main elements of the paper were the following:

- Participation in the system should to be entirely voluntary;

- The system should not add to or diminish the existing rights and obligations of Members, regardless of whether a Members chooses to participate or not;

- Members need to remain free to determine (consistent with the relevant TRIPS provisions) whether or not a particular term qualifies for protection as a GI in its territory;

- The register should take the form of a searchable database of *all* GIs for wines and spirits notified under it;

- The system would facilitate protection by providing national intellectual property offices with information on GI rights claimed by producers in the territory of another WTO Member;

- The system should have no legal effects for those Members that choose not to participate. Participants would undertake to refer to the database when making decisions regarding GIs under domestic law.

- Notified GIs could be challenged only under the national law of the notifying Member. There is no need to establish a new international dispute settlement procedure, given that responsibilities for enforcing protection would remain grounded in national law.

[45] TN/IP/W/9. In May Chinese Taipei joined the group of co-sponsors. (TN/IP/9/Rev.1)

- The system suggested in the joint proposal would be multilateral, because it would be free for all Members to participate, the information in the system would be available for all Members and the system would be the result of negotiations among all.

At the two first meetings of the negotiating group Members debated the main elements of the proposals submitted earlier against the new paper. During the discussions no new substantive arguments were made and no actual elements/areas of flexibility were indicated.

The EC stressed that it remained fully committed to the negotiating process and regarded the register as an essential element in the overall balance in the Doha round.[46] They underlined that on some areas convergence was detectable. As examples the applicability of the definition of GIs in Article 22.1; the understanding that national authorities were to determine whether a term met the relevant criteria of national legislations, the continued validity of exceptions under Article 24 and the objective of facilitating the attainment of protection provided for under the TRIPS Agreement were mentioned. They criticized, however, the joint approach on some major points, particularly on the automatic registration of all notified terms, the legal effects foreseen as well as participation. The EC stated that the register could facilitate the protection of GIs only if it was ensured that the information in it was reliable. In their view the needed reliability could not be guaranteed if all notified terms were automatically included in the register. They noted that the EC included an opposition mechanism in their proposal exactly to ensure the reliability of information. The legal effects as suggested in the paper were also cause for concern. In the EC's view, it would not be possible to monitor that the relevant national authorities/courts indeed referred to the register in their deliberations and this, they argued, would inject an element of legal uncertainty. In this context the EC pointed out that the presumption of eligibility for protection (flowing from registration) would be a useful tool for legitimate users before national authorities and courts when trying to assert rights regarding GIs. They stated that the EC proposal would not add substantive obligations to those that Members already had under Section 3 of the TRIPS Agreement. Hungary stated that the basic problem with the joint proposal was that it equated the terms notification and registration. This, in their view, meant that this proposal could not meet the negotiating mandate. Similarly to the EC, they expressed concerns that the proposed system did not provide an avenue for dealing with competing claims, for example homonymous GIs, and stated that this questioned the ability of the system to genuinely facilitate protection. They argued that the term "multilateral" in the negotiating mandate meant that registration should have legal effects on all Members, while the decision to participate, in terms of lodging notifications, should be totally voluntary. They also recalled the proposal by the EC and some others, under which the costs of operating the system would not fall on Members that decide not to participate. Hungary pointed out that the premise in the paper (that the register should not add to or diminish existing rights under the TRIPS Agreement) was in contradiction with the joint proposal, which, for participating Member clearly contained the right to notify GIs and the obligation to consult the register. It was highly questionable if any system could be set up that would not add to the rights and obligations under the TRIPS Agreement. Switzerland underlined that a simple database without any legal effects and applicable only to certain Members in the WTO was neither of

[46] There were press reports earlier that the EU decided to shift its focus regarding GIs towards scope extension and would show more flexibility on the register. ("EC signals new flexibility on push for more GI protection" Inside US Trade 19 December 2003; "Member states back Commission on protection of geographical names" Inside US Trade 9 January 2004). P. Lamy EU Trade Commissioner also stated, without giving details, that the EU intended to take a more flexible attitude on GIs to ensure the continuation of the Doha negotiations. - "EU Trade Priorities – post Cancun" Speech by P. Lamy 14 January 2004, Munich.

multilateral character, nor able to facilitate the protection of GIs. They agreed that notification should be on a fully voluntary basis. They recalled their support for including a simple and time-efficient dispute resolution mechanism. Bulgaria and Turkey broadly supported the points and shared the concerns raised by the EC, Hungary and Switzerland. Bolivia, for the first time, intervened substantially and shared some of the points by those that criticized the joint proposal.

The co-sponsors, in addition to emphasizing points in the paper, also highlighted some of their salient concerns, in particular regarding legal effects (as suggested by the EC and its supporters) and opposition. Australia and New Zealand insisted that the system should not call into question the right of WTO Members to determine the appropriate method of implementing their TRIPS obligations[47] and should not *de facto* amend the TRIPS Agreement. Argentina shared these points and asked how the question of unreliability of information would come in regarding notifications of GIs that have been recognized as such by national legislation. Chile argued that the examination of, and decisions regarding the use, recognition or protection of GIs should remain in the hands of national authorities. Regarding legal effects on non-participants they enquired where, in public international law, there were legal instruments, which made it possible for a group of countries to undertake commitments and obligations and impose them on others that who were not participants. The US also emphasized that the register to be set up should in no way prejudice the territorial nature of GI rights and underlined that the adjudication of conflicting rights in such a territory should be handled under national law, by national courts and administrations. Canada stated that there were already systems in place by which private right holders and Members could challenge geographical indications and the way Members were implementing their TRIPS obligations on GIs. Therefore, they did not see a need to establish a new international dispute settlement procedure. Colombia reiterated its support for the joint proposal.

Malaysia shared a number of the views expressed in the paper, including on voluntary participation. They argued that the register should only complement the legal means that were available under the TRIPS Agreement for the protection of GIs for wines and spirits, but with no further legal effects, since the system was only meant to facilitate the existing legal means of protection. The conclusion they drew was that registration should not have legal effects and any legal recourse should be under national laws. Brazil also argued for a system with voluntary participation and stated that the term "multilateral" did not mean universal. They agreed that the system should not impose new obligations on Members and should fully respect the principle of territoriality. Korea stated that the negotiating mandate called for a register without binding legal effects, in which participation should be voluntary. At the same time, in their view, the objective was to enhance the protection of GIs. They questioned whether this objective could be achieved if too many Members decided not to participate in the system. Japan did not engage substantively in the debate and simply affirmed that they want to establish a system that would be acceptable to all and would not impose excessive burdens on Members.

Hong Kong called the attention of delegations to the proposal they tabled in 2003, which attempted to strike a delicate balance between the two ends of the negotiating spectrum. In their view, while some legal effects should be attached to registration, participation in the system, at least at the beginning, should be voluntary.

[47] This right is laid down in Article 1.1 of the TRIPS Agreement.

It is worth mentioning that some supporters of the EC approach - Cyprus, the Czech Republic, Hungary, the Slovak Republic and Slovenia - on 1 May joined the EU, and since then the European Commission speaks also on their behalf.

In June the Chairman, on his own responsibility, prepared a short factual report to the TNC on the work undertaken in the Special Session in 2004.[48] Regarding the substantive discussions the document noted that the exchange of views covered the legal effects of registration, participation in the system, administrative and other burdens; the need to respect the principle of territoriality and whether the proposals on the table would modify the balance of rights and obligations in the TRIPS Agreement. The Chairman noted that a range of issues, which included, but were not limited to, the key issues of legal effects of registration and participation, required further work.

3.3.2 The end-of July General Council decision

WTO Members were aware that in 2004, because of the elections in the US and some other important Members, as well as a change in the EU Commission, substantive decisions having important policy implications could only be taken until August. Bearing this in mind they made a conscious effort to prepare for important decisions by the end of July and managed to take a General Council decision, which put the negotiating round back on track. (The major developments leading up to the adoption of this decision is detailed in the ITC paper on the multilateral register, which was published in September 2004).[49]

The General Council decision[50] reaffirmed the Doha Ministerial Declarations and Decisions, including the negotiating mandate on the multilateral register, and emphasized the resolve of Members to complete the Work Program fully and conclude the negotiations started at Doha successfully. It prolonged the negotiations beyond the original deadline of 1 January 2005, but did not set a new end-date for the round. It decided, however, that the sixth session of the Ministerial Conference, to be hosted by Hong Kong, should take place in December 2005.[51]

The decision dealt in detail with the negotiating subjects of agriculture, cotton, NAMA, development (including implementation issues, special and differential treatment for developing countries and the treatment of LDCs), services and the Singapore issues. It contained a detailed framework setting out key elements of and main directions for the agricultural and NAMA negotiations (Annexes A and B respectively), but did not fix a deadline for establishing the negotiating modalities in either field. It decided that the trade-related aspect of the cotton initiative would be pursued expeditiously, ambitiously and specifically within the agricultural discussions. The document set a deadline for the circulation of revised services offers (May 2005) and determined a timeframe for the work on outstanding implementation issues and agreement specific proposals on special and differential treatment. It included a decision to start negotiations on trade facilitation, as part of the single undertaking of the round, and clarified that no work toward negotiations was going to take place during this round on the other three Singapore issues (investment,

[48] TN/IP/10
[49] The report is available at http://www.intracen.org/worldtradenet/docs/information/dohadevagenda/wines_spirits_september04.pdf
[50] The decision is available at http://www.wto.org/english/tratop_e/dda_e/ddadraft_31jul04_e.pdf.
[51] In accordance with the decision of the General Council taken on 20 October 2004 the Ministerial Conference shall take place on 13-18 December 2005.

competition policy and transparency in government procurement). The text adopted the recommendations put forward by the negotiating body on services, as well as that of the TNC on the DSU review, but did not offer any specific guidance on the negotiations on the multilateral register for GIs, on rules and on the environment. The decision extended, until the Sixth Session of the Ministerial Conference, the moratoria on non-violations complaints under the TRIPS Agreement, as well as on the imposition of customs duties on electronic transmissions.

Regarding the extension of the scope of Article 23 protection to products other than wines and spirits, the decision called on the Director General of the WTO to continue with his consultative process and report back to the TNC and the GC not later than May 2005. The GC will than review the progress in these discussions (together with progress in other outstanding implementation issues) and take any appropriate action not later than July 2005.

3.4. Discussions in the negotiating group after July

WTO Members continued the negotiations on the multilateral register right after the summer break. The Chairman of the negotiating group organized informal consultations on 14 September to discuss the organization of work in the remainder of 2004. His suggestion to set aside time during the negotiating sessions in order that delegations can conduct informal consultations among themselves got positive reactions. Members also supported the idea of focusing on the following three sets of issues:

- Legal effects and participation;
- Administrative and other burdens; and
- Technical and procedural issues relating to the operation of the register.

The negotiating body held two formal sessions in the fall (23 September and 30 November). At the September meeting discussions followed the earlier pattern, delegations on the most important outstanding questions - legal effects and participation – simply repeated their established, divergent positions.[52] The issue of costs and administrative burdens received a fair amount of attention. Hong Kong, China recalled that under their proposal the system would not levy costs and administrative burdens on non-participants. The users of the multilateral system would contribute to the costs of running it in line with the number of notifications they submit. As another means of controlling costs they suggested that quotas should be set on the number of notifications that can be made and processed annually. Australia, the United States and other supporters of the joint proposal emphasized that their approach was the least expensive and burdensome. The US pointed out that - in addition to the multilateral level - costs and administrative burdens would be created by the EC proposal also at the national level. They stressed that the need to employ personnel in national intellectual property offices to examine notifications made under the system, the training of such personnel, as well as possible challenges of notified terms would all require resources. In its response Switzerland noted that costs should not be analyzed in isolation from benefits of the system, and that all proposals, of whatever nature, involved burdens. They supported the points by Hong Kong, China on how the costs could be controlled at the multinational level. The EC also agreed that the costs of running the multilateral register should be borne by those that benefited from it and indicated willingness to consider mechanisms to control the number

[52] "No headway made on GI register for wines and spirits" ICTSD Bridges Weekly Trade News Digest Vol. 8, No.32.

of annual notifications. Responding to the US they stated that the existing systems of GI protection in each WTO Member already entailed costs of personnel, training and opposition. Malaysia expressed concerns over the potential costs and stressed that the "user-pays principle" should be applied also to the overall administration of the system, including opposition procedures. They raised the idea of exempting developing countries from contributing to the cost.

Canada and Australia - alluding to the fact that the European Commission from 1 May 2004 was speaking on behalf of ten new EU Member States - inquired whether the EC was supporting the Hungarian proposal that contained suggestions on dispute resolution. The EC, answering partially and indirectly, stated that their proposal did not culminate in a system of dispute settlement.

Following the Chairman's suggestion the negotiating session was suspended to allow informal contacts among delegations. Supporters of both major approaches found these discussions useful.

At the November meeting delegations concentrated particularly on questions related to the notification phase of the system. It came as no surprise that the positions on these, mostly technical issues were not as far apart as on the substantive questions of legal effects and participation. Delegations discussed the content and nature of notifications. There seemed to be agreement that the rules to be set up for notifications should accommodate the various legal approaches Members chose to implement their GI related TRIPS obligations. It was also a common view that the notification procedure should be simple and transparent. The debate returned to the issue of costs and Members seemed to agree that - at the multilateral level - the operation of the register should be financed by those delegations that put in notifications. While the EC proposed that the WIPO should operate the register, the supporters of the joint proposal opposed this idea. At the same time no movement was detectable on the major issues that would define the utility and effects of the register.[53]

In addition, Members agreed to hold 4 negotiating meetings in 2005: in March, June, September and October.

3.5. Assessment, outlook for the coming period

In 2004, as the above sections illustrate, the "trench war", which unfolded in 2001 continued with the "two camps" rigidly and stubbornly keeping to their respective positions in the debates, in particular with respect to the key issues of legal effects of registration and participation. Few Members joined the discussions actively and their participation did not tip the balance significantly in favor of any of the proposals. The Hong Kong approach failed to garner more support. With the enlargement of the EU the debate is conducted more and more between the EC and Switzerland on the one hand, and the US, Canada, Australia, New Zealand and Argentina, on the other. In the absence of clear support from the EC the Hungarian approach received limited attention.

In sum, 2004 did not bring tangible progress in the negotiations on establishing the multilateral register. No new proposals were tabled, no flexibilities were offered, and no

[53] "GI register for wines and spirits inches forward" ICTSD Bridges Weekly Trade News Digest Vol. 8, No.41.

serious attempts were made to make trade-offs with other negotiating subjects. Accordingly, the very wide divide between the negotiating positions of the "two camps" remained intact.

The negotiating environment, however, was improved considerably with the adoption of the General Council decision at the end of July. Substantial progress was achieved in agriculture, the potential source of trade-offs for the register discussions. This, according to analysts and trade negotiators, should give a needed impetus to the Doha Round as a whole in the coming period. The negotiations are clearly far from being over, a lot of open issues remain to be solved. In the agricultural area the next important step is to work out and adopt, on the basis of the framework[54] approved on 31 July, the negotiating modalities for future commitments. Members then, towards the end of the round, will prepare the national schedules of commitments following the modalities to be established.

The end-of-July GC decision did not set a target date for establishing the agricultural modalities and failed to specify new deadlines for the register negotiations and the round as a whole. This suggests that the talks on the register would finish at the same time as the negotiating round. It is also to be noted that the GC did not provide guidance on the most important open questions in the register discussions, i.e. the legal effects of registration and participation. This was not surprising, since demanders, in particular the EC, seemed to be of the view, that the time in July was not ripe for trying to make trade-offs between the register negotiations and agriculture. In light of the extensive concessions given by the EC in the agricultural framework some analysts argue that it might have been a lost opportunity for the supporters of a register with a strong legal effect. At the same time it is generally acknowledged that the elaboration of the agricultural modalities will certainly offer another chance. It is also a widely shared view that if the agricultural modalities are adopted without settling, in principle, the major outstanding questions in the register negotiations, the outcome, in all likelihood, will closely reflect the content of the joint proposal.

Another factor that can influence the register negotiations, in particular through affecting the support base of the EC approach, is the outcome of the discussions on extending the product scope of Article 23. In accordance with the decision taken at the end of July, Members should take any appropriate action on scope extension not later than July 2005.

WTO Members will turn their attention to setting the goals for the next Ministerial Conference early in 2005. Bearing in mind the setbacks of Seattle and Cancun, Members are expected to exercise extreme caution in formulating targets. Supachai Panitchpakdi, the Director General of the WTO, announced informal consultations on this issue in December 2004 and expressed hope that, based on these, a productive first formal discussion could take place on 14 February 2005, at the next meeting of the TNC.

Many trade policy specialists think that the Hong Kong WTO Ministerial Conference to be held in December 2005 could offer the earliest realistic opportunity for adopting the negotiating modalities in the agricultural field. Indications from some influential Members seem to confirm this expectation. At a press conference in Geneva on 23 November Peter Mandelson, the new EU Trade Commissioner, said that negotiating modalities should be approved at the Hong Kong Ministerial in the areas of industrial market access (NAMA) and

[54] The Agricultural annex of the GC decision is often referred to as the "framework". It decided certain important issues (e.g. the elimination of export subsidies and measures having the same effect) and gave directions on some others (e.g. disciplines on certain forms of domestic support), but did not define in detail all elements of future agricultural commitments (e.g. it did not set out a concrete method for tariff reduction).

agriculture. He also called for significant progress in the negotiations on services and antidumping rules.[55] A few days later, US Trade Representative Robert Zoellick, very cautiously, put forth similar expectations.[56] This timeline, according to both Mandelson and Zoellick, could lead to concluding the negotiating round in 2006, just in time for the US Congress to pass the results under the fast track authority that expires in 2007.[57] The G-20 is definitely supportive of a Hong Kong deadline for modalities in the area of agriculture. China, speaking on behalf of the group, called on WTO Members in an October negotiating session to set this target.[58]

Analysts also point out that the Hong Kong Conference may only be successful if Members achieve significant progress not only in the key area of agriculture, but also in other negotiating fields, in particular NAMA and services, which, at present, are clearly, and for many delegations quite disturbingly, lagging behind. Some fear that the election of a new Director General for the WTO in 2005 and the discussion of the report by the Consultative Board to the WTO Director General (published in January) on possible steps to improve the organization's inner workings could divert attention and valuable time from the negotiating process.[59]

Against the above, despite the improved negotiating environment and the considerable progress in agriculture, experts do not expect rapid movement in the register negotiations in the first half of 2005. In fact, no major changes are likely to occur before the negotiations on the agricultural modalities make further substantive answers. The ability of Members to set the Hong Kong Conference as a target for establishing the agricultural negotiating modalities may also provide an impetus and purpose for the register discussions.

3.6. The importance of the multilateral register for business

It is very difficult to tell exactly what impact the multilateral register for GIs for wines and spirits will have for business, without having a clear view of its main elements, especially of the effects of registration. The fact that the proposals, in particular the ones supported by the two most influential WTO Members (the US and the EC), are so divergent on this key issue underlines this complexity.

Nevertheless, wine and spirits producers that own GIs and that are already involved in, or plan to participate in international trade should be keenly interested in a negotiating outcome, which would facilitate the prevention of their GIs' misuse. As discussed above, the TRIPS Agreement obliges Members to provide the legal means for interested parties to prevent the use of a GI identifying wines (spirits) for wines (spirits) not originating in the place indicated by the GI in question even where the true origin of the goods is indicated or the GI is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the

[55] "Mandelson says Hong Kong Ministerial must produce detailed modalities" Inside US Trade, 26 November 2004
[56] "WTO Members looking to 2005 Mini-Ministerials" Inside US Trade, 10 December 2004
[57] Fast track is the traditional trade negotiating authority granted by the US Congress that allows the US President to negotiate international trade agreements. Under fast track procedures, the President submits the legislation to Congress for approval or rejection and the legislature cannot amend the content of the agreements.
[58] „G20 calls for agricultural modalities at Hong Kong Ministerial" Inside US Trade, 8 October 2004
[59] Since the Consultative Board is lead by Peter Sutherland, former DG of the WTO, its output is often referred to as the Sutherland-report.

like.[60] In other words, WTO Members are not obliged to provide *ex officio* protection (though they can decide to do so); the requirement under the TRIPS Agreement is limited to providing the possibility for the owners of GIs to prevent misuse by using the national processes (courts in most cases). In fact this means that, unless there is *ex officio* protection, the owners of GIs would have to start legal proceedings abroad in cases where their indications are used by other producers in a manner that violates the relevant provisions of the TRIPS Agreement. The owners of the GIs would have to prove their case before these courts, including that the exceptions (relating to prior use; good faith prior application for or registration of a trademark containing a GI and generic expressions) do not apply in the specific case in question. This is certainly no easy feat, since the owners of GIs of wines and spirits normally comprise of small and medium size producers, who in most cases lack the financial means or the experience to litigate in a legal environment that can be very different from that of their home country.

Against this background it would seem clear that strong legal effects acquired through registration in the multilateral system would genuinely help the owners of GIs in cases of litigation over misuse. GI owners could simply bring a certificate of registration, a proof that their indication is recorded in the multilateral register, and use the presumptions before a court. Should non-rebuttable presumptions be agreed to flow from registration, the issues covered by these could not even be raised in litigation. Rebuttable presumptions, in turn, would shift the burden of proof to the alleged misuser regarding the issues covered by them. If Members agreed that registration would carry a non-rebuttable presumption that a registered term was in conformity with the TRIPS definition, no one could claim before a court that the term recorded as a GI in the multilateral register did not fit the definition and, hence, was not entitled to protection provided for in Section 3 of the TRIPS Agreement. If Members agreed that registration would carry a rebuttable presumption regarding conformity with the TRIPS definition, the owner of the GI would simply present evidence of multilateral registration and the alleged misuser would need to prove that the term registered was not in line with the TRIPS definition. It would seem logical that the value of legal effects for GI owners would increase with a broader coverage of presumptions.

The above legal effects would obviously save costs for the owners of GIs in the case of litigation. In addition, the reversal of the burden of proof could serve as a deterrent for those that contemplate the use or actually misuse the GIs of others; these producers would know that in case of litigation they would have to shoulder the costs of proving their case.

However, should the system simply oblige, or encourage, national administrations and courts to refer to the register (together with other relevant information) when making GI-related decisions, the value of direct benefits flowing from multilateral registration to the owners of GIs would not seem to amount to too much. They would still have to build their case before local courts and prove that their GIs are used in a manner that is contrary to the relevant provisions of the TRIPS Agreement. In their argumentation they could certainly use the fact that their GIs are registered multilaterally, but it would be unclear to what extent national courts and administrations would actually rely on this fact when making their decisions.

At any rate, if the prevention of misuse is made easier through the setting up of a multilateral system of notification and registration, the utilization of geographical indications for wines and spirits as efficient marketing tools will be facilitated. As argued above, if adequately

[60] The use of "Napa Valley-style Merlot made in Switzerland" or "Bordeaux from Australia" would not be in conformity with the standard of protection laid down in the TRIPS Agreement.

protected, GIs can be very effective and valuable tools producers can use to differentiate their traditional products with special qualities or characteristics (attributable to their geographical origin) from the mass-produced competition. GIs can efficiently help their owners reap the benefits of the willingness of consumers to pay more for goods of tradition, in this case for such wines and spirits. At the same time, it has to be noted that other producers could continue to produce and sell whatever they wish; the establishment of an effective register would simply make it more difficult and risky for them to free-ride on the reputation of the GIs of others by putting these indications on the labels of their produce in a manner contrary to the TRIPS Agreement.

Given the state of play in the negotiations it is still not too late for those wine and spirit producers that are interested in any of the approaches outlined in this paper to contact their governments, individually or collectively, with a view to indicating their preference. Some have already done so. The Union of Industrial and Employer's Confederations of Europe (UNICE),[61] which supports the EC approach, stated in its position paper on the intellectual property aspects of the Doha Ministerial Conference[62] that "the main advantage of setting up the multilateral register remains the criteria of making use of GIs, and the presumption that the geographical denominations registered constitutes a GI according to Article 22 of TRIPS." The UNICE supports the notion that registration should reverse the burden of proof before national courts and suggests that the World Intellectual Property Organization (WIPO) should be involved in the operation of the register,[63] because of its experience with registers, the treatment of intellectual property in general, as well as with alternative dispute resolution proceedings (e.g. in relation of domain names). Other business groupings have also been active, the World Spirits Alliance (WSA) in addition to publishing written communications has organized symposia dedicated to issues of the new round (including the establishment of the register) that can assist the market access of spirits in various world markets. One of the key priorities of WSA in the Doha Round is to clarify the protection of GIs. It is also to be noted that the Distilled Spirits Council of the United States (DISCUS) attaches considerable importance to the negotiations on the register and expects their outcome "to provide greater protection for Bourbon and Tennessee Whiskey as distinctive products of the United States".[64] A different example is the American Intellectual Property Law Association (AIPLA), which, having seen the text of the Doha Ministerial Declaration on the multilateral register, took the initiative and wrote to USTR Zoellick, expressing its fears that if the system to be set up went beyond the US proposal, it would "potentially place at risk literally thousands of United States trademark registrations."[65] The International Trademark Association (INTA) also expressed similar reservations and its belief that "the establishment of a multilateral system is premature".[66]

[61] Created in 1958, the Union of Industrial and Employer's Confederations of Europe (UNICE) has as members 34 principal business federations from 27 European countries, plus 6 federations as observers, covering the continent from Ireland in the West to Turkey in the East, from Iceland in the North to Malta in the South.

[62] The document, together with other position papers, is available on the web-site of UNICE: http://www.unice.org/

[63] Hungary made a proposal to this effect in the negotiations before the Seattle Ministerial Conference of the WTO.

[64] http://www.discus.org/mediaroom/2001/release.asp?pressid=14

[65] See the full letter at http://www.aipla.org/Content/ContentGroups/Issues_and_Advocacy/Comments2/United_Sates_Trade_Representative/WorkProgramInDraft.pdf

[66] http://www.inta.org/downloads/tap_GIpaper.pdf

Many of these industry associations follow the negotiations closely and react to developments. As a prime example two industry groups – the European Confederation of Spirits Producers (CEPS[67]) and the European Committee of Wine Enterprises (CEEV[68]) - lobbied the European Commission in August 2004, because they felt that other GI efforts by the EU (scope extension, agricultural claw back[69]) had impeded the register negotiations.[70] The groups wrote to the European Commission and also met Commissioners Pascal Lamy and Franz Fischler to press the point that - since the wine and spirits sector enjoys a close to 7 billion euro annual trade surplus - the establishment of a legally binding register should be the EC's first priority in the GI field.

4. The Extension of additional protection to products other than wines and spirits (scope extension)

At the Doha Conference in 2001 Ministers stopped short of settling the debate on the existence of a negotiating mandate for extending the scope of additional protection to products other than wines and spirits. Instead, they referred[71] the "issues related to extension" to the Council for TRIPS for discussion with priority (along with a number of other so-called implementation issues) and stated "negotiations on outstanding implementation issues shall be integral part of the Work Programme". Although this meant that by the end of 2002 the Council had to report to the TNC for appropriate action, it was clear that consensus was necessary to move forward with the negotiations on scope extension. Analysts believed that this would be a daunting, but certainly not impossible task for the supporters of extension. The guarded optimism was rooted in the fact that the new round launched at Doha created a totally different negotiating environment where effective linkages with other negotiating areas (in particular with agriculture) could be established and utilised to further this cause. Analysts and trade policy makers tended to believe that this could offer the only realistic chance of moving forward with extension, since the necessary trade-offs did not seem to be available within the TRIPS area.

It is important to briefly describe the state of play regarding scope extension in this paper, because progress on this issue, or the lack of it, has a significant impact on the register negotiations. WTO Members exclusively interested in improved GI protection for products other than wines and spirits, like India, Kenya, China, Egypt and Pakistan, are expected to take active part in the negotiations and provide support for approaches aiming at a multilateral register with strong legal effects if negotiations on scope extension move forward and there is a realistic chance that the register to be set up could be extended to incorporate GIs for products of their interests.

4.1. State of play in the discussions on scope extension

In 2002 Members continued the heated, often political and even emotional discussions on scope extension and spent a very large portion of the TRIPS Council's time on this issue.

[67] For more information about CEPS see http://www.europeanspirits.org.
[68] For more information about CEEV see http://www.ceev.be.
[69] See sections 4 and 5
[70] "EU wine, spirit producers press for more action in GI registry" Inside US Trade, 27 August 2004
[71] See paragraph 18 of the Doha Ministerial Declaration.

Despite the lengthy and animated debate, no substantially new arguments were forwarded; Members mostly reiterated points made earlier.[72]

In June 2002 a large number of demanders proposed[73] that the TNC should adopt guidelines consisting of the following three points for the negotiations on extension:

- Additional protection is to be extended to GIs for all products;
- The exceptions in Article 24 of the TRIPS Agreement are to apply *mutatis mutandis,* and
- The multilateral register under Article 23.4 to be open for GIs for all products.

At the end of November 2002, supporters of scope extension recalled this proposal[74] and suggested that the TRIPS Council should include it, as a recommendation, in its report to the TNC. Opponents did not agree and suggested[75] that the TRIPS Council should advise the TNC that the discussions have been completed and propose that no further action be taken. Since no agreement could be reached on recommendations to the TNC the TRIPS Council Chairman made a factual, oral report on all TRIPS-related outstanding implementation issues.

The TNC, at its last meeting of 2002, took up the question of how to proceed with the work on implementation issues that do not fall under existing negotiating mandates. Most developing countries, together with the EU, Switzerland, Norway, Hungary, the Czech Republic and transition economies, argued that such implementation issues form part of the new round and should be dealt with in negotiating bodies. This was squarely opposed in general by a number of developed Members, in particular the US, Canada and Australia, and in relation to scope extension of GIs by a number of developing country opponents, for example Argentina, Chile, Colombia and Paraguay.

Finally, the Director-General of the WTO, who chairs the TNC *ex officio*, was tasked to conduct urgent informal consultations on all outstanding implementation issues, including on GI extension. During these consultations the Director General outlined five possible courses of action (1. resolving the issue; 2. agreeing that no further action was needed; 3. referring the issue to a negotiating body; continuing work in the relevant subsidiary body under enhanced supervision by the TNC and with a clear deadline; 5. undertaking further work at the TNC level[76]). Regarding GI extension, where the discussions were most heated,[77] delegations could not agree on any of the five options. After months of futile discussions a pragmatic arrangement was reached to separate GI extension, so far as the consultations were concerned, from the other implementation issues. The further discussions, which at times were extremely belligerent, repetitive and politicized, took place at "heads of delegation" level, but failed to bridge the gaps between positions: the Membership of the WTO remained utterly divided over

[72] Earlier ITC studies prepared on the register negotiations contain more detailed information about scope extension. The studies are available at the web page of World Trade Net: http://www.intracen.org/worldtradenet/
[73] IP/C/W/353 submitted by Bulgaria, Cuba, Cyprus, the Czech Republic, the European Communities and their member States, Georgia, Hungary, Iceland, India, Kenya, Liechtenstein, Malta, Mauritius, Pakistan, Romania, Slovakia, Sri Lanka, Switzerland, Thailand and Turkey
[74] JOB(02)/194 submitted by Bulgaria, Cyprus, the Czech Republic, the European Communities, Georgia, Hungary, India, Jamaica, Kenya, Liechtenstein, Malta, Mauritius, Pakistan, Romania, the Slovak Republic, Slovenia, Sri Lanka, Switzerland, Thailand and Turkey.
[75] IP/C/W/395 by Argentina, Australia, Canada, Chile, Chinese Taipei, Colombia, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, New Zealand, Panama and the United States.
[76] JOB(03)/13
[77] "Dura discusión en OMC por uso de denominaciones de origen", El Pais (Ur) 17 July, 2003

the issue. While European WTO Members and many developing countries, including all LDCs,[78] supported the cause, the US, Canada, Australia, New Zealand and some, mostly Latin American developing countries still fiercely opposed it. Supporters, nevertheless, decided to submit a new formal document,[79] in which they summarized the essence of extension and suggested that a decision in favour of extension be taken and their proposal for guidelines for the negotiations be adopted at Cancun.[80]

Business actors interested in the idea of scope extension, mostly producers of food and drink specialties, became more vocal in the months preceding the Ministerial Conference and organized themselves with a view to influencing the debate in a more efficient manner.[81] In June 2003 producers from 25 countries joined OriGIn[82] (Organization for an International Geographical Indications Network) to campaign for stronger protection of GIs. The new organization held a seminar for its members, met government representatives and officials of the WTO and organized a product show and tasting in Geneva.[83]

The first draft of the Cancun Ministerial text dealt with implementation issues in a single paragraph. According to the text, Ministers would have simply noted that a number of these issues remain outstanding, instruct the relevant WTO bodies to intensify efforts to resolve them and report on progress by the next Ministerial Conference. The text did not contain a specific reference to the issue of scope extension, did not foresee decisions on any implementation issues and did not fix a new deadline for taking appropriate action. In reacting to the text the supporters of scope extension made clear that they would not accept it as suggested and linked a decision on the negotiations on scope extension to decisions on various other negotiating subjects, in particular to the adoption of an agricultural framework.

The revised draft ministerial text issued on 24 August 2003 made a number of important additions/changes to the previous version. The text reaffirmed the mandate given in paragraph 12 of the Doha Ministerial Declaration and stated the Members' "renewed determination to find appropriate solutions to these issues". Furthermore, the text injected the notion of urgency by calling on the TNC, negotiating bodies and other WTO bodies to find appropriate solutions *as a priority* and was to set a deadline for the work. GI extension got a specific mention, but the text did not foresee any related decisions at this stage: Ministers were to request the Director-General to continue with his consultations on certain implementation issues, including on "issues related to the extension of the protection of GIs". The supporters of GI extension welcomed the changes as steps in the right direction and pressed further for a decision to start negotiations.[84] Opponents criticised the new additions, in particular that GIs were singled out among the implementation issues and rejected the further ideas put forth by demanders. Positions did not change at the consultations in Cancun and, feeling that the text

[78] Dhaka Declaration of LDC Trade Ministers, 2 June 2003, paragraph 22(e)
[79] TN/C/W/14 (9 July 2003)
[80] "India and 22 WTO Members push for GI extension", The Financial Express, India, 15 July 2003
[81] "Food producers seek name protection" Financial Times, 12 June 2003; "Piden a la OMC mayor protección a productos", El Economista 12 June 2003; "Productores del mundo crean red defensa indicaciones geográficas" EFE, 12 June 2003
[82] More information about the network can be found at OriGIn's web site: http://www.origin-gi.com.
[83] Producers from Bulgaria, Croatia, the Czech Republic, France, Germany Guatemala, Guinea, Hungary, Italy, Kenya, Macedonia, Morocco, Mauritius, Pakistan, Romania, Spain, Sri Lanka, Switzerland, Thailand and Turkey presented various products.
[84] The EU for example, together with India and Brazil suggested that a negotiating group on implementation issues be set up and wanted to fix an early deadline (March 2004).

was striking a delicate balance, the Chairman of the Conference did not modify the text when the second revision ("Derbez-text") was put out.

Given that the initial focus of consultations after Cancun was on agriculture, cotton, NAMA and Singapore issues, scope extension was not discussed in the remainder of 2003.

The reconvening of the TNC in April 2004 provided an opportunity for proponents to raise scope extension again. On behalf of the GI Friends Group, consisting of over 50 WTO Members, Kenya confirmed that the issue remained of utmost importance for them. Kenya stressed that, for this group, extension was an indispensable element of the Doha Round's outcome and, recalling the earlier recommendation for guidelines, expressed the expectation that negotiations on detailed modalities for extension were to take place as soon as possible. The intervention, in addition, made the point that all WTO Members - LDCs, developing and developed Members - had much to gain from extension.

At the June TNC this intervention was followed up by a joint statement of the group (delivered by Switzerland), which later was also circulated as an official document.[85] The group demanded that a clear signal be given in the July decision that GI extension would be part of the overall results of the negotiations. It also tried to allay fears of opponents by stating that the exceptions laid down in Article 24 of the TRIPS Agreement shall also apply to scope extension. The statement referred to the event organized by OriGIn at the public symposium the WTO held in May 2004, during which participants from a wide range of WTO Members explained why they support extension and what they expect from it.[86]

The implementation element of the GC decision adopted at the end of July closely mirrored the Derbez-text. It reaffirmed the mandate in paragraph 12 of the Doha Declaration, instructed the TNC and other negotiating bodies to redouble efforts and find appropriate solutions as a priority. It also instructed, without prejudice to the positions of Members, the Director General of the WTO to continue his consultations on some outstanding implementation issues, including on issues related to scope extension. The decision set a deadline for the DG to report to the TNC and the GC[87] not later than May 2005 and stated that the GC shall take any appropriate action by July 2005.

Having consulted informally with Members in October and November, the Director General of the WTO requested one of his deputies (Mr. Francisco Thompson-Flôres) to conduct, on his behalf, a technical level process aimed at clarifying the issues related to GI extension.

The GI Friends Group submitted a communication[88] before the December meetings of the TNC and GC, as well as the first technical level consultation. The purpose of the paper was threefold. First, the group of co-sponsors put forth the points forcefully that considerable substantive work had been already been done on the subject of GI extension and that the decision by July 2005 would need to go beyond a mere procedural arrangement for discussing this subject. Second, the communication summed up the key features of GI extension and its

[85] TN/C/4
[86] The summary of the event entitled "Localization within globalization" is available at http://www.ige.ch/E/jurinfo/documents/j10403e.pdf
[87] The solution that the Director General is to report to both the TNC and the GC is a compromise aimed at ensuring that the decision does not prejudge whether these issues are part and parcel of the negotiating round.
[88] WT/GC/W/540/Rev.1 by Bulgaria, the European Communities, Guinea, India, Kenya, Liechtenstein, Madagascar, Moldova, Romania, Switzerland, Thailand and Turkey.

perceived benefits. Third, the co-sponsors suggested that the technical level work should focus on what is necessary to incorporate scope extension into the TRIPS Agreement; as well as on the solutions and mechanisms available to address the substantive concerns that some WTO Members have regarding costs and burdens (e.g. the application of exceptions in Article 24 of the TRIPS Agreement; transition periods etc.).

The first technical level meeting took place on 16 December[89] with the main purpose of identifying the issues that should be the subject of discussions. While the GI Friends pushed their proposal, Australia and some other opponents of GI extension requested that the consultations should be broadened to include other GI-related issues, such as the multilateral register and the EU's GI-related agricultural proposal ('claw-back'). On the basis of the consultations DDG Thompson-Flôres decided to prepare a list of topics to be covered in future discussions. At the December TNC meeting the Director General announced that he would provide progress reports to the TNC on the consultations.

In sum, the end of July decision created a new opportunity for supporters of GI extension to push for a further decision in 2005 that would open the door to negotiations on scope extension within the Doha round. This will not be easy, since trade-offs evidently would need to be made across negotiating subjects. The fact that the July decision did not determine a timeframe for the establishment of agricultural modalities, which is an occasion widely believed to be holding the greatest potential for the needed trade-offs, is a factor that can make the attainment of this objective very difficult.

5. GIs in the agricultural negotiations

The European Communities submitted a divisive proposal for improving GI protection in the context of the agricultural negotiations. The suggestion is distinct from both the multilateral register and scope extension, and basically aims at introducing an absolute prohibition on the use, by other countries, of a limited number of European GIs in relation to food products even where the exceptions in the TRIPS Agreement create a legal cover for such use.[90] The proposal, which has been supported only by European countries (Switzerland, Bulgaria, Hungary and some other former EU candidates), has stirred up emotions in and has been vehemently opposed by many other WTO Members. While the US, Canada, Australia, New-Zealand and many Latin American countries criticised the proposal as an attempt from European countries to monopolize the use of names that they consider generic, or which were brought by European immigrants to the "New World", European countries claimed that food producers outside Europe, by using European GIs, free-ride on the centuries-old reputation of European products and this "food piracy" cost billions of dollars in trade turnover every year.[91]

[89] "Consultations on geographical indications underway" ICTSD Bridges Weekly Trade News, Vol. 8, No. 44.
[90] The EU proposal, therefore, is often referred to as 'claw-back.'.
[91] "A taste for protection" The Scotsman 29 August, 2003; "Denominaciones de origen", La Nacion Line 14 October 2003; "US set to battle EU over product naming rights", Dow Jones, 13 August, 2003; "What is in a name", Wall Street Journal 1 September 2003; "EU seeks food-labelling restrictions", Wall Street Journal; 29 August 2003; "New Zealand resist EU moves to lock up geographical names for cheese" 15 August 2003; "The label police" 17 August 2003; "Italy says US piracy of its food costs billions" Reuters, 28 August 2003;

The EC put together and, just before the Cancun Ministerial Conference, submitted to the WTO a list of 41 GIs[92] it wished to have the above protection for.[93] The list included names from the 15 EU Member states and, referring to the enlargement of the EU in 2004, a supplement of the list with names from the 10 new Members was foreshadowed. (In 2004 the EU did not notify new names from the countries that acceded on 1 May). Switzerland followed the example of the EU in September 2003 and established a list of 14 GIs.[94]

The agricultural negotiations held centre stage in 2004, but no progress was made on the EU's 'claw-back' proposal. Accordingly, the agricultural framework adopted at the end of July simply listed GIs among the issues of interest on which no agreement was reached.

No substantive work took place in this issue in the remainder of 2004.[95] The EU pushed for discussing the proposal at the December negotiating session,[96] but some G-20 and Cairns Group Members, including Brazil and Australia [97] objected, stressing that it was "too early" to take up issues on which no agreement existed.

6. Executive Summary

WTO Members, in the framework of the Doha Round, are continuing the negotiations on the establishment of a multilateral register for geographical indications (GIs) for wines and spirits. Although the Doha Ministerial Declaration set the Cancun Ministerial Conference held in September 2003, as the deadline for completing the talks, WTO negotiators were unable to meet this target date.

To date three main proposals have been tabled in the register negotiations: one by the European Communities, a joint-proposal by the US, Canada, Chile and Japan and a third approach by Hong Kong China, which intended to find a compromise between the other two.

The EC proposal envisages multilateral registration as a three-step process. First WTO Members would notify their GIs and the WTO Secretariat would publish all notifications. In the second phase Members would have 18 months to examine the notifications and would have the right to challenge the registration of a notified GI. In such a case, the Members concerned would start bilateral negotiations aimed at resolving the disagreement. In the third phase the notified GI would be registered in the multilateral register with reference to any

[92] The following GIs are included on he list: Beaujolais; Bordeaux; Bourgogne; Chablis; Champagne; Chianti; Cognac; Grappa di Barolo, del Piemonte, di Lombardia, del Trentino, del Friuli, del Veneto, dell'Alto Adige; Graves; Liebfrauenmilch; Malaga; Marsala, Madeira, Médoc; Moselle; Ouzo; Porto; Rhin; Rioja; Saint-Emilion; Sauternes; Jerez; Asiago; Azafrán de la Mancha; Comté; Feta; Fontina; Gorgonzola; Grana Padano; Jijona y Turrón de Alicante; Manchego; Mortadella Bologna; Mozzarella di Bufala Campana; Parmigiano Reggiano; Pecorino Romano; Prosciutto di Parma; Prosciutto di San Daniele; Prosciutto Toscano; Queijo Sao Jorge; Roquefort.

[93] "EU agrees WTO list of geographical food names" Agra Europe 29 August, 2003; "Brussels heads for controversy over famous food names" Financial Times 28 August 2003; "EU seeks WTO Protection for 41 agricultural products" Bloomberg, 28 August 2003; "La EU pedirá ante la OMC protección para 41 productos de calidad" El País, 29 August 2003

[94] "La Suisse établit une liste de 14 produits régionaux en vue de la conférence de l'OMC" Le Temps, 6-7 September 2003

[95] "Ag negotiations to drop GI discussion - for now" ICTSD Bridges Weekly Trade News Digest Vol. 8, No.41.

[96] "Informal Agricultural Talks reveal Members' differing priorities" ICTSD Bridges Weekly Trade News Digest Vol. 8, No.36.

[97] "Cairns, G20 fight US, EU on WTO green box, potential tariff cuts" Inside US Trade, 26 November 2004,

challenge. Registration, under the EC proposal, would have legal effects. A registered GI could no longer be claimed (1) not to be in conformity with the definition of GIs in the TRIPS Agreement; or (2) to be false homonymous (literally true but misleading) or (3) to be a generic name. In addition, registration would create a rebuttable presumption of eligibility for protection. Members would be free to decide if they wished to participate in the system by putting in notifications: The non-rebuttable legal effects flowing from registration, however, would apply in all Members. Based on the EC approach Hungary proposed to combine direct bilateral consultations over a challenged notification with a multilateral procedure for cases where direct discussions do not yield a bilateral settlement. They suggested that the effect of a successful challenge, where appropriate, should be *erga omnes.*

The joint proposal concentrates on the notification part of the system and basically seeks to establish a searchable database with no genuine legal effects. Participating WTO Members would simply agree to refer to the database, together with other sources of information, when making decisions on providing protection in accordance with their national legislation. The proposed system would not create obligations for non-participants.

Under the model suggested by Hong Kong China a notified GI would be subject to a formality examination. Provided that the basic information identifying the GI, its ownership, the basis on which it is claimed to be protected in the country of origin was submitted (and a fee paid) the indication would be entered on the register. The system would not deal with competing claims. Multilateral registration would be accepted by the relevant domestic courts and administrative bodies as *prima facie* evidence of (1) ownership; (2) that the indication meets the TRIPS definition of GIs and (3) that it is protected in the country of origin. All questions relating to the applicability of exceptions would continue to be decided at the national level. The system would be entirely voluntary at the outset, but the scope of participation could be revisited after four years. Registration would be valid for ten years with no limit on the number of renewals.

The EC approach has been supported by Switzerland, Hungary, Bulgaria, Cyprus, the Czech Republic, Georgia, Iceland, Malta, Mauritius, Moldova, Nigeria, Romania, the Slovak Republic, Slovenia, Sri Lanka and Turkey.[98] The joint proposal has been co-sponsored by the US, Australia, New Zealand, Canada, Chile Argentina, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Namibia, the Philippines and Chinese Taipei. The Hong Kong approach has not managed to garner sizeable support.

Since March 2002 the negotiations have been conducted in the Special Sessions of the TRIPS Council, which is dedicated solely to the establishment of the multilateral register. The Special Session reports to the Trade Negotiations Committee (TNC), the body established to oversee and direct the new round of multilateral trade negotiations launched at Doha.

Discussions in the Special Session were first structured around the following five broad themes: eligibility of GIs for inclusion in the system; the purpose of the notification and registration system; the elements of notification and registration; participation; and procedural matters. The debates revealed huge gaps between the 'two camps' on two key issues: the legal effects of registration and participation.

[98] Among theses countries Cyprus, the Czech Republic, Hungary, Malta, the Slovak Republic and Slovenia joined the EU on 1 May 2004 and from that moment on the European Commission speaks also on their behalf.

The first draft negotiating text was circulated, after heated discussions, in April 2003. In light of the state of play the Chairman decided not to prepare a single set of provisions on all issues. On the most controversial ones - legal effects of registration, opposition and participation - the suggestions by delegations were translated into treaty language and included as options. On some less difficult ones - notification procedures, form of the register, content of registration etc. - the text included a single set of provisions. In addition, some elements, such as the questions of institutional arrangements, legal form, final provisions, were flagged for discussions once the decisions regarding the substance of the system have been taken.

Despite extensive debates delegations were unable to narrow the gap between positions and it became obvious that the deadline established for the completion of the negotiations could not be met. Accordingly, in the run-up to the Cancun Ministerial Conference delegations debated whether Ministers should, in addition to extending the timeframe for the negotiations, provide substantive guidance on the issues of legal effects and participation. The EC and its supporters pushed for the inclusion of text to clarify that the system to be set up should have *legally binding effects* with respect to the eligibility of GIs for protection in *all* WTO Members. The US and its supporters rejected this proposal and insisted that only procedural decisions should be taken: the negotiating mandate should be rolled over and a new target date for the completion of the talks should be set. There was no agreement, however, what the new deadline should be. While the US and its supporters favoured the end of the round, the EC and its allies, pointing out that Ministers in Doha decided to establish the register as an "early harvest" in the negotiating round, argued for a prior date. In addition, the latter group insisted that the new deadline should coincide with the new target date to be set for the establishment of agricultural modalities.

At Cancun the register was not at the centre of attention; the single open-ended consultation on this issue brought a mere repetition of the above arguments. The Ministerial ended abruptly and without success when Members were unable to overcome their differences on the "Singapore-issues" and wide gaps remained on agriculture, non-agricultural market access (NAMA) and the cotton-initiative as well. Instead of the planned, detailed ministerial text a very short declaration was put out, which did not deal explicitly with any negotiating issue. The negotiators were instructed to continue working on outstanding issues with a renewed sense of urgency. The Chairman of the GC was requested to co-ordinate this work and convene a meeting of the GC by 15 December 2003 in order to take the action necessary to move towards a successful and timely conclusion of the negotiations.

In the fall the GC Chairman initiated intensive consultations on the following four key areas where, in his opinion, substantial progress was needed for the negotiations to get back on track: agriculture, cotton, NAMA and the "Singapore" issues. It was stated that the initial focus on the four key areas in no way lessened the importance of other negotiations, including on the multilateral register. A decision was made to temporarily discontinue work in the negotiating bodies.

In the consultations, which revealed persisting gaps between positions, it became evident that by mid-December Members will not be able to take the decisions planned for Cancun. The Chairman could not present a revised Ministerial text for the 15 December meeting and, instead, decided to give a detailed report on process and substance. The Chairman's message was the following: in a short time considerable progress had been made towards getting the Doha Round back on track, but the WTO was not there yet. He suggested to reactivate all

negotiating bodies after the election of chairpersons in early February 2004 and consider objectives and benchmarks for the work early in 2004.

The Special Session of the TRIPS Council met twice in the first eight months of 2004. At the April meeting proponents of the joint proposal introduced a new submission to explain the proposal's main elements. The paper argued for a system with voluntary participation that would not add to or diminish existing rights and obligations. Another key point was that Members needed to remain free to determine if a particular term qualified for protection as a GI in its territory. Members debated the key elements of the proposals submitted earlier against the new paper.

In June the Chairman prepared a short factual report to the TNC on the work in 2004 and reflected the inability to make headway. The report noted that the exchange of views covered the legal effects of registration, participation in the system, administrative and other burdens; the need to respect the principle of territoriality and whether the proposals on the table would modify the balance of rights and obligations in the TRIPS Agreement. It highlighted that a range of issues, which included the key issues of legal effects of registration and participation, required further work. The Chairman mentioned his intention to start consultations before the next session of the negotiating body on how to carry the negotiations forward.

WTO Members were aware that in 2004, because of the elections in the US and some other important Members, as well as a change in the EU Commission, substantive decisions having important policy implications could only be taken until August. Bearing this in mind they made a conscious effort to prepare for important decisions by the end of July and managed to take a General Council decision that put the negotiating round back on track.

The decision reaffirmed the Doha Ministerial Declarations, including the negotiating mandate on the multilateral register, and emphasized the resolve of Members to complete the Work Program fully and conclude the negotiations started at Doha successfully. It prolonged the negotiations beyond the original deadline of 1 January 2005, but did not set a new end-date for the round. It decided, however, that the sixth session of the WTO Ministerial Conference, to be hosted by Hong Kong China, should take place in December 2005.

The decision contained a detailed framework setting out key elements of and main directions for the agricultural and NAMA negotiations, but did not set a deadline for establishing the negotiating modalities in either field. The document set a target date for the submission of revised services offers (May 2005) and determined a timeframe for the work on outstanding implementation issues and agreement specific proposals on special and differential treatment. It included a decision to start negotiations on trade facilitation, as part of the single undertaking, and clarified that no work toward negotiations was going to take place during this round on the other three Singapore issues (investment, competition policy and transparency in government procurement). The text adopted the recommendations put forward by the negotiating body on services as well as that of the TNC on the DSU review, but did not offer any specific guidance on the negotiations on the multilateral register, on rules and on the environment.

The approval of the GC decision was publicly greeted by all participating governments, many hailing it as a crucial breakthrough that put the WTO as well as the negotiating round back on track. The majority of comments focused on the agricultural framework, reflecting the decisive importance of progress in this field for the entire negotiating package, as well as the

fact that the agricultural text, in particular its sections on export competition and domestic support, are the most specific and contain the most important decisions negotiators made.

The negotiations on the GI register continued right after the summer break; at an informal consultation Members discussed how to organize the work in the remainder of 2004. It was decided to set aside time during the negotiating sessions in order that delegations can have informal contacts among themselves. The idea to focus the debate on three sets of issues - legal effects and participation; administrative and other burdens; and technical and procedural issues relating to the operation of the register - was also supported.

The negotiating body held two formal sessions in the fall. In September the issue of costs and administrative burdens was in the focus of attention. Members debated the potential cost-implications of different proposals and the various measures proposed to control expenses. The "user-pays" principle and the idea of limiting the number of notifications annually received support from both major camps. Some delegations stressed that costs and administrative burdens would be created not only at the multilateral but also at the national level. Supporters of the joint proposal attacked the EC approach as being too burdensome. The idea of exempting developing countries from contributing to the cost was raised.

At the November meeting delegations concentrated particularly on questions related to the notification phase of the system. The positions on these mostly technical issues were not as far apart as on the substantive questions of legal effects and participation. The content and nature of notifications was discussed. There seemed to be agreement that the rules to be set up for notifications should accommodate the various legal approaches Members chose to implement their GI related TRIPS obligations. It was a common view that the notification procedure should be simple and transparent. While the EC proposed that the WIPO should operate the register, the supporters of the joint proposal opposed this idea. Members agreed to hold 4 negotiating meetings in 2005.

Overall 2004 did not bring tangible progress in the negotiations on the multilateral GI register. No new proposals were tabled, no flexibilities were offered, and no serious attempts were made to make trade-offs with other negotiating subjects. Accordingly, the very wide divide between the negotiating positions of the "two camps" remained intact. The negotiating environment, however, was improved considerably with the adoption of the GC decision at the end of July, which should give a needed impetus to the Doha Round in the coming period. The negotiations, however, are far from being over, many open issues remain to be solved. In agriculture (regarded by analysts as the potential source of trade-offs for the register discussions) the next step is to work out, on the basis of the framework approved on 31 July, the negotiating modalities for future commitments. Members will then prepare the national schedules of commitments following the modalities to be established.

The GC decision did not set a target date for establishing the agricultural modalities and failed to specify new deadlines for the register negotiations and the round as a whole. This suggests that the talks on the register would finish at the same time as the negotiating round. The decision also failed to provide guidance on the key outstanding questions in the register discussions, i.e. the legal effects of registration and participation. It is generally acknowledged that the elaboration of the agricultural modalities could offer a chance to settle these points.

The outcome of the discussions on extending the product scope of Article 23 is a factor that can also influence the register negotiations, in particular through affecting the support base of

the EC approach. In accordance with the end-of July decision Members should take any appropriate action on scope extension not later than July 2005.

WTO Members will turn their attention to setting the goals for the next Ministerial Conference early in 2005. Bearing in mind the setbacks of Seattle and Cancun, Members are expected to exercise extreme caution in formulating targets. Many analysts believe that the Hong Kong Conference could offer the earliest realistic opportunity for adopting negotiating modalities in the agricultural field. Indications from some of the most influential Members (EU, US, G-20) seem to confirm this expectation. It is also pointed out that the Ministerial may only be successful if Members achieve significant progress not only in the key area of agriculture but also in other negotiating fields, in particular NAMA and services, which at present, clearly, and for many delegations quite disturbingly, lag behind.

Against the above, despite the improved negotiating environment and the considerable progress in agriculture, experts do not expect rapid movement in the register negotiations in the first half of 2005. In fact, no major changes are likely to occur before the negotiations on the agricultural modalities make further substantive headway. The ability of Members to set the Hong Kong Conference as a target for establishing the agricultural negotiating modalities may also provide an impetus and purpose for the register discussions.

It is extremely difficult to predict what impact the register will have for business without having a clearer view of its main elements, especially the effects of registration. Nevertheless, wine and spirits producers that own GIs and trade their products internationally should be keenly interested in an outcome that would facilitate the prevention of their GIs' misuse. Today, in such cases, the owners of GIs would have to litigate and prove their case before the local courts in all WTO Members that put into effect only the minimum TRIPS standards of GI protection. This is no easy feat, since the owners of GIs normally are small and medium size producers, often lacking the financial means or the experience to litigate in a foreign legal environment. It would, therefore, seem logical that the presumptions of eligibility for protection, acquired through registration in the multilateral system, would help these producers by not only reducing the legal costs for the owners of GIs, but also by deterring others from misuse. Should the system, however, simply oblige or encourage national administrations and courts to refer to the register (together with other relevant information) when making decisions, the value of direct benefits flowing to the owners of GIs from multilateral registration would not seem to amount to much.

Those wine and spirit producers that are interested in any of the approaches should contact their governments, individually or collectively, and indicate their preference. Given the state of play in the negotiations, it is still not late for interested businesses to approach their government representatives with a view to influencing their position.

ANNEX I

AGREEMENT ON TRADE-RELATED INTELLECTUAL PROPERTY RIGHTS

SECTION 3: GEOGRAPHICAL INDICATIONS

Article 22

Protection of Geographical Indications

1. Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

2. In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:

    a) The use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;

    b) Any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention (1967).

3. A Member shall, *ex officio* if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.

4. The protection under paragraphs 1, 2 and 3 shall be applicable against a geographical indication, which, although literally true as to the territory, region or locality in which the goods originate falsely represents to the public that the goods originate in another territory.

Article 23

Additional Protection for Geographical Indications
for Wines and Spirits

1. Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in

translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.[99]

2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, *ex officio* if a Member's legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.

3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

4. In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system.

Article 24

International Negotiations; Exceptions

1. Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, Members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.

2. The Council for TRIPS shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of the WTO Agreement. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council, which, at the request of a Member, shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section.

3. In implementing this Section, a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement.

[99] Notwithstanding the first sentence of Article 42, Members may, with respect to these obligations, instead provide for enforcement by administrative action.

4. Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliary who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (*a*) for at least 10 years preceding 15 April 1994 or (*b*) in good faith preceding that date.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

   a) Before the date of application of these provisions in that Member as defined in Part VI; or
   b) Before the geographical indication is protected in its country of origin;

   Measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

6. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.

7. A Member may provide that any request made under this Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Member or after the date of registration of the trademark in that Member provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Member, provided that the geographical indication is not used or registered in bad faith.

8. The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

9. There shall be no obligation under this Agreement to protect geographical indications, which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

ANNEX II

PARAGRAPH 18 OF THE DOHA MINISTERIAL DECLARATION

"18. With a view to completing the work started in the Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS) on the implementation of Article 23.4, we agree to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference. We note that issues related to the extension of the protection of geographical indications provided for in Article 23 to products other than wines and spirits will be addressed in the Council for TRIPS pursuant to paragraph 12 of this Declaration."

ANNEX III
LIST OF DOCUMENTS OF THE SPECIAL SESSION OF THE COUNCIL FOR TRIPS (1997-2005)

Document Symbol	Communication from	Title	Distribution Date
2004			
TN/IP/11	Chairman	Council for Trade-Related Aspects of Intellectual Property Rights - Special Session - Report by the Chairman, Ambassador Manzoor Ahmad, to the Trade Negotiations Committee	06/12/2004
TN/IP/M/10	Secretariat	Council for Trade-Related Aspects of Intellectual Property Rights - Special Session - Minutes of Meeting - Held in the Centre William Rappard on 23 September 2004	27/10/2004
TN/IP/M/9	Secretariat	Council for Trade-Related Aspects of Intellectual Property Rights - Special Session - Minutes of Meeting - Held in the Centre William Rappard on 18 June 2004	06/09/2004
TN/IP/10	Chairman	Ninth Special Session of the Council for TRIPS Report by the Chairman, Ambassador Manzoor Ahmad, to the Trade Negotiations Committee	23 June 2004
TN/IP/M/8	Secretariat	Council for Trade-Related Aspects of Intellectual Property Rights - Special Session - Minutes of Meeting - 7 April 2004	15 June 2004
TN/IP/W/9/Add.1	Argentina, Australia, Canada, Chile, Chinese Taipei, Ecuador, El Salvador, New Zealand and the United States	Joint proposal for a multilateral system of notification and registration of geographical indications for wines and spirits - Addendum	6 June 2004
TN/IP/9	Chairman	Eight Special Session of the Council for TRIPS Report by the Chairman, Ambassador Manzoor Ahmad, to the Trade Negotiations Committee	14 April 2004
TN/IP/W/9	Argentina, Australia, Canada, Chile, Ecuador, El Salvador, New Zealand and the United States	Joint proposal for a multilateral system of notification and registration of geographical indications for wines and spirits	13 April 2004

Document Symbol	Communication from	Title	Distribution Date
2003			
TN/IP/8	Chairman	Special Session of the Council for TRIPS - Report by the Chairman, Ambassador Eui-yong Chung, to the Trade Negotiations Committee	4 July 2003
TN/IP/7	Chairman	Seventh Session of the Council for TRIPS Report by the Chairman, Ambassador Eui-yong Chung, to the Trade Negotiations Committee	4 July 2003
TN/IP/M/6	Secretariat	Minutes of the meeting of 29-30 April 2003	1 July 2003
TN/IP/W/Rev.1/ Corr.1	Secretariat	Corrigendum	20 June 2003
JOB(03)/123	European Communities	Non-paper – Legal Effects	25 June 2003
TN/IP/W/7/Rev.1	Secretariat	Discussions on the Establishment of a Multilateral System of Notification And Registration of Geographical Indications for Wines And Spirits: Compilation of Issues and Points	23 May 2003
TN/IP/6	Chairman	Sixth Session of the Council for TRIPS Report by the Chairman, Ambassador Eui-yong Chung, to the Trade Negotiations Committee	5 May 2003
JOB(03)/75	Chairman	Draft Text of Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits	16 April 2003
TN/IP/M/5	Secretariat	Minutes of the meeting of 21 February 2003	28 April 2003
TN/IP/W/8	Hong Kong, China	Multilateral System of Notification and Registration of Geographical Indications Under Article 23.4 of the TRIPS Agreement	23 April 2003
JOB(03)/76	European Communities	Traditional Expressions	23 April 2003
JOB(03)/75	Chairman	Draft Text of Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits	16 April 2003
JOB(03)/60	Chairman	Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits: Possible Elements/Options	20 March 2003
JOB(03)/51	Australia	Traditional Expressions	6 March 2003
TN/IP/5	Chairman	Fifth Session of the Council for TRIPS Report by the Chairman, Ambassador Eui-yong Chung, to the Trade Negotiations Committee	28 February 2003

Document Symbol	Communication from	Title	Distribution Date
TN/IP/W/7	Secretariat	Discussions on the Establishment of a Multilateral System of Notification and Registration of Geographical Indications for Wines and Spirits: Compilation of Issues and Points	18 February 2003
TN/IP/M/4	Secretariat	Minutes of the Meeting of 28 November 2002	6 February 2003
2002			
TN/IP/4	Chairman	Fourth Session of the Council for TRIPS Report by the Chairman, Ambassador Eui-yong Chung, to the Trade Negotiations Committee	4 December 2003
TN/IP/W/4/Add.1	Secretariat	Multilateral Notification and Registration Systems – Addendum	27 November 2002
TN/IP/W/6	Argentina, Australia, Canada, Chile, New Zealand and the United States	Multilateral System of Notification and Registration of Geographical Indications for Wines (and Spirits)	29 October 2002
TN/IP/W/5	Argentina, Australia, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Namibia, New Zealand, the Philippines, Chinese Taipei and the United States	Proposal for a Multilateral System for Notification and Registration of Geographical Indications for Wines and Spirits Based on Article 23.4 of the TRIPS Agreement	23 October 2002
TN/IP/M/3	Secretariat	Minutes of the Meeting of 20 September 2002	21 October 2002
TN/IP/3	Chairman	Third Session of the Council for TRIPS Report by the Chairman, Ambassador Eui-yong Chung, to the Trade Negotiations Committee	30 September 2002
TN/IP/W/4	Secretariat	Multilateral Notification and Registration Systems	18 September 2002
TN/IP/M/2	Secretariat	Minutes of the Meeting of 28 June 2002	26 August 2002
JOB(02)/94	Australia	Intervention Made by the Delegation of Australia at the Special Session of 28 June 2002	26 July 2002

Document Symbol	Communication from	Title	Distribution Date
TN/IP/2	Chairman	Second Session of the Council for TRIPS Report by the Chairman, Ambassador Eui-yong Chung, to the Trade Negotiations Committee	9 July 2002
TN/IP/W/3	Bulgaria, Cyprus, the Czech Republic, the European Communities and their member States, Georgia, Hungary, Iceland, Malta, Mauritius, Moldova, Nigeria, Romania, the Slovak Republic, Slovenia, Sri Lanka, Switzerland and Turkey[100]	Negotiations Relating to the Establishment of a Multilateral System of Notification and Registration of Geographical Indications	24 June 2002
JOB(02)/70	The European Communities and their member States	Negotiations Relating to the Establishment of a Multilateral System of Notification and Registration of Geographical Indications – Issues for Discussion at the Special Session of the TRIPS Council of 28 June 2002 – Informal Note	24 June 2002
JOB(02)/49	Chairperson	List of Points and Issues for Discussion at the June 2002 Meeting	4 June 2002
JOB(02)/44	The European Communities and their member States	How to Achieve a Focused and Structured Agenda to Negotiate the Establishment of a Multilateral System of Notification and Registration	28 May 2002
TN/IP/1	Chairman	First Session of the Council for TRIPS Report by the Chairman, Ambassador Eui-yong Chung, to the Trade Negotiations Committee	12 April 2002
TN/IP/W/2	United States	Issues for Discussion in the Negotiation Under Article 23.4	10 April 2002
TN/IP/W/1	United States	Questions and Answers – Comparison of IP/C/W/107/Rev.1 ("EC Proposal"), IP/C/W/133/Rev.1 ("Joint Proposal"), IP/C/W/255 ("Proposal by Hungary")	9 April 2002
TN/IP/M/1	Secretariat	Minutes of the Meeting of 8 March 2002	22 March 2002
2001			
IP/C/M/33	Secretariat	Minutes of the Meeting of 19-20 September 2001	2 November 2001
IP/C/M/32	Secretariat	Minutes of the Meeting of 18-22 June 2001	23 August 2001
IP/C/M/30	Secretariat	Minutes of the Meeting of 2-5 April 2001	1 June 2001

[100] For Estonia see document TN/IP/M/2, para. 21.

Document Symbol	Communication from	Title	Distribution Date
IP/C/W/259	The European Communities and their member States	Establishment of a Multilateral System of Notification and Registration of Geographical Indications Under Article 23.4 of the TRIPS Agreement – Comparative Table of the Main Proposals Submitted to Date	31 May 2001
IP/C/W/260	The European Communities and their member States	Establishment of a Multilateral System of Notification and Registration of Geographical Indications under Article 23.4 of the TRIPS Agreement - Comments on the Proposal Jointly Submitted by Canada, Chile, Japan and the United States (IP/C/W/133/Rev.1)	30 May 2001
IP/C/W/255	Hungary	Incorporation of Elements Raised by Hungary in IP/C/W/234 into the Proposal by the European Communities and their member States on the Establishment of a Multilateral System of Notification and Registration of Geographical Indications	3 May 2001
IP/C/M/29	Secretariat	Minutes of the Meeting of 27-30 November and 6 December 2000	6 March 2001
2000			
IP/C/W/234	Hungary	Opposition/Challenge Procedure in the Multilateral System of Notification and Registration of Geographical Indications	11 December 2000
IP/C/M/28	Secretariat	Minutes of the Meeting of 21-22 September 2000	23 November 2000
IP/C/M/27	Secretariat	Minutes of the Meeting of 26-29 June 2000	14 August 2000
IP/C/W/189	New Zealand	New Zealand's System of Protection for Geographical Indications and the Multilateral Notification and Registration System for Geographical Indications Under Article 23.4 of the TRIPS Agreement	22 June 2000
IP/C/W/107/Rev.1	The European Communities and their member States	Implementation of Article 23.4 of the TRIPS Agreement Relating to the Establishment of a Multilateral System of Notification and Registration of Geographical Indications - Revision	22 June 2000
IP/C/M/26	Secretariat	Minutes of the Meeting of 21 March 2000	24 May 2000
1999			
IP/C/M/25	Secretariat	Minutes of the Meeting of 20-21 October 1999	22 December 1999
IP/C/M/24	Secretariat	Minutes of the Meeting of 7-8 July 1999	17 August 1999
IP/C/W/133/Rev.1	Canada, Chile, Japan and the United States	Proposal for a Multilateral System for Notification and Registration of Geographical Indications for Wines and Spirits Based on Article 23.4 of the TRIPS Agreement	26 July 1999

Document Symbol	Communication from	Title	Distribution Date
IP/C/M/23	Secretariat	Minutes of the Meeting of 21-22 April 1999	2 June 1999
IP/C/M/22	Secretariat	Minutes of the Meeting of 17 February 1999	9 April 1999
IP/C/W/134	United States	Suggested Method for Domestic Recognition of Geographical Indications for WTO Members to Produce a List of Nationally-protected Geographical Indications	11 March 1999
IP/C/W/133	Japan and the United States	Proposal for a Multilateral System for Notification and Registration of Geographical Indications for Wines and Spirits Based on Article 23.4 of the TRIPS Agreement	11 March 1999
IP/C/M/21	Secretariat	Minutes of the Meeting of 1-2 December 1998	22 January 1999
1998			
IP/C/M/20	Secretariat	Minutes of the Meeting of 17 September 1998	15 October 1998
IP/C/M/19	Secretariat	Minutes of the Meeting of 16 July 1998	5 August 1998
IP/C/W/107	The European Communities and their member States	Proposal for a Multilateral Register of Geographical Indications for Wines and Spirits Based on Article 23.4 of the TRIPS Agreement – Establishment of the Register and Registration Procedure	28 July 1998
IP/C/M/18	Secretariat	Minutes of the Meeting of 12 May 1998	11 June 1998
IP/C/M/17	Secretariat	Minutes of the Meeting of 24 February 1998	23 March 1998
1997			
IP/C/M/16	Secretariat	Minutes of the Meeting of 17-21 November 1997	5 December 1997
IP/C/W/85	Secretariat	Overview of Existing International Notification and Registration Systems for Geographical Indications Relating to Wines And Spirits	17 November 1997
IP/C/M/15	Secretariat	Minutes of the Meeting of 19 September 1997	15 October 1997
IP/C/M/14	Secretariat	Minutes of the Meeting of 15 July 1997	15 August 1997