

DDA negotiations
F-Room meeting chaired by Amb. T. Clarke
21 November 2008
EC Remarks

Introduction

- Thank you Mr. Chairman. First of all, I would like to **greet your commitment** and thank you for holding confessionals and convening this meeting to find ways forward on the Register.
- As you are well aware, GIs are of utmost importance for the EU and hence we need to address the issue **by the time of Modalities**. The **G20 Summit conclusions** invited us "to reach agreement this year on modalities that leads to a successful conclusion to the WTO's Doha Development Agenda with an **ambitious and balanced outcome**." For the EC and for the **110** proponents of Communication TN/C/W/52, such outcome could not be "ambitious and balanced" without defining key parameters on TRIPS issues, and thus the Register.
- As clearly stated during the last meeting of the TRIPS SS on 29 October, the **EC confirms that it supports the proposal** on the Register enshrined in Communication TN/C/W/52. Hence that Communication now reflects EC position on the Register. For us, this meant showing much flexibility by comparison with our Communication of June 2005 (TN/C/W/26) and our new thinking summarised in the Chair's report of 9 June 2008. This is the result of a difficult negotiation and of the concessions to those that were against the previous EC Register proposal. This is indeed a **compromise** proposal.
- We got the opportunity to present this proposal in the July meetings and we're ready to further set forth its details. Despite these explanations, some Members still claim that they didn't receive sufficient details, so I provide these now.

On substance: Details of Communication TN/C/W/52

The overall features of this proposal are the following:

1. Members will notify GIs to the WTO Secretariat;
2. those GIs will be entered in the Register;
3. Members authorities will consult the Register and take it into account.

Now, let me detail this proposal.

1. Notification (1st Par).

On this, the W/52 proposal states: "*Members agree to establish a Register open to geographical indications for wines and spirits protected by any of the WTO Member. (...)The elements of the notification will be agreed.*".

- This should not create difficulties as the **Joint Proposal has similar language**.
- Thus each WTO Member would be able to notify a GI as long as it is **protected in the notifying Member**. Such protection depends on each Member system. It may for example be done via a *sui generis* GI system, a certification mark, etc.
- Regarding the **content of the notifications**, as stated in the Chair's report of 9 June 2008, a **fair amount of detailed work has already been done**. Further work will depend on how participation and effects of the Register will be treated. Hence determining key parameters on the latter will allow progress post-Modalities on the content of the notifications. We are in favour of detailed notifications but this can be left for after modalities.

2. Registration (1st Par).

- Again on this issue, we have moved our proposal to match the Joint Proposal.
- On this, W/52 states: "*Following receipt of a notification of a geographical indication, the WTO Secretariat shall register the notified geographical indication on the register.*".
- Again, let me rely on the Chair's report of 9 June 2008, which indicates that there is "*significant common ground among Members*" on the following elements:
 1. Following receipt of a notification, the administering body shall register the GI;
 2. The registration shall consist of the recording on the Register of the information provided in the notification;
 3. The administering body shall notify all WTO Members of the registration of each GI.This common ground is captured in the W/52 language. So, we are contemplating a **simple system** where the notification is sent to the WTO Secretariat for example, which would just have to compile the information provided in the notification and put it in a website in an organised manner.
- For other Members, this system means **no administrative costs**, since they will not have to scrutinise notified GIs prior to their entry on the Register.

3. Participation (2nd Par.)

- Communication W/52 clearly indicates that "*Each WTO Member shall provide that domestic authorities will consult the Register and takes its information into account*".
- Let me be very clear: after spending 15 years negotiating, there is no point in still discussing a voluntary Register. We have the WIPO Lisbon Agreement for that. It is even less relevant in the framework of DDA that requires substantial commitments from our side that are not voluntary either. Just like we are negotiating a multilateral DDA, we need to establish a multilateral Register.

4. Register and domestic authorities (2nd Par.)

- On this point, we have again adapted our language and it is now very close to the Joint Proposal, another step in the direction of the other side.
- First of all, we propose that domestic authorities **consult** the Register when making decisions regarding registration and protection of trademarks and geographical indications. This consultation would be done in accordance with existing domestic procedures, which typically include the consultation of sources and documentation. The Register will thus allow better access to information.
- Secondly, when consulting the Register, domestic authorities will also **take it into account**. This has been confirmed by co-sponsors of the Joint Proposal to be the sense of their proposal.
- Finally, we would also like to make it explicit how the Register will, at least, be taken into account.

1. The registered **geographical indication - duly supported by the evidence provided by the notifying Member - will be considered to meet indeed the TRIPS definition in the absence of better available evidence to the contrary.**

- This proposal is fully justified. Indeed, prior to entry on the Register, a GI will have to be "protected" in the notifying Member. This means it will have been **checked in the notifying Member following a domestic legal process that is in principle compliant with TRIPS**. The notifying Member will have assessed that there is for example a characteristic attributable to the origin of the product in question which is the basis for the GI definition in TRIPS. The **notifying Member will also have**

provided the evidence that allows it to arrive at that conclusion. This evidence will be available. Thus, WTO Members that do not have proof different should normally agree that this is sufficient proof of the relation between the good and its territory of origin and, thus, that the definition in Art 22.1 is met.

- But this proposal is balanced: **any WTO Member may, at any time**, consider that it holds **evidence contrary** to that provided by the notifying Member and that the name does not meet Art. 22.1 TRIPS.

2. In order to show further flexibility we have also substantially reduced our ambition on **genericness**. In the framework of an overall compromise, we would be ready to simply accept the clarification that those who **assert that a name is generic** would have to **substantiate** their assertions. There is no upheaval there: those who rely on an exception are the ones having to substantiate their stance.

3. Concerning **homonymy**, which was an important part of our previous proposal, we would again be ready, in the framework of an overall compromise, to drop it entirely.

For GI definition and genericness, **national authorities remain free as to the final decision on substance**. Hence they will take their decision on those elements, as well as any other, and finally decide whether the GI should be protected in their territory or not. This is without any time-limit. Of course, decisions taken in country A will have no impact on country B.

- Following on from that, this proposal does **not** amount to a **one-stop shop system of registration**. To be protected in a third country, the GI will have to follow the procedures provided for in that country.
- Finally, it goes without saying that the Register would not hamper recourse to the **exceptions under Art. 24 TRIPS**. Generics, but also prior use and prior trademarks exceptions, will continue to be available as per TRIPS.

5. Product coverage

- Communication W/52 encompasses a Register proposal for wines and spirits. However, it clearly states under Extension that "*Members agree to the extension of the protection of Article 23 of the TRIPS Agreement to geographical indications for all products, including the extension of the Register*".
- Communication W/52 is a whole, it is not intended to be cut into pieces, especially as this proposal captures compromises made by all its proponents.

6. SDT

- This Communication also takes into account the special needs of some countries; that's why it states that "*Special and Differential treatment shall be an integral part of negotiations in the three areas above, as well as special measures in favour of developing countries and in particular least-developed countries*". SDT measures are to be negotiated after modalities in view of the needs expressed by DCs in view of the modalities agreed.

Mr. Chairman, this is a significant step made by the EC and this clearly shows that Communication W/52 is a compromise proposal where proponents have adapted their positions to accommodate the concerns of others.