Room Document

QUESTIONS FROM SINGAPORE

INFORMAL MEETING OF THE TRIPS SPECIAL SESSION
4 DECEMBER 2008

1 In contributing to constructive discussions on the technical aspects of the GI Register, Singapore has some comments and implementation-related questions from the perspective of a non-wine producing member. These questions and comments relate specifically to the document TN/C/W/52 as well as the EC's intervention at the Room F meeting on 21 November 2008. We hope that responses to our earlier comments and questions will help to clarify our concerns and bring about convergence.

- First, the EC in its intervention on 21 November had expressed that the language in W/52 on Notification, Registration, and Domestic Authorities is now *"very close to" or "matches"* that of the Joint Proposal. Indeed, we recognise that this similarity is reflected in the fact that "following the receipt of the notification, the WTO Secretariat shall register the notified GI". Nevertheless, we also note that the most fundamental difference is that W/52 advocates a mandatory Register, while the Joint Proposal calls for a voluntary proposal. This suggests very different legal effects when domestic authorities take the Register into account, with the W/52 proposal amounting to that of a rule-book, while the Joint Proposal operates as an encyclopaedia.

- Second, given that the proposed *prima facie* validity of the Register in W/52 would create widespread legal effects for all Members, we will like to ask if the W/52 proponents have considered the need for pre-grant opposition and post-grant revocation proceedings analogous to that used in the trademark system.

- Third, we will like to refer to Section 4.1 of the EC's intervention which states that, *"The registered GI – 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"*. We would like to ask what kind of *"evidence"* can be provided by a notifying Member, and what kind of *"evidence contrary"* can be provided by an opposing WTO Member. In essence, we would like to better understand what is the definition of *"evidence"* and *"evidence contrary"*?

- Fourth, also related to Section 4.1, it is not evident to us who will weigh the *"evidence"* provided by the notifying Member and the *"evidence contrary"* provided by the opposing Member. And hence, what will be the outcome if the *"evidence contrary"* proves to be better available evidence?

- Fifth, and lastly, we would like to seek clarification on the intent of the W/52 proposal relating to the genericness exception under TRIPS Article 24.6. The EC's intervention states that, *"The Register would not hamper recourse to the exceptions under Article 24 of TRIPS. Generic, but also prior use and prior trademarks exceptions, will continue to be available as per TRIPS"*. However,

the last sentence of Paragraph 2 in W/52 states that *"domestic authorities shall consider assertions on the genericness exception laid down in TRIPS Article 24.6 only if these are substantiated"*. In our view, this sentence in W/52 appears to differ from the explanation provided by the EC. Hence, we will be grateful for clarifications on this issue.

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