ELEMENTS OF THE INTERVENTION
BY THE EUROPEAN COMMUNITIES
AT THE TRIPS COUNCIL SPECIAL SESSION
OF 4th AND 5th DECEMBER 2008

Background : *On 18 July 2008, a Communication was tabled with the support of more than 100 WTO Members (TN/C/W/52). It contains a proposal to agree at Ministerial level on the key parameters of TRIPS related issues (GI Register, TRIPS disclosure requirement and GI Extension). This was the result of a high-level negotiating process with significant concessions by all sides, in order to converge in a single compromise proposal.*
On 4th December 2008, 12 Members submitted questions relating to the portion of Communication TN/C/W/52 on GI Register[1]. At the TRIPS Council Special Session of 4th and 5th December 2008, the EC made a number of interventions to answer those questions.
At the request of some Members, the EC is providing the elements of its oral interventions at that session.
The EC remains at the disposal of any Member to provide further clarifications on the compromise proposal in Communication TN/C/W/52.

Introductory remarks

While being fully aware of the mandate of the Chair of the TRIPS Special Session, the EC together with the vast majority of WTO Members consider that all TRIPS issues in DDA should be dealt with in parallel and that Modalities on all of them should be adopted at the next Ministerial meeting. We regret that no discussions have been called since July on GI Extension and on TRIPS/CBD disclosure and consider it is urgent to resume work on those two issues.

[1] The portion of TN/C/W/52 on GI Register reads :

*"**GI-Register: draft Modality text***

1. Members agree to establish a register open to geographical indications for wines and spirits protected by any of the WTO Members as per TRIPS. Following receipt of a notification of a geographical indication, the WTO Secretariat shall register the notified geographical indication on the register. The elements of the notification will be agreed.

2. Each WTO Member shall provide that domestic authorities will consult the Register and take its information into account when making decisions regarding registration and protection of trademarks and geographical indications in accordance with its domestic procedures. In the framework of these procedures, and in the absence of proof to the contrary in the course of these, the Register shall be considered as a prima facie evidence that, in that Member, the registered geographical indication meets the definition of "geographical indication" laid down in TRIPS Article 22.1. In the framework of these procedures, domestic authorities shall consider assertions on the genericness exception laid down in TRIPS Article 24.6 only if these are substantiated.

3. Text based negotiations shall be intensified, in Special Sessions of the TRIPS Council and as an integral part of the Single Undertaking, to amend the TRIPS Agreement in order to establish the Register accordingly."

Paragraph 9 of W/52 applies horizontally to the three TRIPS issues: "9. 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."

Communication TN/C/W/52 (hereafter ″W/52") was tabled on 18 July 2008. It has been debated at meetings held during the course of the Ministerial meeting at the end of July. Since then, the Register portion of the Communication has been discussed in meetings of various formats convened under the auspices of the Chair of the TRIPS Special Session. Written material has been circulated as well. In response to requests for additional clarifications, the EC already had the opportunity to circulate in writing some of its oral comments. Parallel to the WTO work, conferences and seminars have been organised which provided an opportunity to further debate Communication W/52 with a wider audience. Articles have been published as well.

In the light of the extensive work already carried out, we hope that the current elements will be used as clarifications and induce all Members to engage in a constructive spirit in a – regrettably - protracted negotiation process which has been going on for more than 14 years.

Structure to answer the questions

Following the extensive work carried out over the years, the Chair of the TRIPS Special Session structured his report dated 9 June 2008 (TN/IP/18) on the basis of the following categories :

"The elements of a registration system that have been considered in the work can be put into three categories :

(a) First, there are the two key issues of participation and the consequences/legal effects of registration (...)

(b) There is a second category of elements on which a fair amount of detailed work has been done. These are the areas of notification and registration (...) positions on these matters are linked to the treatment of participation and consequences/legal effects (...).

(c) Third, there are a number of other elements which depend substantially on the key policy choices to be made, in particular on the questions of participation and consequences/legal effects, and which have thus been less fully discussed so far. (...)".

As some of the questions put forward cover the same issues or overlap each other, the EC will use the three categories devised by the Chair to cluster and answer those questions.

As a general remark, note that the elements of Communication W/52 supersede and take precedence over all those aspects in previous EC proposals that may contradict them.

Category 1 issues : key issues

These include "the two key issues" of :
1. Consequences/legal effects of registration,
2. Participation/Member coverage.

The features of the GI Register depend mostly on what is entailed by those "key issues". A clear Ministerial decision is thus required thereon. Indeed, the absence of a decision on these two issues after 14 years of negotiation undermines any possibility to further progress on Categories 2 & 3 issues. Following clear guidance by Ministers on Category 1 issues, issues under Categories 2 & 3 could largely fall into place after some months of intensive technical negotiations. Similarly, discussions over precise legal drafting can only take place after Ministers have decided on the key parameters. Therefore, Communication W/52 focuses on making a compromise proposal on these two "key issues", while leaving other details for later.

We understood from previous discussions that the issue of " Participation/Member coverage" can be more easily addressed if there is understanding on the issue of "Consequences/legal effects of registration". We therefore start with the latter.

Cat 1, Issue 1 : Consequences/legal effects of registration

This issue refers to WHAT are the consequences or legal effects of entering GIs in the GI Register. This issue is covered in W/52 as follows :

"2. *... domestic authorities will consult the Register and take its information into account when making decisions regarding registration and protection of trademarks and geographical indications in accordance with its domestic procedures. In the framework of these procedures, and in the absence of proof to the contrary in the course of these, the Register shall be considered as a prima facie evidence that, in that Member, the registered geographical indication meets the definition of "geographical indication" laid down in TRIPS Article 22.1. In the framework of these procedures, domestic authorities shall consider assertions on the genericness exception laid down in TRIPS Article 24.6 only if these are substantiated.*"

In relation to those consequences or legal effects, the questions put forward can be clustered as follows:

Decisions regarding registration and protection of trademarks and GIs

Communication W/52 reads : "*when making decisions regarding registration and protection of trademarks and geographical indications".*

The "*decisions regarding registration and protection of trademarks and geographical indications*" are the ones already provided for in each domestic system, with no need to establish new or different decisions to be taken. Indeed, Members would implement the provisions regarding the GI Register within their own legal system and practice as already in place (be it a GI *sui generis* registration system, a system of collective and certification marks, an administrative or legislative scheme for protection, a judicial system ...). Furthermore, as long as no such "*decisions regarding registration and protection of trademarks and geographical indications*" have to be taken, there would be no requirement to consult the Register, even though domestic authorities would be free to do so if they so wish.

This wording fully takes over that of the alternative proposal TN/IP/W/10 (hereinafter W/10), according to which the Register will be consulted *"when making decisions regarding registration and protection of trademarks and geographical indications (...)"*.

Existing procedures provided for by national law

According to Communication W/52, such decisions are made "*in accordance with [each Member] domestic procedures*".

The reference to such procedures appears several times. The language *"In the framework of these procedures"* or *"in the course of these",* refers to the same "*domestic procedures*", i.e. the "*domestic procedures" "when making decisions regarding registration and protection of trademarks and geographical indications".* Again, the proposal does not aim at creating new procedures, but entails that the consultation of the Register would be included in any procedure – be it administrative or judicial - involving decisions regarding registration and protection of trademarks and geographical indications already provided for in domestic law.

Domestic authorities

The domestic authorities referred to in the proposal are those operating within the "*domestic procedures*" provided for in each WTO Member to make *"decisions regarding registration and protection of trademarks and geographical indications".* Each WTO Member will continue to decide which authorities make such decisions. If domestic procedures provide competence to administrative and judiciary authorities to make *"decisions regarding registration and protection of trademarks and geographical indications"*, then "*domestic authorities"* will obviously include both administrative and judiciary authorities.

Consult the Register and take its information into account.

Communication W/52 provides that domestic authorities will *"consult the Register and take its information into account".*

The language used in W/52 is similar to the one appearing in proposal W/10, with the exception that the word "*Database*" is replaced by the term "*Register*" *[p.m., in W/10 : "consult the Database when making decisions ...".].* Proponents of W/10 have clarified in the past that the obligation to consult the Register in their own proposal entails the obligation to "*take its information into account".* This clarification is spelled out more clearly in W/52.

When consulting the Register and taking its information into account, domestic authorities will continue to handle the procedure, the evidence, the legal arguments and take the final decision on the matter at stake in view of all elements available. The consultation of the GI Register will integrate into these domestic procedures. For instance, if there is a timeframe for the authority to gather information before taking a decision, the consultation of the Register will occur within that timeframe. Failing any timeframe for decision-making, there will be none for the consultation either. Again, the final decision will rest upon domestic authorities.

The information to be taken into account is the information included in the GI Register. We will see later (under "notification") what the information to be notified is. We are of the view that such notification should include not only the GI itself, but also other elements *inter alia*

the good for which the GI is used and the relation between the good and its origin. The EC has always been in favour of submitting substantial information to the GI Register in order to support the work of domestic authorities of other WTO Members. This will contribute to alleviating administrative costs and workload by allowing access to a transparent one-stop resource with easy access to information. The availability of this one-stop resource will not preclude domestic authorities from requiring additional information should they need to.

How at least the Register will be taken into account

Proposal W/10 is silent as to HOW the Register will be taken into account by domestic authorities. Proposal W/52 clarifies how AT LEAST the Register would be taken into account.

In the absence of proof to the contrary

In W/52: *" ... in the absence of proof to the contrary in the course of these, ..."*

Communication W/52 proposes key parameters to be agreed at Modalities. W/52 does not propose a precise drafting language for a TRIPS amendment. Thus, while W/52 includes terms which are as precise as possible to facilitate a negotiation, they are without prejudice to the precise legal drafting which will have to be agreed later by all WTO Members.

As for the "proof to the contrary", such "proof" should relate to the elements of the GI definition of TRIPS Article 22.1[2] as flowing from the following sentence of the second paragraph. Each domestic authority will evaluate whether the "proof" indeed relates to the elements of the GI *definition* or not. In this respect, a prior trademark would in principle appear to be unrelated to the GI definition in TRIPS Article 22.1. However, a prior trademark may result in the GI being refused *protection* and the Register is not intended to change Members' protection systems. This highlights the difference between the GI definition of TRIPS Article 22.1 and the protection of GIs.

The "proof" can take any form provided for under domestic law and procedures and would be examined upon request or *ex officio* (i.e. on the domestic authority's own initiative) according to each Member legal system and practice.

At this stage, we see no need in agreeing a precise definition of "proof". Should this appear necessary, we may do so when entering legal drafting after Modalities. We may, on the contrary, decide that such definition is not necessary or possible. In that case, the evaluation of the "proof to the contrary" would rest upon each Member according to its domestic legal system and practice.

Each domestic authority will asses in each case all the information available and decide, in that particular case, whether this information qualifies, in its view and in relation to its own rules and practices, for "proof" to the contrary or not.

[2] TRIPS Art 22.1: *"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."*

A name on the Register enjoys *prima facie* evidence that the registered GI meets the definition of "geographical indication" laid down in TRIPS Article 22.1

In W/52: " … *the Register shall be considered as a prima facie evidence that, in that Member, the registered geographical indication meets the definition of "geographical indication" laid down in TRIPS Article 22.1."*

"Prima facie evidence" is evidence which, on its appearance (at first sight), attests a certain fact. The Register, with all the information notified by the country of origin, provides evidence that the name is indeed a GI on its appearance.

Indeed, first, only GIs protected *"as per TRIPS"* in their country of origin will be notified to the GI Register. Thus, only GIs that meet the agreed definition in TRIPS Article 22.1 will be entered in the GI Register. Furthermore, the notification to the GI Register will be done by WTO Members. The notifying member will have ensured that the GI has been processed domestically with the result that it is legally protected in its territory as per TRIPS, i.e. that it meets the definition in TRIPS Article 22.1. In addition, when making a notification to the GI Register, we propose that the notifying member provides the information supporting such protection as per TRIPS.

To summarise, we have a registered GI which is definitively a GI as it meets the agreed definition in TRIPS Article 22.1, which has gone through a domestic process of approval (be it administrative or judicial for example), which has been notified by the competent authority of a WTO Member whose IP legislation has been notified to the WTO and scrutinised by Members, and whose registration in the GI Register has been accompanied by all the necessary information, as agreed by Members, showing that it meets the agreed definition of TRIPS Article 22.1.

In these circumstances, it appears reasonable that, when consulting the GI Register and taking its information into account, the domestic authorities of another Member will consider at least that, *in the absence of proof to the contrary,* this registered name meets the GI definition. The expression "*in that Member*" used in W/52 refers obviously to the Member consulting the Register.

Such "consequence" of the Register appears sensible. First, it is limited to the circumstance where domestic authorities take "*decisions regarding registration and protection of trademarks and geographical indications"*. Furthermore, in that case, they will continue to act *"in accordance with [their] domestic procedures"*.

While consulting and taking the information of the Register into account, they will evaluate that information in view of all other information in the case. Should they face contradictory information, they may request more information to be provided or find out on their own initiative according to national procedures. Domestic authorities will be the ones deciding whether they have "*proof to the contrary"* regarding the fact that the name meets the GI definition. They will also be in charge of deciding whether the GI on the Register may be granted protection according to national law. Finally, they will take the decision on the overall case under scrutiny.

It is important to stress the difference between deciding on the GI definition and deciding on GI protection. When domestic authorities examine whether a GI may be protected, the

exceptions applicable to a GI (genericness exception, prior trademark exception …) remain valid and may be relied upon as provided under national law. For instance, a GI may be generic in the Member where the matter occurs and, in that case, the GI may not be protected. Likewise, in some Members, the existence of a prior trademark may prevent the protection of the GI. Another example may be the existence of a local homonymous GI where there would be no means to ensure that consumers are not misled, etc.

Thus, it is important to remind that the entry of a GI in the GI Register will not result in automatic protection in any other WTO Member. This decision on protection will continue to remain entirely in the hands of domestic authorities. The consequences of the entry in the Register have been explained and none imply automatic protection abroad. To be protected in a third country, the GI has to be protected according to the domestic legislation and the procedures established in that country. Members would continue to apply their existing domestic system of protection, including TRIPS exceptions, whether prior trademarks or any other.

There are thus significant differences between the current proposal and the previous EC proposals. These have contributed to gathering a broad support. Such broad support is another difference in itself. The EC understood that the concept of presumptions could raise misunderstandings. Communication W/52 addresses this issue and, in terms of consequences of the Register, is now merely referring to how the information on the GI Register should be taken into account, while defining it narrowly.

Genericness in TRIPS Article 24.6 is an exception to protection. The burden of proof rests upon the party asserting the claim.

In W/52: *"In the framework of these procedures, domestic authorities shall consider assertions on the genericness exception laid down in TRIPS Article 24.6 only if these are substantiated."*

The application of the "genericness exception"[3] allows a Member to refuse protection in its territory to a foreign GI. A GI may become generic in a given territory when "*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".*

On this issue, W/52 first refers to "*In the framework of these procedures".* As already mentioned, "*These procedures*" are the "*domestic procedures*" applicable "*when making decisions regarding registration and protection of trademarks and geographical indications*". Again, W/52 insists on "*domestic authorities*" acting within "*domestic procedures*".

Within that well-defined framework, domestic authorities may be called to "*consider assertions on the genericness exception laid down in TRIPS Article 24.6"* (indeed, this exception will obviously continue to be available as provided in TRIPS). In doing so, domestic authorities should make sure that the assertions "*are substantiated*", which follows from the fact that genericness is defined as an "exception" in TRIPS. Again, the genericness exception will continue to be considered by domestic authorities in accordance with their

[3] TRIPS Art 24.6*: "Article 24 - International Negotiations; Exceptions (…) 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. (…)"*

legal system and, if the name is finally considered generic in their territory, domestic authorities may refuse protection of a GI on this ground.

Regarding the meaning of the word "substantiated" (and the level to reach to be considered as "substantiated"), we refer to the answers given regarding the definition of "proof": W/52 is not intended to be the draft language for a TRIPS amendment but a tool to agree on key parameters at Modalities. Should Members wish to agree on guidelines concerning "substantiated", we may do so once key parameters are fixed at Modalities. Should such guidelines appear unnecessary, this would be implemented by each Member according to its domestic legal system and practice. Each WTO member would evaluate when an assertion is "substantiated" or not. Again, the basic principle reaffirmed in W/52 is that domestic authorities will act within domestic procedures. For instance, genericness may be examined upon request as well as on the domestic authority's own initiative if the domestic procedure so provides. It is understood that, even if the examination of genericness occurs *ex officio,* this should still be accompanied by some substantiation and not on an arbitrary basis.

To sum up, on genericness, W/52 clarifies that those relying on the exception are to substantiate their assertion. This merely encapsulates a general principle of good administration and common procedural requirements in Members' systems.

On this issue, there is a very considerable evolution compared to previous EC proposals, which provided for legal presumptions in relation to genericness. For this reason, genericness remains an issue covered by the Register proposal, albeit significantly toned down by only requiring that any assertions of genericness be substantiated; this is another of the key concessions made by the EC to gather consensus around W/52.

Cat 1, Issue 2 : Participation/Member coverage

In W/52: "*Each WTO Member shall provide ….* "

The language of W/52 is quite clear on this issue.

There were questions as to the implementation of the W/52 Register proposal in countries depending on the production or sale of some products. As it appears from the text itself, W/52 does not differentiate amongst Members on a product basis. Beyond that, W/52 includes a proposal under "GI Extension" to enlarge the GI Register to all products without discrimination.

Category 2 issues : issues subject to decisions on Category 1 on which detailed work has already been done

According to the Chair's report of 9 June 2008, this category covers the issues of :
1. Notification,
2. Registration.

The Chair notes that "*positions on these matters are linked to the treatment of participation and consequences/legal effects*" (i.e. Category 1 issues). He further states that "*a fair amount of detailed work has been done*" on Notification and Registration. After 14 years of technical

discussions, it is difficult to see how there could be further progress on Category 2 issues without an agreement on Category 1. In view of the convergence already achieved and the fact that these issues are subject to decisions on Category 1, "Notification" and "Registration" are identified but not further developed in W/52. Technical work will resume on the basis of the agreement reached by Ministers on Category 1 issues. We are nevertheless willing to take the questions raised in this respect.

Cat 2, Issue 1 : Notification

"Notification" concerns WHICH information will have to be notified in the Register.

This issue is covered in W/52 as follows : " … *protected by any of the WTO Members as per TRIPS (...) The elements of the notification will be agreed*."

W/52 encompasses two elements.

Notify only GIs that are protected in the country of origin

W/52 proposes that the Register be open only to GIs "*protected by any of the WTO Member as per TRIPS*". W/52 merely stresses that only a GI which is protected in its country of origin will be notified to the Register. If a GI is not protected by the notifying member (for instance, on the basis of the genericness exception or prior trademark exception), the GI cannot be notified to the GI Register.

When notifying a name to the Register, a Member would have to ensure – according to its own domestic system - that this requirement is met, whatever the form of protection. This is notably why the EC is not proposing that private parties notify GIs directly.

W/52 does not enter into details regarding the issue of the form of protection. Indeed, the Register would not affect the fact that Members are free to determine the appropriate method of implementing TRIPS provisions. Hence, GIs can be protected via a registration system but also via any other legal system able to provide the TRIPS protection (e.g. an administrative scheme, a trademark system, or a judicial decision, notably in common law countries). Thus, the GI Register would not require Members to establish a national registration system.

So, in this context, a Member would have to ensure that GIs are "*protected by any of the WTO Member as per TRIPS*". This stems from the fact that each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in TRIPS. Every legal system which generates an IP right, including GIs, should have been the object of a notification to the TRIPS Council upon entry into force (as per the TRIPS standard transparency provision) and Members have the opportunity to scrutinise it and challenge it.

Notify elements to be agreed

According to the Chair report of June 2008, there is already "*significant common ground among Members*" on some of the issues to be notified, which are listed in his report (e.g. notifying Member, the good for which the GI is used, the GI itself …).

Among those items, the core issue is that notifying Members should only notify names which are GIs because they meet the definition in TRIPS Article 22.1 and because they warrant the protection provided by TRIPS in their country of origin.

Thus, the notification to the WTO should at least include all necessary information supporting that 1) the GI meets the GI definition and that 2) the GI is protected in its country of origin.

There will only be a final agreement on GI Register when the elements of the notification are agreed. However, the precise elements of the notification are obviously not an issue for Ministers.

Cat 2, Issue 2 : Registration

"Registration" concerns HOW the information will be registered in the Register after being notified by a Member.

According to the Chair report, there is also "*significant common ground among Members*" on some elements (i.e. following receipt of a notification the GI will be registered; this registration will consist in recording the information submitted on the Register; all WTO Members will be informed).

This issue is covered in W/52 as follows : "*Following receipt of a notification of a geographical indication, the WTO Secretariat shall register the notified geographical indication on the register".* W/52 takes over the language in W/10 *[Cf. W/10 : "The WTO Secretariat shall, following receipt of the notification, register the notified geographical indication on the Database ..."].*

Registration was a thorny issue in the past, as EC was proposing an opposition phase to take place between notification and registration. Some concerns were expressed in this respect and this is one of the areas where the EC has shown considerable flexibility, with the result that W/52 does not encompass an opposition phase at international level.

There were questions concerning the rare cases of GIs from homonymous regions, i.e. GIs from different regions which happen to have the same name but are located in two different WTO Members. In our view, if both WTO Members each protect its GIs in its own territory, both Members should be able to notify its GI to the GI Register. If so, both GIs will appear in the GI Register. As various elements related to the GI will be included in the registration (and not merely the name of the GI), the Register will allow to see that there are two different GIs with the same name and having different characteristics protected in two different countries. Following on from that, which GI has been entered in the Register first, second or if both have been entered at the same time will be irrelevant. Likewise, the GI being registered first would not be able to "prevent" the second one from being entered in the Register as well.

Although both GIs are in the Register, their protection abroad will continue to be decided on a case by case basis by each WTO member in accordance with its own domestic provisions and in compliance with TRIPS and the current TRIPS flexibility in this respect. The Register is not designed to affect the existing provisions on homonymy and the flexibility in TRIPS to decide on the protection of a homonymous GI is not changed..

As to who will decide on the GI protection in a case of homonymy, this is the competent authorities in the Member's territory which are examining the matter where the issue of homonymy is raised.

In the past, the EC had submitted proposals concerning homonymy but these met some sensitivity and they were dropped in order to allow consensus in W/52. This is a substantial concession as the EC was proposing until recently to subject homonymy to legal presumptions.

Category 3 issues : other issues subject to decisions on Category 1

In his report, the Chair includes in this category "*Other elements which depend substantially on the key policy choices to be made, in particular on the questions of participation and consequences/legal effects".*

The issues under Category 3 are listed in the Chair's report (e.g. fees, SDT, duration of registrations, modification and withdrawal, contact points, …). After 14 years of technical discussions, like for Category 2, Category 3 issues may only progress further once "key policy choices" are made on Category 1. Accordingly, they are not covered in W/52 to any detail as they will not need to be discussed at Modalities.

However, on Special and Differential Treatment (SDT), W/52 affirms 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."* This confirms the importance that the EC and the other W/52 co-sponsors attach to the development dimension of the Round. In fact, the EC approach to the whole W/52 is a response to development concerns. Indeed, EC has substantially adapted its GI expectations to concerns expressed by developing countries. Likewise, it has adjusted its views on TRIPS/CBD disclosure to better take into account the interests of those countries. Efforts have been made by all sides to achieve the large consensus gathered around W/52. Discussions on SDT will necessarily have to be an integral part of post-Modalities negotiations. Modalities on "key issues" are a necessity to move ahead but are just an intermediary step before we can agree on an overall agreement that integrates all aspects to the satisfaction of all Members. This approach is consistent with the Chair's report.

There were some questions on other Category 3 issues. These very technical issues have been largely covered in the past 14 years of negotiations and we hesitate to cover them again failing guidance by Ministers on Category 1 issues. They are not part of W/52 since such guidance is needed to address them efficiently. Nevertheless, the EC may advance answers to the questions raised. In doing so, the EC recalls the discussions which have already taken place in the last years and the voluminous background documentation from the Secretariat in this respect.

Some questions relate to how/when notifying Members should remove names from the Register. The EC is of the view that a notifying member should remove a GI from the GI Register when it is no longer a GI or when it is no longer protected in its territory. That being said, the entry into force and the expiration of a GI in a Member is – and will continue to be - determined by the domestic law and procedures in the notifying member. The flexibility of the TRIPS provisions in that respect would not be altered by the Register. For instance, a

Member may provide that a name may lose its status as a GI in its territory if it becomes generic, falls into disuse or merely if an annual fee is not paid. Another Member may have adopted different provisions. Nevertheless, the principle that GIs remain in the Register as long as they are protected in the notifying member should, in our view, remain. This issue should not be intractable once Category 1 issues have been solved, and we are open to the views of Members in this respect.

On the issue of the costs of the Register, this again will depend on the decisions adopted on Category 1 issues. We think that the "costs" for the WTO Secretariat of receiving GI notifications and having to register them in a GI Register of the kind now proposed will be negligible compared to the numerous notifications and communications received by the WTO Secretariat on a daily basis. We can discuss this matter after Modalities but we understand it will not be difficult to sort out. In relation to "costs" at national level, these will be guided by the applicable domestic procedures. Should a Member provide for the payment of a fee by a private party in a given procedure, this will not be affected by the Register. The same applies if the protection of a GI – whatever the form of such protection – is subject to the payment of a fee. The GI owner will remain subject to the payment of that fee.

Concerning contacts and consultations amongst WTO Members on issues related to the GI Register, we do not expect specific guidelines to be needed other than those which already exist in WTO and in general diplomatic practice.

Again, on this issue as on all others, we are open to discussions once we get further guidance on the key issues at stake.

Concluding remarks

The EC would like to thank the numerous co-sponsors of W/52 for their support today.

The EC is pleased to have had the opportunity to clarify some points of proposal W/52 in response to the questions raised. This will contribute to a better understanding of this proposal and highlight the substantial efforts made by the EC in order to reach compromise with more than 100 WTO Members.

We have been able to orally answer the questions in a record time because we are very confident in a proposal which is the result of an intense process of negotiation at highest level. This is a robust and coherent proposal which has been tested against the vast majority of WTO Members, some of which were in fact against previous proposals on GI Register put forward by the EC.

W/52 – covering GI Register, TRIPS disclosure requirement and GI Extension – is a reasonable proposal. Each of its elements has been maturing over time and now enjoys a large consensus among Members from the entire WTO spectrum. We hope that the efforts made by so many Members in adapting their positions to the concerns of others will result in an early engagement by the remaining Members to achieve full consensus.

We have made all efforts to answer all the questions on GI Register. We remain open to any request for clarification, including on a bilateral basis. We remain at the permanent availability of any delegation, notably here in Geneva.

We have taken note of the invitation to provide answers in writing.

To conclude, the EC reminds that the portion of W/52 on GI Register should be seen in the framework of a single proposal which also includes TRIPS/CBD disclosure and GI Extension, which is a compromise proposal. The EC reaffirms its support to the entirety of Communication W/52, including its portions on TRIPS/CBD disclosure and on GI Extension.