

**General Council
Trade Negotiations Committee**

**ISSUES RELATED TO THE EXTENSION OF THE PROTECTION OF GEOGRAPHICAL
INDICATIONS PROVIDED FOR IN ARTICLE 23 OF THE TRIPS AGREEMENT TO
PRODUCTS OTHER THAN WINES AND SPIRITS AND THOSE RELATED TO
THE RELATIONSHIP BETWEEN THE TRIPS AGREEMENT AND
THE CONVENTION ON BIOLOGICAL DIVERSITY**

Report by the Director-General

1. As reported to various meetings of the General Council¹ and the TNC², Deputy Director-General Rufus Yerxa has been consulting on my behalf on issues related to the extension of the protection of geographical indications provided for in Article 23 of the TRIPS Agreement to products other than wines and spirits ("GI extension") and those related to the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD), pursuant to the mandate relating to outstanding implementation issues in paragraph 39 of the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC). The purpose of this note is to report on the status of these discussions.

GI extension

2. The work continues to be characterized by different views on both the merits of GI extension and on whether it was agreed at Doha that this is part of the negotiations and of the Single Undertaking. There are also different views on whether this matter should be addressed in the context of the modalities decision.

3. On the one hand, we have a number of Members who support GI extension and who want clear guidance on this question as part of the modalities decision. In this connection, these Members have tabled the following proposal for action: "Members agree to the extension of the protection of Article 23 of the TRIPS Agreement to geographical indications of all products. Negotiations shall be undertaken, in Special Sessions of the TRIPS Council and as part of the Single Undertaking, to amend the TRIPS Agreement in order to extend the protection of Article 23 of the TRIPS Agreement to geographical indications of all products as well as to apply the exceptions provided in Article 24 of the TRIPS Agreement *mutatis mutandis*" (WT/GC/W/587 and Add.1 - TN/C/W/48 and Add.1).

4. On the other hand, we have a number of Members who are opposed to negotiations on extension. They believe that the case has not been made for such extension and that even basic objectives are far apart. In their view, the issue of GI extension should not be addressed in the context of the modalities decision and the suggested draft modalities text presented by the *demandeurs* would prejudice an outcome. Some of these Members are willing to continue fact-based discussions under the present process of work as agreed in paragraph 39 of the Hong Kong Ministerial Declaration but

¹ See documents WT/GC/M/101-103, 112 and 114 (to be issued).

² See documents TN/C/M/23-25 and 27.

without prejudice to the outcome and the positions of Members and provided that there is a readiness to engage meaningfully on technical matters.

TRIPS/CBD

5. There is important common ground on key underlying objectives, notably the importance of the TRIPS Agreement and the CBD being implemented in a mutually supportive way, the avoidance of erroneous patents for inventions that involve the use of genetic resources and related traditional knowledge and securing compliance with national access and benefit-sharing regimes. Moreover, there is wide acceptance of the need for patent offices to have available to them the information necessary to make proper decisions on the grant of patents and to avoid any undermining of the role of the patent system in providing incentives for innovation. However, the work continues to be characterized by different approaches to meeting these objectives, including whether the TRIPS Agreement needs to be amended and whether it was agreed at Doha that this issue is part of the negotiations and of the Single Undertaking. There are also different views on whether this matter should be addressed in the context of the modalities decision.

6. On the one hand, we have a large group of developing country Members who have proposed an amendment of the TRIPS Agreement to introduce a mandatory disclosure requirement in patent applications and who want clear guidance on this matter as part of the modalities decision. In this connection, these Members have tabled the following proposal for action: "Members agree to the inclusion in the TRIPS Agreement of a mandatory requirement for the disclosure of origin of biological resources and/or associated traditional knowledge in patent applications. Text-based negotiations shall be undertaken in Special Sessions of the TRIPS Council, and as an integral part of the Single Undertaking, on an amendment to the TRIPS Agreement establishing an obligation for Members to require patent applicants to disclose the origin of biological resources and/or associated traditional knowledge, including prior informed consent and access and benefit sharing" (WT/GC/W/590 – TN/C/W/49).

7. On the other hand, we have a number of Members who are opposed to negotiations on this matter. They believe that the case has not been made as to how disclosure requirements of the sort proposed would contribute towards meeting the commonly accepted objectives, which these delegations believe can be met without amending the TRIPS Agreement, for example through the establishment under WIPO of improved databases on traditional knowledge available to patent examiners and through contractual arrangements under national access and benefit-sharing laws. These Members believe that these issues should not be addressed in the context of the modalities decision. They are willing to continue fact-based discussions under the present process of work as agreed in paragraph 39 of the Hong Kong Ministerial Declaration on issues related to the relationship between the TRIPS Agreement and the CBD, but without prejudice to the outcome and the positions of Members.

8. In this area, we have three further approaches put forward by some other Members which lie in-between the two positions set out above. Under all these proposals, there would be sanctions for non-compliance with a new disclosure requirement but these would not affect the validity of granted patents. One Member has proposed modification of the WIPO Patent Cooperation Treaty's Regulations so as to explicitly enable countries to require patent applicants to disclose the source of genetic resources and related traditional knowledge in patent applications. Another Member has referred to its proposals in WIPO for a mandatory requirement on patent applicants to disclose the source and, if readily known, the origin of genetic resources and has indicated that the possible extension of the disclosure requirement to traditional knowledge associated with a genetic resource would be considered in the light of progress made in WIPO on the definition of this concept.

9. A further Member has submitted a proposal for the negotiation in the WTO of an amendment to the TRIPS Agreement to oblige Members to require patent applicants to disclose the source and, if known, the origin of genetic resources and traditional knowledge, both related and unrelated, as well as evidence of compliance with national requirements on prior informed consent.

10. Different views have been expressed about linkages between the issues of GI extension and TRIPS/CBD and also between these issues and work elsewhere. A large number of Members who are proponents of GI extension and a new TRIPS disclosure requirement have proposed that these issues, together with that of the GI register³, should be part of the horizontal process in order to have modality texts that reflect Ministerial agreement on the key parameters for negotiating final draft legal texts with respect to each of these issues as part of the Single Undertaking. They believe that an agreement on the parameters for negotiations is essential at the modalities stage in order to ensure a successful conclusion to the Round, in particular its development dimension. A number of other Members have expressed their strong opposition to this proposal and their conviction that it would substantially set back efforts to arrive at a viable way forward for the Doha negotiations. They reject what they consider to be an artificial parallelism being made in the proposal between the TRIPS issues cited, saying that each has its own terms of reference and subject-matter, many technical issues remain, and the interest of Members in each varies considerably.

³ GI register negotiations are not part of the mandate relating to outstanding implementation issues in paragraph 39 of the Hong Kong Ministerial Declaration and therefore not a subject of this report.