WTO

World Trade Organisation

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Report to AIPPI by

Esmé du Plessis

Co-Chair Committee Q94

"It was worth it. We have managed to put the [Doha] Round back on track after a period of hibernation." Pascal Lamy, Director-General of WTO, 19 December 2005.

1. INTRODUCTION

The World Trade Organisation (WTO) came into being on 1 January 1995 as a permanent rules-based body on the basis of consensus achieved through the protracted negotiations during the Uruguay Round. The Uruguay Round was launched in September 1986 at Punta del Este and was the eighth round of trade-related talks since the coming into effect of the General Agreement on Tariffs and Trade (GATT) in 1947. The WTO oversees a bundle of 27 agreements and instruments which were all signed with the founding WTO Agreement in Marrakech, Morocco, in April 1994. All the instruments became effective on 1 January 1995. One of these instruments is the Agreement on Trade-Related aspects of Intellectual Property Rights (TRIPS); it is regarded as one of the core agreements of the WTO.

A significant shift in the composition and focus of the WTO has taken place over time. While only 11 of the original 23 signatories of the GATT in 1947 were developing countries, by the end of 2005 the number had grown to 128, so that more than 75% of the total number of 149 current WTO member countries are developing and least-developed countries. Of these, 32 are least-developed countries. This has brought about a shift in the approach to, and in the emphasis placed on, issues under consideration within the WTO, including IP issues. This is a development which has also been

reflected in other international and UN bodies, such as WIPO, and which AIPPI should take into account in its strategic planning.

From its very beginning the main objective of the WTO has been the liberalisation of international trade, initially by the steady removal of government-imposed barriers to international trade, in terms of both tariffs and non-tariff barriers; but the attention of trade negotiators has increasingly turned to other factors affecting trade, not only in goods but also in services, and most recently the trade in knowledge itself.

The underlying principle has always been that the liberalisation of trade plays a major role in promoting economic growth in member countries, and ultimately promoting prosperity of and interdependence between countries within the international community, so rendering armed conflict less likely. However, there is a growing concern over a lack of balance in the international system as emanating from the WTO deliberations. One such concern relates to the perception that the benefits from economic growth through trade are unequally and inequitably distributed between countries (particularly between developed and non-developed countries), and even within countries; another concern is that the deregulation which accompanies trade liberalisation is perceived to weaken countries' abilities to impose the regulation necessary to maintain standards in regard to public health, the environment, the protection of local culture, and the enhancement of social infrastructure, human rights, etc.

It is within this context that the current round of talks, which subsequently became known as the Doha Round, should be viewed. Four new issues were initially proposed in Singapore in 1996, mainly by developed countries, for negotiation: investment, competition, government procurement and trade facilitation. However, it soon became clear, after the Seattle Ministerial meeting in 1999 was torpedoed, that from the perspective of developing countries these issues were not regarded as so important; it was regarded as more important that the commitments made during the Uruguay Round be implemented, particularly on increased market access and on further liberalisation of agriculture and services; and that a new trade agenda focused on environmental and developmental issues be established. The combination of all of these issues were agreed upon in Doha in 2001 and became known as the Doha Development Round, comprising the Doha Development Agenda (DDA).

In the wake of the failure of Cancun in 2003, several of the initial components which remained on the DDA were dropped or sidelined, such as the issues of investment, competition, and government procurement. The overriding consideration that would dominate the proceedings in Hong Kong was the underlying theme of the Development Agenda: the interests of developing and least-developed countries. Accordingly, the overriding issue that went forward to the Hong Kong Ministerial Meeting

scheduled for December 2005 was agriculture (subsidies, tariffs, market access, etc), but the agenda also included issues relating to non-agricultural market access (NAMA), services (GATS), and certain IP-related issues namely:

- the finalisation of the TRIPS amendment on compulsory licences for pharmaceutical products;
- the regulation of the use of geographical indications and the negotiations on a multilateral notification and registration system;
- the review of Art. 27.3(b) of TRIPS on the patentability of plants and animals and processes for their production;
- the relationship of TRIPS and the CBD (Convention on Biological Diversity) involving the requirement for disclosure in patent applications of the use of biological resources in innovation and development activities; and
- the protection of indigenous/traditional knowledge.

Another notable development emerging from Cancun was the formation of a number of organised developing-country negotiating blocs, referred to as the G20, the G33 and the G90 Groups. These blocs include economically strong developing countries, like Brazil, China, India, also SA. These country groups take and promote positions, also involving IP, which are increasingly becoming dominant in the negotiation processes. Towards the end of the Hong Kong deliberations the G90 group (in fact including 110 countries and – as the Hong Kong newspapers put it – representing four-fifths of the planet's population) linked arms in an unprecedented show of unity. This move (which was widely photographed) was interpreted as a show of unity to support the developing country agenda and to put pressure on wealthy nations which were accused of trying to dominate the agenda.

It is this "shifting of the negotiating weight" that should be seen as the background to one of the closing remarks of the Director General of WTO, Mr Pascal Lamy, when he summed up the achievements of Hong Kong:

> "There has been a re-balancing in favour of developing countries, whose interests have now been placed at the heart of our negotiations as we provided for in 2001 when we launched this Round."

My observation, in the light of this development, is that it will be important in future for AIPPI to become engaged in initiatives to position and promote strong and effective IP protection as one of the core interests of these developing countries.

I revert to this aspect at the end of this report.

Apart from the severe pressure for some significant progress to be made in Hong Kong, in the wake of the failure at Cancun, there was always the spectre of possible protests and interference and even disruptions by interest groups such as farmers' organisations, environmental groups, public health bodies and other pressure groups.

It is against this background that the preparations for the Hong Kong Ministerial were made.

2. SETTING THE SCENE FOR HONG KONG

A Draft Ministerial Text was published on 26 November 2005 to serve as a basis for the Hong Kong Ministerial Conference, the so-called HKMC, the 6th Ministerial Conference to take place in Hong Kong in December 2005. At the HKMC it soon became clear that the draft text was the subject of criticism from various groups and on various grounds as being inadequate as a work plan: in the first place, a big issue was made of the fact that not all of the annexures to the draft text had been approved by the designated work committees (there was no annexure on TRIPS); and secondly, the text was condemned as falling short on the development agenda, as offering too little by way of development assistance to developing countries and least-developed countries, as failing to propose a workable solution to the agricultural demands, etc, etc.

There was a discernable level of nervousness in the air about the outcome of the talks: the Hong Kong meeting was billed as a make-or-break conference for the Doha Development Round; newspapers urged the negotiators to forget absolute success or failure as an outcome, but to see Hong Kong as a second chance (after the failure at Cancun) to salvage the Doha Round. Slogans such as "Failed in Cancun, now try Hong Kong" and "Let the haggling begin" were headlines. Agriculture was presented as the talks' Gordian Knot. The developing countries required two immediate key concessions from their richer trading parties: substantially lower tariffs on agricultural products, and steep reductions in subsidies to first-world farmers. When the talks commenced, the positions of the EU and US on both these issues appeared intransigent. The fear was that by concentrating on the agricultural issues to the exclusion of all others, the Hong Kong talks were doomed to failure even before they had begun.

The only way forward, it seemed evident, was to lower expectations; to endeavour to achieve consensus albeit on a modest level, but to avoid at all costs a breakdown of the talks, thereby to ensure an opportunity for continued negotiations after Hong Kong in an attempt to reach the deadline set for the Doha Round at end 2006. As it was put in newspaper reports: even if Hong Kong could only facilitate a breakthrough later on (ie during 2006), it would still be regarded as a success. And

the front-page newspaper headlines at the conclusion of the HKMC proclaimed in rather subdued fashion: “modest deal keeps hopes alive for WTO talks”.

While the trade delegates braced themselves for a tough negotiating engagement, Hong Kong braced itself for protests, demonstrations and even violence. The preparatory work and precautions, and the security forces themselves, were meticulous and impressive. In addition to the 3000 journalists expected and the more than 3000 accredited NGO representatives, 4000 protestors were expected, the most aggressive being the Korean Peasants League. The Wan Chai waterfront area of Hong Kong, where the Conference and Exhibition Centre (HKCEC) is located, was divided into a series of no-go zones with an extensive system of barriers and a very visible police force presence. Businesses in that area (including the offices of AIPPI Hong Kong President Ella Cheong) were closed for the duration of the meeting. The waterways and mooring piers in the area of the HKCEC were also closed and certain ferry services suspended.

As very graphically shown in the media and on television, towards the end of the proceedings the confrontation between protestors and the security forces became quite ugly. However, I do not believe that the accredited attendees of the conference felt threatened at any time, nor that the negotiation proceedings were in any way disrupted by the protestors. I believe that the role and influence of the accredited NGOs (not only at the meeting but mainly in the run-up to the meeting) were of much greater significance in determining the overall direction of the negotiations, as referred to in more detail later on.

3. THE OPENING CEREMONY

In his opening address, Mr Pascal Lamy, the Director-General of the WTO, stressed that the WTO system is a complex one, with strengths and weaknesses, entailing assets and liabilities, but a system that belongs to the member countries. It was accordingly the task of the member countries to improve it. In particular the negotiation part of its activities could be improved, as well as the public acceptance of the WTO. He mentioned that the crowds outside – and within – the conference centre were a reminder that the WTO was not the most popular international organisation.

He also reiterated that the WTO decision-making process, being a bottom-up process, was slow and difficult, and reaching agreement was therefore not easy. He called upon members to be bold, courageous, open-minded and responsible.

In the course of his address, a crowd of people in the audience, who had all been accredited as NGO representatives (and who held about 100 of the 300 admission passes issues to NGOs for the opening ceremony), jumped up with banners and started shouting slogans. The Hong Kong police

was deployed within the hall in large numbers, also in civilian clothes, and they were very effective in controlling the activists and removing them from the hall without any violence or incidents. The protesters outside the conference buildings were not so calm or quite so civilised, but again the control by the police was effective and no excessive violence erupted until the last two days.

In his welcoming address, the Honourable Donald Tsang, Chief Executive of Hong Kong, stressed the importance of the WTO and that those assembled in Hong Kong at the HKMC had a once-in-a-generation opportunity to enhance the existing international trading environment. He pointed out that the WTO was a powerful force in countering the currents of protectionism and discrimination responsible for the economic hardship suffered by the poorer countries. He urged all delegates to conduct the negotiations freely, frankly and constructively, and to demonstrate their collective resolve to improve the lives of people through progressive trade liberalisation.

The Chairman of the 6th Ministerial Session was Mr John Tsang, Secretary of Commerce, Industry and Technology of Hong Kong. In his address he conceded that the WTO was at a critical juncture, and stressed that the Doha Development Agenda negotiations were arguably the most complex and difficult yet undertaken. The key negotiating areas, most notably the agricultural issues, were politically sensitive to many member countries. He reminded member countries that they had agreed to take up the challenge and urged them to press on vigorously with the negotiations in view of the quickening pace of global interdependence. The rules-based system of the WTO provided the essential international framework underpinning open economic policies and permitting competition on a level playing field.

He also stressed that the draft Ministerial Text, a 44-page document, captured to the maximum degree possible the progress that had been made in the run-up to Hong Kong. He assured the audience that the meeting would be open, transparent and inclusive, and that he saw his role, as meeting Chairman, as that of an honest broken who will spare no effort in helping to bridge the gaps still perceived to exist. For the first time in the history of the WTO, not only the media but also the NGOs would be housed under the same roof as the conference delegates. This was in keeping with the spirit of transparency and inclusiveness.

Addresses were also presented by Ambassador Amina Mohamed (Kenya), the WTO General Council Chair, and on behalf of Mr Kofi Annan, the UN Secretary-General.

4. THE ROLE OF NGOs

The HKMC was attended by delegates from 148 member countries (a further two new members – Saudi Arabia and Tonga – attended for the first time); by delegates from 41 observer governments; by delegates from 76 international intergovernmental organisations; and by representatives of more than 1000 non-governmental organisations (NGOs).

It was the first time that the NGOs were accommodated under the same roof as the negotiating delegates. The important role of the NGOs was recognised and NGOs were invited to participate in a meaningful and constructive manner in the proceedings. Although NGO representatives were generally not allowed to attend the plenary sessions or the negotiating meetings, every effort was made to keep them informed and briefed.

The NGOs were provided with an entire floor with support staff and copying equipment, a computer room, and about 10 meeting rooms for purposes of their lobbying activities and meetings. Regular briefings and reports were provided by WTO reporters.

Generally speaking, the NGOs were well prepared but extremely critical of the WTO and its systems, and particularly antagonistic towards TRIPS and IP rights. This was apparent from the presentations and debates in most of the concurrent NGO meetings which involved IP (I attended about 20 such meetings over the six days of the HKMC).

The accredited NGOs were also provided with an information hall, where the WTO proceedings and briefings as well as the daily NGO meetings programme were on video-display throughout the day, and where relevant NGO literature could be displayed and made available on a continuous basis. In the course of the conference, literally thousands of items of literature were disseminated; the information hall was visited by hundreds of delegates during the conference proceedings. The value of this kind of WTO meeting as a forum with educational and public relations opportunities to promote intellectual property should not be underestimated.

I came to the conclusion that it was important, and indeed imperative, that information should be made available at WTO events to NGOs as well as to negotiating delegates and the media, information which would present a position and perspective on the value and potential of intellectual property as a driver of economic development and growth, not only in developed countries, but more importantly, in the economies of developing and least-developed countries.

I revert to this aspect at the end of this report.

5. TRIPS AND PUBLIC HEALTH

* See Annexure A to this report with Attachments and Annexes.

In paragraph 40, the Ministerial Declaration adopted in Hong Kong on 18 December 2005 at the conclusion of the meeting reaffirmed the importance that WTO attaches to the General Council Decision of 30 August 2003 on the implementation of Paragraph 6 of the Doha Declaration, and welcomed the consequential amendment of TRIPS as agreed by the General Council on 6 December 2005.

The amendment was presented in the form of a bundle of documents (attached to this report as Annexure A) and comprising :

- the Decision to amend the TRIPS agreement;
- the Protocol amending the TRIPS agreement;
- the Annex to the Protocol setting out the new Article 31*bis* to be inserted into the TRIPS agreement;
- the Annex to the TRIPS Agreement setting out definitions and requirements for using the mechanism of Article 31*bis*;
- the Appendix to the Annex prescribing the determination of manufacturing capacity;
- the Chairman's statement; and
- the Attachment setting out "Best Practices" guidelines.

Although consensus on the amendment was achieved in the General Council, procedurally the Amendment Protocol adopted by the General Council has to be submitted to Members for acceptance. The Protocol shall be open for acceptance until 1 December 2007 (or such later date as may be decided by a Ministerial Conference). The amendment takes effect once it is accepted by two-thirds of the Members (in terms of Article X.3 of the WTO Agreement).

Until such time as the amendment takes affect, the waiver in terms of the 30 August 2003 Decision will remain operative. This is significant since, in the meanwhile, the Chairman's Statement which accompanied the 30 August 2003 Decision would remain relevant for interpreting the Decision.

The amendment entails three additions to TRIPS:

1. <u>The insertion of a new Article 31 *bis*</u>

New Article 31*bis* has five paragraphs.

- Paragraph 1 provides that Article 31(f), which stipulates that products produced under compulsory licence shall be predominantly for the supply of the domestic market of the Member granting the licence, shall not apply to an exporting Member in respect of the grant of a compulsory licence for a pharmaceutical product in terms of paragraph 2 of the new Article 31*bis*, for export to an eligible importing Member. This will facilitate the export of pharmaceutical products produced under such a licence.

- Paragraph 2 provides that adequate remuneration in terms of Article 31(h) shall be paid in the exporting Member (taking into account the economic value to the importing Member). Where a compulsory licence is granted for the same product also in the eligible importing Member, no obligation for adequate remuneration as contemplated in Article 31(h) shall apply in the importing Member where remuneration has been paid in the exporting Member. This will avoid double remuneration (by both the exporter and the importer) to the patent holder.

- Paragraph 3 provides for the case where a developing or least-developed country is a party to a regional trade agreement (of which at least half of the membership is made up of least-developed countries), namely that the restriction on exportation under Article 31(f) shall not apply in that country in respect of exports to the other developing or least-developed countries of that regional trade agreement that share the health problem in question. The effect of this provision is to make it unnecessary to issue separate compulsory licences to export to each member country of the regional trade agreement.

- Paragraph 4 prohibits Members from challenging any measures taken in conformity with Article 31*bis*. This provision addresses the so-called “non-violation” issue, providing that Members shall not be permitted to lodge any challenges under Article XXIII.1(b) or (c) of GATT (ie in the form of so-called non-violation complaints) in respect of measures taken in accordance with the provisions of the new Article, even though such measures may cause loss or impairment of any benefit which would have accrued to such Member under TRIPS.

- Paragraph 5 confirms that the new Article and its Annex are without prejudice to any other rights, obligations and flexibilities that Members have under TRIPS.

From the above it is evident that the textual amendment of TRIPS will mainly deal with three aspects, namely to provide for the granting of a compulsory licence in respect of a pharmaceutical product in a so-called exporting country, which licence permits exportation of the product to a so-called eligible importing country; to avoid the double payment of the prescribed adequate remuneration in those cases where compulsory licences are granted in both exporting and importing countries; and to provide for the exportation right to encompass the right in certain circumstances to re-export to other countries party to a regional trade agreement, without the need for a further compulsory licence.

2. <u>The addition of an Annex to TRIPS applicable to Art 31 *bis*</u>

The provisions setting out the circumstances and manner in which Article 31*bis* is to be invoked are contained in an Annex to be added to the TRIPS agreement. The Annex contains the definitions and requirements for Member countries to make use of the compulsory licence system as provided for in Article 31*bis*. These provisions correspond to the similar provisions in the 30 August 2003 Decision. The Annex also provides that the TRIPS Council shall annually review the functioning of the system.

3. <u>The addition of an Appendix to the Annex</u>

The Appendix sets out the criteria to be applied in determining whether a Member country has insufficient or no manufacturing capacity in order to qualify as an eligible importing Member.

4. <u>The procedure for the amendment of TRIPS</u>

When the amendment was agreed upon, the Members also agreed on a so-called "choreography" outlining the procedure to be followed in amending the TRIPS agreement. This procedure entailed that Members would make no statements regarding the amendment, and that the controversial Chairman's statement of 30 August 2003 would accompany the amendment. Prior to the formal adoption of the General Council decision, the 2003 Chairman's statement was read out. It has been suggested that this would again elevate the 2003 Chairman's statement to a level where it would be the primary if not the only interpretational aid for interpreting the text of the amendment.

The fact that agreement could be reached in regard to the principle of an amendment of TRIPS as well as the textual form of the amendment and the handling of the Chairman's statement, does not mean that the controversial side has been laid to rest. Generally NGOs remained

critical of the workability of the compulsory licence system to address the problem of access to affordable medicines, and continued to blame the role of patents as constituting the problem preventing access to medicines. As the **Bridges Weekly Trade News** (vol. 9, number 42) put it: "Civil society remains unimpressed". For example, Médicins Sans Frontières (MSF) warned that the amendment was based on a mechanism that has failed to prove (since August 2003) that it can increase access to medicines. Reference is made to the fact that, although several "exporting" countries (such as Canada, Norway and India) have amended their domestic laws to implement the compulsory licence model, not a single developing or least-developed country has so far used the model to import drugs.

6. TRIPS AND GEOGRAPHICAL INDICATIONS

*See Annexure B to this report.

In paragraph 29 of the Ministerial Declaration adopted in Hong Kong, the report of the Chairman of the Special Session of the TRIPS Council in November 2005 was noted. In this report progress is set out that has been made with the negotiations on the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits, as contemplated in Article 23.4 of TRIPS and paragraph 18 of the Doha Declaration 2001.

The report refers to eight meetings during 2004 and 2005 as well as some informal consultations, when proposals for a multilateral system were considered. It is admitted, however, that "the level of convergence in these negotiations has not significantly expanded". Differences remain on two key issues:

- the extent to which legal effects at the national level should flow from the registration of a geographical indication in the system;
- the question of participation, ie whether any legal effects under the system will apply in all Member countries or only in those opting to participate in the system.

The Ministerial Meeting agreed to intensify the negotiations in order to complete them within the overall time-frame foreseen in the Doha Declaration, ie by the end of 2006.

It is evident that the Chairman's report and the Hong Kong Ministerial Declaration relate only to the Article 23.4 issue, namely the creation of a multilateral system for geographical indications for wines and spirits. The reason is that this issue is the one which has been negotiated in the so-called "special sessions" (ie negotiation sessions) of the TRIPS Council.

A second issue has also been the subject of debate, namely the extension of a higher level of protection, as provided by Article 23 in respect of wines and spirits, also to other products. This is

contemplated in Article 24 of TRIPS. It has been argued that the Doha mandate does not extend to this latter issue. The Doha Declaration indicated that this extension matter would be handled as part of the implementation issues, and the correctness of this approach has been contested.

In paragraph 39 of the Hong Kong Ministerial Declaration the instruction is reiterated that appropriate solutions are to be found for implementation-related issues; one of these issues which is expressly referred to in paragraph 39 is the extension of the protection of geographical indications to other products. The Director-General is requested to intensify his consultative process in order to find a solution. The General Council shall review progress and take appropriate action by 31 July 2006.

Members are deeply divided on the issue of extension of the higher level of protection to other products, and no agreement appears to be in sight.

7. TRIPS AND PLANT AND ANIMAL PATENTS, BIODIVERSITY AND TRADITIONAL KNOWLEDGE

In paragraph 44 of the Hong Kong Ministerial Declaration note is taken of the work by the TRIPS Council pursuant to paragraph 19 of the Doha Declaration. It is agreed that this work should continue; the General Council will report on this work at its next session.

In paragraph 19 of the Doha Declaration the TRIPS Council was instructed, as part of its review work of Article 27.3(b) on the patentability of animals and plants and processes for their production, to examine also the relationship between TRIPS and the CBD (Convention on Biological Diversity), the protection of traditional knowledge and folklore, and "other relevant new developments raised by Members pursuant to Article 71.1" (ie developments which might warrant modification or amendment of TRIPS).

This review process takes place not in the "negotiating sessions" but in the regular TRIPS Council meetings and by way of special consultations under the Deputy Director-General. One issue that has been raised by Members in this regard, and which derives from the provisions of the CBD, is the issue of "disclosure": should patent applicants be required to disclose (in the patent application) the country of origin of genetic and biological resources and of traditional knowledge used in inventions; should patent applicants be required to show that "prior informed consent" had been obtained to use such resources and/or knowledge; and should applicants be required to provide evidence of "fair and equitable" benefit-sharing with the owners of biological/genetic resources and traditional knowledge.

The debates around this issue have elicited a number of diverse proposals on whether or not such a disclosure requirement should be enforced, and whether such disclosure should take place as part of the patent application; and if so, in what manner should disclosure be enforced (ie by amending

TRIPS to introduce such a requirement, or by amending an appropriate WIPO treaty, or in some other legally enforceable manner); and finally, what the consequences would be, particularly as regards the patent in question, should the applicant fail to give effect to such a disclosure requirement.

It is clear that the entire Article 27.3(b) review process and the consideration of the most appropriate way of introducing a system to give structure to the relationship between TRIPS and the CBD is, at this time, still work in progress.

As undertaken in paragraph 44 of the Hong Kong Ministerial Declaration, the General Council shall report at its next session.

8. TRIPS AND S&D TREATMENT

Paragraphs 35-38 of the Hong Kong Ministerial Declaration set out the agreed position on special and differential (S&D) treatment provisions in the WTO agreements. The Declaration reaffirms that S&D provisions are an integral part of all WTO agreements, including TRIPS (Articles 65, 66 and 67), and expresses renewed determination to fulfil the mandate contained in paragraph 44 of the Doha Declaration and in the so-called "July Package", ie the decision adopted by the General Council on 1 August 2004. This mandate entailed that all S&D treatment provisions be reviewed with a view to strengthening them and making them more precise, effective and operational.

The S&D treatment provisions are intended to optimise the use of the flexibilities and alternatives built into TRIPS to improve the position of developing but particularly least-developed countries. As part of the Doha Development Agenda (DDA), the chief negotiators identified as an important objective to adopt (hopefully at Hong Kong) a package of S&D proposals. In Annex F to the Hong Kong Ministerial Declaration, the package of agreed proposals is set out in agreement-specific format; TRIPS is not expressly referred to. However, it is generally affirmed that least-developed Members will only be required to undertake commitments and concessions to the extent consistent with their individual development, trade and financial needs, and taking into account their administrative and institutional capacities.

The Hong Kong meeting instructed the Special Session to continue with this work and to report on a regular basis to the General Council.

In paragraph 47 of the Hong Kong Declaration the decision by the TRIPS Council to extend the transition period under Article 66.1 of TRIPS is welcomed, ie the 10-year period for least-developed countries to become fully TRIPS complaint. This period has been extended to 2016.

9. TRIPS AND NON-VIOLATION COMPLAINTS

In paragraph 45 of the Hong Kong Declaration specific reference is made to the TRIPS non-violation complaints position. Article XXIII of GATT makes provision for a complaints procedure if any contracting party considers that a benefit which accrues to it directly or indirectly as a result of a WTO agreement, is being nullified or impaired or impeded, inter alia –

- as a result of the application of another contracting party of any measure (whether or not it conflicts with a provision of the WTO Agreement); or
- as a result of the existence of any other situation.

This provision is made applicable to TRIPS by Article 64 of TRIPS, but the implementation of the provisions referred to above was suspended for an initial five year period in terms of Article 64.2. During this period the TRIPS Council was instructed to examine the "scope and modalities" of complaints of this type, and to submit its recommendations to the Ministerial Council for approval. Approval of the recommendations, or extension of the five year period, can only take place by consensus.

Several extensions were made in the past up to the 6th Ministerial Meeting, ie the Hong Kong meeting. However, no recommendation package was submitted for approval. In terms of paragraph 45 of the Hong Kong Declaration the Ministerial Meeting took note of the work done by the TRIPS Council, and directed it to continue with its examination of the scope and modalities for complaints of the type outlined above. Recommendations are to be made at the next session; in the meanwhile it was agreed that Members will not initiate such complaints under TRIPS.

10. RECOMMENDATIONS TO THE BUREAU

On the basis of my experience in Hong Kong of the proceedings at the 6th Ministerial Meeting of the WTO, I wish to submit the following proposals and recommendations to the Bureau for consideration:

10.1 The continued communication, interaction and involvement of AIPPI with the WTO is not only strategically important, but may in future in fact prove to be essential in view of the challenges to intellectual property which are in evidence within the WTO negotiation process. The WTO is the international forum where trade-offs are negotiated; intellectual property is one of the areas in which negotiations take place. AIPPI is an NGO with international status and credibility; it can play an important role in promoting the position of intellectual property within the WTO proceedings.

To the extent that this may be feasible, the collaboration of AIPPI and WIPO (as the other body with major influence in the area of IP in the context of the WTO proceedings) should be intensified and expanded.

The Special Committee Q94 has already established valuable connections with members of the TRIPS Directorate and Secretariat. I expect that the work of Committee Q94 will increase and may indeed become even more important to AIPPI.

10.2 It is my view that it will become more important for AIPPI to expand its activities and exposure in developing countries, also in those countries on the African continent, and to seek out and collaborate with other bodies in these countries which are active in the area of intellectual property.

It will also be important in future for AIPPI to become engaged in initiatives to position and promote strong and effective IP protection as one of the core interests of these developing countries.

10.3 There is a clear need for positive information regarding intellectual property and its value as a driver of economic, technological and industrial growth and progress, to be disseminated amongst groups and bodies engaged in propaganda and opinion-forming in developing and least-developed countries.

I strongly recommend that the Bureau considers the possibility of preparing one or more information documents addressing IP in general, but WTO-related IP issues in particular, and focusing on the role and value of IP and technology transfer in the economy – also the economies of developing and least-developed countries – for dissemination at the next WTO event. It is imperative that a positive but balanced perspective on the advantages (economically, technologically and developmental) of IP protection should be presented to the people involved in and attending WTO deliberations. For this reason the value of the continued interaction of the Special Committee Q94 with the TRIPS Directorate/Secretariat should not be underestimated.

I am of the view that the negative position towards IP, and the sometimes outright opposition to IP, displayed by NGOs and delegates in many cases is based on a lack of information and understanding; in some cases on blatantly wrong information that has been given to groups. There are, of course, some NGOs which are well-informed but which oppose IP protection on principle; in these cases, the negative propaganda emanating from these groups has to be countered.

I came away from Hong Kong with a strong conviction that it will be important and indeed imperative for the future of strong and effective intellectual property systems, for IP-oriented non-government organisations like AIPPI, FICPI, LES, AIPLA, ASIPI etc to step up their collaboration, inter alia to co-ordinate, as a priority, an information dissemination initiative to promote the positive features of

intellectual property protection, but always within a balanced and factually correct context; and this should include the value of IP also for developing and least-developed countries.

11. CONCLUDING REMARKS

In conclusion, I would like to record my sincere appreciation to AIPPI, the Bureau, and the Chairman of Committee Q94 for the opportunity afforded me to attend the Hong Kong Ministerial Meeting of the WTO as the representative of AIPPI. I sincerely hope that AIPPI will endeavour to attend future WTO events, since that is where binding rules involving intellectual property will continue to be negotiated as a component of the trade negotiations.

Esmé D. du Plessis
Co-Chair: Special Committee Q94
February 2006

ANNEXURE A

WORLD TRADE ORGANIZATION

(05-0000)

General Council

AMENDMENT OF THE TRIPS AGREEMENT

Draft Decision of [date]

The General Council;

Having regard to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization ("the WTO Agreement");

Conducting the functions of the Ministerial Conference in the interval between meetings pursuant to paragraph 2 of Article IV of the WTO Agreement;

Noting the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2) and, in particular, the instruction of the Ministerial Conference to the Council for TRIPS contained in paragraph 6 of the Declaration to find an expeditious solution to the problem of the difficulties that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face in making effective use of compulsory licensing under the TRIPS Agreement;

Recognizing, where eligible importing Members seek to obtain supplies under the system set out in the proposed amendment of the TRIPS Agreement, the importance of a rapid response to those needs consistent with the provisions of the proposed amendment of the TRIPS Agreement;

Recalling paragraph 11 of the General Council Decision of 30 August 2003 on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health;

Having considered the proposal to amend the TRIPS Agreement submitted by the Council for TRIPS (IP/C/41);

Noting the consensus to submit this proposed amendment to the Members for acceptance;

Decides as follows:

1. The Protocol amending the TRIPS Agreement attached to this Decision is hereby adopted and submitted to the Members for acceptance.

2. The Protocol shall be open for acceptance by Members until 1 December 2007 or such later date as may be decided by the Ministerial Conference.

3. The Protocol shall take effect in accordance with the provisions of paragraph 3 of Article X of the WTO Agreement.

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ATTACHMENT

PROTOCOL AMENDING THE TRIPS AGREEMENT

Members of the World Trade Organization;

Having regard to the Decision of the General Council in document WT/L/■, adopted pursuant to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization ("the WTO Agreement");

Hereby agree as follows:

1. The Agreement on Trade-Related Aspects of Intellectual Property Rights (the "TRIPS Agreement") shall, upon the entry into force of the Protocol pursuant to paragraph 4, be amended as set out in the Annex to this Protocol, by inserting Article 31*bis* after Article 31 and by inserting the Annex to the TRIPS Agreement after Article 73.

2. Reservations may not be entered in respect of any of the provisions of this Protocol without the consent of the other Members.

3. This Protocol shall be open for acceptance by Members until 1 December 2007 or such later date as may be decided by the Ministerial Conference.

4. This Protocol shall enter into force in accordance with paragraph 3 of Article X of the WTO Agreement.

5. This Protocol shall be deposited with the Director-General of the World Trade Organization who shall promptly furnish to each Member a certified copy thereof and a notification of each acceptance thereof pursuant to paragraph 3.

6. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this [date], in a single copy in the English, French and Spanish languages, each text being authentic.

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ANNEX 1
ANNEX TO PROTOCOL

ANNEX TO THE PROTOCOL AMENDING THE TRIPS AGREEMENT

*Article 31*bis

1. The obligations of an exporting Member under Article 31(f) shall not apply with respect to the grant by it of a compulsory licence to the extent necessary for the purposes of production of a pharmaceutical product(s) and its export to an eligible importing Member(s) in accordance with the terms set out in paragraph 2 of the Annex to this Agreement.

2. Where a compulsory licence is granted by an exporting Member under the system set out in this Article and the Annex to this Agreement, adequate remuneration pursuant to Article 31(h) shall be paid in that Member taking into account the economic value to the importing Member of the use that has been authorized in the exporting Member. Where a compulsory licence is granted for the same products in the eligible importing Member, the obligation of that Member under Article 31(h) shall not apply in respect of those products for which remuneration in accordance with the first sentence of this paragraph is paid in the exporting Member.

3. With a view to harnessing economies of scale for the purposes of enhancing purchasing power for, and facilitating the local production of, pharmaceutical products: where a developing or least-developed country WTO Member is a party to a regional trade agreement within the meaning of Article XXIV of the GATT 1994 and the Decision of 28 November 1979 on Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries (L/4903), at least half of the current membership of which is made up of countries presently on the United Nations list of least-developed countries, the obligation of that Member under Article 31(f) shall not apply to the extent necessary to enable a pharmaceutical product produced or imported under a compulsory licence in that Member to be exported to the markets of those other developing or least-developed country parties to the regional trade agreement that share the health problem in question. It is understood that this will not prejudice the territorial nature of the patent rights in question.

4. Members shall not challenge any measures taken in conformity with the provisions of this Article and the Annex to this Agreement under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994.

5. This Article and the Annex to this Agreement are without prejudice to the rights, obligations and flexibilities that Members have under the provisions of this Agreement other than paragraphs (f) and (h) of Article 31, including those reaffirmed by the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2), and to their interpretation. They are also without prejudice to the extent to which pharmaceutical products produced under a compulsory licence can be exported under the provisions of Article 31(f).

ANNEX TO THE TRIPS AGREEMENT

1. For the purposes of Article 31*bis* and this Annex:

(a) "pharmaceutical product" means any patented product, or product manufactured through a patented process, of the pharmaceutical sector needed to address the public health problems as recognized in paragraph 1 of the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2). It is understood that active ingredients necessary for its manufacture and diagnostic kits needed for its use would be included[1];

(b) "eligible importing Member" means any least-developed country Member, and any other Member that has made a notification[2] to the Council for TRIPS of its intention to use the system set out in Article 31*bis* and this Annex ("system") as an importer, it being understood that a Member may notify at any time that it will use the system in whole or in a limited way, for example only in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. It is noted that some Members will not use the system as importing Members[3] and that some other Members have stated that, if they use the system, it would be in no more than situations of national emergency or other circumstances of extreme urgency;

(c) "exporting Member" means a Member using the system to produce pharmaceutical products for, and export them to, an eligible importing Member.

2. The terms referred to in paragraph 1 of Article 31*bis* are that:

(a) the eligible importing Member(s)[4] has made a notification[2] to the Council for TRIPS, that:

(i) specifies the names and expected quantities of the product(s) needed[5];

(ii) confirms that the eligible importing Member in question, other than a least-developed country Member, has established that it has insufficient or no manufacturing capacities in the pharmaceutical sector for the product(s) in question in one of the ways set out in the Appendix to this Annex; and

(iii) confirms that, where a pharmaceutical product is patented in its territory, it has granted or intends to grant a compulsory licence in accordance with Articles 31 and 31*bis* of this Agreement and the provisions of this Annex[6];

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[1] This subparagraph is without prejudice to subparagraph 1(b).

[2] It is understood that this notification does not need to be approved by a WTO body in order to use the system.

[3] Australia, Canada, the European Communities with, for the purposes of Article 31*bis* and this Annex, its member States, Iceland, Japan, New Zealand, Norway, Switzerland, and the United States.

[4] Joint notifications providing the information required under this subparagraph may be made by the regional organizations referred to in paragraph 3 of Article 31*bis* on behalf of eligible importing Members using the system that are parties to them, with the agreement of those parties.

[5] The notification will be made available publicly by the WTO Secretariat through a page on the WTO website dedicated to the system.

[6] This subparagraph is without prejudice to Article 66.1 of this Agreement.

(b) the compulsory licence issued by the exporting Member under the system shall contain the following conditions:

(i) only the amount necessary to meet the needs of the eligible importing Member(s) may be manufactured under the licence and the entirety of this production shall be exported to the Member(s) which has notified its needs to the Council for TRIPS;

(ii) products produced under the licence shall be clearly identified as being produced under the system through specific labelling or marking. Suppliers should distinguish such products through special packaging and/or special colouring/shaping of the products themselves, provided that such distinction is feasible and does not have a significant impact on price; and

(iii) before shipment begins, the licensee shall post on a website[7] the following information:

- the quantities being supplied to each destination as referred to in indent (i) above; and

- the distinguishing features of the product(s) referred to in indent (ii) above;

(c) the exporting Member shall notify[8] the Council for TRIPS of the grant of the licence, including the conditions attached to it.[9] The information provided shall include the name and address of the licensee, the product(s) for which the licence has been granted, the quantity(ies) for which it has been granted, the country(ies) to which the product(s) is (are) to be supplied and the duration of the licence. The notification shall also indicate the address of the website referred to in subparagraph (b)(iii) above.

3. In order to ensure that the products imported under the system are used for the public health purposes underlying their importation, eligible importing Members shall take reasonable measures within their means, proportionate to their administrative capacities and to the risk of trade diversion to prevent re-exportation of the products that have actually been imported into their territories under the system. In the event that an eligible importing Member that is a developing country Member or a least-developed country Member experiences difficulty in implementing this provision, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in order to facilitate its implementation.

4. Members shall ensure the availability of effective legal means to prevent the importation into, and sale in, their territories of products produced under the system and diverted to their markets inconsistently with its provisions, using the means already required to be available under this Agreement. If any Member considers that such measures are proving insufficient for this purpose, the matter may be reviewed in the Council for TRIPS at the request of that Member.

5. With a view to harnessing economies of scale for the purposes of enhancing purchasing power for, and facilitating the local production of, pharmaceutical products, it is recognized that the development of systems providing for the grant of regional patents to be applicable in the Members

[7] The licensee may use for this purpose its own website or, with the assistance of the WTO Secretariat, the page on the WTO website dedicated to the system.

[8] It is understood that this notification does not need to be approved by a WTO body in order to use the system.

[9] The notification will be made available publicly by the WTO Secretariat through a page on the WTO website dedicated to the system.

described in paragraph 3 of Article 31*bis* should be promoted. To this end, developed country Members undertake to provide technical cooperation in accordance with Article 67 of this Agreement, including in conjunction with other relevant intergovernmental organizations.

6. Members recognize the desirability of promoting the transfer of technology and capacity building in the pharmaceutical sector in order to overcome the problem faced by Members with insufficient or no manufacturing capacities in the pharmaceutical sector. To this end, eligible importing Members and exporting Members are encouraged to use the system in a way which would promote this objective. Members undertake to cooperate in paying special attention to the transfer of technology and capacity building in the pharmaceutical sector in the work to be undertaken pursuant to Article 66.2 of this Agreement, paragraph 7 of the Declaration on the TRIPS Agreement and Public Health and any other relevant work of the Council for TRIPS.

7. The Council for TRIPS shall review annually the functioning of the system with a view to ensuring its effective operation and shall annually report on its operation to the General Council.

APPENDIX TO THE ANNEX TO THE TRIPS AGREEMENT

Assessment of Manufacturing Capacities in the Pharmaceutical Sector

Least-developed country Members are deemed to have insufficient or no manufacturing capacities in the pharmaceutical sector.

For other eligible importing Members insufficient or no manufacturing capacities for the product(s) in question may be established in either of the following ways:

(i) the Member in question has established that it has no manufacturing capacity in the pharmaceutical sector;

or

(ii) where the Member has some manufacturing capacity in this sector, it has examined this capacity and found that, excluding any capacity owned or controlled by the patent owner, it is currently insufficient for the purposes of meeting its needs. When it is established that such capacity has become sufficient to meet the Member's needs, the system shall no longer apply.

CHAIRMAN'S STATEMENT

"It is understood that paragraph 4 of Article 31*bis* in the proposed amendment is without prejudice to the overall question of the applicability of subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 to the TRIPS Agreement and to the different positions of Members on this subject."

"Pursuant to paragraph 11 of the General Council Decision of 30 August 2003, the General Council has been presented with a draft Decision containing a proposed amendment to the TRIPS Agreement to implement paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health. This amendment is part of the wider national and international action to address problems as recognized in paragraph 1 of the Declaration. Before adopting this Decision, I would like to place on the record this Statement which represents several key shared understandings of Members regarding the amendment to be submitted for acceptance and the way in which it will be interpreted and implemented. I would like to emphasize that this Statement is limited in its implications to paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health.

"First, Members recognize that the system that will be established by the amendment should be used in good faith to protect public health and, without prejudice to paragraph 3 of the Article 31*bis* of the amendment, not be an instrument to pursue industrial or commercial policy objectives.

"Second, Members recognize that the purpose of the amendment would be defeated if products supplied under this amendment are diverted from the markets for which they are intended. Therefore, all reasonable measures should be taken to prevent such diversion in accordance with the relevant paragraphs of the amendment. In this regard, the provisions of paragraph 2(b)(ii) of the Annex to the TRIPS Agreement in the amendment apply not only to formulated pharmaceuticals produced and supplied under the system but also to active ingredients produced and supplied under the system and to finished products produced using such active ingredients. It is the understanding of Members that in general special packaging and/or special colouring or shaping should not have a significant impact on the price of pharmaceuticals.

"In the past, companies have developed procedures to prevent diversion of products that are, for example, provided through donor programmes. "Best practices" guidelines that draw upon the experiences of companies are attached to this statement for illustrative purposes.[10] Members and producers are encouraged to draw from and use these practices, and to share information on their experiences in preventing diversion.

"Third, it is important that Members seek to resolve any issues arising from the use and implementation of the amendment expeditiously and amicably:

- "To promote transparency and avoid controversy, notifications under paragraph 2(a)(ii) of the Annex to the TRIPS Agreement in the amendment would include information on how the Member in question had established, in accordance with the Appendix to the Annex to the TRIPS Agreement in the amendment, that it has insufficient or no manufacturing capacities in the pharmaceutical sector.

- "In accordance with the normal practice of the TRIPS Council, notifications made under the system shall be brought to the attention of its next meeting.

[10] Reproduced as the Attachment to this Statement.

- "Any Member may bring any matter related to the interpretation or implementation of the amendment, including issues related to diversion, to the TRIPS Council for expeditious review, with a view to taking appropriate action.

- "If any Member has concerns that the terms of the amendment have not been fully complied with, the Member may also utilize the good offices of the Director-General or Chair of the TRIPS Council, with a view to finding a mutually acceptable solution.

"Fourth, all information gathered on the implementation of the amendment shall be brought to the attention of the TRIPS Council in its annual review as set out in paragraph 7 of the Annex to the TRIPS Agreement in the amendment.

"In addition, as stated in footnote 3 to paragraph 1(b) of the Annex to the TRIPS Agreement in the amendment, the following Members have agreed to opt out of using the system as importers: Australia, Canada, [the European Communities,] Iceland, Japan, New Zealand, Norway, Switzerland and the United States.

"As we have heard today, and as the Secretariat has been informed in certain communications, some other Members have agreed that they would only use the system as importers in situations of national emergency or other circumstances of extreme urgency. These are the following: Hong Kong, China; Israel; Korea; Kuwait; Macao China; Mexico; Qatar; Singapore; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Turkey and the United Arab Emirates."

ATTACHMENT

"BEST PRACTICES" GUIDELINES

Companies have often used special labelling, colouring, shaping, sizing, etc. to differentiate products supplied through donor or discounted pricing programmes from products supplied to other markets. Examples of such measures include the following:

- Bristol Myers Squibb used different markings/imprints on capsules supplied to sub-Saharan Africa.

- Novartis has used different trademark names, one (Riamet®) for an anti-malarial drug provided to developed countries, the other (Coartem®) for the same products supplied to developing countries. Novartis further differentiated the products through distinctive packaging.

- GlaxoSmithKline (GSK) used different outer packaging for its HIV/AIDS medications Combivir, Epivir and Trizivir supplied to developing countries. GSK further differentiated the products by embossing the tablets with a different number than tablets supplied to developed countries, and plans to further differentiate the products by using different colours.

- Merck differentiated its HIV/AIDS antiretroviral medicine CRIXIVAN through special packaging and labelling, i.e., gold-ink printing on the capsule, dark green bottle cap and a bottle label with a light-green background.

- Pfizer used different colouring and shaping for Diflucan pills supplied to South Africa.

Producers have further minimized diversion by entering into contractual arrangements with importers/distributors to ensure delivery of products to the intended markets.

To help ensure use of the most effective anti-diversion measures, Members may share their experiences and practices in preventing diversion either informally or through the TRIPS Council. It would be beneficial for Members and industry to work together to further refine anti-diversion practices and enhance the sharing of information related to identifying, remedying or preventing specific occurrences of diversion.

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ANNEXURE B

WORLD TRADE ORGANIZATION

TN/IP/14
23 November 2005

(05-5543)

Council for Trade-Related Aspects of Intellectual Property Rights
Special Session

SPECIAL SESSION OF THE COUNCIL FOR TRIPS

Report by the Chairman, Ambassador Manzoor Ahmad,
to the Trade Negotiations Committee

1. This report on the negotiations on the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits is submitted on the Chairman's own responsibility and is without prejudice to the position of any delegation and to the outcome of the negotiations.

2. Article 23.4 of the TRIPS Agreement provides that

> "[i]n 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."

The mandate of the Special Session is set out in the first sentence of paragraph 18 of the Doha Ministerial Declaration, which reads as follows:

> "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."

In respect of the Special Session's and of certain other areas of negotiations, paragraph f of the General Council Decision of 1 August 2004 (WT/L/579) provides that

> "... [t]he [General] Council reaffirms Members' commitment to progress in all of these areas of the negotiations in line with the Doha mandates."

3. Since the Fifth Ministerial Conference in 2003, the Special Session has held eight meetings: on 7 April, 18 June, 23 September, 30 November 2004, and on 11 March, 16-17 June, 16 September and 27 October 2005. The Chairman has also held a number of informal consultations, either in an open-ended mode or in other formats. The minutes of the formal meetings are contained in document series TN/IP/M/-.

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4. The work of the Special Session this year has been characterized by an enhanced level of activity, with the tabling of submissions spelling out in legal form proposals for a multilateral system. A detailed and useful discussion of the issues and proposals has taken place, with an exchange of questions and answers on many specific points. This has been aided by document TN/IP/W/12, prepared by the Secretariat, which sets out side by side the elements of the three proposals tabled that, in the view of the proponents of each proposal, are relevant to the mandate of the Special Session: Hong Kong, China's proposal, contained in Annex A of TN/IP/W/8; the Joint Proposal of Argentina, Australia, Canada, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Mexico, New Zealand, Paraguay, Chinese Taipei and the United States in TN/IP/W/10 and Add.1; and the European Communities' proposal, contained in the Annex set out in TN/IP/W/11.

5. Despite the active engagement of delegations and the detailed discussion of the proposals, it is a matter of concern that the level of convergence in these negotiations has not significantly expanded in the period since the last Ministerial Conference. In particular, important differences remain on two key issues:

- the extent to which legal effects at the national level should be consequent on the registration of a geographical indication for a wine or a spirit in the system; and

- the question of participation, including whether any legal effects under the system should apply in all WTO Members or only in those opting to participate in the system.

6. Further work is also required on a range of other points, including on questions of costs and administrative burdens for WTO Members, in particular for developing countries. It will be difficult to make major headway on these issues, together with other details of the mechanism to be established, without greater convergence on the two key issues mentioned above. Some delegations have indicated that it would help the process if Ministers could provide guidance at the Sixth Ministerial Conference on how and where this convergence could be found, since in their view the Special Session's mandate is not specific enough to determine the issue. Some other delegations have opposed this on the ground that the existing mandate in Article 23.4 of the TRIPS Agreement and paragraph 18 of the Doha Ministerial Declaration is clear and that convergence should be found within the existing mandate.

7. On the basis of the consultations held, it is the Chairman's understanding that the points on which there is general support for recommendations to the TNC at this stage are that, at the Sixth Ministerial Conference, Ministers take note of the report of the Chairman of the Special Session of the Council for TRIPS setting out the progress in the negotiations on the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits, as mandated in Article 23.4 of the TRIPS Agreement and paragraph 18 of the Doha Ministerial Declaration, (document TN/IP/14) and agree to intensify these negotiations in order to complete them within the overall time-frame for the conclusion of the negotiations foreseen in the Doha Ministerial Declaration.