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# Geographical Indications and Labelling Issues at the WTO



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# Negotiations on a GI Register

# Negotiating Mandate: Article 23.4



*“In 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.**”*

**Highlighted:** elements where delegations are having differences of views

# GI Register Negotiations: Issues

## Negotiating Positions:

- Main differences: **legal effect** and **participation**
  - Two basic approaches:
    - Commitment to consult a data base of registered GIs; legal effects under the domestic law; voluntary participation
    - A registration to have certain legal effects in all Members
  - Middle ground proposed Hong Kong, China: certain presumptions; voluntary participation
- Notification and registration
- Special and Differential Treatment, Costs, Fees.

# GI Register Negotiations: The proposals on the table since 2008



- TN/IP/W/10/Rev.4 by the Joint Proposal Group (Argentina, Australia, Canada, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Israel, Japan, Korea, Mexico, New Zealand, Nicaragua, Paraguay, **South Africa**, Chinese Taipei and the United States) (April 2011) (*Voluntary participation, commitment to consult the register, legal effects only under national law*)
- TN/IP/W/8 by Hong Kong, China (April 2003) (*Voluntary participation, certain rebuttable legal presumptions*)
- TN/C/W/52 (para. 1-3 and 9) by the “Modalities Group” (Albania, Brazil, China, Colombia, Croatia, Ecuador, the European Communities, Georgia, Iceland, India, Indonesia, the Kyrgyz Republic, Liechtenstein, Moldova, the Former Yugoslav Republic of Macedonia, Pakistan, Peru, Sri Lanka, Switzerland, Thailand, Turkey, **the ACP Group and the African Group**) (July 2008) (*Mandatory participation, register information is prima facie evidence for meeting the GI definition, assertions of genericism have to be substantiated*)

# Recent progress – a single text

- Development of single negotiating text in consultations of a drafting group since January 2011
- *Easter Package* - Chair's report in TN/IP/21:
  - Summarizes work done
  - Publishes draft composite text (JOB/IP/3/Rev.1)

# Draft Composite Text:

## Differences on Legal Effect and Participation remain

### [X.2 SCOPE AND COVERAGE

This system applies to wines falling under heading 22.04, and to spirits falling under heading 22.08, of the International Convention on the Harmonized Commodity, Description and Coding System ("Harmonized System"), done at Brussels on 14 June 1983.]<sup>CAN</sup>

### A. PARTICIPATION

A.1 [In accordance with paragraph 4 of Article 23 of the TRIPS Agreement,]<sup>JP,SG</sup> participation in the System [[established in this Decision]<sup>JP,SG</sup> is voluntary and no Member shall be required to participate.]<sup>JP,HKC,SG,IND,BRA</sup>

[Participation in the system means:

- (a) Each WTO Member [shall be free to participate and]<sup>HKC</sup> may notify geographical indications as provided in Section B.]<sup>CH,EU,HKC</sup>
- (b) [Each WTO Member shall consult the Register as provided in Section E.]<sup>CH,EU</sup> [The obligation to give legal effect to registrations under the system will only be binding upon Members choosing to participate in the system.]<sup>HKC,IND,BRA</sup>

[A.2 In order to participate in the System, a Member shall make a written notification to the WTO through the WTO Secretariat of its intention to participate.]<sup>JP,CUB,HKC</sup>

### B. NOTIFICATION

# Draft Composite Text:

Some issues contemplated by the drafting group



## Notification:

- Content of Notification
  - Notify domestic means of protection?
- Translation / transliteration

## Registration:

- Formality examination by WTO Secretariat
- Obligations to notify corrections?
- Withdrawals of registered GIs
- Require renewal of registrations after 10 years?
- Question of fees



# Draft Composite Text:

Some issues contemplated by the drafting group



## Special and Differential Treatment provisions:

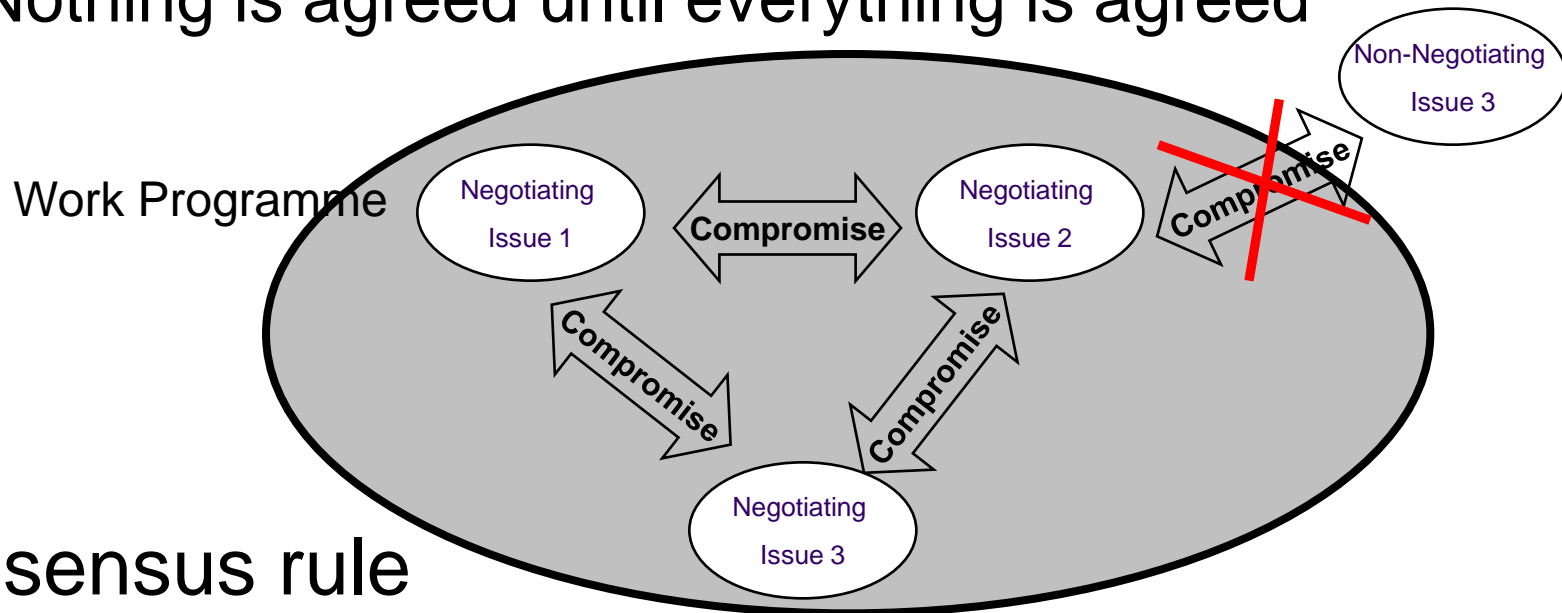
- Transitional periods for developing countries and LDCs
  - Exemption from registration fees
  - Technical/Financial assistance regarding
    - translations
    - participation in and implementation of the system (including notification of GIs)
- Engagement by developing countries from both camps

# GI Extension

# WTO Negotiation and decision-making



- Single undertaking
  - “Nothing is agreed until everything is agreed”



- Consensus rule
  - Each Member can block consensus

# GI Extension: the proposal

- = Extension of the higher protection of GIs for wines and spirits to GIs for other products
- What do proponents (GI Friends) want? (TN/C/W/52)
    - Article 23 to apply to all GIs
    - Article 24 exceptions to apply *mutatis mutandis*
    - Multilateral register (of GIs for wines and spirits) to apply to all GIs
    - Part of Single Undertaking
    - Linkage and Parallelism

# GI Extension: the actors



## TN/C/W/52 – Sponsors

Albania, Brazil, China, Colombia, Croatia, Ecuador, the European Communities, Georgia, Iceland, India, Indonesia, the Kyrgyz Republic, Liechtenstein, Moldova, the Former Yugoslav Republic of Macedonia, Pakistan, Peru, Sri Lanka, Switzerland, Thailand, Turkey, **the ACP Group and the African Group**

## Non-Demandeurs:

New Zealand, Australia, United States, Canada, Chile, Argentina, Japan, Chinese Taipei (etc.)

# GI Extension: some points made and issues raised

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- Discrimination between product categories legitimate?
  - Systemically
  - Economic impact
- Shift of burden legitimate?
  - Necessity to prevent “genericisation” of terms
  - Burden for legitimate users of
- Impact of GI Extension in third markets?
  - Existing economic interests
  - Impact of bilateral agreements feared by opponents

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# Latest Developments

- First textual proposal by GI extension proponents  
TN/C/W/60 of 15 April 2011
- Proposal to amend TRIPS GI Section
  - Art. 23 protection to apply to all GIs
  - Art. 24 exceptions
- Put forward by Albania, China, Croatia, European Union, Georgia, Guinea, Jamaica, Kenya, Liechtenstein, Madagascar, Sri Lanka, Thailand, Turkey, and Switzerland
- DG Report on implementation issues (TN/C/W/61 of 21 April 2011)

# State of Play

- Move from “positions” to “texts”
  - Work on single text since January 2011 has brought Members to focus and engage on the practical aspects of a GI Register
  - Issue of GI Extension has complicated progress in the GI Register negotiations
- Further progress tied to the fate of the wider Doha Round
  - What will be delivered in December 2011?
  - Negotiating mandate on GI Register pre-dates Doha Round



# Labelling Issues

# Standards of compliance under the TBT Agreement

## TBT Agreement

- Not create **unnecessary obstacles to international trade**.
- regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create.
- legitimate objectives are, inter alia: national security requirements; the prevention of deceptive practices; **protection of human health** or safety, animal or plant life or health, or the environment.
- In assessing such risks, relevant elements of consideration are, inter alia: available scientific and technical information, related processing technology or intended end-uses of products.

# Trade Concerns raised at WTO TBT Committee – Alcohol (1)



- Thailand — Health Warnings for Alcoholic Beverages (G/TBT/N/THA/33)
  - display of specific health advisory statements and pictures on the packaging of alcoholic beverages
  - raised by Mexico, the EU, Argentina, New Zealand, Switzerland, Australia and the US in 2010

# Trade Concerns raised at WTO TBT Committee – Alcohol (2)



- Brazil — Labelling of alcoholic beverages (G/TBT/N/BRA/362)
  - indicate alcohol content on the front main label; prohibition of abbreviations, obligation to translate into Portuguese terms such as “light” or “diet”,
  - raised by EU, Mexico and the US in 2010

# Trade Concerns raised at WTO TBT Committee – Tobacco (1)



- Canada — Additives in tobacco products
  - prohibits the use of certain additives in cigarettes and other tobacco products,
  - raised by Mexico, Argentina, Colombia, Malawi, Brazil, Switzerland, the Dominican Republic, Philippines, Turkey, the EU, the Former Yugoslav Republic of Macedonia, the US, Japan and Zimbabwe already in 2009

# Trade Concerns raised at WTO TBT Cttee and TRIPS Council



- Australia — Plain Packaging for tobacco products (G/TBT/N/AUS/67) - April 2011
  - olive-coloured plain packaging as of 1 July 2012, no logos or brand images permitted on the packaging, product brand name to appear in uniform font on the front, top and bottom of the package, graphic health warnings continue to be displayed.
  - Raised in the TBT Committee and the TRIPS Council (7 June 2011) by the Dominican Republic and other Latin American Countries. Norway, Uruguay and New Zealand supported the legislation.

# Provisions raised under the TRIPS Agreement

- Article 15 and 16 – Trademark Rights
- Article 20
  - The use of a trademark in the course of trade shall not be **unjustifiably encumbered** by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.

# Disputes on Tobacco Regulations in other Fora

- Philipp Morris International (et al.) launched case against Uruguay under the investor-to-state arbitration provision of the BIT (ICSID case no. ARB/10/7, registered 26 March 2010)
- EFTA Court Decision of 12 Sept 2011 on Norway's ban of point-of-sale display



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