



**Worldwide Symposium on  
Geographical Indications  
WIPO-DIP  
Bangkok, 27-29 March 2013**



An International Register for Geographical  
Indications

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**Negotiations and discussions at the  
World Trade Organization (WTO):  
Where are we and where do we go?**

**Thu-Lang TRAN WASESCHA  
Counsellor, IPD  
WTO Secretariat**

*TLTW/27March 2013 – Corr.9 April  
Photos used for teaching purposes only*



# Structure of presentation

## TRIPS: Trade-related Aspects of Intellectual Property Rights

- Introductory part
  - What is the WTO and what it is not
  - The economics of identifiers (trademarks and geographical indications (GIs))
  - The TRIPS Agreement and GIs
  - Historical background
- On-going discussion/negotiations in the WTO
  - Register of GIs for wines and spirits
  - So-called "GI Extension" (to other products)
- The challenges and building blocks



# A few points on trade and consumers

- TRIPS protection is about market access !
- A product can involve many aspects:
  - Consumer protection – labeling → TBT issue (“technical trade barrier”))
  - Food safety→health
  - Country of origin labeling (traceability)
  - And what else?
    - IP (patents, trademarks, geographical names, designs, copyright)
- Distinctive signs and consumers
- **Marketing** function of distinctive signs



# **What is the WTO and what it is not**

- Multidisciplinary
- “Single undertaking” (single package) tradition
- Trade-off within a discipline and with others disciplines
- Member-driven
- The concept of Multilateral vs. Plurilateral in the WTO (difference with WIPO and other IGOs)
  - N.b.: reciprocity and preferential treatment in various agreements before the Uruguay Round



# **What is the WTO and what it is not**

- Dispute settlement (DS) mechanism proper to the WTO
  - Sanctions (change of law or compensation)
  - Cross-retaliations
  - But in the course of procedure possibility of agreed solutions
- DS used by many developing countries for matters, for the time being a bit less under TRIPS than under goods (GATT) or services (GATS)

## Example of the importance attached by a Member to GIs

The screenshot shows a web browser displaying the IGE | IPI website. The address bar shows the URL: <https://www.ige.ch/en/legal-info/legal-areas/made-in-switzerland>. The website header includes the IGE | IPI logo, contact information, and a search bar. A banner image shows various Swiss products. The main navigation menu includes links to About us, Patents, Trademarks, GIs, Designs, Copyright, Legal info, Searches, Training, Service, Download, and News. The 'Legal info' section is expanded, showing a breadcrumb trail: Legal info > Legal areas > «Made in Switzerland».

Legal information	
<b>Legal areas</b>	
Patents	
Trademarks	
Designs	
Copyright	
Geographical indications	
Intellectual Property and Sustainable Development	
Domain Names	
Counterfeiting & piracy	
<b>«Made in Switzerland»</b>	
Brief history	
Dispatch	
Consultations process	
The Federal Council report	

**Swissness: Protecting «Made in Switzerland» designations and the Swiss cross**

The economic value of a "Swiss" origin for products or services is considerable in an ever more globalized economy. Switzerland's excellent reputation, both domestically and abroad, benefit numerous Swiss products and services because of the values associated with it—values such as exclusivity, tradition and quality. This reputation, primarily appreciated by consumers, grants an undeniable competitive advantage for positioning products and services in a higher price category.

The advantages and success that accompanies the commercial use of the "Swiss" brand has attracted attention as well as envy: Instances of wrongful use, both abroad and at home, have been increasing proportionally over the past years.

To strengthen protection for "Made in Switzerland" designations and the Swiss cross, the "Swissness" amendment, initiated by the Fetz and Hutter postulates, directed the Federal Council to study and draw up legislative measures. The aim of "Swissness" is to create the basis for sustaining the added value represented by the

**Key info in brief**

- "Swissness" Legislative Amendment: Background, goal and content (pdf 220 KB)
- Glossary of terms for "Swissness" project, in French (pdf 106 KB)

**Documents**

- Dispatch on "Swissness" project, in French (pdf 974 KB)
- Amendment of the protection of trade marks and indications of source, in French (pdf 481 KB)
- Amendment of the law on the protection of coats of arms and other public insignia, in French (pdf 608 KB)



## Country branding



# Economics of TMs and GIs

*See Marcus' slides*

Economists classification of IPRs

- Markets fail if asymmetric information between buyers and sellers of goods
- **Trademarks = identification tools (information)**
  - Consumers: trademarks assure consumers that they purchase what they intend to purchase
  - Producers: trademarks thus offer an incentive to invest in reputation and superior quality
- **GIs = identification tools (information)**
- Undeserved over-protection vs. undeserved under-protection. Trade implications
- Differences with (individual) trademarks



# Categories of trademarks

- Individual trademarks
- **Collective marks** are owned by an association whose members use them to identify themselves with a level of quality and other requirements set by the association.\*
- **Certification marks** are given for compliance with defined standards. They may be granted to anyone who can certify that the products involved meet certain established standards. The owner – who is the certifier – cannot use it.\*

*(n.b.: not legal definitions)*

- In many jurisdictions, protection of geographical indications as collective or certification marks



# Trademarks and GIs: myths and realities

- GIs importance recognized. But large differences on the way to protect and use them
- Both are great **marketing** tools but are vulnerable  
Both are not “life insurances” or automatically yield higher profits
- Points made by delegations on the differences between certification /collective marks and GIs
- **Genericness?**
  - A trademark can become generic if no action by right holder. A generic mark can get its trademark distinctiveness back if action by right holder
    - GIs: in some jurisdictions, a GI can never become generic, but in others, yes
- Debate on **prior trademarks and GIs**

## GIs - some clarifications

- Economic sectors involved depending on countries: agriculture, foodstuffs, handicrafts, industrial products, services
- Clarifications:
  - GIs and “rules of origin”
  - GIs and “indications of source”
  - GIs and “appellations of origin”
- Difference between
  - A GI and the **process/production specification** (or “cahier des charges”). See WT/DS174/R and WT/DS290/R
- Difference between the GI of a product and a logo (stating that the the GI is protected according to certain rules)

## Example of a product using two or more IPRs



Patent (process) protection in 1909

Trademark protection: combination of words, colours, and images; 3-dimensional; well-known trademark

One of the figurative (picture or drawing) elements, the Cervin/Matterhorn in Zermatt, is considered as a figurative GI (at least under Swiss law and practice)

## EU: Logos/symbols used for products bearing a GI



EU symbols for "Protected Designation of Origin" (PDO) and "Protected Geographical Indication" (PGI).

Left: PDO symbol (red and yellow)

TL 100-2012

Right: PGI symbol (blue and yellow)



A geographical name protected as an “AOC” in France and “AOP” (PDO) in EU, as a collective mark in France, and as a certification in the US



AOC in  
France (AOP  
(French  
abbreviation  
for PDO)



Collective mark  
of ewe milk  
producers in the  
area of  
Roquefort



ROQUEFORT

US Certification  
mark  
Nr. 571798

Source: WTO e-Training and WTO Handbook

## Two geographical names protected as certification marks



Certification  
mark for  
potatoes from  
Idaho



« **Cognac** »  
first protected  
in the US as a  
common-law  
certification  
mark for  
brandy

# Café de Colombia Strategy

- Denominación de origen «Café de Colombia»
- Certification mark in countries which provide for this type of protection only
- Use of the trademark system and the DO/IG whenever possible
- Use of «Juan Valdez Café®»  
«Juan Valdez®» Café for services





## Café de Colombia: “PGI” in the EU

28.12.2006

EN

Official Journal of the European Union

C 320/17

Publication of an application pursuant to Article 6(2) of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs

(2006/C 320/09)

This publication confers the right to object to the application pursuant to Article 7 of Council Regulation (EC) No 510/2006. Statements of objection must reach the Commission within six months from the date of this publication.

### SUMMARY

#### COUNCIL REGULATION (EC) No 510/2006

Application for registration according to Article 5 and Article 17(2)

‘CAFÉ DE COLOMBIA’

EC No: CO/PGI/0467/08.06.2005

PDO ( ) PGI ( X )



Strategy of “Café de Colombia” as trademarks and service marks (for mugs, tee-shirts, caps, coffee-bars services, etc.)





## **“Feta” / “feta”**

1. Greek GI
2. Generic name in certain countries

## TRIPS and GIs: background (1)

- Complex and controversial issue both at national and international levels
- Commercial and economic stakes
- Socio-historical, cultural dimensions
- Emotional debates
- Not sufficient empirical evidence on pros and cons?

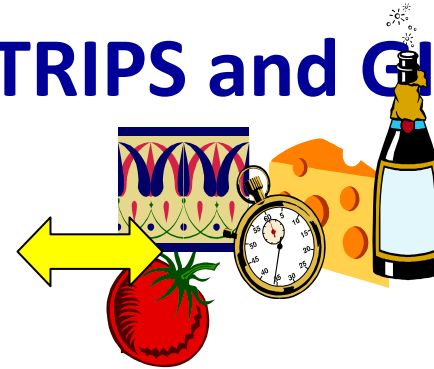


## TRIPS and GIs: background (2)

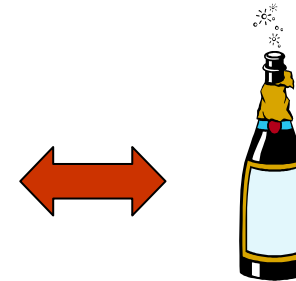
- Pre-Uruguay Round
  - WIPO:
    - Madrid Agreement (false or deceptive indications of source)
    - Lisbon Agreement (all products)
    - Paris Convention revision conference : draft Article 10<sup>quater</sup> (almost same constellation of actors)
  - Stresa Convention (cheese)
  - GATT 1947 provisions (Article IX.6)
- The Uruguay Round:
  - area heavily negotiated → some “constructive ambiguity”
  - the “deals”
  - The unfinished business

## TRIPS and GIs

[Outside TRIPS, i.e. optional, higher level for all sectors: national laws, bilateral, regional and other multilateral agreements]

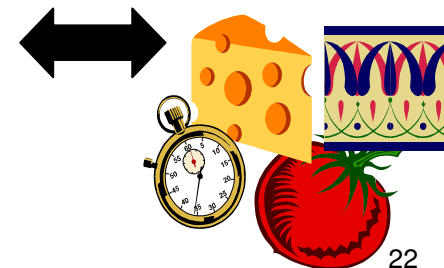


**TRIPS: Article 23 - higher protection for wines and spirits (minimum, mandatory) (+ Art. 24.2-9)**



**TRIPS: Article 22 (minimum, mandatory)**

- *Misleading/confusion test*
- *Unfair competition («free-riding»)*



## Wording in Art. 22, 23 and 24

- Compare with other sections of Part II
- “**Legal means**” → Members’ freedom under Art. 1.1  
→ diversity of systems:
  - Unfair competition
  - Consumer protection
  - Trademarks (collective and/or certification)
  - *Sui generis* (tailored-made or special) protection systems
  - Others (e.g. taxation (Japan in addition to collective marks))
- Wording carefully negotiated: see for example article 24

## Article 22.1

### Definition

*"...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."*

- Relatively wide definition
- Reflected in the great majority of WTO Members' laws
- Only goods
- Direct (terms or names) or indirect (figurative) GIs ?
- Non-geographical names?
- Country's name ?





## Basic level of protection: Article 22.2 and 22.3

For all products other than wines and spirits,  
obligation of Members to provide **legal means**  
for interested parties to prevent

- Use which:
  - **misleads the public** as to the geographical origin of the good;
  - constitutes an act of **unfair competition** (Art. 10*bis* Paris Convention)
- Protection against registration as a trademark if use of the GI in the trademark would mislead the public as to origin



## Additional protection for wines and spirits (Art. 23)

- Additional protection against use of a GI for wines on wines (and for spirits on spirits) not originating in the place indicated by the GI:
  - **without requirement to show misleading of the public or act of unfair competition**
  - **even where the true origin of the good is indicated; and**
  - **even where the GI is accompanied by expressions, e.g. kind, type, style, imitation**
- Against registration as a trademark with respect to wines and spirits not having the origin indicated (no misleading test required)

## Article 24 exceptions

But the protection under Section 3 is to be read in conjunction with the exceptions under Article 24.

- **Generic terms (“customary”) (Article 24.6)**
- **Prior trademark rights (Article 24.5):**
- Certain other prior uses (Article 24.4) (grand-father clause):
- Personal names (Article 24.8)
- GIs not protected or fallen into disuse in their country of origin (Article 24.9)

## Article 24.1

- Art. 24.1: International negotiations "aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 through 8 ... shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. ... “

## Article 24.2

- Review of Members' legislation on GIs
- 49 Members have submitted responses, and that the majority of these date back to the period from 1998 to 2002. (IP/C/W/117 and addenda). Some information outdated.
- Summary by Secretariat in IP/C/W/253/Rev.1 of 29 contributions (until November 2003)
- More recently, information on bilateral/regional agreements with GI component (IP/C/W/547 series)



## Register for wines and spirits: Article 23.4

### Built-in agenda

*"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.**"*

Singapore Ministerial Conference (spirits)



# The (general) Doha Declaration and GIs (1)

## Register of GIs for wines and spirits

Paragraph 18, first sentence:

*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.*

Clear mandate; “early harvest” not achieved in 2003.



## The Doha Declaration and GIs (2)

### Extension

- Paragraph 18, second sentence

*"We note that issues related to the **extension** of the protection of geographical indications provided for in Article 23 to products other than wines and spirits will be addressed in the Council for TRIPS pursuant to paragraph 12 of this Declaration."*



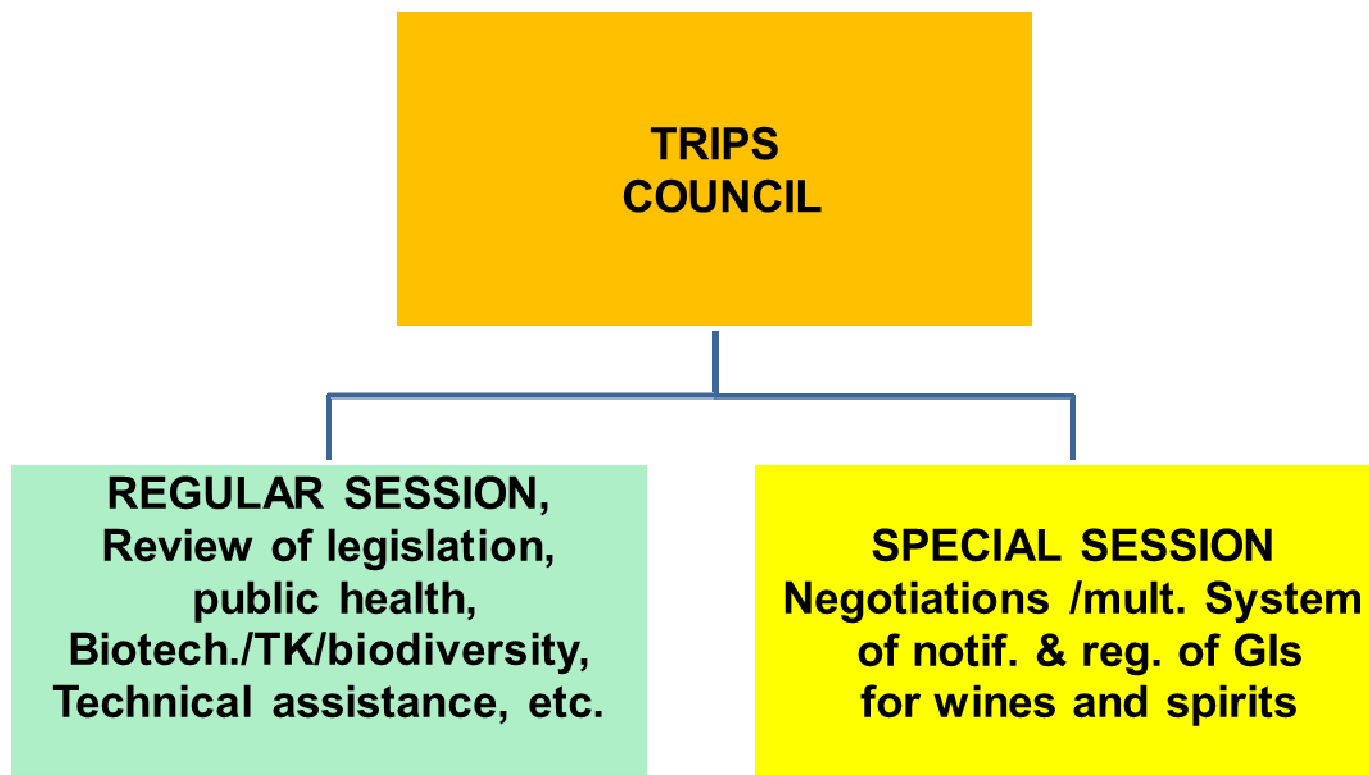
## The Doha Declaration and GlS (3)

"Work programme





Implementation-Related Issues and Concerns

12. ... ***we agree that negotiations on outstanding implementation issues shall be an integral part of the Work Programme... and that agreements reached at an early stage in these negotiations shall be treated in accordance with the provisions of paragraph 47 below. In this regard, we shall proceed as follows: (a) where we provide a specific negotiating mandate in this Declaration, the relevant implementation issues shall be addressed under that mandate; (b) the other outstanding implementation issues shall be addressed as a matter of priority by the relevant WTO bodies, which shall report to the Trade Negotiations Committee, established under paragraph 46 below, by the end of 2002 for appropriate action.***"

## **TRIPS Council since Doha: regular session and Special Session**



## Discussion/work and proposals on GIs in the WTO

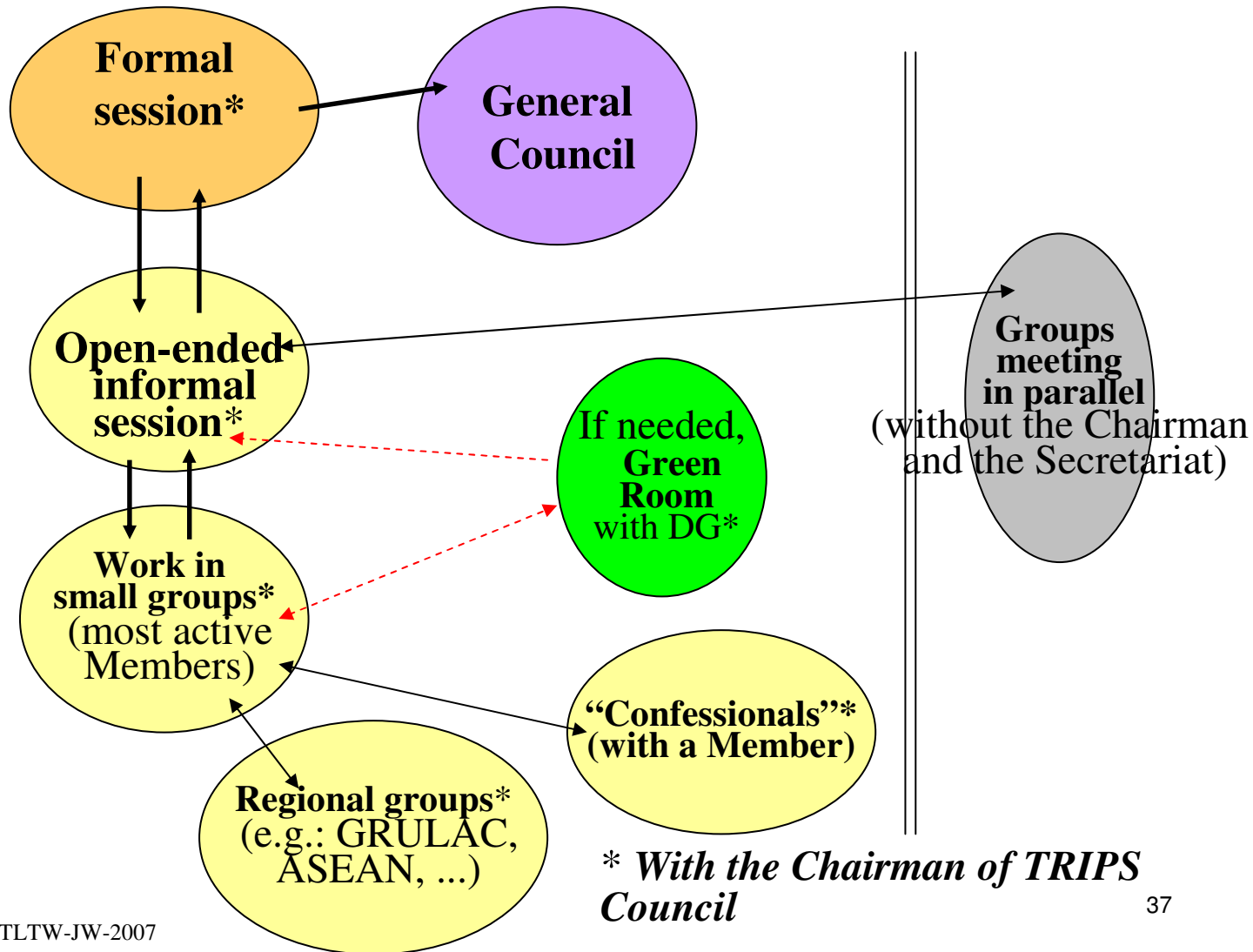
- |  |   |   |
|--|---|---|
| <p>1. <u>Art. 63.2 notification/review</u><br/>+ <u>Art. 24.2 review</u><br/>(examination of<br/>implementation)</p>   |    | <p>1. <i>TRIPS Council</i><br/>(regular session)</p>                          |
| <p>2. <u>Negotiations on the</u><br/><u>establishment of a</u><br/><u>multilateral system of</u><br/><u>notification and registration</u><br/><u>of GIs for wines and spirits</u><br/>(Art. 23.4 + Doha)</p> |    | <p>2. <i>TRIPS Council</i><br/><i>Special Session</i></p>                     |
| <p>3. <u>Issues related to the</u><br/><u>extension of the protection</u><br/><u>of GIs provided in Art. 23 to</u><br/><u>products other than wines</u><br/><u>and spirits</u></p>                           |    | <p>3. <i>GC/TNC → DG</i><br/><i>consultations</i></p>                         |
| <p>4. “Other issues: ...V. [...B.<br/>GIs]” (TN/AG/W/4/Rev.4)</p>  |  | <p>4. <i>Committee</i><br/><i>Agriculture, Special</i><br/><i>Session</i></p> |



# Negotiations in the WTO

- Member-driven organization
- Bottom-up vs. top-down
- Consensus rule
- Negotiating “practice”
  - Formal, open-ended informal, small group, separate groups, “confessionals” (see separate slide)
- “Nothing is agreed until everything is agreed”

**How do Members negotiate in the TRIPS Council (example:  
negotiation of Paragraph 6 System (public health))**



## Register W&S (1)

- The **main proposals**:
  - TN/IP/W/8 (23 April 2003) by Hong Kong, China
  - TN/C/W/52 (19 July 2008) (“Modalities proposal”) by Albania, Brazil, China, Colombia, Ecuador, EU, Iceland, India, Indonesia, the Kyrgyz Republic, Liechtenstein, the Former Yugoslav Republic of Macedonia, Pakistan, Peru, Sri Lanka, Switzerland, Thailand, Turkey, the African Group and the ACP Group + Croatia, Georgia and Moldova
  - TN/IP/W/10/Rev.4 (31 March 2011) (“Joint proposal”) by Argentina, Australia, Canada, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Israel, Japan, Mexico, New Zealand, Nicaragua, Paraguay, South Africa, Chinese Taipei, US

(Other Members: less or no interest)

## Register W&S (2)

HKC	Joint proposal	W/52 proposal (paras. 1-3)
Voluntary participation (Review after 4 years)	Voluntary participation	Notification voluntary Effects in all WTO Members
Rebuttable prima facie evidence of certain elements, e.g.: definition of Art. 22.1; GI protected in country of origin	<ul style="list-style-type: none"> <li>Participating Members commit to ensure inclusion in its procedure an obligation to consult the Database</li> <li>Non-participating Members: encouraged, but not obliged, to consult</li> </ul>	<ul style="list-style-type: none"> <li>Domestic authorities of a Member to consult the Register and take its information into account in domestic procedures</li> <li>In the absence of proof to the contrary, the Register to be considered as a <i>prima facie</i> evidence that, in that Member, the registered geographical indication meets Art. 22.1 definition of "geographical indication"</li> <li>Genericness claims to be substantiated</li> </ul>

## Register W&S (3)

### The stumbling block of legal effects

- Should a name considered as a GI in a Member and put on the register be considered/protected as a GI in another Member, i.e. is it a GI under Art. 22.1 definition in that other Member?
- What if the name put on the register as a GI from a Member is considered as a generic in another Member?
- Extent to which the information on the register is to be **taken into account**?
- Burden of proof ?
- Concerns expressed regarding WTO's dispute settlement
- Fear that the register be expanded to GIs for other products (extension)
- etc.



## Register W&S (4)

### Participation

- “Multilateral”: in the WTO can only be mandatory for all Members, otherwise it would be a “plurilateral” agreement, vs.
- Article 23.4 words “participating in the system” clearly means voluntary
- *Is there any other approach possible?*

## Register W&S (5)

- Considerable amount of work and proposals since beginning but negotiations by delegations among themselves only in 2010.
- Small drafting group:
  - Argentina, Australia, Brazil, Canada, Chile, China, the European Union, Hong Kong, China, India, Japan, Kenya (for the African Group, with Nigeria as TRIPS focal point), Mauritius (for the ACP Group), New Zealand, Peru, South Africa, Switzerland, Turkey and the United States.
- In March 2011, enlarged to include:
  - Bangladesh (for LDC Group, with Angola as TRIPS focal point), Barbados, Ecuador, Indonesia, Korea, Malaysia, Mexico, Pakistan, Singapore, Thailand, and Chinese Taipei.
- Open-ended informal meetings (transparency and inclusiveness)

## Register W&S (6)

- Textual proposals → collation by Secretariat  
→ read-through → textual comments
- Work on screen, transparency, direct and immediate involvement of delegations; time to check
- Attributions of proposed texts
- Reads-through as many times as possible to reduce
  - Brackets
  - Bracketed texts

## Register W&S (7)

- **JOB/IP/3/Rev.1 of 20 April 2011 – *DRAFT COMPOSITE TEXT***
- First time a draft negotiated text by Members among themselves
- **Chair's report TN/IP/21 of 21 April 2011**
- Key issues of:
  - Legal effects/consequences
  - Participation
- Special and differential treatment
- **“fundamental, systemic and mandate-related concern, relating to product coverage...”**

## Register W&S (8)

*JOB/IP/3/Rev.1, excerpt showing the methodology and the result:*

### B. NOTIFICATION

B.1 Each [participating]<sup>JP,HKC,IND,SG,BRA,CUB</sup> WTO Member may notify to the WTO [through the WTO]<sup>JP</sup> Secretariat any geographical indication [that identifies a wine or a spirit]<sup>JP,HKC,SG,CUB</sup> [as defined in Article 22.1 of the TRIPS Agreement, which is]<sup>EU,CHN,CH,TUR,HKC</sup> originating and protected in that Member's territory.

## GI Extension (1)

= *Extension of the higher protection of GIs for wines and spirits to other products*

- What do proponents want?
  - Article 23 to apply to all GIs
  - Article 24 exceptions to apply *mutatis mutandis* (by analogy)
  - Multilateral register (of GIs for wines and spirits) to apply to all GIs
- “Outstanding Implementation issue”, the other one being TRIPS-CBD

## GI Extension (2)

- In July 2008, the “modalities proposal”: TN/C/W/52
- The “alliance” of different interests and concerns
- Parallelism
- Parameters (draft modality texts) in terms of substance and process for:
  - Register of GIs for wines and spirits
  - TRIPS/CBD disclosure
  - Extension
- 19 April 2011: TN/C/W/60 - proposed amendment of TRIPS Agreement
  - Albania, China, Croatia, EU, Georgia, Guinea, Jamaica, Kenya, Liechtenstein, Madagascar, Sri Lanka, Thailand, Turkey and CH

## GI Extension (3)

### Other Members' position:

- Mandate clear for W&S only → TN/IP/W/10/Rev.4 on the table
- GI extension
  - No mandate
  - Disruption of balance in the Doha Development Agenda (DDA) and endanger possible outcome of the whole DDA
  - Cannot be part of the Single Undertaking
  - Case not made
  - Artificial parallelism between the three issues
- Both positions reflected in DG's report WT/GC/W/591-TN/C/W/50 (2008) and WT/GC/W/633-TN/C/W/61 (2011)



## GI Extension (4) - points made (non-exhaustive list)

Proponents	Non-demandeurs
<p><b><i>For producers in the area indicated by the GI</i></b></p> <ul style="list-style-type: none"> <li>- Discrimination with wines and spirits unjustified</li> <li>- Article 22 protection inadequate. Art. 23 offers certainty and clarity of protection. Burden of proving infringement, costs of action, uncertainty of results, subjective criteria used by authorities/courts, etc.</li> <li>- Legitimacy of use. “Usurpation” ?</li> </ul>	<p><b><i>For producers not in the area that use the GI</i></b></p> <ul style="list-style-type: none"> <li>- Discrimination: why W&amp;S greater protection? Why not go back to Art. 22 level for all products?</li> <li>- Case not made that legal means under Art. 22 not appropriate. Costs of action same as for any IPR. Existing legal means, e.g. certification marks, offers same quality of protection</li> <li>- Legitimacy of use of terms (immigrants) or terms in public domain. “Expropriation” of legitimate use?</li> </ul>

## Extension (5) - points made (non-exhaustive list)

Proponents	Non-demandeurs
<p><b><i>For producers in the area indicated by the GI</i></b></p> <ul style="list-style-type: none"> <li>- Encourage quality production Better price for producers, in part. SMEs and small producers in developing countries. Helps rural development</li> <li>- Costs and burdens and uncertainty <ul style="list-style-type: none"> <li>– in the country of the GI</li> <li>– <b>in third markets</b></li> </ul> </li> </ul>	<p><b><i>For producers not in the area that use the GI</i></b></p> <ul style="list-style-type: none"> <li>- More competition encourages quality production</li> <li>- Costs and burdens for changing brands/labelling and uncertainty <ul style="list-style-type: none"> <li>-in domestic markets</li> <li><b>-in third markets</b></li> </ul> </li> </ul>

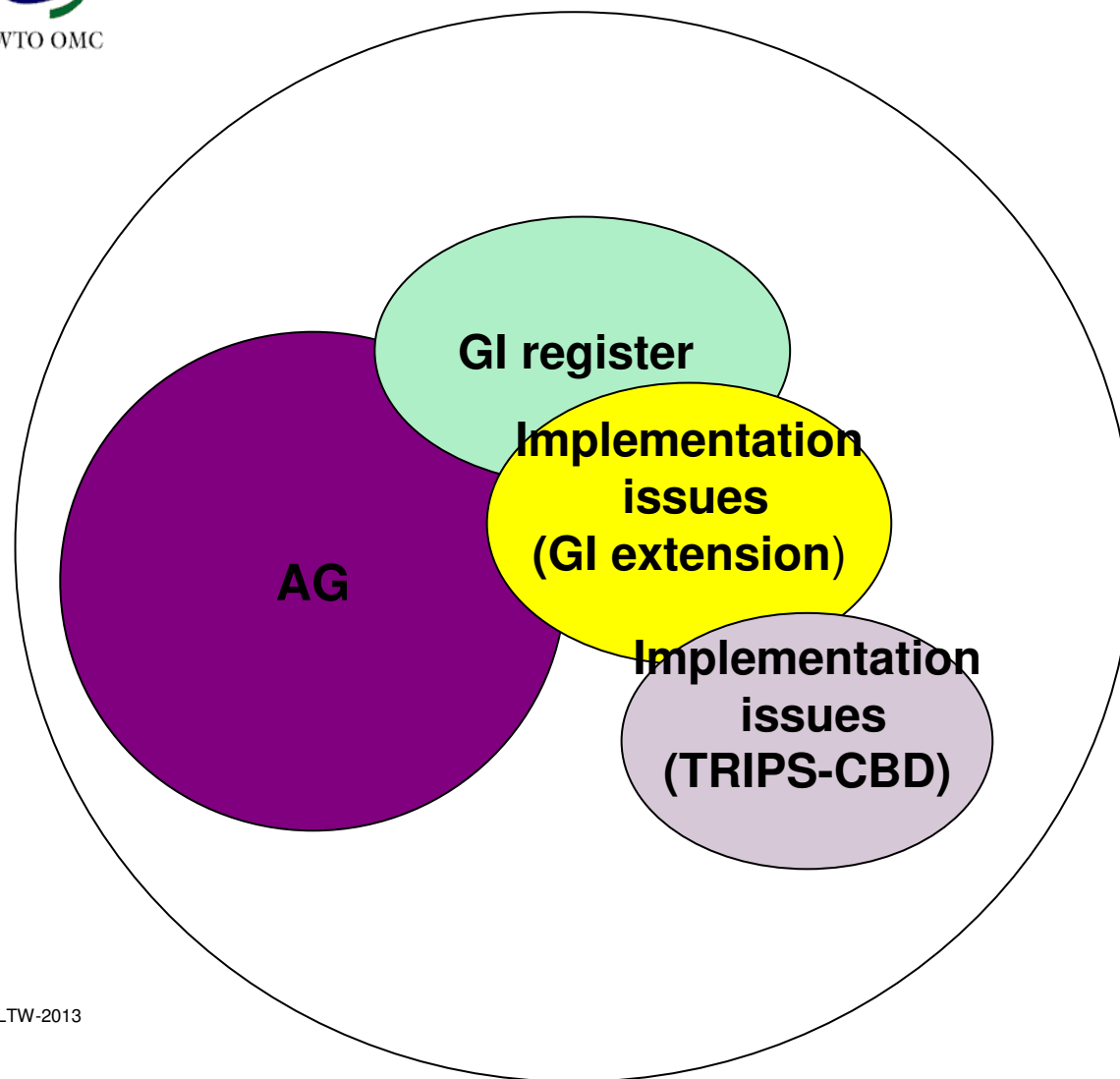
## Extension (6) - points made

Proponents	Non-demandeurs
<p><b><i>For consumers</i></b></p> <ul style="list-style-type: none"> <li>- More choice (more producers, in particular SMEs, of the GI product)</li> <li>- Help make choice (better identification)</li> <li>- Quality ensured</li> <li>- If impact on prices, freedom of consumers to choose between a GI product and a generic</li> </ul> <p><b>etc.</b></p> <p>TLTW-2013</p>	<p><b><i>For consumers</i></b></p> <ul style="list-style-type: none"> <li>- Less choice (only one product, etc.)</li> <li>- Consumer confusion (not able to find products he is used to)</li> <li>- No guarantee about quality</li> <li>- Costs for searching new products → impact on prices (cost of re-branding, re-labelling; less producers → less competition → higher prices)</li> </ul> <p><b>etc.</b></p> <p>51</p>

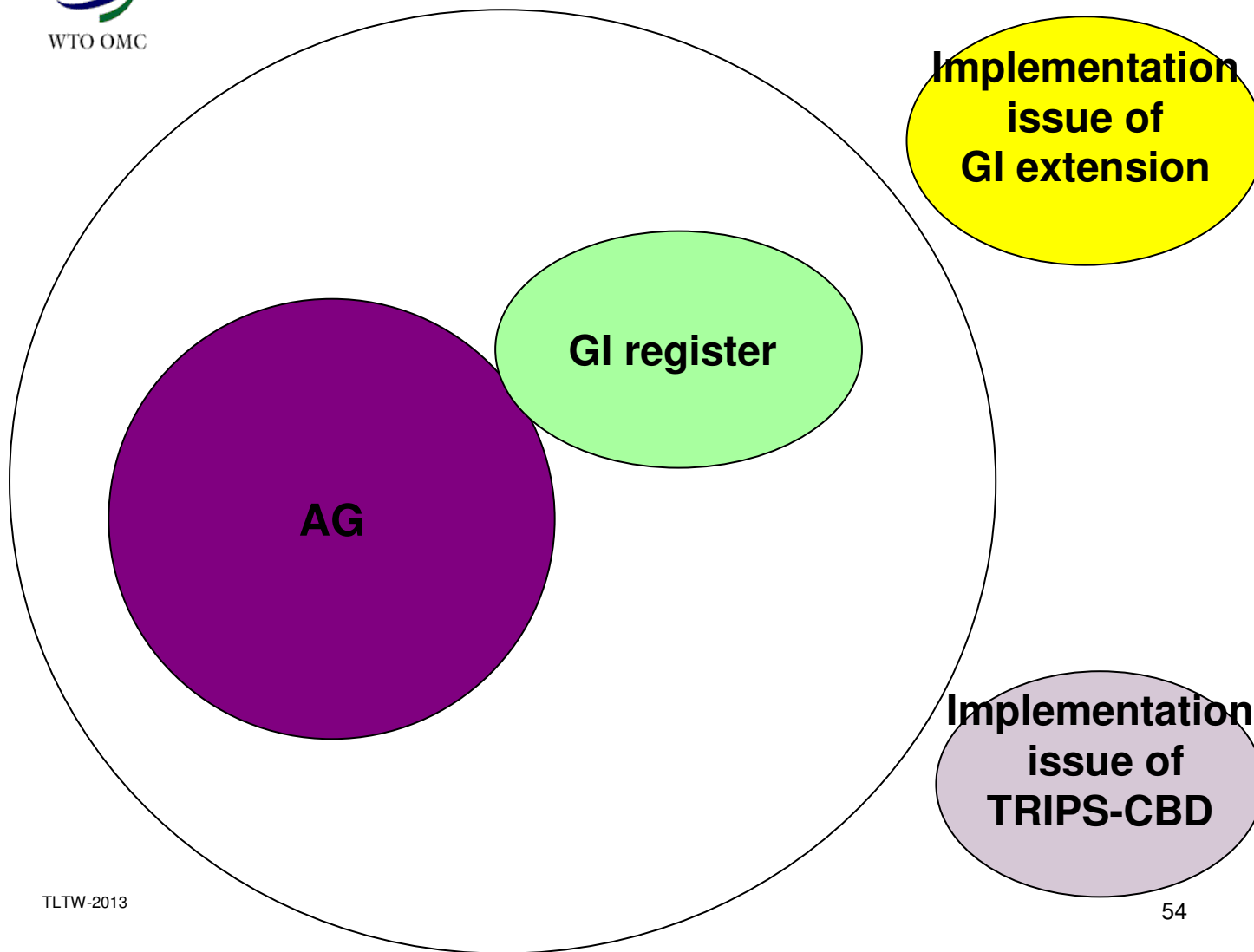
## GI Extension (7)

- Group of Members consulted by DG (in his capacity as DG, not as TNC Chair):
  - Argentina, Australia, Brazil, Canada, Chile, China, the European Union, India, Japan, New Zealand, Norway, Peru, South Africa, Switzerland, the United States, the ACP Group, the African Group and the LDC Group
- DG's Report of 21 April 2011: TN/C/W/61 (not part of the Easter (April) Package)
  - Covers TRIPS-CBD and GI extension

*How one side sees the issue of linkages*



*How another side sees the issue of linkages*





# Register for W&S: Quo vadis?

- What next?
  - New Chairman: Ambassador Y.F. Agah (Nigeria)
  - Process ? Delicate; for the time being, focus on Trade Facilitation, Agriculture and Development
  - Bali Ministerial Conference
- Recall Article 23.4 negotiations are a stand-alone built-in agenda
- GIs in **Free Trade Agreements**
- Legislative/Monitoring/Judiciary role of the WTO
- WTO = Bretton Woods third pillar



## Some documents on GIs to have as starting points...

- **On register of GIs for W&S**
  - TN/IP/W/8, TN/C/W/52 & add., and TN/IP/W/10/Rev.4
  - Chair's report in TN/IP/21 of 21 April 2011 (Attachment JOB/IP/3/Rev.1 – Draft Composite Text)
  - Secretariat's compilation (TN/IP/W/12/Add.1) (still relevant for most parts)
- **On GI extension**
  - DG's report (in his capacity as DG) in TN/C/W/61 of 21 April 2011
  - Secretariat's compilation of 2005 - TN/C/W/25 – to be read in conjunction with DG's report for more recent discussions



# Dispute settlement (1)

## GI case

- Complaints by US and Australia
  - EC Regulation 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.
- **WT/DS174/R and WT/DS290/R of 20 April 2005; TRIPS and GATT concerned**
- Two main issues:
  - **National treatment in several aspects**
  - **Relationship between GIs and prior trademarks**
- EC's implementation of panel decisions: New Council Regulation (EC) **N° 510/2006** of 20 March 2006, in force on 31 March 2006 (WT/DS174/25/Add.3 and WT/DS290/23/Add.3)

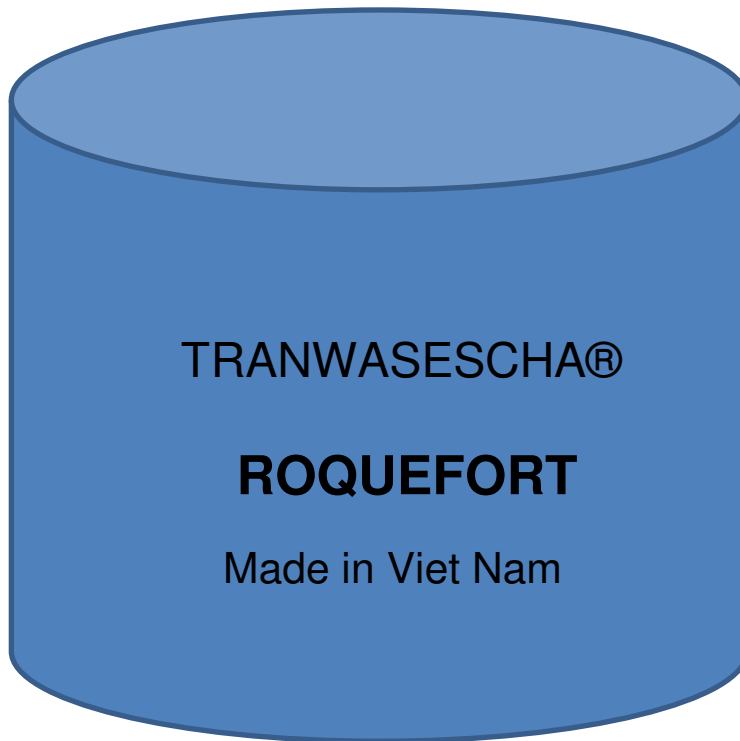
## Dispute settlement (2)

- **Retaliation (Art.22 DSU)**
  - **Retaliation in general**
  - **Cross-retaliation (Art. 22.6 DSU)**
    - "Cross-retaliation" authorized in *EC – Bananas III (Ecuador)* (WT/DS27/ARB/ECU, of 23 March 2000)
    - [ TRIPS areas requested by Ecuador: copyright/related rights; **geographical indications**; industrial designs]
    - N.B.: issue of Bananas resolved in an agreement

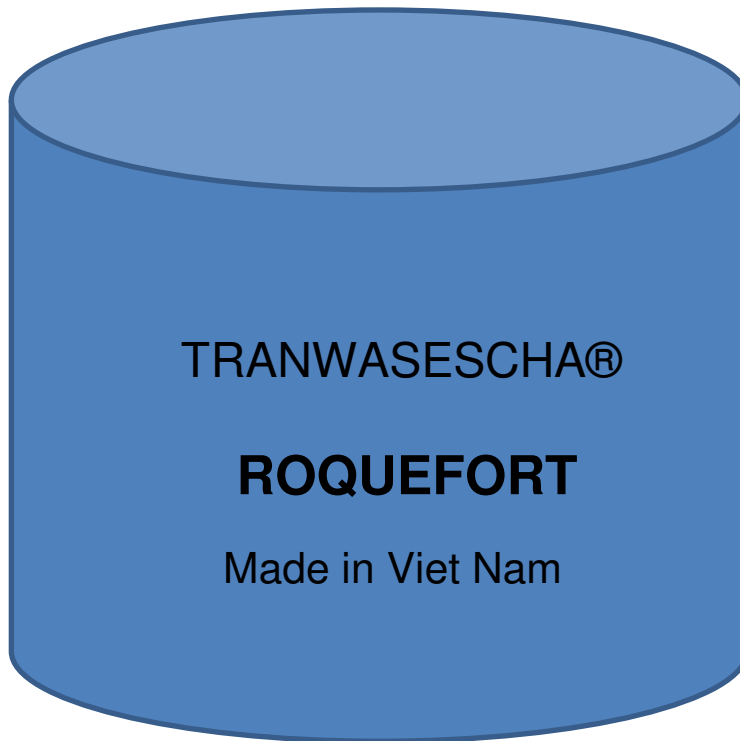
## Concluding remarks

- TRIPS provisions: delicate compromise, heavily negotiated, in particular on GIs
- GIs:
  - High economic and commercial stakes but also highly emotional social/cultural aspects
  - Lack of harmonization at national and international levels
  - Lack of decisive empirical evidence on both sides
  - Linkages
    - within GI sector (for the GI issues)
    - linkage outside GI sector but within TRIPS context (TRIPS-CBD)
    - linkage with other WTO discussions or negotiations, in particular Agriculture
- TRIPS Built-in agenda

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Other questions to:

- [thu-lang.tranwasescha@wto.org](mailto:thu-lang.tranwasescha@wto.org); tel.:  
+41 22 739 57 05