

DRAFT MODALITIES FOR TRIPS-RELATED ISSUES

Communication from Albania, Brazil, China, Ecuador, the European Communities, India, Indonesia, the Kyrgyz Republic, the Former Yugoslav Republic of Macedonia, Pakistan, Peru, Sri Lanka, Switzerland, Thailand, Turkey, the ACP Group and the African Group

The following communication, dated 17 July 2008, is being circulated at the request of the Delegations of Brazil, the European Communities, India and Switzerland.

Proponents of the TRIPS-related issues under the Doha Work Programme (GI Register, TRIPS disclosure requirement and GI Extension) agree to include these issues as part of the horizontal process in order to have modality texts that reflect Ministerial agreement on the key parameters for negotiating final draft legal texts with respect to each of these issues as part of the single undertaking. The central objective of the proponents remains the adoption of a procedural decision that would open up the way for negotiations on the three issues.

We therefore submit draft modalities for consideration by Ministers for TRIPS-related issues.

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GI Register: draft Modality text

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

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

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

TRIPS/CBD disclosure: draft Modality text

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4. Members agree to amend the TRIPS Agreement to include a mandatory requirement for the disclosure of the country providing/source of genetic resources, and/or associated traditional knowledge for which a definition will be agreed, in patent applications. Patent applications will not be processed without completion of the disclosure requirement.

5. Members agree to define the nature and extent of a reference to Prior Informed Consent and Access and Benefit Sharing.

6. Text-based negotiations shall be undertaken, in Special Sessions of the TRIPS Council and as an integral part of the Single Undertaking, to implement the above. Additional elements contained in Members' proposals, such as PIC and ABS as an integral part of the disclosure requirement and post-grant sanctions, may also be raised and shall be considered in these negotiations

6 Bis. It is also the understanding of Members that the negotiations on the above shall [incorporate] [continue to be linked to] negotiations, which are mandated in paragraph 19 of the Doha Ministerial Declaration, on (a) the review of Article 27.3(b) of the TRIPS Agreement, (b) the relevant outstanding implementation-related issues and concerns under paragraph 12 of the Doha Ministerial Declaration and (c) the review of the

implementation of the TRIPS Agreement under Article 71.1, including the issue of the patentability or non-patentability of life forms in relation to (a), (b) and (c).

GI Extension: draft Modality text

7. Members agree to the extension of the protection of Article 23 of the TRIPS Agreement to geographical indications for all products, including the extension of the Register.

8. Text-based negotiations shall be undertaken, in Special Sessions of the TRIPS Council and as an integral part of the Single Undertaking, to amend the TRIPS Agreement in order to extend the protection of Article 23 of the TRIPS Agreement to geographical indications for all products as well as to apply to the exceptions provided in Article 24 of the TRIPS Agreement *mutatis mutandis*.

9. Special and Differential treatment shall be an integral part of negotiations in the three areas above, as well as special measures in favour of developing countries and in particular least developed countries.
