

WIPO/GEO/SFO/03/25

ORIGINAL:English

DATE:July15,2003



WORLDINTELLECTUAL
PROPERTYORGANIZATION

WORLDWIDESYMPOSIUM ONGEOGRAPHICALINDI CATIONS

organizedby
theWorldIntellectualPropertyOrganization(WIPO)
and
theUnitedStatesPatentandTrademarkOffice(USPTO)

SanFrancisco,California,July9to11,2003

AWAYFORWARDFORGE OGRAPHICALINDICATIO NS

*documentpreparedbyH.E.DavidSpencer,AmbassadorandPermanentRepresentativeof
AustraliatotheWorldTradeOrg anization(WTO)*

Introduction

In two months Ministers from the 146 member countries of the WTO will meet in Cancun to carry out a mid-term review of the Doha negotiations which began in November 2001.

It is hoped that Ministers will provide the decision and guidance needed to inject much needed momentum so that we are able to conclude the negotiations by the target date of 1 January 2005. Whether we will succeed is too early to tell.

The negotiations are hanging on a thread at the moment, partly because some Members are not prepared to live up to the undertakings they made at Doha and partly because they are simultaneously seeking to broaden that mandate.

One of the issues we will need to grapple with in the next two months is an array of demands from Europe to amend the TRIPS Agreement.

The aim of three separate but related demands is to increase the level of protection currently afforded to GI's under the TRIPS Agreement.

The increase in protection would occur in three ways:

- first, the higher level of protection currently given to wines and spirits would be extended to all products;
- second, the legitimate use of certain European GIs would be totally prohibited in respect of certain (as yet undisclosed) agricultural products; and
- third, a new international system of notification and registration of GIs for all products would be established which would create legal obligations, additional to those already found in the TRIPS Agreement, that would be binding on all WTO Members, whether or not they are interested in participating.

Of these demands, only one, that related to the negotiation of a multilateral system, was agreed as part of the negotiating agenda decided in Doha. It should be noted that the mandate agreed was for a voluntary system that did not increase the level of protection currently afforded by the TRIPS Agreement to GIs.

Although the demandeurs would have us believe that their proposals amount to slight procedural adjustments, the reality is that, taken together, they have the potential to fundamentally re-write the TRIPS Agreement.

As we heard yesterday, the TRIPS Agreement was agreed in 1994, a little over nine years ago. It entered into force on 1 January 1995.

For 30 of the WTO's 146 Members, the Least Developed Countries, the Agreement has not even entered into force and will not do so until 2006.

For developing countries as a whole - the large majority of the WTO's membership - the Agreement came into force only in 2002, and even then, some important developing countries are still to fully implement their obligations.

The TRIPS Agreement was heralded as one of the major outcomes of the Uruguay Round. But if you asked developing countries today for their views on the Agreement, they would generally like to either re-balance it or negotiate new flexibilities, particularly as it affects public health, access to medicines, genetic resources and traditional knowledge.

I'm sure that most of the Members of the WTO at the time participated in the negotiations of the TRIPS Agreement, but the reality is that this was an agreement negotiated between Europe and the United States. This applies particularly to the section on GIs and Trademarks and the distinction between wines and spirits and other products.

So here we are just a few years after the Agreement came into force for most WTO Members and Europe is seeking to re-write the Agreement.

There should be no misunderstanding about the ultimate outcome of proposals to change the agreement. The result, if demandeurs have their way will, inter alia,

- create a new sui generis form of protecting intellectual property rights which goes well beyond anything that has been done in other comparable intellectual property rights areas;
- undermine or extinguish the rights of trademark owners;
- oblige all WTO Members to adopt a cumbersome, costly and bureaucratic system of GI protection;
- introduce a new form of government subsidy for selected European food producers;
- extend a new form of neo-colonialism on its former territories by preventing them from using terms which are now generic in their territories;
- introduce by stealth an agenda to legitimise regulations based on production and process methods and,
- extend the coverage from GIs to another form of European protection, so called "traditional" expressions or designs.

Proponents have suggested that their proposals would be an instrument to:

- organise the countryside and professionals
- enhance the wealth of right holders
- stimulate quality and strengthen competitiveness
- encourage a more balanced distribution of added value
- contribute to the identity of European heritage

-promote products with virtually no investment

As far as we are concerned, there must be a legitimate balance in protecting intellectual property rights and protecting the public interest.

Enhancing GI protection in the ways some WTO Members have proposed would:

-erode, rather than strengthen, competition;

-lead to rent -seeking at the expense of the consumer;

-add cost to producers and governments;

-do nothing to open up markets;

-not guarantee more sales or higher returns for developing countries;

-undermine the cultural heritage of those countries in the Americas, Oceania and Africa which were based on immigration;

-not guarantee that developing countries could protect the terms they would like to protect.

So where do we stand in Geneva? Clearly, there is a very wide gulf between proponents and opponents, essentially between the new world and the old world.

Clearly, there is a genuine lack of understanding of the implications of the existing TRIPS Agreement, let alone proposals to -balance the Agreement.

Clearly, the demandeurs have yet to convince their partners that Article 22 protection is not sufficient.

Clearly, the majority of developing countries have yet to assess what impact the EU agenda will have on their development aspirations.

Clearly, the international jury of NGO's and academics has yet to come to a conclusion about the pros and cons of the EU agenda. Recent reports by eminent impartial observers conclude that far more work needs to be undertaken.

Clearly, there is a serious lack of trust about the way in which the EU has sought to advance its agenda through the back door of the agriculture negotiations and under the guise of the developing country implementation concerns.

Clearly, it is premature to consider any re -balancing of the current agreement.

So I would urge the following steps for further action:

1. The EU withdraws its proposal to amend the TRIPS Agreement through the backdoor of the agricultural negotiations.

2. We reject any multilateral register for wines and spirits which enhances the current level of protection in Article 23 or qualifies the exceptions to Article 23.

3. We should continue the discussion in the TRIPS Council and WIPO of issues relating to the extension of Article 23 protection to other products.

4. We should get a better practical understanding of the perceived problems caused by alleged infringements of GI protection.

5. We should examine the inter-relationship between Rules of Origin and GIs - this has been ignored.

6. We should continue to extend trade-related technical assistance to developing countries to help them implement the current TRIPS Agreement.

7. We should look at the issue of whether we should permit governments of developing countries to lodge applications for GI certification marks.

8. We should consider looking at whether we should outlaw under the WTO a producer in one country using the name or symbol of another country to market a product.

9. We should consider the monopoly practices of GI rights owners in the context of the work under way in the WTO on competition policy. The EU has suggested we look at hard core cartels. We should also look at soft monopolies who now want to extend GI rights to slicing, grating and further processing.

10. We should look in more depth at the implications of GI protection in terms of PPM's.

11. We should clarify the issue of the relationship between trademarks and GIs.

[End of document]