



3rd International Antalya Seminar
Governance of Local Food Value Chains and Geographical
Indications in Turkey and Other Mediterranean Countries
10-14 October 2012
Antalya-Turkey

The WTO and Geographical Indications

Thu-Lang TRAN WASESCHA
Counsellor, IPD
(Intellectual Property, Government Procurement and Competition)
Secretary to the Special Session of the Council for TRIPS
WTO Secretariat

- Market access
- Tariffs
- “Relatively new” disciplines : agriculture policy, services, intellectual property
- Dispute settlement mechanism
- Negotiations of rules , monitoring and dispute resolution

The paradoxes?



- Global value chain

Finike oranges



And YET... but not contradicting

- Importance of localizing
- Consumers' needs for identifiers (e.g. trademarks and geographical indications (GIs))
- Consumers' increased knowledge (consumer-actor)
- Local food value chains

Likya wines

Source: www.likyawine.com



From national to WTO

(Example of the wine sector (non exhaustive))

<p>WTO</p> <p>If dispute: DSU</p>	<p>Agriculture</p>	<p>TBT</p>	<p>SPS</p>	<p>GATS</p>	<p>TRIPS</p>	<p>?</p>
<p>National</p>	<p>Agriculture</p>	<p>Foodstuff (e.g. labeling) Health (e.g. consumer protection)</p>		<p>Services (e.g. distribution)</p>	<p>Intellectual property (TM, GI, unfair competition, etc.)</p>	<p>Competition</p>

IPRs under TRIPS Agreement

Copyright

- Artistic works
- Literary works
 - including computer software and data bases

Related (neighbouring) rights

- Performers
- Phonogram producers
- Broadcasters

[not covered: *sui generis* EU type data bases]

Industrial property

- Trademarks
- Geographical indications
- Industrial designs
- Patents
 - Patents for inventions
 - Plant varieties protection
- Topographies of int. circ.
- Undisclosed information (trade secrets/know-how; test data)

The views of economists on IP

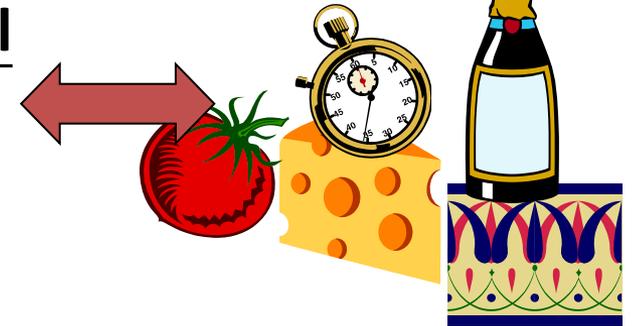
IPRs that stimulate inventive and creative activities, e.g. **patents, copyright, industrial designs**

Intellectual property rights (IPRs) that resolve information asymmetries: **trademarks and geographical indications**

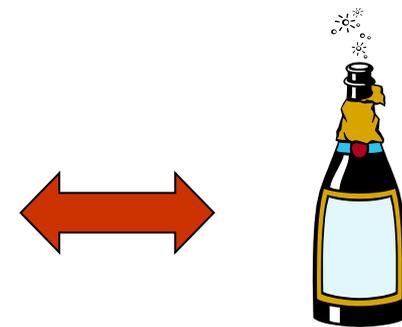
- Complex and controversial issue both at national and international levels. Emotional debates
- Commercial and economic stakes; socio-historical, cultural dimensions
- Not sufficient empirical evidence on pros and cons?
- The Uruguay Round:
 - area heavily negotiated → some “constructive ambiguity”
 - the “deals”
 - The “unfinished business”

TRIPS and GIs

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

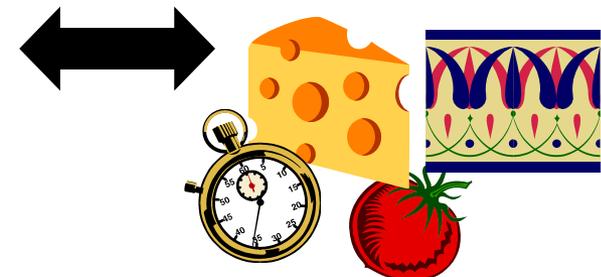


TRIPS: Article 23 - higher protection for wines and spirits (minimum, mandatory)
(+ Art. 24.2-9)



TRIPS: Article 22
(minimum, mandatory)

- *Misleading/confusion test*
- *Unfair competition*



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))
- Protection under Art. 22 & 23 but exceptions, such as genericness and prior trademarks
- Dispute settlement WT/DS174/R and WT/DS290/R of 20 April 2005; TRIPS (trademarks) and GATT concerned

Geographical indications: Discussion/work on GIs in the WTO

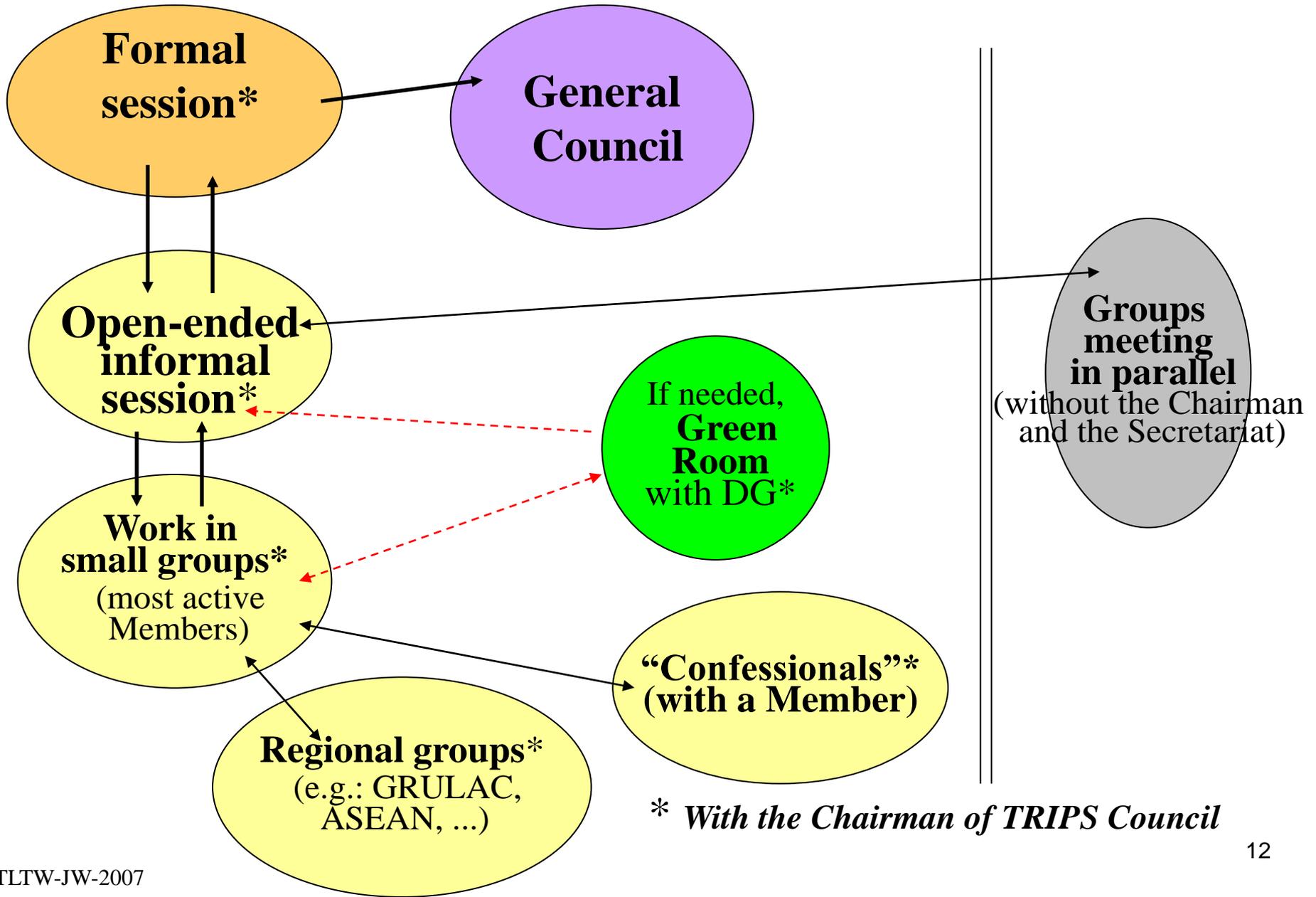
- | | | |
|---|--|--|
| 1. <u>Art. 63.2 notification/review + Art. 24.2 review (examination of implementation)</u> |  | 1. <i>TRIPS Council (regular session)</i> |
| 2. <u>Negotiations on the establishment of a multilateral system of notification and registration of GIs for wines and spirits (Art. 23.4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

N.b.: GIs also addressed in Trade Policy Review, Dispute Settlement, Accession context.

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
 - TN/IP/W/10/Rev.4 (31 March 2011) (“Joint proposal”) by Argentina, Australia, Canada, Chile, Colombia, 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)
<p>Voluntary participation (Review after 4 years)</p>	<p>Voluntary participation</p>	<p>Notification voluntary Effects in all WTO Members</p>
<p>Rebuttable prima facie evidence of certain elements, e.g.: definition of Art. 22.1; GI protected in country of origin</p>	<ul style="list-style-type: none"> • Participating Members commit to ensure inclusion in its procedure an obligation to consult the Database • Non-participating Members: encouraged, but not obliged, to consult 	<ul style="list-style-type: none"> • Domestic authorities of a Member to consult the Register and take its information into account in domestic procedures • 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" • Genericness claims to be substantiated

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)

- 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 (5)

- 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 (6)

- **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...” (i.e. extension)**

Register W&S (7)

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

B. NOTIFICATION

B.1 Each [participating]^{JP,HKC,IND,SG,BRA,CUB} WTO Member may notify to the WTO [through the WTO]^{JP} Secretariat any geographical indication [that identifies a wine or a spirit]^{JP,HKC,SG,CUB} [as defined in Article 22.1 of the TRIPS Agreement, which is]^{EU,CHN,CH,TUR,HKC} 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

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><i>For producers in the area indicated by the GI</i></p> <p>Discrimination with wines and spirits unjustified</p> <p>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.</p> <p>Legitimacy of use. “Usurpation” ?</p>	<p><i>For producers not in the area that use the GI</i></p> <p>Discrimination: why W&S greater protection? Why not go back to Art. 22 level for all products?</p> <p>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</p> <p>Legitimacy of use of terms (immigrants) or terms in public domain. “Expropriation” of legitimate use?</p>

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

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

Extension (6) - points made (non-exhaustive list)

Proponents

For consumers

More choice (more producers, in particular SMEs, of the GI product)

Help make choice (better identification)

Quality ensured

If impact on prices, freedom of consumers to choose between a GI product and a generic

etc.

Non-demandeurs

For consumers

Less choice (only one product, etc.)

Consumer confusion (not able to find products he is used to)

No guarantee about quality

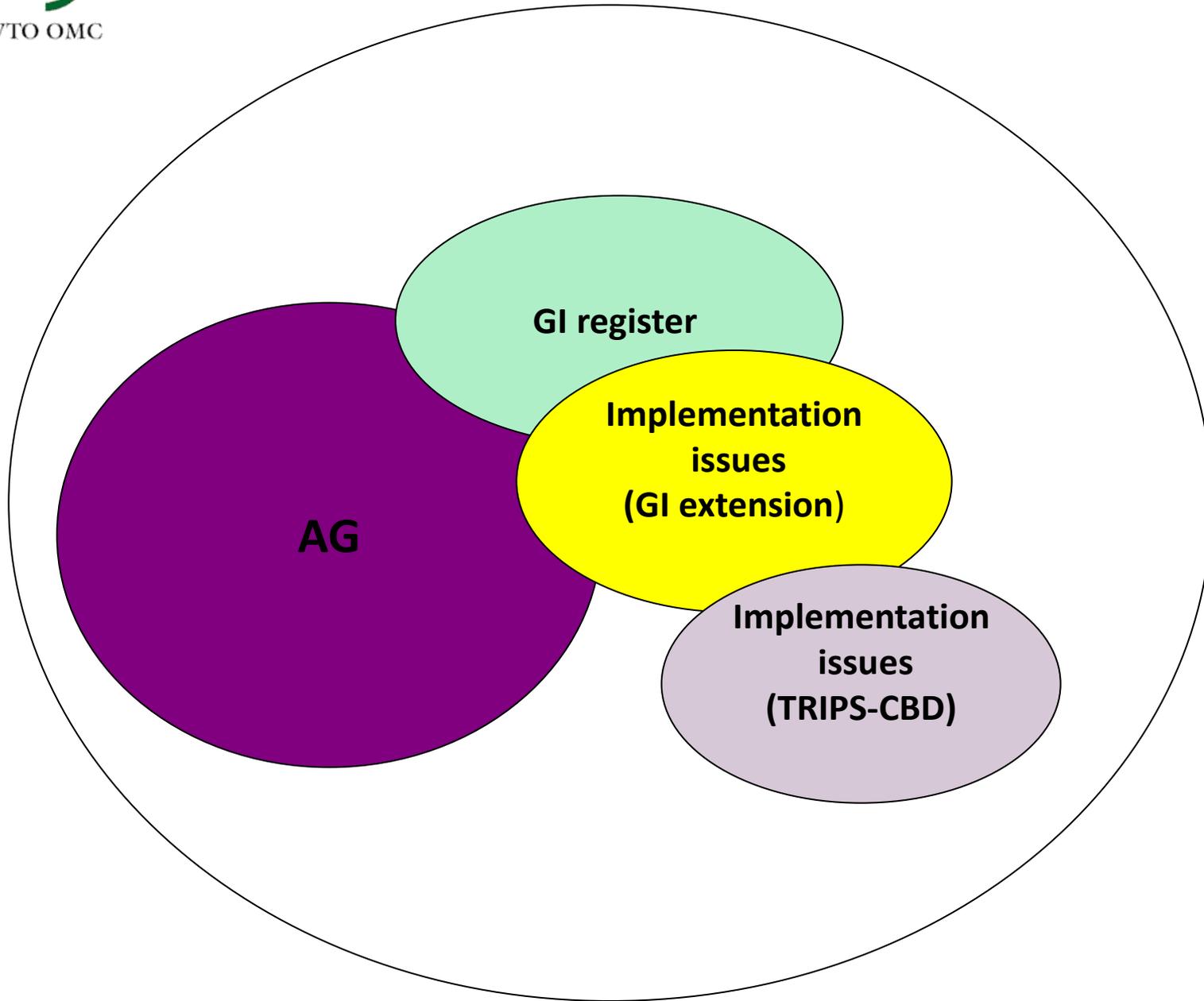
Costs for searching new products
 → impact on prices (cost of re-branding, re-labelling; less producers
 → less competition → higher prices

etc.

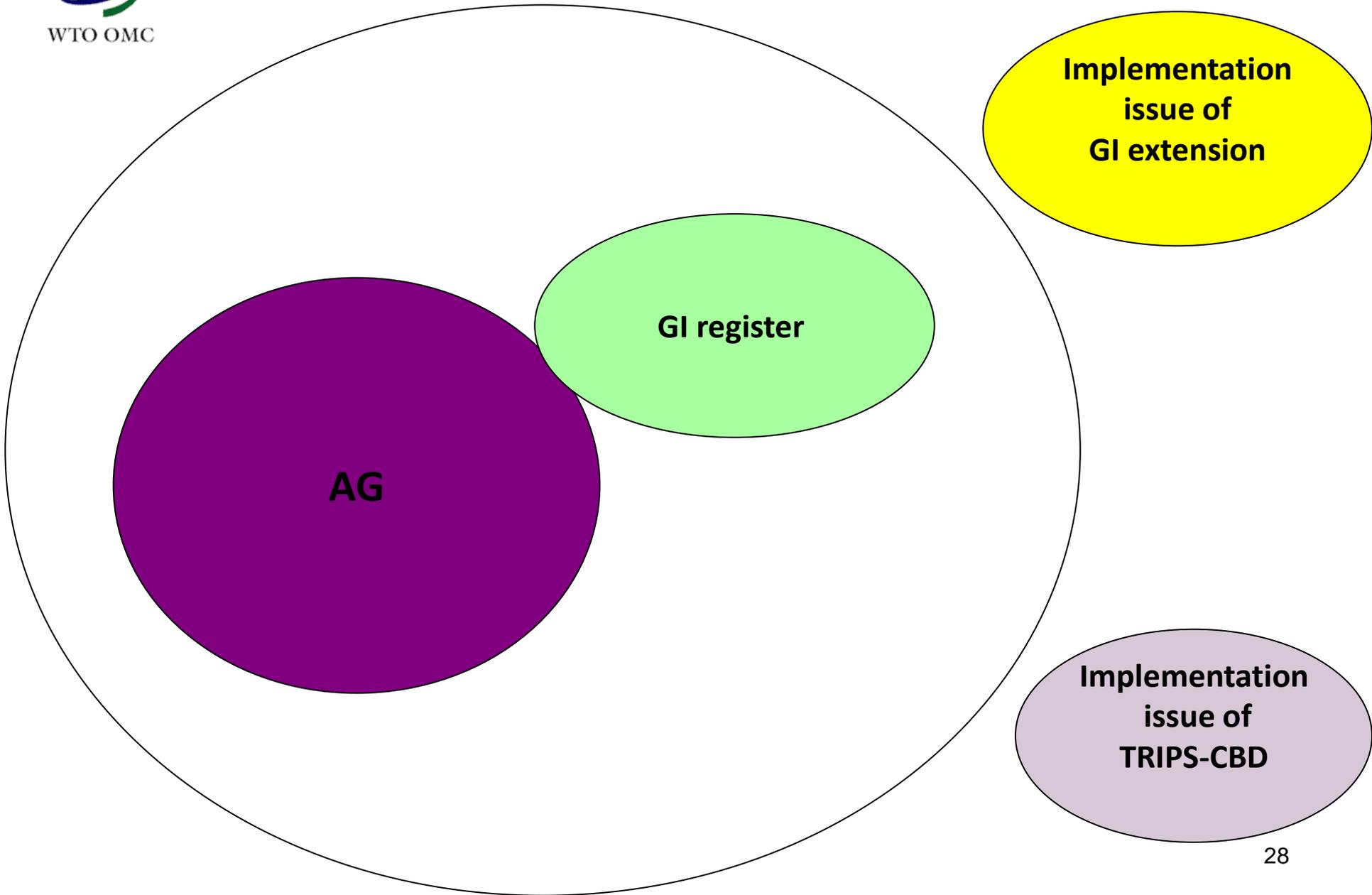
GI Extension (7)

- 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?
 - Chairman: Ambassador Y.F. Agah (Nigeria)
 - Process ?
- Recall Article 23.4 negotiations are a stand-alone built-in agenda + Singapore Ministerial Declaration

GIs and the WTO

- Free-trade agreements or regional trade agreements (RTAs) with GI/trademark components
 - “Spaghetti bowl” or “lasagne”?
- Reminder WTO = Bretton Woods third pillar
- “Legislative”/Monitoring/”Judiciary” role of the WTO





Consult our website
www.wto.org

Other questions to:

n thu-lang.tranwasescha@wto.org; tel.: +41
22 739 57 05; # 3024