

Special Union for the Protection of Appellations of Origin and their International Registration (Lisbon Union)

Assembly

Twenty-Ninth (20th Ordinary) Session
Geneva, September 23 to October 2, 2013

DRAFT REPORT

prepared by the Secretariat

1. The Assembly was concerned with the following items of the Consolidated Agenda (document A/51/1 Prov.3): 1, 2, 3, 4, 5, 6, 8, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 40, 47 and 48.
2. The reports on the said items, with the exception of item 40 are contained in the draft General Report (document A/51/20 Prov.).
3. The report on item 40 is contained in the present document.
4. Mr. Tiberio Schmidlin (Italy) was elected Chair of the Assembly; Mr. Miguel Ángel Margáin (Mexico) and Mr. Jan Walter (Czech Republic) were elected Vice-Chairs.

ITEM 40 OF THE CONSOLIDATED AGENDA

LISBON SYSTEM

5. Discussions were based on document LI/A/29/1.
6. In opening the session, the Chair read out a report on the activities of the Working Group on the Development of the Lisbon System (hereinafter referred to as “the Working Group”), received from the Chair of the Working Group, Mr. Mihály Ficsor (Hungary), who was not able to attend the present session of the Lisbon Union Assembly.
7. The Chair of the Working Group reported on the activities of the Working Group since the previous session of the Assembly, while recalling that, at its twenty-eighth (9th extraordinary) session held in Geneva, from October 1 to October 9, 2012, the Assembly of the Lisbon Union had taken note of the considerable progress made, and the planned work ahead, in the review of the Lisbon system on which the Working Group on the Development of the Lisbon System had embarked – with a view to improving the Lisbon system so that it might attract a much wider membership without abandoning its basic principles and objectives. He said that, since the last session of the Assembly, the Working Group had met twice, in December 2012 and in April-May 2013, to discuss the expansion and transformation of the current Lisbon framework into an international protection and registration system for appellations of origin and geographical indications. Those discussions were held on the basis of drafts for a new instrument and regulations as prepared by the Secretariat upon the Working Group’s request for each of those meetings. He pointed out that in doing so, the Working Group had complied with the mandate it had been given by the Lisbon Union Assembly. Under that two-fold mandate, the Working Group had been tasked with, firstly, a revision of the Lisbon Agreement that would involve the refinement of its current legal framework and the inclusion of the possibility of accession by intergovernmental organizations, while preserving the principles and objectives of the Agreement; and, secondly, the establishment of an international registration system for geographical indications.
8. In view of the progress made at the seventh session of the Working Group, which took place from April 29 to May 3, 2013, the Working Group had agreed that a recommendation be made to the Lisbon Union Assembly to approve, at its present session, the convening of a Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications in 2015, with the exact dates and venue to be decided by a preparatory committee meeting.
9. The Chair further specified that the roadmap designed by the Working Group in that respect included two further Working Group sessions, one in December 2013 and one in the first half of 2014, and, possibly, an additional session in the second half of 2014 if considered necessary by the Working Group. The Assembly of the Lisbon Union would be in a position at its session in 2014, to note the progress made by that time.
10. At its next session, in the first week of December 2013, the Working Group would continue its examination and discussion of the draft Revised Lisbon Agreement on Appellations of Origin and Geographical Indications and its draft Regulations, on the basis of a revised version to be prepared by the Secretariat along the lines of the guidance that the Working Group had provided at its seventh session. Work would continue towards a single instrument covering both appellations of origin and geographical indications and providing for a high and single level of protection for both, while maintaining two separate definitions, on the understanding that the same substantive provisions would apply to both appellations of origin and geographical indications.

11. The Chair indicated that in the same week, there would also be a half-day conference on dispute settlement within the Lisbon system, as a side-event on the margins of the next session of the Working Group.

12. Finally, the Chair indicated that the Secretariat would further promote the activities of the Working Group as well as the draft Revised Lisbon Agreement on Appellations of Origin and Geographical Indications and its draft Regulations in order to raise awareness, and to stimulate discussions among the current membership of the Lisbon Union and other WIPO Member States, in accordance with the wish expressed by the Working Group in that respect. He added that he found that particularly important as the review of the Lisbon system was of interest not only to its current membership but also to other WIPO Member States, be they developing countries or developed ones. It was expected that a user-friendly international protection and registration system covering both appellations of origin and geographical indications under the umbrella of a single instrument would prove attractive enough to significantly expand the membership and reach a truly global coverage.

13. In conclusion, the Chair of the Working Group on the Development of the Lisbon System wholeheartedly supported the decisions the Assembly was invited to take, including the approval of the convening of a diplomatic conference and the roadmap for preparing that conference.

14. The Delegation of Serbia expressed its support for the proposed revision of the Lisbon Agreement which included its extension to geographical indications, in accordance with the TRIPS Agreement. Given the significant changes proposed, such as those concerning the definitions of protected subject-matter, or those regulating the relation between geographical indications and trademarks, the Delegation was of the view that the proposed Revised Lisbon Agreement would lead to a significant improvement and simplification of the international protection of appellations of origin and geographical indications. By way of conclusion, the Delegation expressed its support for the convening of a diplomatic conference in 2015.

15. The Delegation of Hungary recalled its position as a long-term promoter of greater protection for geographical indications and appellations of origin. Hungary, therefore, attached the utmost importance to the activities of the Working Group on the Development of the Lisbon System. The Delegation recalled that, at its seventh session in May 2013, the Working Group had made significant progress on the draft Revised Lisbon Agreement and welcomed that, after many years of dedicated work, the Working Group had been able to reach consensus on recommending that the Lisbon Union Assembly approve at the present session the convening of a Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications in 2015. The Delegation believed that an international system that would provide effective protection for geographical indications constituted an excellent example of how the protection of intellectual property rights could effectively meet the special needs of developing countries. The Delegation also welcomed the proposed changes to the current Lisbon system allowing for, and thereby encouraging, the accession of intergovernmental organizations. The Delegation further indicated that it felt confident that the Revised Lisbon Agreement would make the Lisbon system more user-friendly and more attractive for non-member States, and that it would help protect national economic interests in both developed and developing countries, thus potentially resulting in a much wider membership of the Lisbon system. The Delegation, therefore, supported the proposal that the Lisbon Union Assembly approve the convening of a Diplomatic Conference for the Adoption of the Revised Lisbon Agreement on Appellations of Origin and Geographical Indications in 2015 and take note of the roadmap for future work, as designed by the Working Group.

16. The Delegation of Iran (Islamic Republic of) welcomed the efforts of the Working Group and the considerable progress made on the development of the Lisbon system, which had resulted in a draft Revised Lisbon Agreement carefully designed to make the Lisbon system more attractive for a greater number of countries. In that regard, the Delegation expressed the wish that a diplomatic conference be convened as early as 2015 for the adoption of a Revised Lisbon Agreement. The Delegation recalled that it had always tried its best to reach out to the non-member States of the Lisbon Agreement and encourage their greater participation at the sessions of the Working Group. In that regard, the Delegation pointed out that the current members of the Lisbon system had shown flexibility and had tried to incorporate the ideas and concerns expressed by observer delegations in the draft Revised Lisbon Agreement. Finally, the Delegation indicated that the international protection of geographical indications alongside appellations of origin proposed in the draft Revised Lisbon Agreement represented a major achievement of the Working Group which, if turned into a binding international instrument, would prevent the misuse and misappropriation of appellations of origin and geographical indications, which was of particular importance for developed and developing countries alike.

17. The Delegation of the Czech Republic expressed its support for the planned work ahead in the review and promotion of the Lisbon system, including the convening of a Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications in 2015.

18. The Delegation of France endorsed the comments made by other delegations in calling for the convening of a Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications in 2015.

19. The Delegation of Portugal pointed out that the Working Group had reached a solution to modernize the Lisbon Agreement so as to extend its coverage to geographical indications, while also making it more attractive and more comprehensible. Referring to a previous statement on the importance that geographical indications and appellations of origin had for the economic development of developed and developing countries alike, the Delegation said that it would be absolutely essential to come up with an adequate legal framework that would confer truly international protection in that particular branch of economic activity. The Delegation further recalled the celebration of the 50th anniversary of the Lisbon Agreement, in Lisbon in 2008, and concluded by saying that the time had now come to hold a Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications. The Delegation, therefore, fully supported the proposal to that effect, while indicating that Portugal would be very pleased to host the diplomatic conference in the city of Lisbon in 2015.

20. The Delegation of the United States of America pointed out that currently the Lisbon Agreement was a Treaty limited to the protection of appellations of origin, whereas the Revised Lisbon Agreement as proposed would include an additional substantive right, namely geographical indications. The Delegation was of the view that the inclusion of geographical indications in the revised instrument would be inappropriate for three reasons. Firstly, geographical indications as a subject matter were not within the mandate of the Lisbon Working Group. In that regard, the Delegation recalled that the Assembly had merely decided to establish a Working Group responsible for exploring possible improvements to the procedures under the Lisbon Agreement, as stated in paragraph 35 of document LI/A/23/2. The Delegation expressed the view that including geographical indications in a Revised Lisbon Agreement was not a procedural improvement, but rather an expansion of subject matter and substance. Secondly, adding geographical indications in a Revised Lisbon Agreement would prejudice negotiations at the World Trade Organization (WTO) and would conflict with the provisions of the TRIPS Agreement. Finally, the Delegation pointed out that adding geographical indications to the revised instrument would necessitate the participation and resources of all WIPO Member

States to prevent conflicts with other international agreements involving related subject-matter. The Delegation further pointed out that, unlike the Lisbon Working Group, the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) had an explicit mandate concerning geographical indications. In that regard, the Delegation recalled that the SCT, which had been established in 1998, had been created by WIPO Member States to serve as a forum to discuss issues, facilitate coordination and provide guidance concerning the progressive international development of law, including the law on geographical indications and the harmonization of national laws and procedures. The SCT was entitled to submit its recommendations to the WIPO General Assembly for approval, whereas the Working Group on the Development of the Lisbon System did not have such authority. Moreover, the Delegation indicated that all issues related to geographical indication protection and enforcement were currently under the purview of the WTO TRIPS Agreement. Although protection under the draft Revised Lisbon Agreement was stated to be without prejudice to the TRIPS Agreement or other international instruments, the Delegation said that the question still remained as to what guarantees there were to ensure that the operation of those two treaties would be compatible, for example, how the mandated notification of geographical indications under TRIPS Article 23.4 would be affected. The Delegation said that while it certainly welcomed expert analysis of the international protection of geographical indications at the SCT, it recalled that such discussions had been blocked because of geographical indication negotiations at the WTO. The Delegation found that it was most troubling to see discussions on geographical indications at the SCT among all WIPO Member States blocked and geographical indications negotiations in the Lisbon Working Group proceed beyond the mandate of the Working Group. The Delegation recalled that the Lisbon negotiations, even though limited to a few members, were still subsidized by non-member States who were *de facto* excluded because the Lisbon Agreement was fundamentally incompatible with their respective trademark systems. Lastly, the Delegation wondered why the geographical indication negotiations at the SCT would impact the work of the WTO whereas the Lisbon negotiations would not. The Delegation concluded by saying that for all the reasons expressed, it strongly objected to the convening of the proposed diplomatic conference.

21. The Delegation of Poland welcomed the progress in the work on the improvement of the Lisbon system and expressed its support for the recommendation from the Lisbon Working Group to convene a Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications in 2015, even while Poland was not a member State of the current Lisbon Agreement.

22. The Delegation of Sri Lanka highlighted the importance of the protection of geographical indications for Sri Lanka. Sri Lanka was known for the diversity and quality of its products derived from the natural environment and, as Sri Lanka's exclusive products such as *Ceylon cinnamon* or *Ceylon tea* were highly demanded in international markets, having acquired a reputation extending beyond their production region, they faced unfair competition from products passing themselves off as being genuine Ceylon products using the same name. Since that form of unfair competition not only discouraged legitimate producers but also misled consumers, the Delegation indicated that there was strong consensus among the stakeholders in Sri Lanka that the Government of Sri Lanka should safeguard the interests of the producers of those products in order to obtain the best financial return, and fight the substandard products on the market. The Delegation concluded by expressing its appreciation for the cooperation and assistance received from WIPO for the purposes of introducing provisions for the protection of geographical indications in domestic legislation and set the ground for a possible accession to the Lisbon system in the very near future. Finally, the Delegation expressed support for the planned revision of the Lisbon Agreement.

23. The Delegation of Canada expressed its concerns regarding the proposed recommendation for a Diplomatic Conference for the Adoption of a Revised Lisbon Agreement. In particular, the Delegation was concerned that the proposed expansion of the Lisbon Agreement's scope to include geographical indications might, in fact, go beyond the Working Group's mandate, which, indeed, only called for exploring possible improvements to the procedures under the Lisbon Agreement, as spelled out in LI/A/23/2. The Delegation was of the view that the proposed revision of the Lisbon Agreement was more than a procedural improvement, which also conflicted with the mandate of the SCT. The Delegation was also concerned that a Diplomatic Conference for a Revised Lisbon Agreement would incur significant costs for WIPO while it would only be open to a few Member States, thus excluding those non-member States that had chosen alternative but equally effective mechanisms for the protection of geographical indications through their trademark and certification mark regimes. In view of those procedural and substantive concerns, the Delegation could not support the proposed recommendation for a Diplomatic Conference for a Revised Lisbon Agreement.

24. The Delegation of Australia said it supported WIPO's work to create new international norms for intellectual property, provided that such work was sufficiently inclusive and took adequate account of the views of all WIPO Member States. This was not the case with the proposals to expand the Lisbon Agreement well beyond its current boundaries, which currently represented the shared principles of only a few in a narrowly defined subject area. The Delegation went on to say that it had fundamental and systemic concerns about the proposal for a Revised Lisbon Agreement which would impact upon all WIPO Member States. In that regard, the Delegation recalled that it had raised those concerns in the Lisbon Working Group and in the Program and Budget Committee (PBC). The Delegation further indicated that any Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications would need to provide for the involvement of all WIPO Member States, while also expressing the view that it would be a missed opportunity if the work on a Revised Lisbon Agreement merely reinforced the existing principles reflecting only the interests of the current membership. The Delegation concluded by saying that a flexible, inclusive approach was crucial for achieving the goal of making the Lisbon system attractive for a broad membership.

25. The Delegation of Switzerland recalled that it had actively participated in the Working Group on the Development of the Lisbon System as an observer and welcomed the decision to include the international protection of geographical indications alongside appellations of origin. Such an addition not only clarified the scope of the Lisbon Agreement in an extremely satisfactory manner, but also offered an effective international registration system for both appellations of origin and geographical indications. The Delegation said that the proposed outcome was very much in the interest of the holders of rights in respect of appellations of origin and geographical indications. One had to bear in mind that, even though there were significant divergences among national laws, many countries had included in their national legislation a definition, based on the one contained in the TRIPS Agreement, which encompassed also appellations of origin. The Delegation pointed out that the holders of appellations of origin and geographical indications were often small producers of niche products based on traditional knowledge (TK), who, thanks to the proposed Revised Lisbon Agreement, would be able to reap the benefits of these products. The Delegation added that the protection of such small producers was one of the important reasons why the members of the Lisbon Union were now heading towards the convening of a diplomatic conference, in accordance with the recommendation from the Working Group. The Delegation further indicated that that recommendation was fully in line with the mandate of the Working Group, since the Lisbon Working Group had been requested to work towards making the Lisbon Agreement more interesting and attractive for potential new members. Some non-Lisbon member States had indeed been actively involved in the work of the Working Group, in particular through the submission of contributions which had been accurately reflected in the draft Revised Lisbon

Agreement. In that regard, the Delegation said that it was surprised to notice that those who had been present at meetings of the Working Group had not expressed their doubts about having a diplomatic conference at the time and were putting forward their concerns only now. The Delegation concluded by saying that it strongly supported the convening of a Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications in 2015.

26. The Delegation of New Zealand expressed its concern regarding the proposed Revised Lisbon Agreement, in particular since the proposed text would go beyond the protection required under the WTO TRIPS Agreement, which was the recognized international standard for the protection of geographical indications. The Delegation recalled that there was no agreement in the TRIPS context for the extension of protection to geographical indications in the manner suggested in the Revised Lisbon Agreement, or for the establishment of a register which would cover all geographical indications. The Delegation was concerned that the proposed amendments would negatively impact on the legitimate trade of goods and generic names, and would impinge on existing trademark rights. Hence, the Delegation called on members of the Lisbon Union, not to support the convening of a Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications in 2015.

27. The Delegation of Argentina associated itself with the comments of other delegations such as the Delegations of Australia, Canada, New Zealand and the United States of America, in objecting to the convening of the proposed diplomatic conference in 2015. The Delegation said it had serious concerns regarding the consequences of the expansion of the registration of geographical indications and appellations of origin in the Revised Lisbon Agreement, while recalling that the negotiation of a geographical indication register was amongst the most conflictive issues in the Doha Round of the WTO.

28. The Delegation of Morocco endorsed the comments made by previous speakers in commending the work done by the Working Group on the Development of the Lisbon System. The Delegation was of the view that the work that had been done would make it possible to update and modernize the Lisbon Agreement so as to attract a greater membership and therefore fully supported the convening of a diplomatic conference to that effect.

29. The Assembly:

- (i) took note of document LI/A/29/1 and of the statements made, and the planned work ahead in the review and promotion of the Lisbon system;
- (ii) approved the convening of a Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications in 2015, as referred to in paragraph 3 of document LI/A/29/1;
- (iii) took note of the roadmap designed by the Working Group, as referred to in paragraph 4, of document LI/A/29/1.

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