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

Assembly

**Thirty-Sixth (23rd Ordinary) Session
Geneva, September 30 to October 9, 2019**

REPORT

adopted by the Assembly

1. The Assembly was concerned with the following items of the Consolidated Agenda (document A/59/1): 1, 2, 3, 4, 5, 6, 8, 11(ii), 13, 14, 25, 32 and 33.
2. The reports on the said items, with the exception of item 25, are contained in the General Report (document A/59/14).
3. The report on item 25 is contained in the present document.
4. Mr. Reza Dehghani (Iran (Islamic Republic of)) was elected Chair of the Assembly; Mr. Philippe Cadre (France) and Mr. Ray Meloni García (Peru) were elected Vice-Chairs.

ITEM 25 OF THE CONSOLIDATED AGENDA

LISBON SYSTEM

5. The Chair of the Lisbon Union Assembly recalled some important developments concerning the Lisbon System since the last meeting of the Lisbon Union Assembly in 2018. The Chair welcomed Albania as a new Contracting Party to the Lisbon Union Assembly, following its accession to the Lisbon Agreement in February 2019, which brought the total number of Lisbon Contracting Parties to 29. He also pointed out that so far Albania, Cambodia, Côte d'Ivoire and Samoa had deposited their instruments of accession to the Geneva Act of the Lisbon Agreement, while the Democratic People's Republic of Korea had also announced the deposit of its instrument of accession during the present Assemblies. He concluded by saying that the entry into force of the Geneva Act of the Lisbon Agreement could therefore be reasonably expected before the end of the present year.

Report on the Working Group on the Development of the Lisbon System

6. Discussions were based on document LI/A/36/1.

7. Introducing the document under consideration, the Secretariat recalled that in 2017 the Lisbon Union Assembly had extended the mandate of the Lisbon Working Group with a view to allowing further discussions on the development of the Lisbon System, including solutions for its financial sustainability. The Working Group on the Development of the Lisbon System held its second session on May 27 and 28, 2019. Document LI/A/36/1 reflects the outcome of the discussions of the second session of the Working Group.

8. The Delegation of Hungary indicated that the international protection of appellations of origin and geographical indications was a key priority for Hungary. In that regard, the Delegation of Hungary welcomed the positive developments concerning the Lisbon System, especially the filing of new applications, the recent accessions to the Geneva Act, as well as the accession by Albania to the original Lisbon Agreement. The Delegation also noted with satisfaction that the share of international registrations from developing countries had doubled within an eight-year period and had increased to 13 per cent in 2018. Such a considerable improvement showed the potential of the Lisbon System and proved that the protection of appellations of origin and geographical indications was becoming more and more important in developing countries. As a Member State of the European Union, Hungary looked forward to the accession of the European Union to the Geneva Act before the end of the present year. The Delegation said that Hungary was convinced that such accession would give a new impetus to the functioning of the Lisbon System and would pave the way for new accessions or ratifications after the entry into force of the Geneva Act. Upon recalling that Hungary was among the 15 countries who signed the Geneva Act on May 20, 2015, the Delegation said that Hungary had every intention of ratifying it as soon as possible and that the necessary legislative procedure to that effect had already started. The Delegation recalled that, at its second session in May 2019, the Working Group on the Development of the Lisbon System had emphasized the importance of promotional activities to increase the membership of the Lisbon System. In that regard, the Delegation welcomed the enhanced and focused promotional work of the World Intellectual Property Organization (WIPO) on appellations of origin and geographical indications and stood ready to cooperate on the matter with other Lisbon members and the Secretariat. The Delegation further clarified that Hungary was also open to cooperate with WIPO Member States not party to the Lisbon Agreement and was therefore pleased to announce that on October 7, 2019, a Delegation of the Intellectual Property Office of Indonesia, the Directorate General of Intellectual Property (DGIP), would be visiting the Ministry of Justice of Hungary and the Hungarian Intellectual Property Office (HIPO), for bilateral meetings on the protection of geographical indications in the respective countries. The Delegation said that Hungary looked forward to such professional dialogue, which also represented an excellent opportunity to

promote national, regional and international geographical indication protection systems. As regards the financial sustainability of the Lisbon Union, upon recalling that the issue had been on the agenda of WIPO meetings for many years, the Delegation still believed that a reasonable and balanced solution should be found in order to ensure the long-term financial viability of the Lisbon System. Even though Hungary also wished to see the Lisbon System become a well-functioning and self-sustainable global registration system in the near future, the Delegation cautioned that all possible future measures would have to respect the long-standing principles of financial solidarity among unions and budget programs, as well as the capacity to pay and the need for administrative cooperation among unions. The Delegation concluded by saying that it remained confident that the upcoming entry into force of the Geneva Act and the future enlargement of the membership would have a positive impact on the financial situation of the Lisbon Union. In consequence, the introduction of ad hoc solutions did not appear to be necessary at the present time.

9. The Delegation of Iran (Islamic Republic of) recalled that Iran (Islamic Republic of) had been a long-standing promoter of the Lisbon System and that it attached the utmost importance to the effective protection of its national appellations of origin and geographical indications through the Lisbon System. Moreover, the Delegation was of the view that the protection of geographical indications played a significant role in achieving Sustainable Development Goals (SDGs) and growth of international trade. As regards the new accessions to the Geneva Act and the Lisbon Agreement, the Delegation expressed its satisfaction and looked forward to the entry into force of the Geneva Act, which would contribute positively to the financial sustainability of the Lisbon System. Upon recalling that the financial sustainability of the Lisbon System could not be compared with other global registration systems, the Delegation said that it was determined to contribute to finding a reasonable and balanced solution in order to ensure the financial sustainability of the Lisbon System. In that regard, the Delegation commended the Lisbon Union members for their efforts in considering different options for purposes of ensuring the self-sustainability of the System; they would continue to work in the same spirit while respecting the inherent nature of the Lisbon System and the legal provisions of the relevant agreements. Finally, the Delegation believed that the conduct of promotion activities and the provision of high quality intellectual property (IP) protection services remained one of the main functions of WIPO. In that regard, the Delegation looked forward to seeing the Lisbon Union be placed on an equal footing with the other unions administered by WIPO for purposes of fulfilling its mandate.

10. Upon welcoming the new Contracting Parties to the Lisbon Agreement and the Geneva Act, the Representative of oriGIn reiterated its invitation to all WIPO Member States to consider the possibility to accede to the Geneva Act of the Lisbon Agreement, as such multilateral instrument constituted a unique opportunity to establish a truly international system for the protection of geographical indications and appellations of origin. The Representative noted that geographical indications represented a tremendous opportunity for social and sustainable development and that there was an important need for technical assistance and for the exchange of best practices among producer groups all over the world. In that regard, the Representative was pleased to announce that oriGIn and the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) of Peru had recently signed an agreement for the establishment of oriGIn Peru. Under such agreement, Peru would have access to the oriGIn network for technical assistance in multiple areas such as the establishment of producer groups, the implementation of control and certification mechanisms, as well as the possibility to integrate a geographical indication strategy into the SDGs.

11. The Delegation of the European Union said that it attached the utmost importance to the protection of the geographical names of the products of its member states outside the European Union, through the Lisbon System in particular. The Delegation said that the protection of geographical indications had the potential to support sustainable development, as well as the preservation of cultural heritage and the international trade in specialized products. Upon

expressing the wish to see the Lisbon Union being successful and viable, in particular through the accession of new members, the Delegation said that the European Union would soon become a Contracting Party to the Geneva Act of the Lisbon Agreement and that the legislative procedure for the adoption of the necessary legal acts would soon conclude. The Delegation was therefore confident that the European Union would be able to deposit its instrument of accession to the Geneva Act before the end of the present year. The Delegation said that the European Union and its member states appreciated the work and efforts of the Lisbon Union members aimed at ensuring the long-term financial viability of the Lisbon Union and preventing any future budget deficits. The Delegation particularly welcomed the numerous ideas that had been brought forward within the Working Group on the Development of the Lisbon System and acknowledged the progress made towards reaching an appropriate solution. Moreover, the Delegation said that the European Union and its member states were convinced that a solution could be found to provide financial support to the Union while securing the full respect of the long-standing principles of solidarity and equality of treatment for each area of IP. The Delegation believed that it would also be possible to find a long-term financial model for the Lisbon Union that would ensure the financial sustainability of the Union and that would be acceptable to all WIPO Member States. In that regard, the Delegation stressed the importance of placing the Lisbon Union on an equal footing with all other unions administered by WIPO. As a means for ensuring the long-term viability of the Lisbon Union, the Delegation reiterated the importance of conducting a robust and focused promotion of the Lisbon System, including the Geneva Act, which would highlight the development potential of geographical indications with a view to attracting new Contracting Parties.

12. The Delegation of Peru said that Peru continued to move ahead with the national process of strengthening its intellectual property system thanks to the leadership of its public authorities. More specifically, a national IP strategy was being designed to that effect. Once adopted, the strategy would be a milestone for companies, inventors, creators, artists, local producers, rural communities and society in general. The Delegation pointed out that one of the pillars of that strategy was the strengthening of appellations of origin and geographical indications. Referring to the Peruvian exhibition during the 2018 Assemblies, the Delegation pointed out that Peruvian appellations of origin mainly applied to agricultural products that were not just commercial goods but elements that symbolized and expressed the traditional knowledge and the cultural aspects of small communities in Peru. In addition to the 10 appellations of origin that had already been recognized in Peru, 15 potentially new appellations of origin had also been identified. To help protect those new appellations of origin, Peru had been working with several WIPO members, including members of the Lisbon Union. In that regard, the Delegation was pleased to announce the signature of a Memorandum of Understanding (MoU) with the non-governmental organization oriGIN for the establishment of a permanent office within INDECOPI to foster the recognition of new appellations of origin in Peru and to promote appellations of origin and geographical indications within the Latin American region. Under the Lisbon Agreement, Peru had already been able to secure the international protection of various appellations of origin, which in turn had contributed to the development of small businesses as well as the preservation of their local traditions and culture. Referring to the Geneva Act of the Lisbon Agreement, the Delegation said that Peru had made significant progress towards its accession to such an important international instrument.

13. The Delegation of Israel thanked the Secretariat and all the members of the Lisbon Union for the work done in the past year to find possible solutions to the financial sustainability of the Lisbon Union. In that regard, the Delegation reiterated its position that any union should be financially sustainable and that its members should be responsible for the Union's financial situation. The Delegation was of the view that the Working Group should continue to discuss appropriate measures, including the review of the Schedule of Fees, to ensure the long-term financial sustainability of the Lisbon Union.

14. Upon recalling its participation at the second session of the Working Group on the Development of the Lisbon System that was held in Geneva on May 27 and 28, 2019, the Delegation of the United States of America recalled that the Working Group had been convened to establish a plan for purposes of ensuring the financial sustainability of the Lisbon Union. In that regard, the Delegation recalled that, in the past, the Lisbon System had mainly relied on funding from the Patent Cooperation Treaty (PCT). The Delegation expressed the view that the legitimacy of the Geneva Act and the financial situation of the Lisbon Union would have to be adequately addressed before the entry into force of the Geneva Act. As stated on previous occasions, the Delegation reiterated that the Diplomatic Conference to conclude the Geneva Act had been fundamentally flawed as it had been negotiated without meaningful input on its provisions by a majority of the WIPO Member States. As such, the Geneva Act of the Lisbon Agreement could not automatically be considered a WIPO-administered treaty. The Delegation urged the Organization to take an affirmative decision in that regard. Upon noting that the Lisbon Union believed that by simply promoting the accession to the Geneva Act among other WIPO members, the financial situation could be solved, the Delegation expressed the view that such outcome seemed unlikely, given the presence of provisions that drastically favored the interests of the existing Lisbon members over those of prospective Contracting Parties. Referring to the decision taken by the Working Group in May 2019 to assess the impact of the entry into force of the Geneva Act on the financial situation of the Lisbon Union, the Delegation expressed the view that such impact analysis following the entry into force of the Geneva Act simply delayed solving the problem of the financial sustainability of the Union. The Delegation reiterated that the promotion of the Geneva Act by WIPO itself could not be done using funds from other registration systems, yet the implementation strategies for the Lisbon System included "organizing and participating in awareness-raising and promotional activities aimed at expanding the geographical coverage and use of the Lisbon System including the Geneva Act". The Delegation therefore remained concerned that such technical assistance may inappropriately divert resources of other unions to attempt to increase the Lisbon Union membership. Moreover, the Delegation was concerned that such technical assistance would be a missed opportunity to encourage further use of the trademark system for the protection of intellectual property rights associated with distinctive products. Although the implementation strategies included language about "pointing out the option of providing protection for geographical indications through the trademark system", the Delegation remained concerned that the level of such engagement on trademark systems would not be sufficient to provide a truly balanced view. The Delegation concluded by saying that all WIPO members should come together to bridge the differences between trademark systems and the Lisbon System to meet the needs of all producers of distinctive products.

15. The Delegation of Portugal expressed the view that it was vital for the commercial strategy of any company, region, or country, to take advantage of the cultural heritage and the added value of its origin-based quality products and pointed out that the number of appellations of origin and geographical indications was continuously growing. The Delegation noted that the economic potential of such goods also constituted an instrument for social and cultural development with clear benefits for societies and the growth of regions all over the world. In that context, the Lisbon System played a very useful role and the importance of the issue for various Member States required that the development of the Lisbon System remained a priority for WIPO. The Delegation welcomed the positive progress made in the past few years, in terms of the growth of the membership of the Lisbon System and commended the enthusiastic efforts made by the European Union to accede to the Lisbon System before the end of the present year. The Delegation believed that accession by the European Union would trigger further accessions to the Geneva Act. The Delegation reiterated the need to guarantee the effective promotion of the Lisbon System in order to raise awareness on its advantages and benefits, thereby potentially achieving a significant membership growth. The Delegation commended the openness of the Lisbon Union members over the past few years to try to find solutions with due regard to the long-standing principles of solidarity and equal treatment of all intellectual property rights (IPRs) within WIPO so as to ensure the financial sustainability of the Lisbon System in the

short and longer term. The Delegation stated that any solution would have to take into account the overall objective of the Organization to promote the protection of all IPRs without exception. Moreover, the Delegation was of the view that any solution that would ultimately be found regarding the financial sustainability of the Lisbon Union should not enlarge the differences between unions and should also respect the “capacity to pay” principle among unions. The Delegation added that the current financial methodology should be retained and that any alteration to that methodology would have a discriminatory effect and would make the financial situation of the Lisbon Union even worse. The Delegation expressed its firm belief that the Geneva Act would help improve the income of the Lisbon Union both by attracting new members and by increasing the number of registrations. In conclusion, the Delegation indicated its willingness to continue to participate effectively and constructively to the future discussions on the financial sustainability of the Lisbon Union.

16. The Delegation of France took note of certain arguments questioning the status of the Lisbon Union, which had already been expressed during the previous Assemblies. The Delegation referred in particular to the request made by a delegation that the Lisbon Union should not be regarded as a Special Union in respect of which WIPO would have to ensure the necessary administrative services. The Delegation recalled that it could not support such request, as it had not been able to do so, in October 2015, 2016, 2017 and again in October 2018, because Article 4(ii) of the Convention Establishing the World Intellectual Property Organization of 1967 (WIPO Convention) explicitly provided that the Organization should ensure the administrative services of the Special Unions established under the Paris Union. The Delegation recalled that Article 1 of the Paris Convention for the Protection of Industrial Property (Paris Convention) provided protection to indications of source and appellations of origin. It added that the Lisbon Agreement did not leave any room for doubt because its Article 1 made it clear that the Lisbon Union had been established within the framework of the Paris Union. Therefore, the Lisbon Union was without any doubt a Special Union in respect of which WIPO should ensure the necessary administrative services. The Delegation of France recalled that in May 2015, a Diplomatic Conference was organized under WIPO auspices, according to the WIPO Convention and in line with the decision of the General Assembly of the Organization. The Delegation further recalled that, in accordance with the will of the member States of the Lisbon Union, the Diplomatic Conference had achieved the revision of the Lisbon Agreement in the form of the Geneva Act of the Lisbon Agreement. One of the goals of such revision was identical to one of the objectives achieved during the revision of a treaty of another union of WIPO, namely the Madrid Union, which enabled the accession of international organizations such as the African Regional Intellectual Property Organization (ARIPO) or the European Union. The Delegation stated that what had not posed a problem for a union should not pose a problem in respect of another union. The Delegation of France further pointed out that observers had fully participated in the work to draft the Geneva Act of the Lisbon Agreement, even if international law did not confer them any right to vote in that context. The Delegation of France invited the delegation who made the statement to refer to the minutes of the Working Groups and to those of the Diplomatic Conference of 2015. The Delegation of France pointed out that the Geneva Act clearly stipulated in its Article 21 that the Contracting Parties to the Geneva Act belonged to the same Special Union as the States party to the Lisbon Agreement. The Delegation further noted that Article 22(1) of the Geneva Act specified that the Contracting Parties to the Geneva Act were members of the same Assembly as the States party to the Lisbon Union. The Delegation of France said that there was thus no doubt that the Geneva Act had explicitly been adopted as a revision of the Lisbon Agreement by the member States of the Lisbon Union. The Delegation stated that, as a consequence, the Geneva Act clearly fell under the regime of Article 30 of the Vienna Convention on the Law of Treaties; claiming the contrary would mean ignoring the international law and the Vienna Convention. The Delegation went on to say that from the international law perspective it was indisputable that there had been no change in the status of the Lisbon Union, in the same way as the adoption of the Madrid Protocol did not create any new Madrid Union. The Delegation concluded by reiterating that the Lisbon Union was a Special Union administered by WIPO and

that it would remain as such. Finally, the Delegation of France said that the financial sustainability of the Lisbon Union depended on the rapid entry into force of the Geneva Act and, in any case, it could not be used as an argument to change the methodologies or operating principles of WIPO.

17. The Delegation of the Democratic People's Republic of Korea expressed its gratitude to WIPO for the assistance received towards its accession to the Geneva Act of the Lisbon Agreement, in particular through the recent organization of a national seminar. The Delegation indicated that the Democratic People's Republic of Korea had registered six appellations of origin under the Lisbon System and stated that the country had already started the national process for registration of many well-known products with a unique link to their geographical origin. The Delegation looked forward to supporting the promotion of the Lisbon System among the Member States of WIPO.

18. The Delegation of the Czech Republic fully associated itself with the statement made by the Delegation of the European Union. The Delegation recalled that it had been a long-term member of the Lisbon Union and that it was well aware of the advantages of the protection of appellations of origin and geographical indications *via* the Lisbon System. The Delegation was convinced that such form of IP protection brought significant benefits to producers and consumers of both developed and developing countries. For that reason, the Delegation said that it attached great importance to the viability of the Lisbon System and its ability to attract new members. The Delegation expressed its full support to the already announced accession of the European Union and welcomed the accessions to the Geneva Act by Cambodia, Côte d'Ivoire, Albania, Samoa and the Democratic People's Republic of Korea. The Delegation indicated that the Czech Republic was preparing to take the same steps in the near future. The Delegation appreciated the efforts of the members of the Lisbon Union aimed at preventing any future budget deficit of the Union and ensuring its long-term financial sustainability. The Delegation was convinced that significant progress had already been made in the Working Group on the Development of the Lisbon System and that a generally acceptable solution would soon be found. Referring to the issue of the budget for the next biennium, the Delegation expressed its concern about the fact that Annex III of the draft Program and Budget still contained a change in the allocation methodology, which would have a negative impact on the financial situation of the Lisbon Union. The Delegation recalled that the Program and Budget Committee (PBC) did not support such change. The Delegation said that there was no ground for that modification in the allocation methodology and it was therefore unacceptable. The Delegation considered that approach contrary to the long-standing principle of solidarity and equality of treatment for all areas of IP. The Delegation emphasized that one of the prerequisites for the attractiveness of the Lisbon System was a sufficient awareness of its advantages and benefits for its users. The Delegation expressed its support for a wide ranging and targeted promotion of the Lisbon System by any available means.

19. The Delegation of Serbia welcomed the recent accessions to the Lisbon Agreement and the Geneva Act. The Delegation considered that the protection of geographical indications was of great importance and that it was significant for Serbia to be part of a reliable and stable system of international protection of geographical indications. The Delegation said that such a system would guarantee added value to its agriculture and other products that were sold abroad. For that reason, the Delegation supported the statement delivered by the Delegation of Hungary concerning the financial stability of the Lisbon Union. The Delegation believed that there was no justification to change the current financial methodology that had been lasting for more than a decade. The Delegation was of the opinion that nothing had changed to justify the shift to a new financial methodology.

20. The Delegation of the Russian Federation informed the member States of the Lisbon Union that in July 2019, it had enacted a law on geographical indications with the aim of promoting and protecting regional brands. The Delegation considered that the law would offer

new opportunities as it was the first step on the road for the accession to the Lisbon System. The Delegation affirmed that it did not see any need to change the financing system of the Lisbon Union as that might reduce the attractiveness of the Lisbon System not only for current members but also for all future members of the System.

21. The Delegation of Japan expressed its appreciation for the opportunity to participate as an observer in the Working Group on the Development of the Lisbon System. The Delegation believed that, in order to ensure the transparency of the Lisbon System, all WIPO Member States should be allowed to attend future Assemblies and Working Groups of the Lisbon Union. The Delegation requested the Lisbon Union to create an opportunity to seek opinions among observers and all other WIPO Member States and to consider those opinions when making important decisions from the perspective of ensuring the transparency of the Lisbon System. The Delegation recalled the decision on the Program and Budget for the 2018/19 biennium, adopted by WIPO Member States at the 2017 Assemblies, according to which each Union should have enough revenue to cover its own expenses. The Delegation acknowledged that the financial sustainability of the Lisbon Union had been discussed in the Working Group on the Development of the Lisbon System. The Delegation hoped that members of the Lisbon Union would advance discussions on that issue to make the solution more concrete and to implement it as soon as possible.

22. The Delegation of Australia reiterated its encouragement to the members of the Lisbon Union to create an enduring robust framework for financial sustainability. The Delegation indicated that additional sources of funding appeared to be necessary to make the Lisbon System self-sustaining and that such sources could include, for example, maintenance fees. The Delegation recalled that other fee-funded treaties provided a range of mechanisms, including maintenance fees to support the administration of those systems. The Delegation said that maintenance fees could facilitate initial access to the System at a low cost, with reasonably spaced downstream payments set at a level that would not be a deterrent to users. The Delegation was of the view that most of the costs for sustaining the Lisbon System could be borne by the beneficiaries if such costs were to be covered at regular intervals. The Delegation encouraged WIPO to ensure that international systems for the protection of geographical indications were promoted evenly.

23. The Delegation of the United States of America supported the comments made by the Delegation of Japan. Referring to the comments made by the Delegation of France, the Delegation stated that the Director General of WIPO had already responded on that debate, noting that it was a political matter as to whether Article 4(iii) of the WIPO Convention applied. The Delegation was of the view that under the WIPO Convention, the WIPO General Assembly should decide whether to administer a new agreement and that required three-fourths of the votes cast. As a result, the Delegation said that it did not accept that 28 of about 190 WIPO Member States could decide what agreements could be considered as WIPO agreements.

24. The Representative of the Knowledge Ecology International (KEI) observed that the challenge of paying for the Lisbon System was linked to the fact that geographical indications were a community and not a private property asset like a trademark or a patent. He regarded that particular aspect as an interesting element to consider when discussing how to finance the System, as this element made it different.

25. The Assembly of the Lisbon Union took note of the "Report on the Working Group on the Development of the Lisbon System" (document LI/A/36/1).

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