

Working Group on the Development of the Lisbon System (Appellations of Origin)

Tenth Session
Geneva, October 27 to 31, 2014

REVISED DRAFT REPORT

prepared by the Secretariat

1. The Working Group on the Development of the Lisbon System (Appellations of Origin) (hereinafter referred to as “the Working Group”) met in Geneva, from October 27 to 31, 2014.
2. The following Contracting Parties of the Lisbon Union were represented at the session: Algeria, Bosnia and Herzegovina, Bulgaria, Congo, Costa Rica, Czech Republic, France, Georgia, Haiti, Hungary, Iran (Islamic Republic of), Israel, Italy, Mexico, Nicaragua, Peru, Portugal, Republic of Moldova, Slovakia, Togo, Tunisia (21).
3. The following States were represented as observers: Afghanistan, Albania, Australia, Bahamas, Benin, Burundi, Cameroon, Canada, Chile, Colombia, Comoros, Cyprus, Germany, Greece, Iraq, Japan, Jordan, Latvia, Pakistan, Panama, Paraguay, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Senegal, South Africa, Spain, Switzerland, Thailand, Turkey, Ukraine, United Kingdom, United States of America, Uruguay (35).
4. Representatives of the following international intergovernmental organizations (IGOs) took part in the session in an observer capacity: European Union (EU), International Organisation of Vine and Wine (OIV), International Trade Centre (ITC), West African Economic and Monetary Union (WAEMU), World Trade Organization (WTO) (5).
5. Representatives of the following non-governmental organizations (NGOs) took part in the session in an observer capacity: Association of European Trademark Owners (MARQUES), Brazilian Association of Intellectual Property (ABPI), Centre for International Intellectual Property Studies (CEIPI), Consortium for Common Food Names (CCFN), European

¹ Modifications compared to document LI/WG/DEV/10/7 PROV., based on communications from delegations and representatives that participated in the meeting have been introduced in paragraphs 84 and 210.

Communities Trade Mark Association (ECTA), International Association for the Protection of Intellectual Property (AIPPI), International Federation of Intellectual Property Attorneys (FICPI), International Trademark Association (INTA), Knowledge Ecology International, Inc. (KEI), Organization for an International Geographical Indications Network (oriGIn) (10).

6. The list of participants is contained in document Annex II.

AGENDA ITEM 1: OPENING OF THE SESSION

7. Ms. Wang Binying, Deputy Director General of the World Intellectual Property Organization (WIPO), opened the session, recalled the mandate of the Working Group and introduced the draft agenda, as contained in document LI/WG/DEV/10/1 Prov.

AGENDA ITEM 2: ELECTION OF A CHAIR AND TWO VICE-CHAIRS

8. Mr. Mihály Ficsor (Hungary) was unanimously elected as Chair of the Working Group, Mr. Alfredo Rendón Algara (Mexico) and Mrs. Ana Gobechia (Georgia) were unanimously elected as Vice-Chairs.

9. Mr. Matthijs Geuze (WIPO) acted as Secretary to the Working Group.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

10. The Working Group adopted the draft agenda (document LI/WG/DEV/10/1 Prov.) without modification.

AGENDA ITEM 4: REPORT OF THE NINTH SESSION OF THE WORKING GROUP ON THE DEVELOPMENT OF THE LISBON SYSTEM (APPELLATIONS OF ORIGIN)

11. The Working Group took note of the adoption, on October 17, 2014, of the Report of its ninth session, as contained in document LI/WG/DEV/9/8, in accordance with the procedure established at its fifth session.

AGENDA ITEM 5: DRAFT REVISED LISBON AGREEMENT ON APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS AND DRAFT REGULATIONS UNDER THE DRAFT REVISED LISBON AGREEMENT

12. Discussions were based on documents LI/WG/DEV/10/2, LI/WG/DEV/10/3, LI/WG/DEV/10/4 and LI/WG/DEV/10/5.

13. As regards the conduct of the discussions on the pending issues listed in paragraph 5 of document LI/WG/DEV/10/2, the Chair proposed to group the pending issues by subject along the following lines:

Group A: the pending issues concerning the procedures in respect of applications and international registration;

Group B: the pending issues concerning the scope of protection;

Group C: the pending issues concerning other provisions related to the legal effects of international registrations;

Group D: the pending issues concerning fees and the financing of the Lisbon System;

Group E: the pending issues related to the title and the Preamble of the draft Revised Lisbon Agreement.

GENERAL STATEMENTS

14. The Delegation of Georgia underlined the importance for Georgia of the international protection of geographical indications and appellations of origin. The Delegation also emphasized that the efforts of the Working Group over the past five years had resulted in significant progress and that the draft Revised Lisbon Agreement and its Regulations were now close to conclusion. In that regard, the Delegation invited the other participants to maintain a constructive dialogue over the pending issues that would be addressed at the present session of the Working Group. Additionally, the Delegation expressed its strong support for the adoption of a single instrument for the protection of both geographical indications and appellations of origin, so as to allow the Lisbon System to attract a wider membership.

15. The Delegation of Peru reiterated its firm commitment to the principles and objectives of the Lisbon Agreement and indicated that Peru had spared no effort in promoting a greater use of appellations of origin. Peru attached great importance to the protection of appellations of origin as a development tool that could significantly contribute to the improvement of the living conditions of the population of many countries. An international registration system for both appellations of origin and geographical indications would help local producers differentiate themselves and improve their competitiveness on global markets. Therefore, from the very beginning, Peru had supported the ongoing process to revise and improve the Lisbon System, so as to make it as attractive as possible to members and non-members alike while maintaining its fundamental principles and objectives. In that regard, the Delegation cautioned the Working Group against taking steps backwards through provisions that would affect or compromise the nature of the exclusive protection provided under the current Lisbon System.

16. The Delegation of the European Union reiterated its full support for the review of the international registration system for the protection of appellations of origin and their international registration with the objective of making the Lisbon System more attractive for users and prospective new members, while preserving the principles and objectives of the current Lisbon Agreement. The Delegation also highlighted the importance of the consistency of the draft Revised Lisbon Agreement and the draft Regulations with the provisions of the TRIPS Agreement. In that regard, the Delegation welcomed the significant progress made by the Working Group towards refining the current legal framework, as well as the inclusion of provisions providing for the accession of intergovernmental organizations.

17. The Delegation of France recalled the open family spirit that the Working Group had maintained since 2009, not only among the 28 Contracting Parties to the Lisbon Agreement, but among these Contracting Parties and observer delegations alike. He invited participants to make every effort to achieve consensus on as many issues as possible before the Diplomatic Conference.

GROUP A: PENDING ISSUES CONCERNING THE PROCEDURES IN RESPECT OF APPLICATIONS AND INTERNATIONAL REGISTRATION

Implementation aspects of Article 1(xiv)

18. The Delegation of Peru reiterated its concern with regard to the reference to intergovernmental organizations in the text, because neither the national Peruvian legislation, nor the Andean Community legislation contained any such reference to intergovernmental organizations. Thus, the problem for Peru was that it could not protect appellations of origin and geographical indications, if the application for international registration had been filed by an intergovernmental organization.

19. The Chair wondered whether the Andean Community legislation also excluded filings by an intergovernmental organization on behalf of the beneficiaries.

20. The Delegation of Peru said that a provision under the Andean Community legislation could not be interpreted one way or the other by a single member country, such as Peru, at its sole discretion.

21. The Chair concluded that further reflection was needed on the issue and suggested that the Working Group might revert to the matter in connection with the issue concerning the entitlement to file an application under Article 5(2).

The content of Article 2(2) and Article 5(4) concerning trans-border geographical areas of origin

22. With respect to geographical indications and appellations of origin from trans-border geographical areas, the Delegation of Hungary reiterated its strong support for the deletion of the square brackets in Articles 2(2) and 5(4), as it firmly believed that it would be very useful for countries to have the opportunity to submit joint applications for appellations of origin or geographical indications originating in a trans-border geographical area.

23. The Delegations of the Czech Republic, the European Union, Portugal, the Republic of Moldova and Slovakia fully supported the deletion of the square brackets in Articles 2(2) and 5(4).

24. The Delegation of Peru requested additional time to reflect on the issue under consideration.

25. Noting the overwhelming support for deleting the square brackets in Article 2(2) and Article 5(4), the Chair indicated that his preliminary conclusion would be that the square brackets would be deleted in those provisions.

26. When reverting to the issue, the Working Group noted that the Delegation of Peru had withdrawn its reservation, but that the Delegation of Algeria expressed its preference for keeping the brackets in Articles 2(2) and 5(4).

27. The Chair concluded that the square brackets in Articles 2(2) and 5(4) would be retained.

The issue of entitlement to file an application under Article 5(2)

28. The Secretariat said that Rule 5(4) reflected proposals made by the Delegation of the United States of America at the previous two sessions of the Working Group. The provision in question would notably allow a Contracting Party to require use of the geographical indication or appellation of origin in order for the geographical indication or the appellation of origin to be protected in its territory. In addition, a Contracting Party would be allowed to require that an application for registration would have to be signed by the owner or the one entitled to use the appellation of origin or geographical indication. In that regard, the Secretariat sought clarification from the Delegation of the United States of America on this requirement, as the certifying body owning a certification mark would not be allowed to use the certification mark itself. In that connection, the Secretariat pointed out that Form MM18 under the Madrid System, concerning declarations of intention to use, contained an explanation on the first page to the effect that the applicant had to declare that he or she was the sole user of the mark.

29. The Delegation of the United States of America said that Rule 5(4)(a) reflected how certain elements of the trademark system could be incorporated in the Lisbon System. The Delegation was of the view that Rule 5(4) introduced flexibility and inclusiveness without undermining those geographical indication systems that do not require use. Referring to the question raised by the Secretariat as to the wording of the declaration of intention to use that related to a certification mark, the Delegation indicated that the text that the Secretariat had quoted from Madrid Form MM18 required some adaptation in respect of certification marks. The Delegation would provide the Secretariat with the wording that applied under its national law.

30. The Delegations of the Czech Republic, the European Union, France, Hungary and Italy expressed their preference for keeping Rule 5(4) between brackets, for the time being.

31. The Delegation of Australia supported the intervention made by the Delegation of the United States of America.

32. In light of the statements made, the Chair concluded that Rule 5(4) would remain between square brackets. He underlined the arguments put forward in support of the introduction of Rule 5(4), namely that such provision would provide the necessary flexibility without undermining geographical indications protection systems that do not have use requirements.

The issue as to whether Rule 5(3) should be optional or mandatory

33. The Delegation of the Republic of Moldova was of the view that Rule 5(3) should remain optional, since the link with the geographical environment would already have been verified by the Contracting Party of Origin.

34. The Delegation of the Russian Federation was of the view that the declaration-based approach in respect of Rule 5(3), as reflected in Note R5.04, should be taken up in the text of Rule 5(3).

35. The Delegation of the European Union recalled that, under the relevant EU legislation, the information about the link between a product and its geographical origin was considered crucial and therefore made mandatory, in order to determine whether the criteria for obtaining an appellation of origin or a geographical indication were met. The Delegation was, therefore, in favor of the mandatory character of Rule 5(3).

36. The Representative of oriGIn wished to provide a pragmatic approach to the issue. In that regard, he recalled that under the overall structure of the Lisbon Agreement the Contracting Parties could refuse to recognize the effects of an international registration on their national territory on various grounds, notably if they consider that the appellation of origin for which protection is sought does not meet the definition provided under the Lisbon Agreement. Therefore, it would be in the interest of Contracting Parties to provide sufficient information about the very nature of the geographical indication or appellation of origin for which protection is sought, in order to increase the chances of obtaining protection. Rule 5(3) should be seen as an opportunity for Contracting Parties and national producers to secure protection in as many Contracting Parties as possible, irrespective of its mandatory or optional character.

37. In view of the statements made, the Chair concluded that item (xviii) remained a pending issue. However, there were now three Options on the table, namely whether Rule 5(3) should be an optional or mandatory provision or whether it should follow a declaration-based approach similar to the one contained in Rule 5(4), as suggested in Note R5.04 of document LI/WG/DEV/10/5. In that regard, he indicated that the relevant contents of Note R5.04 would be included as a third Option in Rule 5(3) of the revised version of the draft Regulations that would be submitted to the Diplomatic Conference.

The issue of the inclusion of Rule 5(4) permitting a Contracting Party to require a declaration of intention to use in respect of a registered appellation of origin or a registered geographical indication

38. The Chair said that Rule 5(4) had already been dealt with under item (iv). As a result, Rule 5(4) would remain in square brackets.

The issue of promoting transparency under Rule 5(5)(ii)

39. The Delegation of the United States of America reiterated its view that, if a statement to the effect that protection was not claimed for certain elements in the basic protection instrument in the Contracting Party of Origin, such statement would also have to be included as a mandatory element in the international application under Rule 5(2) and recorded in the International Register. From the Delegation's point of view, such a requirement would be necessary in order to provide notice to third parties about the appropriate scope of protection to be given to the individual elements of a compound geographical indication. The Delegation added that footnote 2 to Article 11 attempted to make it clear that generic terms within a compound geographical indication should not be protected in other Contracting Parties either. In the interest of transparency and fairness, the Delegation was of the view that sub-paragraph (ii) of Rule 5(5) should be made mandatory.

40. The Delegation of Italy was of the view that Rule 5(5)(ii) should remain optional.

41. The Delegation of Australia pointed out that, even though Australia did not require the provision of such information under its national trademark system, the Delegation was nonetheless of the view that the provision of such information would increase the transparency of the system for third parties and users of the system at large. The Delegation therefore shared the views expressed by the Delegation of the United States of America.

42. The Chair indicated that the idea would be that, if in the registration or other protection-granting instrument in the Contracting Party of Origin protection was not granted in respect of certain elements of the appellation of origin or the geographical indication in question, then such limitation of the protection in respect of certain terms should be indicated in the application under Rule 5. In such case, the indication of the limitation of the protection would be mandatory, although this would not mean that it would be mandatory to have such

limitations on the protection of the appellation of origin or the geographical indication in the jurisdiction concerned. In other words, it would be left to the Contracting Parties to decide whether protection would be granted or not in respect of those elements of the appellation of origin or the geographical indication in respect of which protection had not been granted in the Contracting Party of Origin.

43. The Representative of CEIPI expressed the view that the way, in which Rule 5(5)(ii) was presented, was not entirely correct, because the issue at stake was whether the inclusion of the statement in the application form should be obligatory under certain circumstances or whether it should be maintained as a simple option to include such a statement. He therefore suggested re-drafting the provision that would be submitted to the Diplomatic Conference, so as to have an Option A that would refer to the obligation to provide the statement in certain circumstances, but also an Option B that would leave the statement as an optional part of the application.

44. The Secretariat pointed out that the question remained as to how the Secretariat would be able to know whether such an exception to the protection was specified in the instrument by which protection was granted in the Contracting Party of Origin. A copy of that instrument did not necessarily have to be attached to the application and, even if a copy was attached, the text might not always be in a working language of the International Bureau. Perhaps, a possible way to solve the issue might be to include in the application form a box which would require the Contracting Party of Origin to indicate whether or not such an exception to protection was contained in the protection-granting instrument in the Contracting Party of Origin and, if this was the case, to specify the exception.

45. The Chair recalled that the Secretariat had proposed to make mandatory the indication whether or not in the Contracting Party of Origin protection was not granted for certain elements of the appellation of origin or the geographical indication. If such elements were specified when protection was granted in the Contracting Party of Origin, then the relevant details should be taken up in the international registration as well but they would not be translated by the International Bureau.

46. The Delegation of the European Union expressed its preference for an optional provision, allowing the Contracting Party of Origin to make a declaration clarifying that certain elements contained in a denomination or indication were considered to be generic. When such elements had been specified in the registration or other instrument by virtue of which protection was granted in respect of the appellation of origin or geographical indication, it was in the interest of the Contracting Party of Origin to clarify this in the international registration as well, in order to avoid future problems. When in 1996 the European Union had granted protection to 320 denominations of its member States, it had been specified in respect of a number of these denominations that some terms contained in these denominations were not part of the object of protection. For instance, in respect of the denomination "*Camembert de Normandie*", it was specified that protection was not claimed for the term "*Camembert*". The same applied in respect of the term "Gouda", which is not protected as such either. However, such clarification did not appear in respect of all unprotected terms. For example, in the case of a French geographical indication for "*crème fraîche fluide*" from a given place, obviously the geographical indication as a whole would be protected, but the word "cream", "fresh" and "fluid" would not be protected. In theory, if the proposed mandatory rule were to be applied by the letter, it would be necessary to specify that the words "cream", "fresh" and "fluid" were not protected. These were common words taken from the dictionary and were only contained in the geographical indication because the geographical name alone would not be sufficient. Nonetheless, although in respect of the appellation of origin "*Grana Padano*" the term "*Grana*" refers to the granular aspect of this cheese, the European Court of Justice has confirmed that the term "*Grana*" refers to "*Grana Padano* cheese" and is, consequently, part of the object of

the protection of the appellation of origin “*Grana Padano*”. The Delegation considered it useful to provide such information in an international registration, so as to avoid refusals in case there was a potential problem. However, it would not be appropriate to conclude from the simple fact that no exception was specified in the protection-granting instrument in the Contracting Party of Origin, and as a result neither in the international registration, *a contrario* that the use of each term contained in the appellation of origin or geographical indication in question was part of the object of protection.

47. The Chair said that the requirement to indicate, in the international application, the existence of an element that was not part of the object of protection would only apply in case the relevant national or regional registration, or other protection-granting instrument, in the Contracting Party of Origin explicitly specified that a certain element was not protected.

48. The Delegation of the European Union said that if the legislation of a Contracting Party of Origin clearly stated that a term included in the compound designation was not protected *per se*, then, of course there should be a duty to indicate this in the box. This was not a problem at all. The problem could, perhaps, better be illustrated by the compound designation “*Epoisses de Bourgogne*”. At first sight, it seemed that, as France had asked for the protection of “*Epoisses de Bourgogne*” without any reference to a possible non-protection of the term “*Epoisses*”, the term “*Epoisses*” as such was protected as well. The Court of Justice, however, had stated that, in order to assess whether “*Epoisses*” was protected or not, a full evaluation should be conducted under the authority of a national court. Therefore, if this example were to be taken as a template, France would apply for the international registration “*Epoisses de Bourgogne*” and would not indicate in the international application that the term “*epoisses*” as such was not protected. This would, however, not necessarily mean that the term “*epoisses*” was protected in the Contracting Party of Origin or not.

49. The Chair said that this concern was not solved by an optional provision either.

50. The Delegation of the European Union expressed its preference for the optional provision. If the Contracting Party of Origin omitted to clarify the non-protection of a given term, another Contracting Party could consider this as a subsequent ground for invalidation of the effects of the international registration, in whole or in part.

51. The Chair concluded that Rule 5(5) would have two Options. Option A, suggested by the Secretariat and supported by several delegations, would require to indicate in the application form whether or not protection was claimed for certain elements if so specified in the instrument granting protection in the Contracting Party of Origin. If this Option A were to be adopted, then the possibility to modify such an indication subsequently should be provided for as well. Option B, as supported by the Delegation of the European Union, would provide for an optional statement.

GROUP B: PENDING ISSUES CONCERNING THE SCOPE OF PROTECTION

The various Options in respect of Article 11(1)(a) and Article 11(3)

52. As regards Article 11(1)(a), the Delegation of Italy expressed its preference for Option A while indicating that the brackets around the term “evocation” should be removed and that the term “usurpation” should be replaced by “misuse”. Regarding Article 11(3), the Delegation expressed a preference for Option C while rejecting Option D.

53. Regarding Article 11(1)(a), the Delegation of the Republic of Moldova expressed support for Option B, which was both clear and perfectly in line with the TRIPS Agreement. The

Delegation nonetheless suggested that the term 'and' be replaced by "or" in the last sentence, so that the text would read "or is likely to damage the interests of the beneficiaries", as the interest of such beneficiaries could be damaged even if the use referred to in Option B would not suggest a connection between the goods and the beneficiaries.

54. The Delegation of Hungary shared the views expressed by the Delegation of Italy with regard to Article 11(1)(a). As regards Article 11(3), the Delegation reserved its position.

55. The Delegation of Georgia also expressed support for Option A of Article 11(1)(a) and the deletion of the brackets around the term "evocation".

56. The Delegation of Portugal expressed its preference for Option A of Article 11(1)(a) and reserved its position with regard to Article 11(3).

57. The Delegation of France also supported Option A of Article 11(1)(a) and deletion of the square brackets around the term "evocation". As regards the suggestion made by the Delegation of Italy to replace the word "usurpation" by "misuse", the Delegation indicated that the equivalent of "misuse" in French was "usurpation". As regards Article 11(3), the Delegation had a preference for Option A, but might also support Option C, depending on the views of other delegations. Option D would represent a step backwards when compared with the current Lisbon Agreement.

58. The Delegation of Australia wished to clarify that its proposal, as contained in Option B of Article 11(1)(a), would only apply in relation to goods of a different kind and would not impact item (i) of Article 11(1)(a) at all. Option B only sought to replace paragraphs (ii) and (iii) of Article 11(1)(a) in an effort to provide simplicity and clarity. The Delegation went on to say that, while it certainly appreciated the flexibility that had been shown by the Working Group through the inclusion of an alternative to the proposed scope of protection in respect of goods of a different kind, it would be easier to have an inclusive universal standard rather than a standard that would be unfamiliar to many countries. Moreover, an inclusive universal standard would have the advantage that users and third parties would not have to seek clarification from Contracting Parties that may have made declarations in relation to the scope of protection. The Delegation was confident that a universal standard would be possible and that it would be preferable to an exception regime.

59. The Delegation of Switzerland supported Option A of Article 11(1)(a). As regards Article 11(3), the Delegation was of the view that Options B and D would considerably weaken the current scope of protection under the Lisbon Agreement.

60. The Delegation of the Republic of Korea said that it could not support Option A of Article 11(1)(a), as it went beyond the level of protection provided under other international treaties. In particular, Article 23 of the TRIPS Agreement provided for such a high level of protection only in respect of wines and spirits.

61. The Delegation of the European Union expressed its preference for Option A of Article 11(1)(a), subject to the replacement of the term "usurpation" by "misuse" and the deletion of the brackets around the term "evocation", as had been suggested by the Delegation of Italy. As regards Article 11(3), the Delegation preferred Option A, but was ready to consider Option C as a possible alternative. The Delegation did not regard Options B and D as acceptable solutions.

62. The Delegation of Iran (Islamic Republic of) expressed its preference for Option A of Article 11(1)(a). As regards Article 11(3), the Delegation agreed with other delegations that Options B and D would considerably weaken the principles and objectives of the Lisbon

Agreement. Hence, the Delegation expressed its preference for Option A of Article 11(3), but was ready to consider Option C as an alternative solution.

63. The Delegation of the United States of America expressed great concern about the presumption of confusion or the presumption of misleading use under Article 11(1)(a)(i), in the absence of any requirement of use. The Delegation was of the view that it would be extremely difficult to claim a presumption of misleading use or a presumption of confusion when the registered geographical indication would not even be in use in a given territory. Hence, the Delegation expressed support for Option B of Article 11(1)(a), even though it would prefer the text of that Option to relate to Article 11(1)(a)(i) as well. The Delegation further reserved its position as regards Article 11(3), pending the outcome of the discussions on the various provisions concerning requirements of use. In light of the vague infringement standards contained in Article 11(1), the Delegation proposed the addition of a second sentence in footnote 2 to Article 11 that would read as follows: "For greater certainty, a refusal or invalidation of a trademark or a finding of infringement in the Contracting Parties under the terms of Article 11 cannot be based on the component that has a generic character". When unclear infringement standards for geographical indications were applied, there was a need to limit the unclear effects of applying a vague "imitation" or "evocation" standard of infringement, for in the Delegation's view a geographical indication could not be found to be infringed by use of a single component of that geographical indication, if that component had a generic character in the territory of a given Contracting Party.

64. The Representative of oriGIn recalled that the objective of an International Register for geographical indications and appellations of origin would be to provide legal certainty to producers and the private sector at large. In that regard, he recalled that misappropriations represented a major problem for producer associations worldwide and that the registration of their appellations or geographical indications in every single jurisdiction to which their products would be exported would be extremely difficult and costly. As regards Article 11(3) and the need for greater flexibility to make the system more attractive to a greater number of States, oriGIn was of the view that, at the end of the day, such flexibility should be limited and should not be detrimental to other imperatives, such as the legal certainty and predictability that an association of producers could reasonably expect from an international registration system. As regards the use of the notion of incompatibility in Options A to D of Article 11(3), he expressed the view that there was no such thing as the "incompatibility" of the trademark system. A trademark system could also provide a high level of protection in respect of a geographical indication, provided that some adjustments were made. He, therefore, suggested the deletion of any reference to compatibility or incompatibility from the text.

65. The Representative of INTA reiterated its concerns about the terminology used in Option A of Article 11(1)(a), and more specifically about the use of terms such as "usurpation, imitation or evocation". The lack of clarity of those concepts only brought confusion with regard to the relationship between trademarks and geographical indications. In contrast, she was of the view that Option B constituted a step in a more positive direction towards greater inclusiveness. However, as the Representative of INTA was not sure whether the elements of Option B were the most appropriate ones for all types of cases, she suggested that the text be further refined. In particular, she was of the view that to simply mirror the content of Article 16.3 of the TRIPS Agreement might not be appropriate for all cases. As in the case of trademarks, there could be highly reputed geographical indications known everywhere and also less known geographical indications. This would have an impact on the scope of protection itself. Therefore, she suggested bringing the text of Option B closer in line with the classical trademark law concepts of likelihood of confusion and the special protection for well-known trademarks. As regards Article 11(3), she expressed a preference for Option D. Lastly, she supported the text suggested by the Delegation of the United States of America in respect of footnote 2 to Article 11.

66. In light of the discussions, the Chair indicated that it had become evident that Options A and B of Article 11(1)(a) would remain in the text. As regards Option A, the word “usurpation” would be replaced by “misuse” and the square brackets around the term “evocation” would be deleted, following the various requests made to that effect by several delegations. Concerns had been expressed by other delegations about the use of those terms. Option B of Article 11(1)(a) had also received support, although some delegations had indicated that the text had to be further refined. As regards Article 11(3), he was under the impression that no one had expressed support for Option B.

67. The Delegation of Australia reserved its position on the Options of Article 11(3), while indicating a slight preference for Option B.

68. The Delegation of Peru maintained its reservation with regard to the use of the term “evocation” and requested that the term be kept between square brackets.

69. Following a request for clarification, the Delegation of Peru indicated that it still had to hold internal consultations in relation to the various Options of Article 11(1)(a). However, what was already clear was that any reference to “evocation” would not be supported by the Delegation of Peru, because that concept was not familiar under the Andean Community legislation and the Peruvian legislation.

70. Summarizing the discussions, the Chair reiterated that some delegations supported Option A of Article 11(1)(a), while other delegations favored Option B. He went on to say that he had duly noted all the concerns expressed about the vagueness of the terms “usurpation, imitation or evocation” used in Option A. The brackets around the term “evocation” would be removed in the revised version of the text. In that regard, the Chair added that the concerns expressed by the Delegation of Peru had been duly noted and that his conclusion in respect of Option A might change, if the Delegation of Peru would eventually indicate its preference for Option A. As regards Article 11(3), the Options A to D would remain on the table for the time being, in particular as a number of delegations had reserved their position in that regard. He also noted that those delegations which had found Options B and D unacceptable had a clear preference for Option A but would nonetheless be ready to further consider Option C. The Chair further recalled the drafting suggestions that had been made in respect of Article 11(3). As regards footnote 2 to Article 11, a second sentence would be added as had been suggested by the Delegation of the United States of America. Footnote 2 would remain in square brackets.

71. The Representative of oriGIn clarified that his suggestion to remove any reference to “compatibility” from Options A to D of Article 11(3) had to be read in conjunction with his other suggestion that the flexibility provided to Contracting Parties should be limited as regards the level of protection, for purposes of achieving greater legal certainty.

72. The Delegation of the United States of America was of the view that it would make sense to remove the requirement of ‘compatibility’ from the text, so as to give more flexibility in that regard to the Contracting Parties.

73. The Chair indicated that the amended text of Option A of Article 11(3) would read as follows: “Any State or intergovernmental organization may declare, when depositing its instrument of ratification or accession, that it shall, instead of the protection stipulated in paragraph (1)(a)(iii), extend to the registered appellation of origin or the registered geographical indication protection against any use thereof in respect of goods that are not of the same kind as those to which the appellation of origin or the geographical indication applies, if such use would indicate or suggest a connection

between those goods and the beneficiaries, and is likely to damage the interests of the beneficiaries". Options B to D would be amended accordingly.

The issue of the Draft Agreed Statement contained in footnote 1 to Article 11 and provisions relating to the same issue

74. The Delegation of Peru pointed out that Article 11 was a fundamental provision of the draft Revised Lisbon Agreement and constituted the very essence of the objectives that the Lisbon Agreement sought to achieve. In that regard, the delegation reiterated its long-standing position that footnote 1 should be deleted from the draft Revised Lisbon Agreement. In addition to the aspects the Delegation had already referred to on previous occasions, the Delegation was of the view that the text of footnote 1 was redundant, in view of Article 6. Moreover, the possibility envisaged in the footnote was not contained in the legislation of the Andean Community, and, as it was not contained in the Lisbon Agreement itself, the text of footnote 1 would compromise the effectiveness of the Lisbon System. The Delegation further recalled that, when Peru had ratified the Lisbon Agreement, it had done so with a firm commitment to the exclusive protection that would be afforded to appellations of origin and to the rigorous measures that would be taken to protect appellations of origin in the other Contracting Parties. The Delegation was of the view that footnote 1 would affect the legal certainty that could reasonably be expected in that regard. The Delegation's request for the deletion of footnote 1 also applied to all corresponding provisions in the draft Revised Lisbon Agreement and the Regulations.

75. The Delegation of Chile recalled its long-standing support for the incorporation in the final draft of footnote 1 to Article 11, which had initially been proposed as a stand-alone provision in the draft Revised Lisbon Agreement itself, but which had later been relegated to a footnote between square brackets. The practice referred to in the footnote was of major importance for Chile, in trade and economic terms. Moreover, as explained by the Secretariat at the seventh session of the Working Group, the practice described in footnote 1 was not unknown to the members of the Lisbon Union. On the contrary, it was a practice implemented in the past under the Lisbon System, with practical and legal consequences not only for the members of the Lisbon Union but also for WIPO members at large. The proposed "Draft Agreed Statement" in footnote 1 simply sought to take stock of an existing practice, thus affording legal certainty to WIPO Member States at large. The Delegation, therefore, requested that footnote 1 to Article 11 be maintained in the draft Revised Lisbon Agreement.

76. The Delegation of Italy was of the view that the deletion of footnote 1 to Article 11 from the draft Revised Lisbon Agreement would not mean that the practice that had been implemented in the past in the context of the Lisbon Agreement could not continue in the context of the Revised Lisbon Agreement. The Delegation further recalled that there were provisions in the TRIPS Agreement dealing with the matter.

77. The Chair concluded that the text of footnote 1 to Article 11 would remain between square brackets.

The content of Article 12 concerning protection against acquiring a generic character

78. The Delegation of France expressed the view that the Working Group should go back to the spirit of the Lisbon Agreement. The Delegation favored a simplified drafting and suggested the deletion of all bracketed parts. The way the bracketed phrase at the end of the provision was drafted, it did not add anything to what preceded it.

79. The Chair said that the text proposed by the Delegation of France would read as follows: "Subject to the provisions of this Act, registered appellations of origin and registered geographical indications cannot become generic as long as the appellation of origin or the geographical indication is protected in the Contracting Party of Origin".

80. The Delegation of the United States of America anticipated serious difficulties with the implementation of Article 12. In particular, the Delegation could foresee the possibility of having a long dormant foreign geographical indication suddenly popping up in a territory to create havoc with a developing domestic industry. The Delegation referred to such dormant appellations of origin or geographical indications as "submarine" geographical indications, comparable to submarine patents, i.e. pending patent applications that remained unpublished for a long time, but which suddenly appeared for purposes of being asserted against those who would have already commercialized a similar invention in the same field of industry. The Delegation went on to say that if a national system would have no requirement of use, maintenance or enforcement, local industries would not likely be on notice about a claim of right by a foreign geographical indication holder and might, therefore, start using that foreign geographical indication as a generic term. Suddenly, many years later, the owner of the foreign geographical indication might appear and demand administrative enforcement, with the possible consequence that the local industries would be crushed by their own Government. The Delegation was of the view that Article 12 could therefore lead to an extremely problematic situation which could be easily avoided by putting some responsibility on the geographical indication owner to maintain his or her private property rights wherever they wished to be able to protect them. In any event, since delegations were invited to express their preference with respect to the text of Article 12 under consideration, the Delegation expressed its preference for the bracketed text which read "cannot be considered to have become generic". In addition, the Delegation was of the view that the brackets around "the denomination constituting" and "the indication constituting" should be retained as well as those around the last sentence which read "and national or regional law requirements in the Contracting Party concerned regarding use, maintenance and renewal are met".

81. The Delegations of the Czech Republic, Georgia, Italy, Portugal and the Republic of Moldova supported the text proposed by the Delegation of France.

82. The Delegation of Australia and the Republic of Korea supported the addition to Article 12 that had been proposed by the Delegation of the United States of America at the previous session of the Working Group, namely the addition of the phrase "and national or regional law requirements in the Contracting Party concerned regarding use, maintenance and renewal are met".

83. The Delegation of the European Union said that, upon reaching the conclusion that a denomination or indication deserved protection as an appellation of origin or geographical indication, there would be no reason why such term should subsequently be considered generic. Only if the protection granted in respect of the denomination or indication would no longer be provided in the Contracting Party of Origin, for whatever reason, there might be reason to believe that such term had become generic in the Contracting Party of Origin.

84. The Representative of CEIPI requested clarification from the Delegation of the United States of America, as he failed to understand the comparison with submarine patent applications. Unpublished patent applications were called "submarines" because they had never emerged from the sea to the surface. However, the issue under consideration concerned registered appellations of origin and geographical indications that had emerged to the surface and that had been recorded in the International Register. He also sought clarification as to the utility of keeping ~~the square brackets around~~ the expressions "the denomination constituting" and "the indication constituting".

85. The Secretariat referred to Note 12.05 in document LI/WG/DEV/10/4, which explained that the phrases “the denomination constituting” and “the indication constituting” had been put between square brackets following a request made at the previous session. The Delegations that had requested that these phrases be retained had argued that the phrases referred to the factual use of the denomination or indication. In other words, it was not the appellation of origin or geographical indication as such that was used but the term that constituted the appellation of origin or the geographical indication. The Secretariat further pointed out that the Note also referred to Article 6 of the current Lisbon Agreement, which did not use the term “appellation of origin” but only the term “appellation”.

86. The Chair said that such difference in terminology could somehow be compared to the trademark law terminology which distinguished between a sign and a trademark. In other words, “sign” was comparable with denomination or indication constituting the appellation of origin or the geographical indication, while “trademark” was comparable with appellation of origin or geographical indication.

87. The Delegation of the United States of America explained that, regarding the analogy with submarine patents, if a Contracting Party did not inform its domestic industries of an appellation of origin or geographical indication registered under the Lisbon System and notified to it, or in the absence of any enforcement action either by the host Government, by the foreign Government or by the Competent Authority of the Contracting Party of Origin, for all intents and purposes, those domestic industries would simply be unaware that the denomination constituting the appellation of origin, or the indication constituting the geographical indication, was protected in their country. Consequently, they could legitimately believe that the denomination or indication was free for use for their own purposes on the domestic market. Such belief might not even be challenged for many years until such time as the foreign geographical indication owner would suddenly decide to take action or would ask the foreign Government to take action against that domestic industry. Use and maintenance requirements would be critical for preventing that type of scenario from happening. As for the question concerning the use of the expressions “the denomination constituting” or “the indication constituting”, the Delegation agreed with the Chair that those expressions were akin to the term “sign”, as opposed to “trademark”.

88. The Chair concluded that, on the basis of the discussion, Article 12 would be revised so as to read as follows: “Subject to the provisions of this Act, registered appellations of origin and registered geographical indications cannot [be considered to have] become generic as long as [the denomination constituting] the appellation of origin, or [the indication constituting] the geographical indication, is protected in the Contracting Party of Origin [and national or regional law requirements in the Contracting Party concerned regarding use, maintenance and renewal are met.]” Its title would read: “Protection Against Becoming Generic”. In the corresponding footnote, the bracketed phrase “have a generic character” would be deleted.

The content of Article 13(1) concerning safeguards in respect of prior trademark rights

89. The Delegation of France expressed support for Option A, which in its view provided the best balance between the legitimate interests of the owner of the trademark and those of the beneficiaries of the rights in respect of an appellation of origin or a geographical indication. As regards the two alternative square bracketed parts in Option A, the Delegation did not have a particular preference for one over the other, while adding that the phrase ‘taking into account’ might perhaps better reflect what should be examined.

90. The Delegation of Italy also expressed support for Option A, which it saw as a balanced compromise between appellations of origin, geographical indications and trademark interests. The Delegation expressed its preference for the phrase “taking into account”.

91. The Delegation of Hungary also favored Option A and the phrase “taking into account”, which might accommodate more scenarios than the stricter phrase “provided that”.

92. The Delegations of the Czech Republic, Iran (Islamic Republic of) and Portugal also expressed their preference for Option A and for the deletion of the phrases “provided that” and “are taken into account”.

93. The Delegation of the United States of America expressed its support for Option B, which in its view was the only option that appropriately respected national sovereignty as well as the international precedent from the WTO on the issue of conflicts between trademarks and geographical indications. Option A represented the creation of new international law on the subject of how Lisbon Contracting Parties should handle such conflicts. That was all the more alarming since Option A did not accurately reflect the existing internationally accepted treatment of prior rights under the provisions of the TRIPS Agreement, nor did it reflect the WTO Panel Report on the issue of conflicts between trademarks and geographical indications. Article 24.5 of the TRIPS Agreement was inapplicable in that regard. Consequently, a provision using elements of Article 24.5 would provide wrong guidance to prospective Contracting Parties on how to implement both the TRIPS Agreement and the Revised Lisbon Agreement. Moreover, Option A used elements of Article 17 of the TRIPS Agreement in a confusing way. Creating new international law on the possibility of coexistence of two conflicting identifiers in the same market for the same products in front of the same consumers unnecessarily impinges on the national sovereignty of prospective Contracting Parties. Upon recalling that coexistence was not the rule but only an exception to the rule, the Delegation expressed the view that treating coexistence as the rule by specifically enshrining it into an international agreement took away the ability of Contracting Parties to determine how best to regulate their own market and protect their own consumers from the confusion that would result from two conflicting identifiers for the same goods on their supermarket shelves. The Delegation was of the view that, if Contracting Parties wished to allow their consumers to be confused by a foreign geographical indication over a prior domestically held trademark, they were certainly free to do so, but such a decision had to be made on the basis of their own national law and should not be dictated by a rule under the Revised Lisbon Agreement.

94. The Delegation of Australia also supported Option B and reiterated that, even though the coexistence of a later claimed geographical indication with earlier trademark rights would be possible, it should not be a default position by any means. In that regard, the Delegation recalled that, in order for such coexistence to occur, Article 17 of the TRIPS Agreement required that the legitimate interests of the holder of the earlier trademark right and third parties be taken into account. The WTO Panel, to which the Delegation of the United States of America had referred, had confirmed that Article 24.5 of the TRIPS Agreement did not provide authority to limit the trademark rights conferred by Article 16 of the TRIPS Agreement. As indicated in paragraph 7.625 of the Panel’s Report: “Therefore, the Panel concludes that, under Article 16.1 of the TRIPS Agreement, Members are required to make available to trademark owners a right against certain uses, including uses as a geographical indication. [...] Article 24.5 of the TRIPS Agreement is inapplicable and does not provide authority to limit that right.” In relation to the relevance of Article 17 of the TRIPS Agreement, the Delegation noted that the object of discussion in the Working Group was an international filing system, which is quite different from the situation addressed by the WTO Panel. The Panel had addressed circumstances and regulations that applied in the European Union. Therefore, its relevance across international borders, where regulations and circumstances could greatly differ, was highly arguable. Option B would not prevent coexistence of an earlier geographical

indication with a later trademark, but would ensure that earlier trademark rights would be respected appropriately.

95. The Delegation of the European Union supported Option A. The Delegation failed to understand how the contents of Option A could be seen as an infringement of national sovereignty, as the Revised Lisbon Agreement would be an international treaty to which States would be free to accede or not. Moreover, the proposed wording of Option A did not preclude Contracting Parties from not applying the coexistence principle. In other words, under the proposed text, the Contracting Party would still be able to refuse protection of an appellation of origin or a geographical indication that would be in conflict with an existing prior trademark. As regards the brackets in Option A, for the sake of simplicity and flexibility, the Delegation could support the phrase "taking into account" instead of "provided that" as well as the deletion of the phrase 'are taken into account'.

96. The Delegation of Peru recalled that under its national legislation it would not be possible to recognize a trademark right, or a right to use the trademark, only on the basis of use. The Delegation expressed its preliminary support for Option B, but sought clarification of the meaning of the phrase "shall be subject to the rights".

97. The Delegation of Chile expressed a preference for Option B which was based on the TRIPS Agreement and which established as a general rule the "first in time, first in right" principle, and provided for coexistence as an exception.

98. The Delegation of the Republic of Korea also supported Option B which appeared to be in line with the TRIPS Agreement. The wording of Option A was too subjective and unclear for purposes of determining what would constitute misleading use of the sign.

99. The Representative of INTA supported Option B and shared the views expressed by the Delegations of the United States of America, Australia and the Republic of Korea. The Representative of INTA supported the principle of "first in time, first in right" as a general principle for the relationship between trademarks and geographical indications and was, therefore, against any assumption that there might be a general rule of coexistence. Moreover, she indicated that it was her understanding that in the WTO Panel Report referred to by other delegations, the proposition that there would be a general rule of coexistence under the TRIPS Agreement had been rejected, even though the specific European Union regime that provided for coexistence had been held compatible with the TRIPS Agreement. She reiterated INTA's concerns about the second part of Option A and suggested deleting all text starting with "taking into account". The reference to the legitimate rights of the beneficiaries was inappropriate in a context where the right of a prior trademark to continued existence was at stake. The same applied in respect of the reference to misleading use.

100. The Representative of oriGIn expressed its preference for Option A. He pointed out that, in practice, the possibility of coexistence had proved to be a useful solution in many cases where a geographical indication had been in conflict with a prior trademark. He further recalled that under the current Lisbon Agreement the Contracting Parties could refuse the protection to a geographical indication or an appellation of origin on the basis of a prior trademark right. With that in mind, it became obvious that Option A would not set coexistence as the rule.

101. The Representative of MARQUES indicated that the coexistence of geographical indications and trademarks was not a foreign concept to its members. She hoped that the concerns expressed by the Delegation of the United States of America with regard to Article 13(1) did not also relate to Article 11(3), as amended at the present session.

102. The Chair concluded that, although positions had been usefully clarified further, both Option A and Option B would be kept in the text. As regards Option A, he indicated that the bracketed phrases “provided that” and “are taken into account” would be deleted. Option B would remain unchanged. He also referred to Note 13.03, which reads: “The phrase at the beginning of Article 13(1), reading “Without prejudice to Articles 15 and 19”, clarifies that Article 13(1) would apply if and when a Contracting Party does not submit a declaration of refusal on the basis of the existence of a prior trademark and as long as it does not invalidate the effects of the international registration on the basis of the prior trademark”.

The issues as to whether Article 13(2) to (4) should be kept and whether consequential amendments should be made to Article 17(2) and to footnote 4 relating to that provision

103. The Delegation of Peru reiterated its position in respect of Article 13(2) and Article 17(2), in view of the issue of coexistence.

104. The Delegation of Chile suggested keeping all the provisions that are related to footnote 1 to Article 11 in the text that would be submitted to the upcoming Diplomatic Conference.

105. The Delegation of the Republic of Moldova expressed its agreement with the wording of Article 13(2) to (4) which, in the interest of transparency, should be kept in the draft Revised Lisbon Agreement. The Delegation wondered, however, whether the proposed formulation of Article 13(2) adequately reflected the requirement under Article 23(3) of the TRIPS Agreement, that the public should not be misled.

106. The Delegations of the Czech Republic, Italy and Mexico were of the view that Article 13(2) was not essential and therefore suggested that it be removed from the text.

107. The Delegation of the European Union expressed the view that the current wording of Article 13(2) was acceptable. However, recognizing the problems that the provision might cause to some delegations, the Delegation could go along with the suggestion to delete Article 13(2).

108. The Chair said that the deletion of Article 13(2) would mean that Contracting Parties could deal with the issue of conflicting appellations of origin and geographical indications within their own legal system and in accordance with their international obligations.

109. The Delegation of Italy expressed its preference for removing the square brackets from Article 13(2) to (4), on the understanding that the current Article 13(2) would be deleted and that the following paragraphs would be renumbered accordingly.

110. The Chair concluded that the Working Group agreed to delete Article 13(2) and to keep Article 13(3) and (4) in the draft Revised Lisbon Agreement, without brackets.

The content of Article 17 concerning the necessity of a phasing out period

111. The Secretariat referred to the Notes contained in document LI/WG/DEV/10/4, in particular Note 17.01, which specifies that Article 17(1) is a provision, while being based on Article 5(6) of the current Lisbon Agreement, makes important changes to it. Article 17(1) specifies, in particular, that the provision will not be applicable with regard to use under any of the rights that are safeguarded under Article 13. Consequently, in respect of prior use under a prior trademark or another right safeguarded under Article 13, Article 17(1) would not apply.

However, in respect of other prior use, notably use as a generic term prior to international registration of the appellation of origin or geographical indication, Article 17(1) allows each Contracting Party to put in place a transitional period for phasing out that use, if it decides not to issue a declaration of refusal on the basis of such prior use. The question that has been put to the Working Group is whether such a provision is necessary. The Secretariat also highlighted the exception mentioned in footnote 2 to Article 11: if the Contracting Party of Origin allows for the coexistence of a protected appellation of origin or geographical indication and generic use of certain elements of such an appellation of origin or geographical indication, other Contracting Parties would be free to apply that exception as well. At previous sessions of the Working Group, examples had been mentioned in this regard, such as “*Camembert*”, which exists in France as a generic term for a particular type of cheese next to the protected appellation of origin “*Camembert de Normandie*”. Finally, the Secretariat referred to footnote 3 to Article 12, which explains the meaning of the term “generic” and does so on the basis of Article 24.6 of the TRIPS Agreement.

112. The Delegation of Australia said that Article 17(2) was an overreaching and unnecessarily detailed provision for an International Register. Issues of prejudice to an earlier right as well as the actions of the holder of the earlier right and any negotiations between private parties should be the subject of national law. Therefore, Article 17(2) should be deleted altogether or, at least, appear in square brackets.

113. The Chair said that the pending issue referred to in item (xvi) did not relate to Article 17(2).

114. The Representative of CEIPI said that, in Article 17(2), the phrase “use under a prior right” should read “use under a prior trademark or other right”. As regards the French version of Article 17(1)(a), he expressed doubts as to whether “*garantie*” expressed the same meaning as ‘safeguarded’ in the English version.

115. The Delegation of the United States of America supported the proposal made by the Delegation of Australia to delete Article 17 and expressed its concerns about a Revised Lisbon Agreement that would give the impression that it would be possible for Contracting Parties to protect a sign that constituted a generic term in their market. Article 17 gave the wrong impression as to what would constitute eligible subject matter for protection in geographical indication systems. The Delegation went on to say that reversing the status of generic terms would not be consistent with intellectual property principles, if consumers did not view such term as an identifier of source or origin.

116. The Delegation of Hungary said that prior use of a term in a Contracting Party would not necessarily mean that that term was generic in the territory of that Contracting Party. Moreover, as under the current Lisbon Agreement, a Contracting Party would also under the Revised Lisbon Agreement have the right to refuse to recognize the effects of a new international registration on the ground that the appellation of origin or geographical indication contains a term that is generic in its territory.

117. The Delegations of the Czech Republic, the European Union, Georgia, Hungary, Italy, Portugal and Switzerland underlined the importance of Article 17(1) and proposed the deletion of the square brackets.

118. The Delegation of Australia reiterated that Article 17(1) was overly prescriptive, intrusive and unnecessary. Geographical indications and trademarks were prospective and exclusive. Indeed, from the date of protection, the right holder could exclude others from using the protected term, except where that term was already protected or exceptions applied in respect of its use. In view of that right to exclude others, it was unnecessary for an international treaty

to provide for an optional phasing out period. This was to be decided by the holder of the right and should not be addressed in such level of detail in an international treaty. The Delegation did not see any advantage in keeping such a permissive provision in the text.

119. The Chair concluded that Article 17(1) would be kept in square brackets, while Article 17(2) would be adapted to reflect the outcome of the discussions on Article 13 and would not be put between square brackets.

120. The Delegation of Peru expressed a reservation in respect of Article 17(2).

121. The Secretariat referred to Notes 17.05 and 17.06 and said that Article 17(2) would be important for those Contracting Parties that allow for the coexistence of two rights under their national law. Contracting Parties that do not allow for such coexistence could simply refuse to recognize the effects of the later right, by deciding that any earlier right that was safeguarded under Article 13 would prevail or by issuing a refusal declaration in respect of the international registration. In other words, if Peru applied a system of 'first in time, first in right', the provision under Article 17(2) would simply not apply.

122. The Representative of CEIPI inquired as to what would be the consequences of omitting Article 17(1), and whether Contracting Parties would nevertheless be able to provide for a phasing out procedure or would not have the right to do so. He was of the view that the Contracting Parties would still have the right to provide for such a phasing out procedure but added that there were, nevertheless, advantages in keeping Article 17(1) in the text. Rule 14(2) provided for a limitation with regard to the duration of such a phasing out period. In addition, Rule 14(1) and (3) provided for a procedure requiring a Contracting Party, that had put in place a phasing out period in respect of a given prior use, to notify the duration and other particulars concerning the phasing out period to the International Bureau, so that these particulars could be recorded in the International register and notified to the Competent Authority of the Contracting Party of Origin, the beneficiaries and other interested parties, as the case may be.

123. The Delegation of Peru indicated that, upon further reflection, it could withdraw its reservation in respect of Article 17(2).

GROUP C: PENDING ISSUES CONCERNING OTHER PROVISIONS RELATED TO THE LEGAL EFFECTS OF INTERNATIONAL REGISTRATIONS

The question as to whether Article 9(1) should be kept and whether Article 9(2) should be moved to Article 6

124. The Delegation of the United States of America was of the view that, as indicated in Note 9.01 and in paragraph 145 of the Report of the ninth session of the Working Group, the current draft of Article 9 had been modeled on Article 1 of the TRIPS Agreement, as well as on the Madrid Protocol and the Geneva Act of the Hague Agreement, for purposes of indicating the effect that an international registration should have in the territory of a Contracting Party in accordance with the Revised Lisbon Agreement. The Delegation was of the view that it would be preferable to follow the text of Article 4 of the Madrid Protocol and Article 14 of the Geneva Act of the Hague Agreement more closely, for greater flexibility. In the Delegation's view, Article 9 had a different rationale than Article 10 and should be retained in the draft Revised Lisbon Agreement, as it was critical to the text.

125. The Delegation of the European Union was of the view that Article 9(1) was redundant, in view of Article 2 and Article 11. Moreover, Article 10 provided that "Each Contracting Party

shall be free to choose the type of legislation under which it establishes the protection stipulated in this Act". In any event, if Article 9(1) were to be retained, the Delegation would strongly suggest the deletion of the last part reading "provided that the legislation treats registered appellations of origin as registered geographical indications", as that phrase might give rise to divergent interpretations and ambiguities.

126. The Delegation of Australia supported the statement made by the Delegation of the United States of America.

127. The Chair suggested, in view of the statements made, that the square brackets be removed from Article 9 and the final phrase of the provision starting with "provided that" be deleted.

128. The Delegation of France expressed the view that Article 9(2) had better be moved to Article 6, so as to bring together all the provisions dealing with international registration. The Delegation further suggested that Article 9(2)(a) might be simplified by deleting the final part of that subparagraph.

129. The Delegations of the European Union and Mexico agreed with the suggestion to move Article 9(2) to Article 6.

130. The Representative of CEIPI supported the proposal to transfer Article 9(2) to Article 6 and to simplify the text of Article 9(2)(a), as suggested by the Delegation of France.

131. Following some further discussion, the Chair indicated that there appeared to be consensus to move the provision of Article 9(2) to Article 6(5), and to amend Article 9(2)(a), so that the provision would read: "Subject to sub-paragraph (b), a registered appellation of origin or geographical indication shall, in each Contracting Party that has not refused protection in accordance with Article 15, or that has sent to the International Bureau a notification of grant of protection in accordance with Article 18, be protected from the date of the international registration."

The issue as to whether Article 10(2), read in conjunction with Article 15(2), should refer to any other or to more extensive protection

132. The Chair suggested that the Working Group might wish to prefer the use of the words "any other", as this phrase had a broader meaning than "more extensive".

133. The Representative of CEIPI pointed out that, if the suggestion from the Chair were followed, the Notes should clearly indicate that 'any other' protection should not be understood as referring also to any less extensive protection. He added that a consequence of the amendment would be that the square brackets in Article 10(2), Article 15(2) and Article 19(4) could be deleted.

134. The Chair said that the reference to 'any other' protection could not simply be invoked to provide a level of protection that would not meet the substantive requirements of the Revised Lisbon Agreement, because Article 10(2) had to be read in conjunction with Article 10(1), which clearly stated that "the substantive requirements of this Act" had to be met by the Contracting Parties. Moreover, Article 9(1) required Contracting Parties to protect registered appellations of origin and geographical indications "in accordance with the terms of this Act", while leaving each Contracting Party free to choose the form of legal protection, in accordance with Article 10(1).

135. The Chair concluded that the phrase 'any other' be retained in Article 10(2) and that the necessary consequential amendments should be made to Articles 15(2) and 19(4), as well as the Notes.

The content of Article 16(2) concerning negotiations following a refusal

136. The Delegation of the United States of America reiterated the request it had made at the previous session of the Working Group that Article 16(2) be deleted. The provision confuses the difference between trade negotiations, which are appropriately handled by Governments, and decisions over private property rights under national law. The Lisbon System is a filing system and not a trade agreement. Notwithstanding the use of the phrase "where appropriate", the Delegation was of the view that Article 16(2) would suggest that the Government of the Contracting Party of Origin might have standing to intervene in appeals against refusal decisions concerning a geographical indication issued by the examining Office under the national law of another Contracting Party, by proposing negotiations to the Contracting Party in question.

137. The Representative of INTA reiterated the position she had expressed at previous sessions of the Working Group and agreed with the Delegation of the United States of America that Article 16(2) be deleted. Without questioning the fact that countries could always enter into negotiations under the general rules of public international law, she agreed that Article 16(2) might send a wrong message, as there would be many situations where negotiations in respect of a refusal would be inappropriate, in particular where the refusal would be based on the existence of prior trademark rights of private parties. Those rights should not be left at the mercy of negotiations between Contracting Parties.

138. The Delegation of Australia also supported the deletion of Article 16(2). It would be inappropriate for a 21st century treaty on intellectual property to contemplate that Governments would be able to propose negotiations in respect of private property rights.

139. The Chair concluded that no support had been expressed in favor of Article 16(2). He nonetheless indicated that two points might be relevant in that regard. Article 16(2) started with the words "where appropriate", which were intended to alleviate the concerns about the cases in which a State would intervene in legal disputes involving private parties. However, a refusal could also be based on other considerations, such as the preservation of public order in a given Contracting Party. Further, the current Lisbon Agreement did not prevent Contracting Parties from entering into negotiations, as confirmed by the Records of the Diplomatic Conference in 1958. Article 16(2) could, therefore, be regarded as a continued practice under the Revised Lisbon Agreement. Deletion of Article 16(2) would not mean that this practice could not continue. In other words, negotiations could still be proposed by Contracting Parties.

140. The Delegation of the European Union agreed with the Chair that there were cases in which refusals were not related to prior rights. For example, with regard to a refusal based on Rule 5(3), the possibility to propose negotiations in respect of this refusal might well be appropriate and it was quite possible that, as a result, the refusing Contracting Party might revise its decision. However, entering into such a negotiation did not depend on Article 16(2).

141. The Delegation of the United States of America suggested that, in view of the statements made, Article 16(2) might be redrafted so as to require contracting parties to offer an opportunity for interested parties to appeal or challenge any refusal made by a Contracting Party, without dictating the form in which such appeals or challenges should take place or who should have standing in such procedures.

142. The Chair indicated that Article 15(5) already deals with the remedies that should be made available in the case of a refusal. He wondered whether the concerns of the Delegation of the United States of America could be alleviated by the deletion of the final part of Article 16(2). Deletion of the reference to interested parties would clarify that Article 16(2) relates to negotiations that could take place between Contracting Parties. Appeal procedures in respect of a refusal were conducted between the Office of a Contracting Party and the interested parties that were affected by such refusal.

143. The Representative of oriGIn expressed the view that, from a practical perspective, the possibility for Contracting Parties to have consultations and to enter into negotiations with respect to the withdrawal of a refusal could be very interesting, especially in cases in which the refusal was not based on a prior right.

144. The Representative of CEIPI said that, in his understanding, the absence of Article 16(2) would not prevent negotiations of this kind being launched. Therefore, Article 16(2) was not essential and might even send a wrong message. In any event, if the provision were retained, the phrase "Where appropriate," should not be translated into French by "*Le cas échéant*", as was currently the case.

145. The Chair said that there were two options. The first option was to delete Article 16(2), on the understanding that this would not affect the possibility for Contracting Parties to enter into negotiations. Thus, the practice under the current Lisbon Agreement could continue. The Notes could reflect this understanding. The second option was to retain Article 16(2), while deleting the final part of the paragraph and adding a phrase to the effect that the provision would be without prejudice to Article 15(5). If the second option were chosen, the French version should be adapted, as indicated by the Representative of CEIPI.

146. The Delegations of the Czech Republic, the European Union, Italy and the Republic of Moldova as well as the Representative of ABPI expressed their preference for retaining Article 16(2), with the modifications suggested by the Chair.

147. The Delegations of Australia, Chile and the United States of America expressed their preference for deleting Article 16(2), on the understanding indicated by the Chair.

148. The Chair said that, while progress had been made with regard to the wording of Article 16(2), the Working Group still had to consider the two options he had outlined. Consequently, the provision would be retained, in square brackets.

The issue as to whether Article 19(1) should establish an exhaustive or a non-exhaustive list of grounds for invalidation

149. The Representative of CEIPI referred to Note 19.02 concerning Article 19(2) and said that, on the basis of Article 5(2) and (3), there were three scenarios setting out who could file an application. Under the first scenario, an application is filed by the Competent Authority on behalf of either the beneficiaries or a legal entity as referred to in Article 5(2)(ii). Under the second scenario, an application is filed by the beneficiaries themselves. And under the third scenario, an application is filed by a legal entity as referred to in Article 5(2)(ii). Under Article 19(2), the beneficiaries shall be given the possibility of defending their rights against invalidation in all three scenarios, including when the application was filed by a legal entity as referred to in Article 5(2)(ii). A legal entity as referred to in Article 5(2)(ii) shall be given such possibility in case of the first and third scenarios only. Article 19(2) does not require such possibility to be given to the Competent Authority in any of the three scenarios.

150. As regards Article 19(1), the Delegation of the European Union expressed its preference for Option B. For reasons of clarity and legal certainty, the Delegation was of the view that, once protection had been granted, it should not be possible to challenge the grant of protection, at any point in time, on the basis of a non-exhaustive list of grounds. Invalidation should only be possible on the basis of clear, objective and predefined criteria. Option A was not acceptable, as it left the door open to all sorts of possible grounds for invalidation. Footnote 5 gave a non-exhaustive list of possible grounds for invalidation, including some that were problematic. For example, item (vii) of footnote 5 refers to “grounds based on the fact that a term has acquired a generic character”, which was unacceptable as a ground for invalidation. In this regard, the Delegation referred to the discussion in the Working Group on Article 12. The generic nature of a term could be advanced as a ground for refusal, if the term was already generic prior to international registration, but the generic nature of a term could not be acquired afterwards. In addition, item (ii) of footnote 5, which referred to “grounds based on genericness prior to the international registration”, could only be accepted, if such ground was advanced within a specific time-limit.

151. As regards Article 19(2), the Delegation of the European Union underlined the fact that, in the case of geographical indications and appellations of origin, the entitlement to use the geographical indication or the appellation of origin did not depend on who had filed the application for registration, but on whoever was producing the product that was the subject of the geographical indication or the appellation of origin, at a place within the geographical area of origin. Such producers qualified as beneficiaries, as referred to in Article 5(2) and (3) as well as Article 19(2). Anyone who bought the production facility from such a producer or established its own facility for the production of the product, that is the subject of the geographical indication or the appellation of origin, within the geographical area of origin in accordance with the product specification, would qualify as beneficiary.

152. The Delegation of Italy expressed its preference for Option B. As regards Article 19(2), the Delegation was of the view that the term “beneficiaries” had to be understood as stated in Article 1(xvii).

153. The Delegation of Iran (Islamic Republic of) preferred Option A, but after hearing the statements made by the Delegations of the European Union and Italy, could also live with Option B, provided that “morality and public order” would be added as possible grounds for invalidation.

154. The Delegation of Chile reiterated its preference for Option A and suggested the addition of the phrase “in accordance with domestic legislation”.

155. The Delegation of Australia said that Option A was desirable from the point of view of transparency and the public interest. Administrative decisions were sometimes made without access to all available information and, moreover, circumstances might change over time. The Delegation was of the view that Option B presented a list that was more limited than those available under many *sui generis* regimes for the protection of geographical indications. Moreover, Option B would exclude countries that protect geographical indications under trademark regimes from joining the Revised Lisbon Agreement. The Delegation further expressed the view that Article 19(2) should assuage some of the concerns expressed by delegations with regard to Option A.

156. The Delegation of Switzerland reiterated its preference for Option B.

157. The Representative of INTA expressed its support for Option A. It would be excessive to draw the conclusion from an administrative silence, that permanent protection should be given even when the requirements for protection were not fulfilled. The Competent Authority may

not have had the necessary information or the resources necessary to comprehensively assess, within the one year period, whether protection should be granted in respect of a given geographical indication or appellation of origin. Moreover, in case wrong information had been provided, there should be a possibility to correct the situation. Not allowing for such corrections might even meet Constitutional concerns in some countries. As regards the wording of Option B, she recommended that the phrase starting with “when the protection granted” be deleted. Whether there is a final court decision is only a procedural requirement for recording the invalidation at WIPO.

158. The Representative of origin expressed its preference for Option B, for the sake of legal certainty and transparency for companies that need to plan their production and investments, and as regards the level of legal protection.

159. The Delegation of Costa Rica expressed its preference for Option A and supported the proposal made by the Delegation of Chile.

160. The Delegation of France expressed its preference for Option B, which was broad enough to deal with the most urgent and problematic cases.

161. The Delegation of the United States of America supported Option A, because it was of the view that limiting the availability of invalidation could potentially raise Constitutional questions for its country and likely for many other countries as well. The United States has laws, regulations and policies in place that have been extensively vetted and tested in courts to ensure the appropriate balance of rights and interests in its intellectual property system. Taking away the ability to invalidate private property rights, on the United States soil, would diminish the country’s ability to regulate commercial behavior as dictated by its laws. In case of fraud, bad faith, mistakes and lack of information, invalidation was entirely appropriate, if not necessary to protect the public. Categories of invalidation could be broadly defined. Perhaps, Article 6 *quinquies* of the Paris Convention could be taken as example. As regards the comments that had been made concerning users that want to be able to plan for their export markets and users that want legal certainty, the Delegation said that this applied to trademark owners as well. Many of the same interests were shared by owners of trademarks and geographical indications.

162. The Representative of CEIPI said that, although legal certainty must be encouraged as much as possible, at the same time one had to be careful not to contravene Constitutional rights. He added that questions of Constitutional law could come up in many countries, i.e. not only in countries that protect geographical indications by a trademark regime. It might be wiser to follow the approach of Option A, albeit with some built-in safeguards, as suggested by the Delegation of the United States of America. Another possibility might be to amend Option A by inserting a phrase to the effect that available grounds for invalidation shall not contravene the provisions of the Revised Lisbon Agreement.

163. The Chair pointed out that there were a number of intellectual property titles in respect of which the grounds for refusal and the grounds for invalidation differ. For instance, a patent application may be refused for lack of compliance with the formalities, but this does not constitute a ground for invalidation. Vice versa, under the European Union trademark legislation, the applicant’s bad faith is a ground for invalidation, but it is not a ground for refusal. In those cases, there is a list of grounds for refusal and a list of grounds for invalidation, which are both exhaustive. However, neither the current Lisbon Agreement nor the draft Revised Lisbon Agreement specify an exhaustive list of grounds for refusal. Consequently, it might not be consistent to have an exhaustive list of grounds for invalidation, if there was not going to be an exhaustive list of grounds for refusal. Moreover, under Option B, there would never be a remedy against, for example, mistakes or bad faith.

164. The Delegation of the European Union said that such inconsistency could be easily explained. Article 15 of the draft Revised Lisbon Agreement provided for a one year period within which Competent Authorities had the opportunity to refuse protection. It could be assumed that, during this one year process, extensive discussions and possible negotiations could take place before the decision is taken whether to refuse protection or not. In this context, any ground of refusal could be invoked, such as, for instance, public order, morality, genericness or prior rights. However, if, upon granting protection, an indefinite period could be opened, during which, at any moment, any ground for invalidation could be invoked, this would jeopardize legal certainty. In other words, once protection is considered acceptable, normally a limited list of grounds for invalidation should apply. In the Delegation's view, the one-year period should prevent cases of insufficient information or bad faith. However, if necessary, this could be taken care of in the wording of Article 19. From the Delegation's perspective, Option B, item (ii), reading "when compliance with the definition of an appellation of origin or geographical indication in the Contracting Party of Origin is not ensured anymore" could be considered to cover a situation in which a Contracting Party had been misled due to inadequate information provided by an applicant.

165. The Representative of oriGIn recalled that oriGIn had always taken the position that there should be an exhaustive list of grounds for refusal as well as an exhaustive list of grounds for invalidation. Genericness could not be advanced as a ground for invalidation at a later stage, as this would violate Article 12. As regards the arguments that there should be remedies against fraud or bad faith, he was of the view that Member States should trust that, it would be in the interest of the Contracting Party of Origin to invalidate the geographical indication or appellation of origin in cases of fraud or bad faith.

166. The Delegation of the Republic of Moldova expressed the view that, even though it was in favor of establishing an exhaustive list, it would be impossible to establish such a list, in view of the various grounds for invalidation that exist under national laws. In the Republic of Moldova, a registered geographical indication can be invalidated if the geographical indication was registered by error, for example because the examiner was not aware of the existence of certain facts at the time that protection was granted. Such an error can be fixed by means of an invalidation procedure. As regards Option A, the Delegation said that item (vii) should be removed from footnote 5, as discussed in the context of Article 12.

167. The Chair concluded that both Options for Article 19(1) would be retained in the text. Suggestions had been made to improve the text of Option A. Article 19(2) would remain unchanged. The discussion on Article 19 had been useful and provided a promising basis for solving the matter at the Diplomatic Conference.

GROUP D: PENDING ISSUES CONCERNING FEES AND THE FINANCING OF THE LISBON SYSTEM

Article 7(3), Article 8(3), Article 24(3)(vi) and related provisions concerning the possible introduction of maintenance fees; and the possible re-introduction of the provisions of the current Lisbon Agreement dealing with contributions by members of the Lisbon Union

168. The Delegation of Mexico reiterated its support for a Lisbon System that would be financially self-sufficient. The Delegation was, therefore, in favor of the introduction of both maintenance fees under Article 7(3) and individual fees under Article 7(5).

169. The Delegation of France indicated that the issues under consideration were related to the budget balance of the future Lisbon System, i.e., the income and expenses of the Lisbon Union under the Revised Lisbon Agreement. The Delegation was of the view that the

introduction of maintenance fees would be contrary to the principles of a protection system in respect of geographical indications and appellations of origin, as also embedded in the current Lisbon Agreement, which provided for protection that was unlimited in time. Furthermore, the requirement to pay a maintenance fee on an *ad hoc* basis would lead to great legal uncertainty. The Delegation, therefore, expressed its opposition to the introduction of maintenance fees. With regard to possible contributions by members of the Lisbon Union, the Delegation pointed out that the provisions in question lacked clarity regarding their implementation and had a negative effect on the attractiveness of the Lisbon System. The Delegation, therefore, reserved its position on these provisions.

170. The Delegation of Italy reiterated its opposition to the possible introduction of a maintenance fee, as it was of the view that the introduction of too many fees would represent a considerable departure from the current Lisbon System. With regard to the provisions of the current Lisbon Agreement dealing with contributions by members of the Lisbon Union, the Delegation pointed out that the financial deficit of the Lisbon System was a budget problem, which might be solved in the future by new accessions and the submission of more applications for international registration. The Delegation suggested that the discussion on the issue be left to the Diplomatic Conference.

171. The Delegations of the Czech Republic, the European Union, Hungary and Portugal expressed support for the statements made by the Delegations of France and Italy. In addition, the Delegation of the European Union wished to clarify that, although it had proposed the reintroduction of the provisions of the current Lisbon Agreement dealing with contributions by member States of the Lisbon Union, this was, of course, the sole competence of these member States.

172. The Delegation of Switzerland reiterated its opposition to the introduction of maintenance fees, insofar as such fees might compromise the fundamental principles of protection under the current Lisbon system. The introduction and management of those fees might unnecessarily complicate the system and generate additional administrative costs. For example, the mere collection of those maintenance fees would already add to the cost of managing the Lisbon system. Referring to the introduction by the Secretariat, the Delegation did not think that the number of applications under the Revised Lisbon Agreement would be reduced to zero soon after its entry into force. As accessions would take place gradually, it was more likely that there would be a steady flow of incoming applications for many years to come. As regards Article 24(3)(vi), the Delegation was of the view that it was premature to take a position on the future financing of the Lisbon System, as this could only be usefully done at the time that the Revised Lisbon Agreement had to be implemented.

173. The Delegation of the United States of America referred to the information provided in document LI/WG/DEV/10/4 on the budget and the funding of the Madrid System. In this regard, the Delegation had done some additional research and wished to share the results with the Working Group, as the figures demonstrated the current fee differential between the Madrid System and the Lisbon System. Use of the Madrid System fee calculator showed that the cost of a certification mark or a collective mark registration designating 19 Madrid members that were also Lisbon members would be 4,606 Swiss francs, while its renewal every ten years for the same 19 members would cost 4,674 Swiss francs. These amounts consisted of the basic fee under the Madrid System of 653 Swiss Francs, the complimentary fee of 100 Swiss Francs for 11 of the 19 members that had not submitted a declaration for an individual fee, and the individual fee for the other eight members. Therefore, the Director General's proposal for an increase of the basic fee under the Lisbon System from 500 to 1,000 Swiss francs for a Lisbon registration was far below the comparable amount charged under the Madrid System, all the more since the figures mentioned only concerned 19 members. From that perspective, the Delegation was of the view that the basic application

fee for the Lisbon System would have to be set much higher than the proposed 1,000 Swiss francs. Alternatively, the maintenance fee of Article 7(3) would have to be made mandatory, so as to help offset the cost of operating the Lisbon System. Individual fees could not by themselves fund the System. The Delegation added that it would be preferable to institute the maintenance fee right away, rather than waiting for the Assembly to do it in the future. Thus, the appropriate income stream could be ensured right away. Moreover, the mandatory character of the maintenance fee would also eliminate the Delegation's concern about the appropriate triggering mechanism for implementing a maintenance fee, if that would just occur on an *ad hoc* basis, as would be the case under the current proposal. The Delegation expressed the view that an amended version of Article 7(3) could thus read as follows: "The Assembly shall establish a fee to be paid for the maintenance of each international registration at a level determined by the extent to which receipts from the sources indicated in Article 24(3)(i) and (iii) to (v) do not suffice to cover the expenses of the Special Union". The Delegation said that a mandatory maintenance fee under Article 7(3) would be preferable to the contribution system proposed under Article 24(3)(vi), as the Delegation was skeptical that any budget deficit would be appropriately covered by those contributions from Contracting Parties referred to in Article 24(3)(vi). Referring to the significant ongoing and rising deficit in the current Lisbon System, the Delegation pointed out that the contributions from Contracting Parties under Article 11 of the current Lisbon Agreement, that were supposed to cover a deficit, had never happened in practice, presumably because there was little incentive for Contracting Parties to make those contributions lacking a triggering mechanism that would require the Contracting Parties to make such contributions.

174. The Delegation of the Republic of Korea supported the proposal made by the Delegation of the United States of America, as it was of the view that the current fee system had to be improved in order to address the chronic financial deficit faced by the Lisbon System. A maintenance fee had to be introduced for the Lisbon System to reach a safe financial structure.

175. The Delegation of Georgia would not favor the introduction of maintenance fees as referred to in Article 7(3), as that would represent a considerable departure from the current Lisbon System.

176. The Delegation of Chile was of the view that maintenance fees, as proposed in Article 7(3), would constitute a good alternative for combatting the budget deficit. The Delegation suggested maintenance fees should not depend on the occurrence of a deficit. They should be established in the same way as under the other international filing systems administered by WIPO, such as the Madrid System and the Patent Cooperation Treaty.

177. The Delegation of Australia supported the comments made by the Delegations of the United States of America, the Republic of Korea and Chile in respect of introducing a maintenance fee.

178. The Delegation of the Republic of Moldova was opposed to the introduction of the proposed maintenance fee in Article 7(3), since the protection conferred under the current Lisbon System was based on the premise that such protection would be given for an indefinite period of time. Still, taking into consideration the current budgetary deficit of the Lisbon System, the Delegation was ready to consider an increase of the international registration fee.

179. The Delegation of Japan expressed the view that the Lisbon System should be designed so as to enable its operation in a sustainable manner, especially in light of its proposed extension to geographical indications. The Delegation believed that the introduction of maintenance fees could be a way of addressing the current financial deficit and, in that regard,

reiterated the importance of a sustainable operation of the Lisbon Union by fees that would be earned by the Union itself.

180. The Representative of oriGIn recalled that the beneficiaries of geographical indications and appellations of origin were often small entities with limited financial resources, both in developed and developing countries. He requested the Working Group to take this fact into account before taking a decision regarding the applicable fees. He further invited national competent authorities to communicate with beneficiaries, so as to avoid duplication of fee payments.

181. The Delegation of Bulgaria was of the view that it might be premature to focus on the maintenance costs of the revised Lisbon System. He was of the view that the International Bureau would have to make a preliminary costs and benefits analysis in due course, showing under which circumstances the operation of the Lisbon System would become too expensive and indicate the number of registrations that would be necessary to achieve a self-sustaining system. Such an analysis should also clarify whether maintenance fees would be necessary or not. In spite of its utmost sympathy for those national small producers who were using, and would be using, geographical indications and appellations of origin to promote their products, the Delegation was convinced that, at least, 20 to 25 per cent of the registrations effected under the current Lisbon System concerned appellations of origin that were not used or commercialized. In light of the fact that appellations of origin and geographical indications also had a commercial objective, as they would be used to promote specific products from well-defined geographical areas, the Delegation was of the view that there should be some additional financial obligations for purposes of maintaining the Lisbon System on the part of the users of the Lisbon System themselves. In that regard, the Delegation expressed the view that the discussion should not focus so much on whether the Lisbon Union had a big financial deficit, as that would not be solved by the international treaty itself but rather by the number of countries and applicants that would be actively using the Lisbon System.

182. The Chair recalled that the overwhelming part of the current deficit had been generated by costs related to the ongoing review of the Lisbon System and not by the activities of the International Bureau in respect of the management of the International Register. Delegations should bear this in mind when making their calculations in respect of the future sustainability of the Lisbon System, as those costs would not arise in the future, after the review process would have been closed. The Chair further recalled that one of the main objectives of the review exercise was to increase the membership of the Lisbon System, so that it would become a truly global system. Although the Secretariat had rightly pointed out that there was a natural limit to the number of geographical indications and appellations of origin that could be registered, currently only some 840 international registrations were in force under the Lisbon System, while a study, mentioned in the fee proposal that the International Bureau had prepared for the Lisbon Union Assembly, had revealed a number of geographical indications worldwide of 10,000. Consequently, there is potential. The Chair further pointed out that, if the possible introduction of maintenance fees was not linked to budgetary considerations, the introduction of such fees would represent a systemic change, to which the current Lisbon membership would be fiercely opposed. Other options that could be considered for covering the expenses of the Lisbon System were an increase of the registration fee or, although less favored by the Working Group, special contributions by the members of the Lisbon Union. As regards the proposed re-introduction of the contributions of the Contracting Parties in Article 24(3)(vi) of the draft Revised Lisbon Agreement, the Chair was of the view that those who argued that there would be significant increase in the number of international registrations should not be afraid of keeping such a provision in the text, because there would be no need for its application in case of such an increase. Moreover, if the membership were to expand, the special contributions would be spread among a higher number of Contracting Parties. Therefore, his plea to delegations was to aim for a flexible framework that would enable

Contracting Parties to address issues related to the financing of the Lisbon System in the future without tying their hands.

183. The Delegation of the Republic of Korea expressed its preference for the introduction of maintenance fees in the Revised Lisbon Agreement, not only in order to supplement the income of the system but also from the perspective of the protection of intellectual property as a whole. The Delegation recognized that some members of the current Lisbon Agreement had concerns about introducing maintenance fees because it would imply a fundamental change over the Lisbon system. However, the Delegation was of the view that the system would considerably change with the introduction of geographical indications. The Delegation said that it was not possible to predict how many or what kind of geographical indications would be registered under the Revised Lisbon Agreement in the future. Nevertheless, the number of geographical indications would increase, as many countries and communities were developing their geographical indications. The Delegation of Korea also pointed out that the function of geographical indications was becoming similar to that of trademarks. The Delegation therefore believed that, for a sound financial management, the principle of trademark legislation concerning fees should be introduced in the geographical indication system. The introduction of the new concept of geographical indications in the Lisbon system required changes to its fee system.

184. The Chair noted that a number of Contracting countries of the current Lisbon Agreement were opposed to the introduction of maintenance fees, as they believed that this would represent a significant departure from the basic principles of the current Lisbon system and from the system of protection that they would like to follow. However, there was at least one Contracting country of the Lisbon Agreement willing to consider the introduction of maintenance fees. Furthermore, a number of observer delegations advocated the introduction of maintenance fees. In that regard, the Chair noted that a proposal had been made for making maintenance fees mandatory and that their introduction should not be left to the Assembly. On the other hand, no delegation had spoken in favor of reintroducing the provisions of the current Lisbon Agreement on contributions by members of the Lisbon Union. Even those delegations that would like to see maintenance fees in the new system considered that the system of contributions did not work properly under the current Lisbon Agreement. The Chair noted that no delegation had supported the current version of Article 7(3) in square brackets. He suggested, therefore, to keep Article 7(3) within square brackets but in an amended form, along the lines of the suggestions made by the Delegation of the United States of America and supported by some other delegations. The title of Article 7(3) should be amended accordingly so as to read: "maintenance fee" instead of: "possible maintenance fee." As a consequence, the title of Article 8(3) should read: "non-payment of the maintenance fee". In Article 24(3)(ii), the wording should be adapted and read: "maintenance fees" and not "any maintenance fees", while the text would remain in square brackets. Article 24(3)(vi), referring to contributions by Contracting parties, should be deleted. In Article 24(4), the text in square brackets should be removed. As an alternative, the Chair suggested to keep more options: the current version of Article 7(3) as Option A; as Option B the suggestion made by the Delegation of the United States and as Option C there would be no provision on maintenance fees. Furthermore, the provisions on possible contributions by Contracting Parties would be kept with the necessary consequential amendments, including the corresponding provisions of the current Lisbon Agreement dealing with the way those contributions had to be defined and paid.

185. The Delegation of Italy reiterated its opposition to the introduction of maintenance fees. However, in order to show flexibility, the Delegation expressed support for the alternative proposal suggested by the Chair.

186. The Delegation of the European Union also reiterated its opposition to the introduction of maintenance fees in terms of principle. The Delegation also sought clarification as to how such mechanism would actually work, so that the payment of such maintenance fees could not simply be forgotten by negligence.

187. The Delegation of the United States of America expressed its support for the alternative proposal suggested by the Chair, so that all the options would remain in the text.

188. The Delegation of France referred to the comments made by the Delegation of the Republic of Korea and recalled that the Working Group was developing the registration mechanism of the current Lisbon Agreement. This mechanism was based on the fundamental principle of international registration without act of receipt in the national legislations of the Contracting parties. The Delegation supported the statement made by the Delegation of the European Union and the comments made by the Delegation of Switzerland on the practical consequences of maintenance fee implementation. The Delegation believed that serious issues could arise in terms of legal certainty. The Delegation noted that there was a mixing debate between the implementation of fees, which would significantly modify the functioning of appellations of origin and geographical indications, and the question on how to deal with a temporary deficit. The Delegation invited the Working Group to reflect on the fact that a finance issue should not be regulated by bringing major legal consequences.

189. The Delegation of Switzerland supported the statement made by the Delegation of France. The Delegation also said that the question posed by the Delegation of the European Union reflected its concerns regarding the hypothetical benefits of maintenance fees, the costs of managing such fees and the uncertainty that would result in terms of the legal effect of negligence as well as any other problems associated with the payments of this kind of fees. The Delegation recalled the complex nature of such a fundamental change to the functioning of the Lisbon system which could be of little use for the financial issue. The Delegation said that Switzerland, as a number of other countries, had a system which clearly differentiated the protection of trademarks, which was subject to a renewal fee, from the protection of geographical indications and appellations of origin, which was not subject to maintenance fees. This was because of the fundamental difference between these two instruments of Intellectual Property.

190. The Chair concluded that there was support for his alternative proposal, so that all options for addressing the financial issue of the Lisbon system would remain in the text.

191. In response to the request for clarification from the Delegation of the European Union, the Secretariat referred to Section 701 of the Administrative Instructions under the Hague System.

Article 7(5) and (6) and related provisions concerning the possible introduction of individual fees

192. The Chair noted that there were two Options. Under Option A, the possibility for Contracting Parties to require individual fees would be provided for in the Agreement itself, leaving it to the Contracting Party concerned to decide whether it wished to have such individual fees or not. Under Option B, the decision on whether or not to establish such possibility would be left to the Assembly.

193. Referring to Article 7(5), the Delegation of the United States of America supported Option A in order to accommodate trademark systems and cost recovery for the examination of geographical indications and appellations of origin. The Delegation requested the

consequential amendments of Article 7(6) and Rule 8(2). As regards Article 7(6) and Rule 8(2), the Delegation was of the view that a reference had to be added to maintenance fees to be paid at the national level. In view of the Delegation, Option B for Article 7(5) was not acceptable. The issue of whether there would be an option for prospective Contracting Parties to charge individual fees should not be left to the Lisbon Union Assembly. The ability to collect an individual fee was a fundamental issue for many prospective Contracting Parties. As for the level of individual fees that would be acceptable, the Delegation indicated that the model of the Madrid System should be followed.

194. The Delegation of Mexico reiterated its position in favor of Option A in respect of Article 7(5).

195. With regard to Article 7(5), the Delegation of Italy expressed its preference for Option B. The Delegation considered important that the payment of individual fees was not mandatory. Taking into account the needs of other countries, which could not join the system without individual fees, the Delegation could agree on this possibility but only on a non-mandatory basis. The Delegation opposed the amendment proposed by the Delegation of the United States in respect of Article 7(6). In this connection, the Delegation also reiterated its opposition against direct filings under the Lisbon System.

196. The Delegation of France also supported Option B. In view of the objective to revise the Lisbon Agreement so as to increase its membership, the situation of countries, which financed their national office for the registration of geographical indication from fees, had to be taken into consideration. However, the Delegation could not accept individual maintenance fees, as it was difficult to foresee examination costs other than in respect of the initial notification of the international registration. Nonetheless, the Delegation agreed that it was important to ensure that protection should not be maintained where no longer necessary.

197. The Delegation of Costa Rica expressed its support for Option A. However, as mentioned by the Delegation of France, the Delegation proposed to delete the last part of Option A concerning maintenance fee. Once an international registration had been awarded and processed, there should be no further costs.

198. The Delegation of Hungary stated not to be against the introduction of individual fees. However, this should be left to the Assembly of the Lisbon Union to decide. The Delegation was therefore in favor of Option B. The Delegation reiterated its view that this should not be combined with the introduction of a kind of designation system undermining the essential feature of the Lisbon System, i.e. the automatic extension of protection to the territories of all other Contracting Parties.

199. The Delegation of the Republic of Moldova expressed its support for Option A, since the purpose of the Working Group was to make the system more attractive for new members. However, the Delegation did not support the proposal to introduce in Article 7(6) provisions regarding maintenance fees.

200. The Chair clarified that Option A already included the possibility to have individual fees in the form of maintenance or renewal fees at national level. Thus, if Option A were to be accepted, Article 7(6) would refer to all these fees. The difference between Option A and Option B was not only that Option B would leave to the Assembly the decision on whether or not to establish individual fees, but also that Option B was only dealing with individual fees to cover the costs of substantive examination. Option B did not extend to maintenance or renewal requirements and fee payments in that regard. Therefore, those who were against having individual fees for maintenance or renewal fees could simply support Option B. On the contrary, those who would like to have such kind of individual fees should support Option A.

The Chair said that if any delegation supported Option A without a reference to renewal and maintenance fees, this would require an Option C. However, the Chair noted that no one had requested such an Option. Option A would provide for individual fees through a provision in the agreement itself and that would cover both fees for substantive examination and for maintenance or renewal. Option B would leave it to the Assembly to establish individual fees but only for substantive examination, not for renewal or maintenance. Then, depending on the outcome of discussions on Article 7(5), Article 7(6) would simply refer back to the individual fee, whether it would cover both kinds of fees or only the individual fee for substantive examination.

201. The Delegation of the Czech Republic stated to be in favor of Option B.

202. The Delegation of Australia supported Option A allowing Contracting Parties to collect individual fees and cover the costs of processing applications for the protection of geographical indications and appellations of origin. The Delegation also accepted the proposed capping of such individual fees. The fees paid by the national citizens of the Contracting Party for their direct filings should not be used to subsidize the protection of intellectual property rights filed through an international filing system. The introduction of individual fees would also make the Lisbon System more attractive to potential new members and enable them to join.

203. The Delegation of the United States of America, following the Chair's explanation of what the term "individual fee" in Article 7(6) would cover, withdrew its proposal to add a reference to "maintenance fees" in Article 7(6) as well as in Rule 8(2). Further, the Delegation agreed with the Delegation of Australia that Option B did not provide a real option for those countries that had to charge an individual fee to avoid their national filers subsidizing international filers. Such countries were not going to join the Lisbon System and then find out that the Assembly might not allow them to collect an individual fee.

204. The Delegation of Switzerland highlighted that delegations had expressed understanding and openness to the concept of individual fees for international registrations, even though this would require a major change to the Lisbon System, which was operating to the great satisfaction of the current members of the Lisbon Agreement. These would be even more so in case of the introduction of maintenance fees. The Delegation of Switzerland said that it would be more logical to leave the possible introduction of individual fee to the Assembly depending on the interest demonstrated by potential new members in respect of the Revised Lisbon Agreement. The Delegation, therefore, supported Option B.

205. The Delegation of the European Union supported the preference expressed by the Delegations of Italy, France, Hungary, Czech Republic and Switzerland in respect of Option B, considering the need for flexibility expressed by prospective new members in terms of individual fees for substantive examination. The Delegation considered that Option B would be appropriate because it would leave time for proper examination of the pros and cons of providing an option to Contracting Parties for introducing individual fees.

206. The Delegation of the Russian Federation expressed its support for Option A. The introduction of individual fees would make an increase in membership possibly.

207. The Representative of oriGIn reiterated that it was very important to enlarge the membership of the Lisbon System. He stressed, however, that the majority of geographical indication producers had limited resources. Too many fees could have the paradoxical effect of having less appellations of origin or geographical indication registered. The overall financial burden should remain limited so as to allow geographical indication associations to benefit from the system and use it effectively.

208. The Chair concluded that Options A and B of Article 7(5) would remain in the text without changes, as proposals for amendments had been withdrawn.

The amount of fees in Rule 8(1)

209. The Chair said that the amounts within square brackets in Rule 8 were those that currently apply under the Lisbon Agreement and its Regulations. In view of the discussion that had already taken place on how the operation of the Lisbon System should be financed, he concluded that the square brackets around these amounts would be kept and the issue of the amounts of fee would be referred to the Diplomatic Conference.

The title and the preamble of the draft Revised Lisbon Agreement

210. The Representative of CEIPI recalled that in WIPO terminology the word "Act" was used. This term was important to designate the revised text of an existing treaty throughout the whole history of the Paris Convention and other international treaties administered by WIPO. A distinction had to be made between the title of the draft text as it was going to be submitted to the Diplomatic Conference and the title of the text which would emerge from the Diplomatic Conference when it had been adopted. At the present time, the title of the draft was "draft Revised Lisbon Agreement on Appellations of Origin and Geographical Indications". The Representative of CEIPI was of the view that the word "revised" should be replaced by the word "New Act of the", not just to follow the usual WIPO style, but also to avoid confusion in case of future revisions. Moreover, the current title of the Lisbon Agreement should be used: "Draft New Act of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration". In Article 1(iii), the expression "the Lisbon Agreement on Appellations of Origin and Geographical Indications" should be used~~This should be reflected in Article 1(iii).~~

211. As regards the Preamble, the Representative of CEIPI expressed doubts as to the need for a Preamble. However, if a Preamble were to be maintained, an expression other than "Contracting Parties" should be found because there would not be Contracting Parties, as defined in Article 1(xiv), until after the entry into force of the New Act.

212. The Representative of CEIPI further took the opportunity to convey some suggestions for the correction of editorial errors in documents LI/WG/DEV/10/2 and 3, which the Secretariat might take on board when aligning the various language versions of the documents to be submitted to the Diplomatic Conference. In this regard, he pointed out that, in the French and Spanish versions of document LI/WG/DEV/10/3, the square brackets with regard to the refusal period of one year in Rule 9 should be removed; in the French version of document LI/WG/DEV/10/2, in Article 24(3), there were two items (iv); and in all language versions of document LI/WG/DEV/10/2, at the end of Article 24(4), the word "above" should be deleted.

213. The Chair then proposed that the title be adapted as suggested by the Representative of CEIPI.

214. The Chair said that the draft Preamble only indicated the objectives of the revision process and would not appear to contribute substantially to any further interpretation of the Agreement. Therefore, he proposed to omit the Preamble and avoid all the complications with respect to its wording.

215. The Working Group agreed to proceed as proposed by the Chair.

FOLLOW-UP

216. The Chair concluded that the Working Group agreed that the text of the Draft Revised Lisbon Agreement and the Draft Regulations resulting from its consideration of the pending issues should constitute the basic proposal for the Diplomatic Conference.

217. The Chair further recalled that the current Lisbon Agreement would continue to apply as long as not all its Contracting Countries had become party to the New Act to be adopted at the Diplomatic Conference. Therefore, the Working Group should consider the possibility that the Assembly of the Lisbon Union might in due course amend the Regulations under the current Lisbon Agreement, in order to align them with those that would apply under the New Act. The Chair wondered whether the Working Group was in a position to recommend to the Assembly of the Lisbon Union to initiate this process at the appropriate time. In practical terms, this would mean that, after the Diplomatic Conference, the Assembly of the Lisbon Union might, at its next session, address a proposal for the initiation of this procedure, and in what way these amendments should be discussed.

218. Following a request for clarification from the Delegation of Algeria, the Chair said that the recommendation would only apply to the Regulations under the Lisbon Agreement, not to the current Lisbon Agreement itself.

219. In this connection, the Secretariat referred to the other international registration systems administered by WIPO, namely the Madrid System and the Hague System, in respect of which revisions had taken place respectively by means of the Madrid Protocol in 1989 and by means of the Geneva Act of the Hague Agreement in 1999. In both cases, following the adoption of these treaties, Working Groups had been created to prepare Common Regulations.

220. The Delegation of Algeria believed that the proposed recommendation was premature.

221. The Chair said that, if the Working Group was not in a position to adopt this recommendation, this would not prevent the Assembly of the Lisbon Union to take a decision to this effect when it was of the view that this was necessary. The Director General was always in a position to initiate this procedure. The Diplomatic Conference might also express its wish that this kind of work should be initiated. The Assembly of the Lisbon Union would also be in a position to launch this procedure. The Chair recalled that this recommendation was proposed because the New Act of the Lisbon Agreement would differ from the current Lisbon Agreement and the Regulations under the current Lisbon Agreement might need to be adapted to the outcome of the Diplomatic Conference, to the extent permitted by the legal framework.

222. Following some further discussion, the Chair concluded that the Working Group agreed to recommend that the Assembly of the Lisbon Union consider the need to amend, to the extent possible, the Regulations under the current Lisbon Agreement, in view of the outcome of the Diplomatic Conference.

AGENDA ITEM 6: OTHER MATTERS

223. No interventions were made under this item.

AGENDA ITEM 7: ADOPTION OF THE SUMMARY BY THE CHAIR

224. The Working Group approved the Summary by the Chair as contained in Annex I to the present document.

225. A draft of the full report of the eighth session of the Working Group will be made available on the WIPO web site for comments by the delegations and representatives that participated in the meeting. Participants will be informed once the draft report is available on the WIPO web site. Participants can submit comments within one month from its publication date, after which a track-changes version of the document, taking into account all the comments received from participants, will be made available on the WIPO web site. The availability of the comments and the track-changes version will also be communicated to participants, together with a deadline for the submission of final comments on that track-changes version. Thereafter, the report, taking into account the final comments, as appropriate, will be published on the WIPO web site without track changes, indicating the date of such final publication. In the absence of comments within two weeks from that date the Report will be deemed adopted.

AGENDA ITEM 8: CLOSING OF THE SESSION

226. The Chair closed the session on October 31, 2014.

[Annexes follow]



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LI/WG/DEV/10/6
ORIGINAL: ENGLISH
DATE: OCTOBER 31, 2014

Working Group on the Development of the Lisbon System (Appellations of Origin)

**Tenth Session
Geneva, October 27 to 31, 2014**

SUMMARY BY THE CHAIR

adopted by the Working Group

1. The Working Group on the Development of the Lisbon System (Appellations of Origin) (hereinafter referred to as “the Working Group”) met in Geneva, from October 27 to 31, 2014.
2. The following Contracting Parties of the Lisbon Union were represented at the session: Algeria, Bosnia and Herzegovina, Bulgaria, Congo, Costa Rica, Czech Republic, France, Georgia, Haiti, Hungary, Iran (Islamic Republic of), Israel, Italy, Mexico, Nicaragua, Peru, Portugal, Republic of Moldova, Slovakia, Togo, Tunisia (21).
3. The following States were represented as observers: Afghanistan, Albania, Australia, Bahamas, Benin, Burundi, Cameroon, Canada, Chile, Colombia, Comoros, Cyprus, El Salvador, Germany, Greece, Iraq, Japan, Jordan, Latvia, Pakistan, Panama, Paraguay, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Senegal, South Africa, Spain, Switzerland, Thailand, Turkey, Ukraine, United Kingdom, United States of America, Uruguay (36).
4. Representatives of the following international intergovernmental organizations (IGOs) took part in the session in an observer capacity: European Union (EU), International Organisation of Vine and Wine (OIV), International Trade Centre (ITC), West African Economic and Monetary Union (WAEMU), World Trade Organization (WTO) (5).
5. Representatives of the following international non-governmental organizations (NGOs) took part in the session in an observer capacity: Association of European Trademark Owners (MARQUES), Brazilian Association of Intellectual Property (ABPI), Centre for International Intellectual Property Studies (CEIPI), Consortium for Common Food Names (CCFN), European

Communities Trade Mark Association (ECTA), International Association for the Protection of Intellectual Property (AIPPI), International Federation of Intellectual Property Attorneys (FICPI), International Trademark Association (INTA), Knowledge Ecology International, Inc. (KEI), Organization for an International Geographical Indications Network (oriGIn) (10).

6. The list of participants is contained in document LI/WG/DEV/10/INF/2 Prov. 2*.

AGENDA ITEM 1: OPENING OF THE SESSION

7. The Deputy Director General of the World Intellectual Property Organization (WIPO), Ms. Wang Binying, opened the session, recalled the mandate of the Working Group and introduced the draft agenda, as contained in document LI/WG/DEV/10/1 Prov.

AGENDA ITEM 2: ELECTION OF A CHAIR AND TWO VICE-CHAIRS

8. Mr. Mihály Ficsor (Hungary) was unanimously elected as Chair of the Working Group, Mr. Alfredo Rendón Algara (Mexico) and Ms. Ana Gobechia (Georgia) were unanimously elected as Vice-Chairs.

9. Mr. Matthijs Geuze (WIPO) acted as Secretary to the Working Group.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

10. The Working Group adopted the draft agenda (document LI/WG/DEV/10/1 Prov.) without modification.

AGENDA ITEM 4: REPORT OF THE NINTH SESSION OF THE WORKING GROUP ON THE DEVELOPMENT OF THE LISBON SYSTEM (APPELLATIONS OF ORIGIN)

11. The Working Group took note of the adoption, on October 17, 2014, of the Report of the ninth session of the Working Group, as contained in document LI/WG/DEV/9/8, in accordance with the procedure established at the fifth session of the Working Group.

AGENDA ITEM 5: DRAFT REVISED LISBON AGREEMENT ON APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS AND DRAFT REGULATIONS UNDER THE DRAFT REVISED LISBON AGREEMENT

12. The Chair recalled that the Lisbon Union Assembly had approved, at its ordinary session in 2013, the convening of a Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications (hereinafter referred to as "the Diplomatic Conference") in 2015.

13. Discussions were based on documents LI/WG/DEV/10/2, LI/WG/DEV/10/3, LI/WG/DEV/10/4 and LI/WG/DEV/10/5. The Working Group examined in detail the pending issues enumerated in paragraph 5 of document LI/WG/DEV/10/2 with a view to reducing their number. As a result some pending issues were settled while others would be submitted to the Diplomatic Conference, either in an amended form or as contained in document LI/WG/DEV/10/2. The outcome of the discussions can be summarized as follows :

A. Settled issues

- (i) the title and the Preamble of the draft Revised Lisbon Agreement;
- (ii) the question as to whether Article 9(1) should be kept and whether Article 9(2) should be moved to Article 6;
- (iii) the issue as to whether Article 10(2), read in conjunction with Article 15(2), should refer to any other or to more extensive protection;
- (iv) the issues as to whether Article 13(2) to (4) should be kept and whether consequential amendments should be made to Article 17(2) and to footnote 4 relating to that provision.

B. Issues that remain pending

1. As amended at the tenth session of the Working Group on the Development of the Lisbon System

- (v) Article 7(3), Article 8(3), Article 24(3)(vi) and related provisions concerning the possible introduction of maintenance fees;
- (vi) the possible re-introduction of the provisions of the current Lisbon Agreement dealing with contributions by members of the Lisbon Union;
- (vii) the various options in respect of Article 11(1)(a) and Article 11(3);
- (viii) the content of Article 12 concerning protection against acquiring a generic character;
- (ix) the content of Article 13(1) concerning safeguards in respect of prior trademark rights;
- (x) the content of Article 16(2) concerning negotiations following a refusal;
- (xi) the content of Article 17 concerning the necessity of a phasing out period;
- (xii) the issue as to whether Rule 5(3) should be optional or mandatory;
- (xiii) the issue of promoting transparency under Rule 5(5)(ii).

2. As contained in document LI/WG/DEV/10/2

- (xiv) implementation aspects of Article 1(xiv);
- (xv) the content of Article 2(2) and Article 5(4) concerning trans-border geographical areas of origin;
- (xvi) the issue of entitlement to file an application under Article 5(2);
- (xvii) Article 7(5) and (6) and related provisions concerning the possible introduction of individual fees;
- (xviii) the issue of the draft Agreed Statement contained in footnote 1 to Article 11 and provisions relating to the same issue;
- (xix) the issue as to whether Article 19(1) should establish an exhaustive or a non-exhaustive list of grounds for invalidation;

(xx) the issue of the inclusion of Rule 5(4) permitting a Contracting Party to require a declaration of intention to use in respect of a registered appellation of origin or a registered geographical indication;

(xxi) the amount of fees in Rule 8(1).

14. The Chair indicated that the Report of the present session would fully and accurately reflect the way in which the Working Group managed to settle some of the pending issues as well as the amendments agreed upon concerning the provisions related to other pending issues. On that basis, the basic proposal that would be submitted by the Director General to the Diplomatic Conference would fully and precisely reflect the outcome of the discussions on the pending issues at the present session of the Working Group, with the editorial changes that might appear necessary.

15. Following discussion of paragraph 7 of document LI/WG/DEV/10/2, the Chair concluded that the Working Group had agreed:

(i) that the texts of the draft Revised Lisbon Agreement and the draft Regulations resulting from its consideration of the pending issues listed in paragraph 5 of document LI/WG/DEV/10/2 should constitute the basic proposal for the Diplomatic Conference; and

(ii) to recommend that the Assembly of the Lisbon Union consider the need to amend, to the extent possible, the Regulations under the current Lisbon Agreement in view of the outcome of the Diplomatic Conference.

AGENDA ITEM 6: OTHER MATTERS

16. No interventions were made under this item.

AGENDA ITEM 7: ADOPTION OF THE SUMMARY BY THE CHAIR

17. The Working Group approved the Summary by the Chair, as contained in the present document.

18. A draft of the full Report of the session of the Working Group will be made available on the WIPO web site for comments by the delegations and representatives that participated in the meeting. Participants will be informed once the draft Report is available on the WIPO web site. Participants can submit comments within one month from its publication date, after which a track-changes version of the document, taking into account all the comments received from participants, will be made available on the WIPO web site. The availability of the comments and the track-changes version will also be communicated to participants, together with a deadline for the submission of final comments on that track-changes version. Thereafter, the Report, taking into account the final comments, as appropriate, will be published on the WIPO web site without track changes, indicating the date of such final publication. In the absence of comments within two weeks from that date the Report will be deemed adopted.

AGENDA ITEM 8: CLOSING OF THE SESSION

19. The Chair closed the session on October 31, 2014.

[Annex II follows]

F - E



LI/WG/DEV/10/INF/2
ORIGINAL: FRANCAIS/ENGLISH
DATE: 27 OCTOBRE 2014/OCTOBER 27, 2014

**Groupe de travail sur le développement du système de Lisbonne
(appellations d'origine)**

**Dixième session
Genève, 27 – 31 octobre 2014**

**Working Group on the Development of the Lisbon System
(Appellations of Origin)**

**Tenth Session
Geneva, October 27 to 31, 2014**

LISTE DES PARTICIPANTS
LIST OF PARTICIPANTS

*établie par le Secrétariat
prepared by the Secretariat*

I. MEMBRES/MEMBERS

(dans l'ordre alphabétique des noms français des États/in the alphabetical order of the names in French of the States)

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SÉNÉGAL/SENEGAL

Alioune AW, chef, Division médecine traditionnelle, Ministère de la santé et de l'action sociale, Dakar

SUISSE/SWITZERLAND

Erik THÉVENOD-MOTTET, expert en indications géographiques à la Division droit et affaires internationales, Institut fédéral de la propriété intellectuelle (IPI), Berne

THAÏLANDE/THAILAND

Kanitha KUNGSAWANICH (Ms.), Professional Trade Officer, Department of Intellectual Property (DIP), Ministry of Commerce, Nonthaburi

TURQUIE/TURKEY

Neşe İLOĞLU (Mrs.), Trademark Examiner, Trademark Division, Turkish Patent Institute (TPI), Ankara

UKRAINE

Larysa PLOTNIKOVA (Ms.), Head, Division of Examination of Applications for Indications and Industrial Designs, Ukrainian Industrial Property Institute (Ukrpatent), Kyiv

URUGUAY

Juan José BARBOZA CABRERA, Segundo Secretario, Misión Permanente, Ginebra

III. ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES/
INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

CENTRE DU COMMERCE INTERNATIONAL (ITC)/INTERNATIONAL TRADE CENTRE (ITC)

Ezequiel GUICOVSKY LIZARRAGA, Senior Business Development Officer, Geneva

Florian RETIF, Legal Consultant, Geneva

ORGANISATION INTERNATIONALE DE LA VIGNE ET DU VIN (OIV)/INTERNATIONAL VINE
AND WINE ORGANIZATION (OIV)

Tatiana Svinartchuk (Mme), chef d'unité économie et droit, Paris

ORGANISATION MONDIALE DU COMMERCE (OMC)/WORLD TRADE ORGANIZATION
(WTO)

Wolf MEIER-EWERT, Counsellor, Intellectual Property Division, Geneva

UNION ÉCONOMIQUE ET MONÉTAIRE OUEST AFRICAINE (UEMOA)/WEST AFRICAN
ECONOMIC AND MONETARY UNION (WAEMU)

Aissatou LAME (Mme), professionnelle chargée de la concurrence, Ouagadougou

UNION EUROPÉENNE (UE)/EUROPEAN UNION (EU)

Oliver HALL-ALLEN, First Counsellor, Permanent Delegation, Geneva

Klaus BLANK, International Relations Officer, European Commission, DG Agriculture and Rural Development, Brussels

Georges VASSILAKIS, Advisor on Quality Policy, European Commission, DG Agriculture and Rural Development, Brussels

Monika TUREK (Ms.), Advisor, European Commission, DG Agriculture and Rural Development, Brussels

Óscar MONDÉJAR, IP Legal Advisor, Legal Practice Service, International Cooperation and Legal Affairs Department, Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM), Alicante

Margherita MARINI (Ms.), Intern, Permanent Delegation, Geneva

IV. ORGANISATIONS INTERNATIONALES NON GOUVERNEMENTALES/
INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

Association brésilienne de la propriété intellectuelle (ABPI)/Brazilian Association of Intellectual Property (ABPI)

Carlos Henrique de Carvalho FRÓES, Counsellor, Rio de Janeiro

Association communautaire du droit des marques (ECTA)/European Communities Trade Mark Association (ECTA)

Michele ELIO DE TULLIO, Member, ECTA Geographical Indications Committee, Rome

Association des propriétaires européens de marques de commerce (MARQUES)/Association of European Trademark Owners (MARQUES)

Keri JOHNSTON (Mrs.), Vice-Chair of MARQUES Geographical Indications Team, Toronto
Miguel Angel MEDINA, MARQUES Council Member and Chair of MARQUES Geographical Indications Team, Madrid

Association internationale pour la protection de la propriété intellectuelle (AIPPI)/International Association for the Protection of Intellectual Property (AIPPI)

Völker SCHOENE, Observer, Zurich
Giulio SIRONI, Observer, Zurich

Centre d'études internationales de la propriété intellectuelle (CEIPI)/Centre for International Intellectual Property Studies (CEIPI)

François CURCHOD, chargé de mission, Genolier

Consortium for Common Food Names (CCFN)

Craig THORN, Advisor, Washington

Fédération internationale des conseils en propriété intellectuelle (FICPI)/International Federation of Intellectual Property Attorneys (FICPI)

Toni POLSON ASHTON (Mrs.), Vice Chair CET1, Toronto

International Trademark Association (INTA)

Bruno MACHADO, Geneva Representative, Rolle
Constanze SCHULTE (Mrs.), Member, INTA Geographical Indications Subcommittee, Madrid

Knowledge Ecology International, Inc. (KEI)

Thirukumaran BALASUBRAMANIAM, Geneva Representative, Geneva

Organisation pour un réseau international des indications géographiques (oriGIn)/Organization for an International Geographical Indications Network (oriGIn)

Massimo VITTORI, Managing Director, Geneva
Ida PUZONE (Mrs.), Project Manager, Geneva

V. BUREAU/OFFICERS

Président/Chair: Mihály FICSOR (Hongrie/Hungary)
Vice-présidents/Vice-chairs: Ana GOBECHIA (Mrs.) (Géorgie/Georgia)
Alfredo RENDÓN ALGARA (Mexique/Mexico)
Secrétaire/Secretary: Matthijs GEUZE (OMPI/WIPO)

VI. SECRÉTARIAT DE L'ORGANISATION MONDIALE DE LA PROPRIÉTÉ
INTELLECTUELLE (OMPI)/SECRETARIAT OF THE WORLD INTELLECTUAL
PROPERTY ORGANIZATION (WIPO)

Francis GURRY, directeur général/Director General

WANG Binying (Mme/Mrs.), vice-directrice générale/Deputy Director General

Marcus HÖPPERGER, directeur, Division du droit et des services consultatifs en matière de législation, Secteur des marques et des dessins et modèles/Director, Law and Legislative Advice Division, Brands and Designs Sector

Matthijs GEUZE, chef, Service d'enregistrement Lisbonne, Division du droit et des services consultatifs en matière de législation, Secteur des marques et des dessins et modèles/Head, Lisbon Registry, Law and Legislative Advice Division, Brands and Designs Sector

Florence ROJAL (Mlle/Miss), juriste, Service d'enregistrement Lisbonne, Division du droit et des services consultatifs en matière de législation, Secteur des marques et des dessins et modèles/Legal Officer, Lisbon Registry, Law and Legislative Advice Division, Brands and Designs Sector

Matteo GRAGNANI, juriste adjoint, Service d'enregistrement Lisbonne, Division du droit et des services consultatifs en matière de législation, Secteur des marques et des dessins et modèles/Associate Legal Officer, Lisbon Registry, Law and Legislative Advice Division, Brands and Designs Sector

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