

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

**Eighth Session
Geneva, December 2 to 6, 2013**

REPORT

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 December 2 to 6, 2013.
2. The following Contracting Parties of the Lisbon Union were represented at the session: Algeria, Czech Republic, France, Georgia, Haiti, Hungary, Iran (Islamic Republic of), Israel, Italy, Mexico, Peru, Portugal (12).
3. The following States were represented as observers: Australia, Benin, Chile, Colombia, El Salvador, Germany, Greece, Jamaica, Japan, Lithuania, Madagascar, Mauritius, Morocco, Pakistan, Paraguay, Poland, Republic of Korea, Romania, Russian Federation, Spain, Switzerland, Turkey, United States of America, Venezuela (Bolivarian Republic of) (24).
4. Representatives of the following international intergovernmental organizations (IGOs) took part in the session in an observer capacity: European Union (EU), Organization of Islamic Cooperation (OIC), World Trade Organization (WTO) (3).
5. Representatives of the following international non-governmental organizations (NGOs) took part in the session in an observer capacity: Centre for International Intellectual Property Studies (CEIPI), International Trademark Association (INTA), MARQUES (Association of European Trademark Owners), Organization for an International Geographical Indications Network (oriGIn) (4).
6. The list of participants is contained in Annex II.

¹ Compared to document LI/WG/DEV/8/7 PROV. 2, paragraph 166 has been modified based on communications from delegations and representatives that participated in the meeting.

AGENDA ITEM 1: OPENING OF THE SESSION

7. The Director General of the World Intellectual Property Organization (WIPO), Mr. Francis Gurry, opened the session and introduced the draft agenda, as contained in document LI/WG/DEV/8/1 Prov.
8. He started the meeting by recalling that the Working Group had been established, in September 2008, by the Lisbon Union Assembly and that its First session had been held in March 2009. He then pointed out that, as a result of the recommendations that had been made at that session, the Assembly had decided that further work was required “in view of the need to look for improvements of the Lisbon system which would make the system more attractive for States and users, while preserving the principles and objectives of the Lisbon Agreement”, and had mandated the Working Group to do that exploratory work.
9. The Director General further indicated that, since then, the Working Group had engaged in a full review of the Lisbon system to explore what changes to the system would be desirable in order to attract a wider membership. He then recalled that the Working Group had used two main documents for the purpose of developing its revision proposals: (1) a document presenting the results of a survey on the Lisbon system among stakeholders, in the widest possible sense, i.e. member state and non-member state governments, intergovernmental organizations (IGOs), non-governmental organizations (NGOs) and interested circles; and (2) a study on the relationship between regional systems for the protection of geographical indications and the Lisbon system and the conditions for the possible accession to the Lisbon Agreement by competent intergovernmental organizations (IGOs).
10. The Director General went on to say that the Working Group had discussed those two documents at its second session, in August/September 2010 and, as a result, the International Bureau had been requested to prepare draft provisions on a number of key issues, taking into account the views expressed in the Working Group. He pointed out that those draft provisions had been discussed by the Working Group at its third session, in May 2011.
11. He further indicated that, since that time, the Working Group had been in treaty-drafting mode, with the aim – as spelled out in the Preamble of the current draft Revised Lisbon Agreement: (i) to refine and modernize the legal framework of the system established under the Lisbon Agreement, while preserving the principles and objectives of the Agreement; (ii) to ensure that the Lisbon system is applicable in respect of appellations of origin and geographical indications; and (iii) to introduce provisions for the possible accession to the draft Revised Lisbon Agreement by intergovernmental organizations.
12. Lastly, he recalled that, at its last session, the Working Group had reported to the Assembly of the Lisbon Union with the recommendation that the Assembly should approve the convening of a diplomatic conference in 2015. He concluded by saying that such recommendation had indeed been approved at the last session of the Assembly in September 2013.

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

13. Mr. Mihály Ficsor (Hungary) was unanimously elected as Chair of the Working Group, Mr. Behzad Saberi Ansari (Iran (Islamic Republic of)) and Mrs. Ana Gobechia (Georgia) were unanimously elected as Vice-Chairs.
14. Mr. Matthijs Geuze (WIPO) acted as Secretary to the Working Group.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

15. The Working Group adopted the draft agenda (document LI/WG/DEV/8/1 Prov.) without modification.

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

16. The Working Group took note of the adoption, on November 19, 2013, of the report of the seventh session of the Working Group, as contained in document LI/WG/DEV/7/7, 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

17. Discussions were based on documents LI/WG/DEV/8/2, LI/WG/DEV/8/3, LI/WG/DEV/8/4 and LI/WG/DEV/8/5.

18. Referring to the recent decision of the Lisbon Union Assembly on convening a Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications in 2015, the Chair indicated that the activities of the Working Group had obviously reached a new crucial and decisive stage, as it now had a clear mandate to fulfill, namely, the preparation of a diplomatic conference for the adoption of a Revised Lisbon Agreement. He added that, in accordance with the roadmap that had been approved by the Lisbon Union Assembly, another Working Group session would be held in the first half of 2014 and could be followed by an additional session in the second half of 2014, should the Working Group find it necessary. He then clarified that the exact dates and venue for the diplomatic conference would be determined at the Preparatory Committee meeting. The Chair recalled that, at its sixth and seventh sessions, the Working Group had managed to reach agreement on the main directions to be taken in the revision of the Lisbon Agreement. In particular, it had been agreed that the revised Lisbon Agreement would take the form of a single instrument covering both appellations of origin and geographical indications and would provide for a single and high-level of protection for both, while maintaining separate definitions for appellations of origin and geographical indications, on the understanding that the same substantive provisions would apply to both. The Chair observed that it had also been largely agreed that the revised Lisbon Agreement would establish a single International Register covering both appellations of origin and geographical indications and that competent intergovernmental organizations would be given the possibility of joining the system. He concluded by saying that those directions had been confirmed by the Lisbon Union Assembly at its last session, in September/October 2013.

19. The Chair then pointed out that for the present session the Secretariat had submitted a new version of the draft Revised Lisbon Agreement and the draft Regulations following those main directions and expressed his hope that significant progress would be made at the present session on the basis of those documents to pave the way for a successful diplomatic conference in 2015. The Chair indicated that he intended to conduct deliberations in an open, fair, accurate and constructive manner at the present session, while also indicating that in view of the advanced stage of the discussions and the degree of maturity of the draft Revised Lisbon Agreement, he would work towards building consensus on as many issues as possible. He added that his priority concern would be to make the discussions as focused as possible

concentrating on the most important aspects of the ongoing revision exercise and the main choices that still had to be made. In that regard, he stressed that delegations would have to make joint efforts to clean up the text by reducing the number of options and square brackets, which of course necessitated a common agreement on some of those still outstanding issues. He also said that delegations should not hesitate to contact him in case of procedural or substantive issues. Finally, he encouraged delegations to convey any purely editorial suggestions to the Secretariat.

GENERAL STATEMENTS

20. The Delegation of Georgia emphasized that it fully supported the efforts that had been made to simplify the draft Revised Lisbon Agreement, while preserving the basic principles of the Lisbon Agreement and the compatibility with the TRIPS Agreement. The Delegation was of the view that such simplification represented a positive advance and therefore fully supported the concept of a single instrument covering appellations of origin and geographical indications and providing a high level of protection for both. The Delegation expected the discussions at the present session to be fruitful and to lead to further progress on outstanding issues, as the convening of a diplomatic conference in 2015 depended on the successful outcome of these discussions.

21. The Delegation of Italy expressed its appreciation for the progress made by the Working Group to the present date. As regards the possible accession to the system by intergovernmental organizations, the Delegation was of the view that some further work still had to be done to better clarify, for example, the relationship between those European Union member States that were already party to the Lisbon system and the European Union itself, if the latter were to accede to the Revised Lisbon Agreement as such. The Delegation believed that it would be possible to fulfill the objectives of the diplomatic conference in 2015, in view of the progress made to date.

22. The Delegation of the United States of America said that it should not come as a complete surprise that delegations such as the Delegation of the United States of America, which protect geographical indications under a trademark system, would find it difficult to accept that WIPO would continue to work towards the development of a treaty that would not adequately accommodate trademark systems. Delegations such as the Delegation of the United States of America would simply be unable to join such a treaty regime, not because they would not want to but rather because the treaty on its face would prevent them from doing so. The Delegation observed that both the current Lisbon Agreement and the draft Revised Lisbon Agreement were not “unfair competition systems”; instead, they represented reciprocal rights, civil law, and property rights systems divorced from consumer perception. In the Delegation’s view, such particularities were fundamentally at odds with “unfair competition systems”, such as trademark systems.

23. The Delegation of the United States of America went on to say that, since the subject-matter of the Lisbon Agreement, namely appellations of origin, featured in only a handful of protection systems around the world, the Delegation had not seen any reason to intervene in the work of the Lisbon Working Group by engaging with the text as such, all the more so as its initial understanding had been that the mandate of the Lisbon Working Group was limited to making procedural changes to the Lisbon Agreement, in order to accommodate the needs of certain Lisbon member States. However, the situation was very different now, because of the inclusion of geographical indications as subject matter. This meant that the Working Group was not merely dealing with a revision of the Lisbon Agreement but, instead, with an entirely new treaty. From the Delegation’s perspective, this represented a radical expansion of scope and subject matter. Moreover, the Delegation was now being asked to

accept the notion of an expanded Lisbon geographical indication system that had never been able to, and, as evidenced in the draft Revised Lisbon Agreement, would never, financially sustain itself. Even more so, the United States of America was being asked to subsidize a system that it would not be able to join.

24. Continuing, the Delegation of the United States of America indicated that its biggest concern was that the draft Revised Lisbon Agreement looked as if it picked the winners and the losers in the international trade debate on geographical indications, with the winners getting the WIPO stamp of approval. While the TRIPS Agreement to meet WTO obligations, specifically allowed any type of system, including “unfair competition systems”, the revised Lisbon system identified only one type of geographical indication system, thereby precluding others. Mindful of the stage of the negotiations on the draft Revised Lisbon Agreement, the Delegation clarified that the purpose of its participation in the Lisbon Working Group was to identify some concerns with the system as it was currently designed and to offer its expertise in at least one geographical indication system that was not contemplated in the ongoing discussions. If the Lisbon Working Group truly wished to make the Lisbon system inclusive for all systems, the Delegation stood ready to assist, in particular as many provisions in the draft Revised Lisbon Agreement were inconsistent with “unfair competition systems” and trademark systems. In this regard the Delegation pointed out that Article 5 referred to applications filed by a Competent Authority or a group of beneficiaries, while geographical indications, like trademarks, were private rights and private rights had to have an owner. The United States of America required applications to be filed by the owner of the right. However, Article 5 did not appear to allow for Contracting Parties to require the owner to file the application, unless the party identified in Article 5 happened to be the owner. In that regard, the Delegation of the United States of America clarified that in its country the legal entity, namely the owner, could differ depending on the type of mark for which an application was filed. In the United States of America, in respect of geographical indications, applications could be filed for certification marks, where the owner was a certifying authority, or for collective marks, where a producer group was the owner, or for a trademark, where the owner was a licensor.

25. The Delegation of the United States of America further pointed out that Article 7 did not allow for Contracting Parties to collect individual fees for applications in order to cover the cost of examination, nor did it contemplate a system for collecting registration, maintenance, or renewal fees. The Delegation further noted that Article 10 contemplated an expansive scope of protection that reached beyond the likelihood of confusion or deception concepts inherent in trademark systems and which did not appear to be limited to the commercial use of a protected term. Such a scope of protection did not appear to have any nexus to the local consumer perception, which was of particular concern in view of the obligation to protect all translations even if the consumer was unaware of them. As regards Article 11, the Delegation was of the view that the artificial constraint against genericism undermined trademark system principles. More particularly, if there was no requirement of use of a geographical indication and no requirement to enforce it, there would simply be no competition. Article 11 was clearly a reservation provision that might never be exercised by the owner. The Delegation also observed that Article 12 did not allow Contracting Parties to provide for maintenance fees or renewal requirements as a condition for maintaining exclusive rights, while those were fundamental features of trademark systems. Another feature of the Lisbon text that was incompatible with trademark systems was the provision on prior rights in Article 13, which was based on a misreading of the World Trade Organization’s holding in the dispute settlement case between the United States of America and Australia against the European Community’s Geographical Indication Regulation 2081/92. In this regard, the Delegation indicated that prior trademark rights were exclusive rights and that if there were to be a limited exception to the rights granted, it had to be narrowly construed and only made available when there would be a relatively low likelihood of confusion resulting from the use of both conflicting identifiers.

26. The Delegation of the United States of America also expressed its concerns about the notion of a governmental dispute settlement regime to adjudicate conflicts between two private right holders as well as disagreements between Governments regarding appropriate implementation of Lisbon obligations. This would appear to mean that countries' implementation of their treaty obligations could be called into question and then judged by an arbitration panel. Such proposal appeared to recreate the WTO dispute settlement system at WIPO using the Lisbon system rules, with the potential of creating conflicts with findings of a WTO panel or the WTO Appellate Body.

27. The Delegation of the United States of America concluded by saying that, as there were so many features of the Lisbon system that were fundamentally incompatible with other geographical indication protection systems, it was a daunting task to make the Lisbon system workable for the majority of WIPO members. For that reason, the Delegation had proposed to pursue work in the Standing Committee on Trademarks, Industrial Designs and Geographical Indications (SCT), to find support for a geographical indications filing system that would not include substance regarding the standards for protection. The Delegation further indicated that it made itself available to the Working Group as a resource on alternative geographical indication protection systems that did not look like the one envisaged under the Lisbon system, and added that if there was an interest in developing an inclusive geographical indication filing system, either in the Lisbon Working Group or in the SCT, the Delegation looked forward to working constructively with the Working Group.

28. The Delegation of Israel expressed support for the statement made by the Delegation of the United States of America and said that, for transparency purposes, it also favored a broadening of the debate on geographical indications out of the Lisbon system. In the SCT, the whole WIPO membership would be able to discuss the matter.

29. Speaking on behalf of the Delegations of Australia and New Zealand, the Delegation of Australia recalled that it had raised its concerns about the ongoing revision exercise on several occasions, not only in the Working Group but also in the General Assembly and most recently in the SCT. The Delegation understood that the Lisbon members wanted to attract a wider membership to protect the rights of the producers and artisans in as many markets as possible and expressed its support for the harmonization of intellectual property laws at the international level to support creative, cultural and commercial interests. However, the mere replication of a system which reflected the interests and systems of only some WIPO members would not achieve that aim, and might even keep the Lisbon membership smaller than it could be and ensure that the system would continue to run at a loss. In order to truly widen the appeal of the Lisbon Agreement and to facilitate the protection for producers and artisans in as many markets as possible, the Lisbon system had to be inclusive and flexible – in both achieving the aims of the membership and taking into account different national approaches to the protection of geographical indications. One way of achieving a more inclusive system while still achieving the aims of Lisbon members would be to increase the consistency between the Lisbon system and trademark systems, given that many geographical indication protection systems outside the Lisbon system used trademark laws.

30. The Delegation further indicated that there should be a fair treatment for generics under the Lisbon system and that the Lisbon system should not dictate in detail how its members had to deal with the issue of generic terms. In that regard, the Delegation was of the view that the issue of whether a term had become generic in a particular member State had to be a matter for the national law and circumstances of that member State, independently of what happened in the country of origin of the geographical indication. The Delegation further recalled that no other intellectual property right operated perpetually or extraterritorially without an opportunity for review at the national level. The Delegation added that there should also be a fair treatment of prior rights under the Lisbon system, in line with international law, and expressed

the view that coexistence of later-claimed rights with earlier rights should be possible provided that the legitimate interests of the earlier right holder and third parties were taken into account. The Delegation also indicated that there should be a way to make sure that interested parties would have a legitimate opportunity to object to the protection of terms in a particular market. The Delegation concluded by saying that without those safeguards Lisbon members risked undermining the global intellectual property system which was meant to serve and protect commercial interests. Regarding dispute settlement, the Delegation was of the view that any dispute settlement should be between affected parties and should be conducted under national law as was the case for all other intellectual property rights. The Delegation recalled that geographical indications were not global rights as they were intellectual property rights protected on a territorial basis. Furthermore, geographical indication rights provided a commercial advantage which had to be either defended or challenged by those with commercial interests, not the State. On a practical level, the Delegation was of the view that the development of an inclusive revised Lisbon system also meant opening any Diplomatic Conference to all WIPO members. Lastly, the Delegation indicated that Australia and New Zealand recognized the value that geographical indications could provide and that they would therefore support an appropriately balanced protection of geographical indications that would complement and be commensurate with other intellectual property rights.

31. The Delegation of the European Union reiterated its support for the efforts to review the international registration system of the Lisbon Agreement with the objective of making the system more attractive for users and prospective new members. More particularly, the Delegation expressed support for the main elements of the draft Revised Lisbon Agreement, which extended the protection not only to appellations of origin but also to geographical indications. In terms of intellectual property rights, the Delegation was of the view that there was hardly any difference between appellations of origin and geographical indications and that the sole difference was that the link between the characteristics of the product and its geographical origin was stronger in the case of an appellation of origin. Consequently, all appellations of origin were by definition geographical indications. Modernization of the Lisbon Agreement was necessary and it should be done in a manner that would be consistent with other international agreements, such as the TRIPS Agreement. The Revised Lisbon Agreement should also allow for the possible accession of intergovernmental organizations, such as the European Union.

32. The Chair said that he was encouraged by the statements made. Referring to the statement made by the Delegation of the United States of America, he underlined that the Delegation put forward a number of important points, on which discussion in the Working Group was required. However, on some of the comments made by the Delegation, he felt the need to react as Chair of the Working Group, notably those concerning the procedures and the mandate of the Working Group. The Chair said that he was personally sensitive to ensuring that the Working Group did remain within the mandate given to it by the Assembly of the Lisbon Union. Referring to the concern expressed by the Delegation of the United States of America that the Working Group might be dealing with subject matter outside of its own mandate - the subject matter being the protection of geographical indications and the extension of the current International Register of the Lisbon Agreement to geographical indications that were not appellations of origin - the Chair indicated that there was no doubt that appellations of origin did qualify as geographical indications within the meaning of Article 22.1 of the TRIPS Agreement; they constituted a sub-category of the wider concept of geographical indications. The Chair was of the view that the appellations of origin registered under the Lisbon Agreement did meet the definition criteria of geographical indications as well; consequently, the Lisbon Agreement was already dealing with geographical indications, or at least with a certain category of geographical indications.

33. The Chair further indicated that the aim of the ongoing revision exercise of the Lisbon system was certainly not to interfere with the different ways in which countries provided protection for geographical indications at the national level. The Chair noted that repeated references had been made to the initial mandate that had been given to the Working Group in 2008, when it was first established by the Lisbon Union Assembly. In that regard, the Chair confirmed that indeed the initial mandate of 2008 tasked the Working Group with the examination of possible improvements to the procedures under the Lisbon Agreement. However, since then, the initial mandate had been extended by the Lisbon Union Assembly on several occasions. First, at the 2009 session of the Lisbon Union Assembly, the mandate was already extended to geographical indications and the Working Group was made responsible for a general review of the Lisbon system. Secondly, the current mandate of the Working Group was now based on the decision taken by the Assembly of the Lisbon Union at its session in September/October 2013, which approved the convening of a Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications.

34. Referring to the issue of compatibility with the TRIPS Agreement which had been raised by a number of delegations, the Chair recalled that one of the purposes of the Lisbon revision exercise was to ensure that the new Lisbon system would be compatible with the TRIPS Agreement and that it had always been the understanding of the Working Group that there were different ways of implementing the provisions of the TRIPS Agreement on geographical indications. Certainly, one way of implementing the TRIPS obligations with respect to geographical indications was to have a *sui generis* system, but another possible way was to deal with them in the context of the trademark system, i.e. through the use of collective, certification or individual trademarks. In this regard, he noted that, although WIPO already provided a full-fledged international registration system in respect of trademarks, collective and certification marks, namely the Madrid system and in particular the Madrid Protocol, this did not mean that the envisaged Revised Lisbon Agreement would be limited to geographical indications and appellations of origin protected under *sui generis* systems. On the contrary, there were repeated references in the Notes, in previous Reports, and in previous Summaries by the Chair, to the wish of the Working Group to establish a system which would provide for the possibility of complying with the Revised Lisbon Agreement through a trademark law-based solution at the national level.

35. In introducing the draft Revised Lisbon Agreement, as contained in document LI/WG/DEV/8/2, the Secretariat indicated that Article 2 which dealt with "Subject-Matter" had been amended on the basis of the discussions at the previous session so as to specify even more clearly that the appellation of origin and geographical indication definitions contained therein did not prevent countries from applying other definitions. The Secretariat further indicated that the issue of trans-border geographical indications and appellations of origin had also been revisited in Article 2(2) and Article 5(4). Still on Article 5, the Secretariat pointed out that a new paragraph 3(b) had been added concerning the possibility envisaged in the draft Revised Lisbon Agreement that the beneficiaries of the appellation of origin or the geographical indication would be able to file the application for registration directly with WIPO, provided their national legislation would allow them to do so. Hence, under paragraph 3(b), the application could be filed by the beneficiaries or their representatives subject to a declaration from the Contracting Party of Origin that its legislation so permits. In respect of trans-border geographical indications and appellations of origin, the Secretariat clarified that it would also be possible for the beneficiaries of those geographical indications or appellations to file the applications directly with WIPO only if the Member States in which the trans-border area was situated had both, or all, made the declaration in question. Articles 10 to 13 and 17 had been modified on the basis of the discussions which took place at the previous session. Article 13 reflected the text that had been agreed upon at the previous session, including the provisions between brackets. Referring to Rule 5 of the draft Regulations, the Secretariat

pointed out that Rule 5 still contained two options with respect to the information to be provided in international applications. In that regard, the Secretariat recalled that no consensus on those provisions could be found at the previous session, and further indicated that it had tried to find text which might function as a compromise solution. Lastly, the Secretariat invited the Working Group to consider at the present session paragraph 4 of document LI/WG/DEV/8/2, so as to determine how certain provisions that were contained in the draft Revised Lisbon Agreement could also be implemented by way of amending the current Regulations of the Lisbon Agreement, once the draft Revised Lisbon Agreement would be adopted, with the aim to reduce the number of discrepancies between the two Agreements and to speed up the implementation of those provisions.

DISCUSSION ON THE PREAMBLE AND CHAPTER I OF THE DRAFT REVISED LISBON AGREEMENT (ARTICLES 1 TO 4) TOGETHER WITH RULES 1 AND 4 OF THE DRAFT REGULATIONS

36. Referring to Article 1(xiii), the Delegation of Peru reiterated its concern about the possibility that was given to an intergovernmental organization to be considered as a “Contracting Party” to the Agreement, and thus to file registrations for appellations of origin or geographical indications under the Revised Lisbon Agreement. Such possibility was not contemplated in the Andean Community legislation and would thus require amendment of the regional legislation established by the Andean Community, of which Peru was a member.

37. Referring to the Preamble, the Delegation of the United States of America recalled the concern it had expressed earlier about the nature of the ongoing Lisbon revision exercise, which seemed to go beyond a mere revision of the Lisbon Agreement. The Delegation pointed out that the phrase “while preserving the principles and objectives of the Agreement” in the Preamble had to be revised in light of the extension of the draft Revised Lisbon Agreement to geographical indications, which went beyond the principles and objectives of the original Lisbon Agreement.

38. As regards the Preamble, the Delegation of Italy suggested adding the term “itself” at the end of the first sentence, so that the sentence would read “while preserving the principles and objectives of the Agreement itself”. The Delegation further suggested adding a new paragraph between the second and third sentences that would read “Desiring to increase the protection of both appellations of origin and geographical indications”. Referring to Article 1, the Delegation was of the view that it would be important to clearly indicate from the outset what the principles and purposes of the Revised Lisbon Agreement were and therefore suggested adding additional introductory text at the beginning of Article 1 that would read: “The Contracting Parties shall establish an International Union for protecting appellations of origin and geographical indications registered at the International Bureau. They undertake to protect on their territories, in accordance with the terms of this Agreement, appellations of origin and geographical indications of products of the other countries of the International Union, recognized and protected as such in the Contracting Party of origin and registered at the International Bureau of the World Intellectual Property Organization”. As regards Article 1(xv), the Delegation suggested referring to “Competent Authorities” in plural and also clarifying that this term referred to “the entities” designated in accordance with Article 3. The Delegation further suggested defining the notion of “generic terms” in the abbreviated expressions to clarify that generic terms referred to those terms which had become the common designation of a type of product. With respect to Article 2(1), the Delegation suggested maintaining the concept of reputation only in the case of geographical indications and therefore suggested cancelling the last part of the first sentence, namely “and which has given the good its reputation” in Article 2(1)(a)(i). In the case of Article 2(1)(a)(ii), the Delegation suggested keeping the definition of Article 22 of the TRIPS Agreement so that the text would read: “any

indication protected in the Contracting Party of Origin which identifies a good as originating in the territory of that Contracting Party, where the quality, reputation or other characteristic of the good is essentially attributable to its geographical origin". With respect to Article 3, the Delegation pointed out that in some Contracting Parties, as in the case of Italy, there was more than one Competent Authority and therefore suggested replacing "Competent Authority" by "Competent Authorities" both in the title of the provision and in the text itself. Furthermore, the Delegation suggested adding a second paragraph in Article 3 that would more or less read as follows: "Each Contracting Party shall also designate the managing Competent Authority to file applications and to carry out official controls in order to protect registered appellations of origin and geographical indications".

39. The Delegation of France said that, in the definition of appellation of origin in Article 2, the cumulative nature of the human and natural factors was the main criteria for differentiation with geographical indications. The Delegation disagreed with the statement in Note 2.02 concerning the need for flexibility in this regard and sought clarification as regards the actual scope of footnote 1.

40. The Delegation of the European Union said that European Union Regulations did not require reputation in respect of appellations of origin. The Delegation feared that Article 2(1)(a)(i) which currently incorporated a phrase reading "which has given the good its reputation" would prevent some of the appellations of origin of the European Union from being registered under the Lisbon system and therefore suggested to delete that phrase from the provision. In that connection, the Delegation also requested the Secretariat to clarify the type of reputation the text referred to, i.e. local reputation or worldwide reputation. As regards Article 2(1)(a)(ii), the Delegation noted that the geographical indication definition slightly differed from the TRIPS definition and suggested to align the text with Article 22.1 of the TRIPS Agreement, so that the provision would read "where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin".

41. The Delegation of the European Union further indicated that Rule 4(2) might prejudice the way in which the European Union would organize itself with its member states. The Delegation suggested a modification of the provision that would allow a Competent Authority to delegate some of its competencies to other specific authorities. More specifically, the Delegation indicated that, if the European Union were to become a member of the Revised Lisbon Agreement, one could for instance imagine a situation where it would still be up to the European Union member states, which were also members of the Lisbon Agreement, to submit applications for their appellations of origin and geographical indications to the International Bureau. In that case, one could imagine that the European Union would inform the International Bureau that, as far as registration under the Lisbon system was concerned, the function of Competent Authority of the European Union had been delegated to a Competent Authority in the member state of the European Union.

42. The Representative of CEIPI wondered whether the Preamble should not simply be removed from the draft Revised Lisbon Agreement, so as to avoid endless discussions on its contents. As regards Rule 1(1)(i), he was of the view that the term "Agreement" that was used in the Regulations could lead to a misunderstanding, given that Article 1(ii) referred to "this Act". With respect of Rule 1(2), he suggested to refer not only to Article 1, but also to Article 2.

43. The Representative of MARQUES suggested that Article 2 be drafted in a more straightforward manner, as the current text was somewhat complex and risked leading to different interpretations by the various authorities that would have to apply the provision in question. For example, the current drafting was very different from the text of the European Union Regulations, which simply read: "a geographical indication is" and then "a designation of origin is". It would be preferable to have a clear definition of what geographical indications

and appellations of origin were, before providing a few explanations about the difference between the two notions, for example through the provision of examples, as was the case in some trademark laws.

44. The Secretariat said that the purpose of the Preamble was to provide clarity on why a Revised Lisbon Agreement was negotiated. The draft Preamble aimed to do so in the most general and neutral way. As regards the suggestion by Italy to add a new paragraph in Article 1, along the lines of the current Article 1 of the Lisbon Agreement, the Secretariat pointed out that such addition would raise the question whether the Contracting Parties to the Revised Lisbon Agreement would constitute a separate Union different from the Union of the Lisbon Agreement. The current draft was based on the premise that both treaties would be covered by the same Union. Referring to the suggestion to use the plural "Competent Authorities" in Article 1(xv) and also in Article 3 for those Contracting Parties which had more than one Competent Authority, the Secretariat pointed out that the necessary flexibility was already given in Rule 4 and that the use of the singular "Competent Authority" in the Revised Lisbon Agreement seemed more appropriate to adequately reflect the case of those Contracting Parties which had just one Competent Authority. The Secretariat recalled that it had been specified in the Notes on Article 3, and also in previous discussions, that the term "Competent Authority" simply referred to that authority which had been authorized by its Government to communicate with the International Bureau under the procedures of the Lisbon system and nothing more. Referring to the suggestion made by the Delegation of Italy to add an abbreviated expression to define the term "generic" in Article 1, the Secretariat pointed out that the term "generic" had already been defined in footnote 5 in respect of Article 11, along the lines of Article 24.6 of the TRIPS Agreement.

45. As regards Article 2, the Secretariat clarified that the provision had been drafted in such a way as to cover the case of those countries which protected geographical indications and appellations of origin in different ways and with different terminologies. In other words, if the term "geographical indication" would be used in Article 2(1)(a)(ii) from the outset, it would not be at all certain that all countries would understand that term in the same manner. That was the reason why Article 2 was rather based on the assumption that countries had different ways of protecting geographical indications and appellations of origin. The Secretariat then provided an example from the Lisbon Register and pointed out that, in the past few years, there had been registrations based on applications submitted by countries which in their application had indicated that the appellation of origin in question was protected as a geographical indication in the country of origin. In that regard, the Secretariat indicated that, since the International Bureau was not in a position to refuse such applications on that basis, as that would amount to a substantive examination of the application in question, those geographical indications had been registered as appellations of origin under the Lisbon system. The Secretariat further indicated that it was up to the other Contracting Parties to examine those registrations and to refuse to recognize their effect in their respective territories if they were of the opinion that the product did not meet the appellation of origin definition of Article 2 of the Lisbon Agreement. The Secretariat pointed out that, so far, none of those registrations had been refused by any member State on that basis. This could mean that the substantive examination had revealed that the product actually also met the definition requirements of Article 2, but it could also mean something else, namely that, even if the product did not meet the definition of Article 2 of the Lisbon Agreement, the Contracting Party in question had two definitions in its national law and provided protection for geographical indications at the same level as appellations of origin. Article 5(3) of the Lisbon Agreement, and the corresponding provision in the draft Revised Lisbon Agreement, could be interpreted as requiring any other protection available in a Contracting Party that refused a new registration on the basis that the product in question did not meet the definition of an appellation of origin. It could be that a product registered as an appellation of origin under the Lisbon Agreement did not meet the definition of an appellation

of origin of the Lisbon Agreement, but actually did meet the definition of a geographical indication under a given country's law.

46. The Secretariat pointed out that differences in terminology had also influenced the drafting of Article 2 and indicated that in European Union law an appellation of origin was in French called "*appellation d'origine*" but in English "designation of origin". Such differences in terminology should not mean that "designations of origin" should not be accepted as "appellations of origin" under the Revised Lisbon Agreement: acceptance or non-acceptance should depend on the substantive elements of the definition. Similar considerations applied in respect of other countries, such as China, that provided protection in respect of geographical indications through certification marks on the basis of a definition that incorporated elements of the appellation of origin definition of the Lisbon Agreement in combination with elements of the geographical indication definition of the TRIPS Agreement. Drafting Article 2 as suggested by the Representative of MARQUES would presume that all countries participating in the system provided protection in the same way, which was not realistic. Another difference with the TRIPS and Lisbon definitions was due to the fact that the Revised Lisbon Agreement would also provide for the possibility to register trans-border geographical indications and appellations of origin. The references to the territory of a country, a region, or a locality had therefore been put in a separate paragraph, because a geographical indication or an appellation of origin from a trans-border area was by definition not located in one particular country, but in two or possibly even more countries.

47. Regarding the concept of "reputation", the Secretariat noted that a suggestion had been made to remove the phrase which referred to reputation from Article 2(1)(a)(i). However, the phrase had been inserted in that subparagraph because the current Lisbon Agreement had a reputation requirement, as contained in the definition of country of origin in its Article 2(2). Referring to the request for clarification made by the Delegation of France concerning the type of flexibility provided for in footnote 1 to Article 2, the Secretariat recalled that the flexibility in question had been requested by some delegations, and, at the previous meeting, the Delegation of Iran (Islamic Republic of) had indicated that the footnote in question would provide the flexibility that that Delegation had been looking for.

48. The representative of MARQUES still believed that it would be advisable to have a more straightforward definition of what constituted a geographical indication or an appellation of origin, despite the explanation that had been given by the Secretariat. Differences in definitions should be avoided as much as possible.

49. The Delegation of Italy withdrew its earlier proposal to add a second paragraph in Article 3 that would read "Each Contracting Party shall also designate the managing Competent Authority to file applications and to carry out official controls in order to protect registered appellations of appellations of origin and geographical indications". The Delegation further expressed its support for the suggestion that had been made by the Delegation of the European Union to bring the geographical indication definition more in line with the TRIPS definition. As regards the use of the term "reputation" in Article 2(1)(a)(i), the Delegation was of the view that footnote 2 should better clarify what would be the function of that term. Lastly, the Delegation reiterated its preference for a strong Preamble that would be in line with the mandate of the Working Group.

50. The Chair suggested to put the phrase "and which has given the good its reputation" in square brackets for the time being, given the reservations expressed about the inclusion of a reference to reputation as one of the definition criteria for appellations of origin and the wish expressed by a number of delegations to further clarify the issue. As regards the term "Competent Authority", the Chair referred to the explanation provided by the Secretariat that Article 3 in conjunction with Rule 4 would ensure sufficient flexibility and would allow

Contracting Parties to designate not only a single Competent Authority but two or more Competent Authorities, depending on their national or regional internal system.

51. As regards the second sentence of Rule 4(2), the Delegation of the European Union suggested to delete the last part of the sentence which began with “for example” and which ended with “empowered for those different protection systems”.

52. The Chair suggested to move the text in question to the Notes, as the sentence was intended to illustrate the possible application of Rule 4(2). He further indicated that additional examples could also be mentioned in the Notes, such as the possibility for the Competent Authorities from the member States of an Intergovernmental Organization to act on behalf of the Competent Authority of the intergovernmental organization.

53. Referring back to its comment about the cumulative nature of the human and natural factors, the Delegation of France noted that footnote 1 would be revisited. As regards footnotes 2 and 3, the Delegation expressed the view that the text as drafted was not clear and suggested to delete those footnotes and provide an explanation in the Notes instead.

54. In response to the concerns expressed by the Delegation of France, the Chair recalled that the phrase “and which has given the good its reputation” in Article 2(1)(a)(i) would be put in square brackets, while footnotes 2 and 3 would be deleted. Instead, the Secretariat would make an attempt to include the necessary explanations on the issue in the next version of the Notes. The Chair further clarified that footnote 1 would be maintained for the time being, on the understanding that the footnote might have to be revisited.

DISCUSSION ON CHAPTER II OF THE DRAFT REVISED LISBON AGREEMENT (ARTICLES 5 TO 7) TOGETHER WITH RULES 5 TO 8 OF THE DRAFT REGULATIONS

55. The Delegation of the European Union sought clarification regarding Rule 5(2)(a)(ii), which would require the application to indicate “the beneficiaries, designated collectively or, where collective designation is not possible, by name”, as in most cases it would be difficult, if not impossible, to provide a list of all beneficiaries on appellation of origin or geographical indication and to keep any such list up-to-date. The Delegation therefore wondered whether a formulation such as “all producers in the geographical area complying with the specifications are considered as beneficiaries” would be acceptable for meeting this requirement. With respect to Rule 5(2)(a)(v) which read “the geographical area of origin, i.e., in the case of an appellation of origin, the geographical area of production of the good”, the Delegation proposed a slight amendment so that the provision would read “the geographical area of origin or the geographical area of production of the good”. As regards Options A and B in Rule 5, the Delegation reiterated its view that the provision of information on the link between the quality or characteristics of the good and the geographical area of production in the application should be mandatory instead of optional, as this was the core of what constituted an appellation of origin or a geographical indication. The Delegation acknowledged that there might be some concerns on the part of the International Bureau as to the administrative task that such requirement would imply and therefore agreed with the proposal that those elements of the application should not be translated by the International Bureau. The Delegation suggested a slight change in the drafting of Option A, so that the text would read “information concerning the protection granted to the appellation of origin or the geographical indication in the Contracting Party of Origin - which the International Bureau shall not translate - notably, in the case of an appellation of origin information concerning the connection between the quality or characteristics of the good and the geographical environment of the geographical area of production and, in the case of a geographical indication, information concerning the connection

between the quality, reputation or other characteristic of the good and the geographical area of origin”.

56. With respect to Rule 5(2)(a), the Delegation of Italy was of the view that a new sub-item (i) should be added requiring the applicant to indicate “the Contracting Party of Origin”. The Delegation also suggested that the text of paragraph (b) concerning transliterations be moved to a new sub-item (vii) right after the current sub-item (vi).

57. Referring to Article 5(4) which concerned goods originating in a trans-border geographical area, the Delegation of Hungary welcomed the new proposed text and, while recalling that the existence of a provision on the possibility of protecting geographical indications or appellations of origin from a trans-border area was of vital importance for Hungary, proposed deletion of the square brackets in Article 5(4). Referring to Article 5(4)(b), the Delegation said that it understood the text as covering four scenarios with respect to filings from trans-border areas, namely: (i) a joint application submitted by the Competent Authorities, (ii) separate applications filed by the Competent Authorities for a geographical indication originating in a trans-border area and - whenever a Contracting Party allowed for direct filings by the beneficiaries, (iii) joint filing by the beneficiaries themselves, and (iv) separate filings by the beneficiaries. The Delegation pointed out that those options were not all reflected in Note 5.03 which only referred to three options and therefore sought further clarification in that regard.

58. The Delegation of the United States of America said that it would have thought that a Competent Authority would be the institution where applications would be filed and that it would be an entity different from the applicant. Yet, Article 5 appeared to mix the Competent Authority, which is to say the institution that processed applications, and the applicant. The Delegation pointed out that in trademark systems the owner would be required to file an application. In other words, Competent Authorities, beneficiaries, or legal entities would not be allowed to file applications unless they would also be the owners of the object of the registration. However, the way in which Article 5 was structured seemed to indicate that a Competent Authority might or might not be the owner of the geographical indication and did not seem to allow a Contracting Party to refuse applications filed by a Competent Authority that was not the owner of the geographical indication. The Delegation wondered how that would link up with a trademark system. The Delegation went on to say that an international registration would not have legal effect in the United States of America unless, as under the Madrid system, there would be “a request for extension of protection of the international registration”. In sum, that was the type of mechanism that the Delegation would also expect to see in the Revised Lisbon Agreement. Along the same lines, a provision such as the one contained in Rule 5(1) which stated that the Competent Authority could sign the application seemed to imply that the Competent Authority would probably not be the owner in many cases. The United States Patent and Trademark Office (USPTO) would have to refuse protection on that basis.

59. The Delegation of the United States of America further sought clarification with respect to the issue of a trans-border geographical area in Article 5(4)(a)(i), as it failed to understand whether the text actually meant that a Contracting Party would have to accept two different applications, from two different entities, for the same term, or whether such application would only be accepted if it would be filed jointly by both Competent Authorities. As regards Rule 5(3)(ii), which dealt with the optional contents of applications, and which allowed an application to indicate “translations of the appellation of origin or the geographical indication in such languages as the applicant may choose”, the Delegation wondered how such provision would apply in light of the fact that the scope of protection under Article 10 extended to translations in general.

60. The Delegation of the United States of America also requested clarification of Article 7, which did not provide for the possibility for national offices to require fees to cover their costs of examination, as was the case under the Madrid system. With regard to Article 7(3), the Delegation indicated that, for a cost recovery organization such as the USPTO, it would be difficult to reconcile a reduced fee unless it would be decided that the international registration in question would be subsidized. Article 7(3) also raised national treatment concerns. Lastly, the Delegation indicated that fee reduction also seemed odd in the context of a system that was already running at a deficit.

61. The representative of CEIPI expressed the view that, since the word “beneficiary” appeared in plural throughout the text, perhaps Article 1(xvi) should do the same. He further indicated that he was surprised to see that Article 1 made a reference to Article 5(2)(i) in which the word “beneficiary” did not appear. Instead, the term appeared in sub-item (ii) and in paragraph (3). He therefore suggested to define “beneficiary” in Article 1(xvi) and to simply state “in the name of the beneficiaries” in Article 5(2)(i). If it were decided to proceed along those lines, Article 1(xvi) could then read: “Beneficiaries” means the natural or legal persons entitled under the law of the Contracting Party of Origin to use an appellation of origin or a geographical indication”.

62. The Delegation of Algeria was of the view that there was a slight incoherence between sub-items (i) and (ii) of Article 5(2). In particular, the requirement to be “entitled, under the law of the Contracting Party of Origin” only appeared in respect of natural and legal persons under sub-item (i), whereas no such requirement existed in respect of the “legal entity” referred to in sub-item (ii). The Delegation also expressed great concern about Article 5(4), as it was of the view that the implementation of such provision would be extremely difficult in practice, if it would require a prior bilateral, trilateral or even multi-lateral agreement between all the Contracting Parties concerned. Hence, the Delegation suggested a slight amendment to Article 5(4)(a), so that the text would read: “in case of a trans-border geographical area, and pursuant to agreement between the Contracting Parties of Origin, the Contracting Parties concerned may”. This would clarify that the implementation of Article 5(4) would be subject to prior agreement between the Contracting Parties concerned.

63. The Delegation of Switzerland requested the Secretariat to remind the Working Group why the decision had been taken to refer to “beneficiaries” instead of “owners of the right”.

64. The Delegation of Romania supported the statement made by the Delegation of Algeria regarding Article 5(4).

65. The Secretariat indicated, in response to the suggestion made by the Delegation of the European Union in respect of Rule 5(2)(a)(ii), that the provision was modeled on Rule 5(2)(a)(ii) of the current Lisbon Regulations, which allowed, indeed, for a collective reference to the producers. With respect to Rule 5(2)(a)(v) and the proposed amendment suggested by the Delegation of the European Union, so that the provision would read “either the geographical area of origin or the geographical area of production of the good”, the Secretariat clarified that the reason for distinguishing between appellations of origin and geographical indications in that provision was due to the fact that the current Lisbon Regulations specified that the application had to indicate the “area of production of the product”. The question was whether the text proposed by the Delegation of the European Union would require the indication of “the area of production” in the case of an appellation of origin, while the indication of “the geographical area of origin” would be sufficient in the case of a geographical indication. Referring to Rule 5(2)(vii), Option A, and the question as to whether the information about the connection between the area of production and “the quality or characteristics”, in the case of an appellation of origin, or “the quality, reputation or other characteristic” in the case of a geographical indication, should be mandatory instead of

optional as was the case under the current Lisbon Regulations, the Secretariat recalled that in one of the previous Working Group meetings there had been a clear difference of opinion between the European Union and its member states on that particular issue.

66. As regards the suggestion made by the Delegation of Italy to add “the Contracting Party of Origin” in Rule 5(2)(a), as the first sub-item to be mentioned in the application along the lines of the relevant provision in the current Lisbon Regulations, the Secretariat indicated that such amendment would be possible if so requested by the Working Group. Referring to the suggestion to transform paragraph (b) of Rule 5(2) into an additional sub-item under Rule 5(2)(a), the Secretariat explained that paragraph (b) appeared as a separate paragraph in Rule 5 simply for purposes of keeping the same logic as the one followed in Rule 5 of the current Lisbon Regulations, which listed all the information to be provided in Rule 5(2)(a), while Rule 5(2)(b) and (c) concerned certain modalities of elements to be provided under Rule 5(2)(a). The Secretariat did not think that the brackets could be removed from Article 5(4) at this stage in light of the comments made by the Delegations of Algeria and Romania in that regard. Referring to the point made by the Delegation of Hungary concerning Article 5(4)(b) and the corresponding explanations in the Notes, the Secretariat indicated that the Notes would be amended to better clarify the different options that were referred to in respect of Article 5(4).

67. Referring to the concerns expressed by the Delegation of the United States of America, the Secretariat said that Article 5 of the draft Revised Lisbon Agreement specified that applications would be filed by the Competent Authority in the name of right holders or beneficiaries. In other words, the Competent Authority was basically representing the beneficiaries or owners. In that regard, the Secretariat sought clarification from the Delegation to understand whether the requirement under US law that the owner had to file or sign the application actually meant that he or she had to do this himself or herself or that the application could also be filed through a legal representative. Referring to the question raised by the Delegation in respect of Article 5(4)(a)(i), the Secretariat indicated that, under the current Lisbon system, in case of two separate applications for the registration of appellations of origin consisting of the same name, both would be registered by the International Bureau, as long as the required formalities were met. The International Bureau was not entitled to refuse registration on substantive grounds. However, Contracting Parties would be free to decide whether to accept both or whether one should prevail over the other, for example if the name was only known for one of the two countries in the Contracting Party in question. In that regard, the Secretariat pointed out that the situation was comparable to the situation of homonymous geographical indications and recalled that there had been cases where a Contracting Party had accepted one and not the other, in accordance with Article 22.4 of the TRIPS Agreement. As regards the request for clarification of Rule 5(3)(ii), the Secretariat confirmed that Article 10 provided protection for translations of a geographical indication or an appellation of origin. However, the purpose of Rule 5(3)(ii) was to allow the applicant to specify the way in which he or she considered that the denomination or indication would translate into another language. Courts could take this into account. However, if the applicant did not mention any translations in the application, translations would still be protected under Article 10 of the draft Revised Lisbon Agreement. On the issue of fees, the Secretariat recalled that in previous discussions the issue of the possible designation fees had come up, but not led to any proposal to change the current Lisbon system, under which internationally registered appellations of origin were protected in all Contracting Parties of the Lisbon system, subject to any refusal or invalidation. With respect to reduced fees, the Secretariat recalled that a national treatment concern had been raised in that respect, but also pointed out that the proposed text had been drafted on the basis of the model which existed under the Madrid and Hague systems, where such fees applied in respect of least developed countries, notwithstanding the provisions requiring national treatment. As regards Article 24 of the draft Revised Lisbon Agreement, the Secretariat pointed out that the issue of financial sustainability

had been mentioned in previous meetings as well, but the issue had never been dealt with conclusively.

68. The Secretariat agreed with the suggestion made by the representative of CEIPI to put the explanation of what “beneficiaries” were as an abbreviated expression in Article 1(xvi) which would then read “Beneficiaries” means the natural or legal persons designated in the legislation of the Contracting Party of Origin”, and to simply state “in the name of the beneficiaries” in Article 5(2)(i). The Secretariat added that in doing so, the incoherence between Rule 5(2)(i) and (ii) that had been mentioned by the delegation of Algeria would also disappear, as the word “beneficiaries” would appear in both sub-items.

69. In response to the question raised by the Delegation of Switzerland about the use of the word “beneficiaries” instead of “holder or holders of the right to use” as in Rule 5 of the current Lisbon Regulations, the Secretariat said that the main reason for doing so was that the phrase “holder or holders of the right to use” was very often misunderstood by applicants. The International Bureau regularly received applications which mentioned the name of the owner under the heading “holder or holders of the right to use”. In such cases the Secretariat had to get back to the applicants to let them know that under “holder or holders of the right to use” they had to mention those persons that were entitled to use the appellation of origin. Hence, the word “beneficiaries” appeared to be more appropriate, as it more adequately reflected what was actually meant.

70. The Representative of CEIPI said that, on the basis of the interventions made by the Delegations of Algeria, Hungary and Romania on Article 5(4), it was his understanding that the Delegation of Hungary wanted to remove the square brackets and to keep the text proposed in Article 5(4) as it was, whereas the Delegations of Algeria and Romania had suggested an amendment to that paragraph. He requested clarification as to whether the square brackets in Article 5(4) could be removed if the amendment proposed by the Delegations of Algeria and Romania appeared to be acceptable.

71. The Delegation of Algeria indicated that in principle it would not be in favor of retaining Article 5(4). However, if there was a majority in favor of keeping it, the provision should be drafted more clearly. The Delegation suggested that wording be added that would clearly require prior agreement between the Contracting Parties concerned. The Delegation suggested that the chapeau of Article 5(4)(a) might read: “In case of a trans-border geographical area, and pursuant to an agreement between the Contracting Parties concerned, the said Contracting Parties may: [...]”.

72. The Chair was of the view that some form of agreement between the Contracting Parties concerned was already implied in Article 5(4)(a)(ii). The conclusion of an agreement between the Contracting Parties was not expressly mentioned in Article 5(4)(a)(ii), because the text was intended to be flexible as to the legal means of concluding such an agreement, and in particular whether it would be an agreement under international public law or whether it would just be an understanding between the two Contracting Parties concerned. However, as regards sub-item (i) of Article 5(4)(a), the Chair failed to understand why Algeria would insist on restricting Algeria’s possibility to file an international application with respect to an appellation of origin or a geographical indication relating to a trans-border area concerning goods originating in the Algerian part of that trans-border area. His understanding was that sub-item (i) of Article 5(4)(a) would apply irrespective of any prior agreement between the Contracting Parties concerned. This was the current situation under the Lisbon system. In other words, Contracting Parties did file international applications with respect to trans-border areas without any prior bilateral agreement concluded between them. By way of illustration, the Chair referred to the registration of the appellation of origin Tokay, which concerned a trans-border area recognized as such by European Union legislation and for which

appellations of origin had been filed by Hungary and Slovakia separately. Hence, at present there were two separate registrations for that appellation of origin without any prior agreement between the two countries concerned.

73. The Representative of oriGIn wondered whether sub-item (i) should not be entirely removed from Article 5(4)(a), as the registration would not concern a trans-border area as such but only that part of the trans-border area located in the territory of the filing Contracting Party. In other words, the registrations would concern products from two different geographical areas with the same name and possibly different product specifications. He agreed that some form of agreement between the Contracting Parties should be explicitly referred to in sub-item (ii) of Article 5(4)(a), in the case of a joint application there would be only one appellation of origin or geographical indication and one set of product specifications.

74. The Chair pointed out that the added value of sub-item (i) of Article 5(4)(a) was to make it clear that none of the Contracting Parties concerned could monopolize the appellation of origin or geographical indication which referred to a trans-border geographical area, and that they could only file an application in respect of goods originating in that part of the trans-border area located in their respective territories. The case of a trans-border geographical area concerned a territory divided by borders between two or more Contracting Parties. This resembled the case of homonymy, but was not the same, as the case of homonymy concerned appellations of origin or geographical indications with the same name for two different and geographically unrelated areas. He concluded by saying that a possible way out would be to delete sub-item (i) and to clarify in the Notes or in a footnote that, if the Contracting Parties concerned did not act jointly on the basis of an agreement concluded between them, they could still file separate international applications in respect of that part of the trans-border area situated in their own territory.

75. The Delegation of Algeria was of the view that an agreement between the Contracting Parties concerned appeared to be necessary. The Delegation pointed out that countries did not always agree with one another on the boundaries of a given trans-border geographical area.

76. The Delegation of Romania expressed support for the statement made by the Delegation of Algeria.

77. In an attempt to reconcile the different views expressed on Article 5(4), the Chair suggested that paragraph (4) of Article 5 might be amended so that the text would read: "In the case of a trans-border geographical area, the Contracting Parties concerned may agree to act as a single Contracting Party of Origin by filing an application jointly on the basis of Article 2(1)(a)(i) or Article 2(1)(a)(ii), depending upon the protection they have granted jointly and through a commonly designated Competent Authority." The Chair said that such drafting would clearly indicate that an agreement between two or more Contracting Parties would be required.

78. As regards Options A and B in Rule 5, the Delegation of France recalled that in previous meetings it had pointed out that, if the information to be provided under Option A would be made mandatory, that might impose a heavy burden on the Secretariat. Nevertheless, the Delegation could support Option A as currently drafted, provided that open-ended terms such as "for example, particulars" would be removed from the text. Mentioning examples might create ambiguity as to whether a given application would be complete or not.

79. The Delegation of Italy supported the intervention made by the Delegation of France.

80. The Delegation of Hungary expressed support for the drafting suggestion made by the Chair in respect of Article 5(4).

81. The Secretariat suggested that the word “possible” be added to the title of Article 5(4), so that the provision would read: “Possible Joint Application Concerning a Good Originating in a Trans-border Geographical Area”. The Secretariat was of the view that otherwise the provision might be interpreted as meaning that countries could only apply jointly.

82. The Delegation of Algeria said that it would be willing to work on the basis of the drafting suggestion made by the Chair in respect of Article 5(4). The Delegation wondered nonetheless what would happen in the case of a unilateral application made by a single Contracting Party for the protection of goods originating from what would be regarded as a trans-border area. In that regard, the Delegation expressed the view that even in the case of a separate, unilateral application an agreement between all the Contracting Parties potentially concerned would still be needed as to what would constitute the delimitation of that trans-border geographical area. The Delegation requested that Article 5(4) remain between square brackets for the time being.

83. The Chair noted that the Working Group agreed to include a definition of “beneficiaries” in Article 1 as an abbreviated expression and simplify the text of Article 5(2) accordingly. As regards Options A and B in Rule 5 of the draft Regulations, the Chair suggested that the Working Group could perhaps consider the idea of introducing a subparagraph (vii) in Rule 5(2)(a) which would make mandatory the indication of the particulars concerning the connection between the characteristics and the geographical origin. Option B in Rule 5 would be kept without having the text within square brackets, so that the provision would simply refer to “any further information that the applicant wishes to provide concerning the protection granted to the appellation of origin or the geographical indication in the Contracting Party of Origin”. The Chair also noted that the Working Group would appear to agree that Rule 5(2)(a)(v) should simply refer to the “geographical area of origin”.

84. The Delegation of Australia expressed concerns as to the proposed Rule 5(2)(a)(vii) that would make mandatory to indicate the particulars concerning the connection between the quality, reputation or other characteristic of the good and the geographical area of origin. The Delegation pointed out that this was a very prescriptive requirement, which was particular to the laws of certain countries only.

85. The Delegation of the Russian Federation sought further clarification from the Secretariat with regard to the issue of fees. The Delegation suggested that the Revised Lisbon Agreement should allow a Contracting Party to require the payment of a fee to cover the cost of the examination of international registrations notified to its national administration.

86. The Delegation of the United States of America supported the view expressed by the Delegation of Australia regarding Rule 5(2), Option A. The requirement concerning information as to a link between the geographical environment and a quality of the product should not be made mandatory. The Delegation underlined that in the United States of America information regarding the reputation in a country of origin was not relevant. Eligibility for protection required the existence of reputation in the United States of America (i.e. the receiving country). The Delegation pointed out that the United States of America did not require exhaustive evidence as to, for instance, the soil in the country of origin or other information that US authorities were unable to examine.

87. As regards the issue of fees, the Secretariat said that according to Article 7 the type of fee to be paid had to be specified in the Regulations. Rule 8 only specified fees to be paid to the International Bureau, namely for registration, for modification and for providing attestations

and extracts. There were no fees to be paid to national authorities under the current Lisbon system. Fees to be paid to national authorities in the country of origin were governed by national law. The Secretariat pointed out that the system matched with the existing systems in the countries that were parties to the Lisbon Agreement. The Secretariat suggested that the interventions by the Delegations of the United States of America and the Russian Federation in respect of fees could perhaps be considered as a proposal to introduce another fee system under the Revised Lisbon Agreement. The Secretariat recalled that, to some extent, this issue had already been discussed at the last meeting of the Working Group in connection with Article 12 of the previous version of the draft Revised Lisbon Agreement.

88. As regards Rule 5(2), Option A, the Secretariat said that there were national systems that did not require applications to contain information on a link between the good and its geographical origin and that, if the Revised Lisbon Agreement should provide an opportunity for those countries to participate in the system, a solution to the issue raised by the Delegations of Australia and the United States of America should be found. The Secretariat underlined that Rule 5(2), Option A, did not require necessarily information on a link with the geographical environment. That was only required in respect of an appellation of origin. In respect of a geographical indication, the information to be provided concerned a link with the geographical area of origin of the good.

89. The Chair sought guidance from the Working Group on the fee issues raised, while underlining the distinction between the issue of fees for renewing the international registration and the issue of possible designation fees to cover the examination cost in a designated Contracting Party. The Chair also invited the Working Group to clarify its views on Options A and B in Rule 5. In particular, he suggested to reformulate Option A and to keep the redrafted text within square brackets for the time being, in view of the opposition against this provision.

90. The Delegation of the European Union was of the view that the definition of an appellation of origin and that of a geographical indication implied a link or connection between the characteristics, the quality or the reputation of the product and its geographical area of origin. This was not only part of the definition, but it was the core element of the definition. The Delegation indicated that it was necessary to have this information somewhere, irrespective of the fact that some national systems did not require it. Contracting Parties where the information was not relevant could simply disregard it. However, this information was necessary for those Contracting Parties for which this link was the core element of the system. Further, the Lisbon system only required the payment of fees to the International Bureau, which was an important element of the system that should not be changed.

91. The Delegation of the United States of America recalled that different ways existed of implementing the TRIPS definition of a geographical indication. In the United States of America, stakeholders who applied through a filing system for the protection of geographical indications were required to show reputation and demonstrate some sort of standard, but they were not required to show a link. Thus, the Delegation expressed the concern that making such information mandatory would put its stakeholders at a significant disadvantage for obtaining protection in other countries. The Delegation further supported the Delegation of the Russian Federation on the issue of designation fees. Some countries had decided to use public funds to protect these private rights, while others had decided not to do that. The United States of America had a fee-funded examination system, under which examination costs had to be paid by the applicant and not by the US taxpayer.

92. The Representative of oriGIn indicated that specifying a link between the good and the geographical origin or environment was a crucial element of the geographical indication and appellation of origin system. He added that this issue should be considered in the light of the specific features of the Lisbon system, which was based on the mechanism of acceptance or

refusal of an international registration by national Competent Authorities. It was in the interest of the country of origin to provide at least a minimum of information on this crucial element in order to increase the chances of acceptance by other countries.

93. The Representative of CEIPI underlined that there were two elements regarding the issue of fees. On the one hand, there was the question of financing the Lisbon system. On this first question, he suggested that the possibility of establishing renewal or maintenance fees be considered. On the other hand, there were the fees for the administrative costs of examination by national authorities. In that respect, he suggested considering the possibility of establishing individual optional fees for countries requiring the cost of examination to be financed from fees to be paid by applicants, as this would permit them to accede to the Lisbon system. The consequence of non-payment of such individual fees would be renunciation of the protection in such country. Contracting Parties would be free to collect such individual fees or not, which would allow the current system to continue to function in those member States which were satisfied by the current system.

94. The Chair recalled that a distinction should be made between renewal fees and designation fees. Renewal fees might be useful for covering at least part of the costs of the Lisbon Union, whilst designation fees might cover the cost of administering the system in Contracting Parties.

95. The Delegation of Italy expressed its support for the intervention of the Delegation of the European Union on the issue of the evidence regarding the link. The Delegation said that not mentioning at all this information would create the impression that no information is required, which would decrease the chances for the application to be accepted in certain jurisdictions.

96. The Delegation of France pointed out that the issue of the payment and financing of national authorities examining international registrations of appellations of origin and geographical indications should be independent from the issue of the recognition of an appellation of origin or geographical indication. The Delegation recalled that the European Union Regulations had been modified on this point, providing the possibility for member states to establish fees to cover their examination costs. The Delegation expressed doubts as to proposed introduction of a renewal fee or a maintenance fee. The Delegation was of the view that, once the appellation of origin or geographical indication had been registered and notified, no further work had to be done by the International Bureau and that the maintenance of the record in itself would not justify such a renewal fee. The sustainability of the Lisbon Registry could be maintained through an increase of the number of Contracting Parties and an increase of the number of applications.

97. The Delegation of Australia recognized that some applicants would be disadvantaged if information on a link would be required and their country of origin did not require such information. The Delegation suggested that, if applicants were advised that this information was necessary in order to gain protection in some jurisdictions, they would probably choose to provide it.

98. The Secretariat referred to the Madrid System for the International Registration of Marks for a possible solution of the issue of the evidence to be provided on the link. In that system, there was a possibility for a Contracting Party to require the applicant to submit a declaration of intention to use the mark (Rule 7 of the Madrid Common Regulations). If the applicant did not provide such declaration, this would not affect the international registration. However, in order to obtain protection in a country requiring such a declaration, the applicant had to submit the declaration to the Trademark Office of such a country. The Secretariat pointed out that the difference with the mandatory provision of Rule 5, Option A, as proposed, was that, if the

information on a link would not be provided, international registration should be refused by the International Bureau.

99. The Secretariat noted that the suggestion made by the Representative of CEIPI of introducing individual fees was also modeled on the Madrid Protocol for the International Registration of Marks. Individual fees were introduced with the conclusion of the Madrid Protocol. However, unlike the Madrid system, the Lisbon system did not require applicants to designate in which Contracting Parties they wanted protection. The Secretariat indicated that the possibility for some countries to request an individual fee to cover the cost of examination could provide a solution to the issue that had been raised by some delegations. This fee should be lower than the national fee, as under the Madrid system, because not all the work had to be done by the examining office, as the formal requirements to be met were checked by the International Bureau.

100. The Secretariat went on to say that fee revenues were not the main source of income of the Lisbon system. Under the current system, fees did not cover the cost of the Lisbon Registry. As there was a limit to the number of geographical areas in the world, there would never be the same flow of applications as under a patent or trademark registration system. However, for notifications under Article 6^{ter} of the Paris Convention no fee had to be paid at all and yet maintenance of that system also involved costs for the International Bureau. On the other hand, the Secretariat indicated that the operational costs of the Lisbon system were not high and they were supposed to become even lower once automation of the operations was completed.

101. The Chair underlined a structural difficulty due to the fact that the Lisbon Agreement, as well as the draft Revised Lisbon Agreement, did not envisage a designation system. The Working Group might therefore further reflect on the suggestion for some kind of designation mechanism into the Lisbon system. This would certainly facilitate the introduction of the solutions that had been suggested, such as the introduction of individual fees or the possibility to require an indication of the link with respect to only some of the Contracting Parties.

102. Considering the divergent views on Rule 5, the Chair suggested keeping Options A and B and further discussing the issue at the next session. However, the text of Option A could be simplified so as to read, in brackets: “particulars, in the case of an appellation of origin, concerning the connection between the quality or characteristics of the good and the geographical environment of the geographical area of production and, in the case of a geographical indication, concerning the connection between the quality, reputation or other characteristic of the good and the geographical area of origin.”

103. The Chair noted that the introduction of renewal fees would not necessarily make the Lisbon system cost covering, but when the number of Contracting Parties and applications would grow under the contemplated Revised Lisbon Agreement, the system could come closer to cost covering.

104. The Delegation of France indicated that in Rule 5(2), Option A, the phrase “which the International Bureau shall not translate” should be maintained, for the reasons stated before.

105. The Delegation of Italy was of the view that the financial situation of the Lisbon Union had to do with the promotion of the system around the world through events and other initiatives to illustrate its benefits. The Delegation expressed doubts about the revolutionary idea to introduce a designation system. Further, the contemplated increased membership of the Lisbon system following its revision would remove the cost issue.

106. The Representative of CEIPI pointed out that the introduction of individual fees would not necessarily require the introduction of a designation system. If the applicant would not pay the required individual fee, this would simply be equivalent to renunciation of protection. The possibility of renunciation was already foreseen in Rule 5(3)(iv) of the Regulations under the current Lisbon Agreement.

107. The Delegation of the Russian Federation welcomed the proposal of the Representative of CEIPI. The Delegation was of the view that this would not lead to radical changes in the system. However, it would make the Lisbon system more attractive for countries that required compensation for the examination of applications. The Delegation suggested to reflect this proposal in the next version of the draft Revised Lisbon Agreement.

108. The Chair wondered whether the Working Group could agree on the idea of asking the Secretariat to prepare a text within square brackets introducing the option of requiring individual fees in combination with the possibility of renouncing protection in one or more Contracting Parties.

109. The Delegation of Mexico supported the proposal.

110. The Delegation of the European Union suggested that the possibility of individual fees in some countries might not help towards attracting a significant number of new members to the Lisbon system and might remove the attractiveness of the system compared to registration through the regular national procedures. The Delegation suggested that the Secretariat could perhaps look into this question and assess the balance between the two options in terms of potential new membership. The Delegation agreed with the Delegation of France that there was no rationale for a renewal fee to be paid to the International Bureau.

111. The Chair pointed out that the proposed individual fees would cover the examination costs of Contracting Parties. As under the Madrid system, there would be a ceiling for the amount of such fees, which could not be established entirely at the discretion of the Contracting Party concerned.

112. The Delegation of the United States of America said that the allocation of fees over the life of a registration depended on policy choices made by national offices. In many cases, the renewal fee was established for the cost of maintaining the right, the cost of administering it.

113. The Chair concluded that there was no opposition to the idea of asking the Secretariat to include in square brackets a text providing for the option of individual fees for Contracting Parties, which might choose this way to cover their administrative costs of examination. This would be combined with the option for the applicant to renounce protection in one or more Contracting Parties. The Chair noted that the impact of such a measure would have to be further analyzed, so that the objective of a wider membership and a greater use of the system would not be put at risk.

114. The Delegation of El Salvador sought clarification as regards Article 7(3) and the criteria for reduced fees.

115. The Secretariat indicated that the issue of fee reduction had been discussed at the fifth, sixth and seventh session of the Working Group. However, the criteria had not been identified yet. The Assembly would establish such reduced fees in the future.

116. The Delegation of Algeria asked the Secretariat to clarify the meaning of the phrase "*en bonne et due forme*" in the French version of Article 6. As regards Article 6(3), the Delegation proposed to add a subparagraph (v) which would refer to the "date of registration in the

Contracting Party of Origin". The Delegation of Algeria was of the view that protection should not be granted if an appellation of origin or a geographical indication was not protected in the Contracting Party of Origin, as required by Article 1(2) of the current Lisbon Agreement.

117. The Secretariat indicated that "in due form" was the usual terminology to indicate that the application could only be registered once it met all the formalities. As regards the proposal to include the date on which protection was granted in the Contracting Party of Origin in Article 6(3), the Secretariat indicated that this requirement was already contained in Rule 5(2)(a)(vi).

118. The Chair said that the need of ensuring that any Contracting Party examining an international registration should have the information necessary for establishing if there was protection in the country of origin was fully achieved under the current rules of the Lisbon system, which had in fact been copied in the draft Revised Lisbon Agreement and followed the common approach under intellectual property registration systems. He wondered what need there was to change the current regime.

119. The Representative of INTA was of the view that the filing date requirements should be determined by the elements which were required for determining the scope of protection and the registration date in the country of origin was not such an element. The same applied in respect of the details of the beneficiaries, as provided for in Article 6(3)(ii); identification of the beneficiaries was sufficient as a minimum requirement. In Article 6(3)(iv), the word "good" should be modified, as there might be more than one good.

120. The Chair said that there had been two interventions questioning the need to include the requirement of the registration date in the Contracting Party of Origin among those necessary for establishing the date of international registration. The Chair noted that the Delegation of Algeria would like to see this text within square brackets as subparagraph (v) in the next version of the draft Revised Lisbon Agreement.

121. The Delegation of the European Union wondered whether Article 6(3) could not be simplified by saying that, where the application did not contain all the mandatory particulars, the date of international registration should be the date on which the last of the missing particulars was received by the International Bureau.

122. The Chair recalled the distinction between requirements necessary in order to obtain a filing date and those that were still mandatory but could be fulfilled at a later stage.

123. The Representative of CEIPI pointed out that the date of international registration was determined by the filing date of the application. This date was important in connection with possible prior rights. Accordingly, difficulties in determining the date of international registration could increase the chances of disputes on prior rights.

124. The Delegation of Algeria said that the issue of the date of registration merited more reflection. The Delegation was of the view that the date of international registration must to some degree be affected by the date of registration in the Contracting Party of Origin (or the date of protection in respect of Contracting Parties not employing a registration system).

125. The Chair said that a new subparagraph (v) would be included in Article 6(3) which would basically mirror Rule 5(2)(a)(vi), requiring the indication of the date of registration or of the legislative/administrative act or judicial decision by virtue of which protection was granted in the Contracting Party of Origin, as a condition for obtaining a date of international registration. This new subparagraph would be put in square brackets, as there was no consensus on its inclusion.

DISCUSSION ON CHAPTER III OF THE DRAFT REVISED LISBON AGREEMENT
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126. The Delegation of the United States of America sought clarification as to how broad the reference to goods of the same kind in Article 10 (1)(a)(i) should be interpreted. With regard to the infringement standards contained in indent 2 and 3, the Delegation was not sure what the terms "usurpation", "imitation", "evocation", "exploit unduly" covered and wondered what sort of evidence was usually admissible to prove these situations. It was not clear to the Delegation either whether the applicable standards were objective or subjective. The Delegation said that unfair competition standards for the protection against misuse required an impact on consumers. Further, protection against dilution should only be available in respect of well-known designations, not for all designations. The Delegation said that the standards of Article 10(1)(a)(i) were very broad and went significantly beyond either the likelihood of confusion or deception standards that were inherent to a trademark system. The Delegation also expressed concern regarding the protection in respect of translations and wondered how to apply that standard to translations that the US consumer had never heard of. The Delegation further wondered whether generic terms could be considered to represent an imitation, usurpation or evocation under the infringement standard of Article 10, thus affecting terms that had already been generic for many years or had become generic through lack of enforcement. The Delegation also wondered whether Articles 11 and 12 would prevent Contracting Parties from applying use, intent to use, renewal or maintenance requirements. The Delegation would not consider this an efficient use of IP resources in Contracting Parties.

127. The Delegation of Peru referred to footnote 4 concerning Article 10 and said that the current Lisbon Agreement in force did not contain any provision whatsoever dealing with homonymous appellations of origin or geographical indications. There was no definition of homonymy, nor was there any provision for the registration of such appellations of origin or geographical indications, or for the granting of any level of protection in respect of them. Therefore, it was not correct to refer to an "existing practice" in respect of homonymy. Moreover, inclusion of such a footnote would create interpretation issues and even systemic issues, as the footnote might be used as a precedent to interpret "possible existing practices" relating to standards or concepts not recognized in the new treaty. Therefore, the Delegation had to express its reservations with regard to this footnote and requested its removal from the text under negotiation. As noted throughout this negotiating process, Peru did not consider it appropriate to regulate a concept like homonymy in the new treaty. This was because the Lisbon system was structured in such a way that, ultimately, it was for each Contracting Party to decide whether or not to grant protection in its territory, once notified of a new international registration by the International Bureau. Such a decision would be made by a Contracting Party taking into account its own national legislation, or an international agreement, whether multilateral or bilateral, to which it was party. Article 9(3) stipulated that the protection afforded by the new treaty was without prejudice to the protection afforded by a party under its national law, international agreements such as the TRIPS agreement, or by a bilateral agreement. This provision would afford the flexibility to all members to regulate this concept more effectively, so that those countries that had provided for homonymy, either by domestic law or by an international agreement, could maintain it, while those that did not provide for homonymy and those for which such a provision was contrary to their national law, would not be affected. It should not be forgotten that the objective of the current negotiation was to attract new members. The issue had therefore best be approached prudently.

128. The Delegation of Peru went on to say that it wished to maintain its reservations regarding any reference to the term "evocation", for example, in Article 10(1)(a)(i). This concept was unknown in Peruvian law and its meaning was not clear. Further, Article 13(2) and Rule 9(2)(v) both dealt with a concept equivalent to homonymy and should remain in brackets. For the same reason, Article 17(3) should be put in brackets.

129. The Delegation of the Russian Federation was of the view that Article 8 should identify appellations of origin and geographical indications as the object of protection, not international registrations. The Delegation stated that non-payment of the individual fee should be added to the list of exclusions of protection at the end of Article 8. Further, the Delegation sought clarification of the starting date of the protection of an international registration under Article 10.

130. The Delegation of the European Union expressed its satisfaction with the level of protection provided in Article 10, which reflected the result of the discussions at previous sessions of the Working Group. The Delegation requested the elimination of the brackets in the second indent of Article 10(1)(a)(i)

131. The Delegation of Australia supported the intervention made by the Delegation of the United States of America, adding that other treaties for the international registration of IP rights, like the Madrid Protocol and the PCT, were not so prescriptive in setting the level of protection. A more inclusive Lisbon system was more likely to encourage an increased membership that would be beneficiary to stakeholders worldwide. For that purpose, Article 10(1) would require some adjustments. With some redrafting, this paragraph could achieve a high level of protection while accommodating more of the different national systems for the protection of geographical indications, including trademark law. After all, protection similar to that stipulated in Article 10(1) existed in respect of trademark counterfeiting and was applicable in relation to any goods or services, not just wines and spirits; in case of unauthorized use of the same trademark on identical goods or services, a likelihood of confusion was presumed, so that it was not required to prove that such use was misleading. The Delegation suggested that the Article 14 approach might be used also for Article 10. Thus, Article 10(1)(a) might be revised so that it would refer to “providing the legal means” or “making available effective remedies for” or simply “providing for protection”.

132. The Delegation of Australia went on to say that the second and third indents of Article 10(1)(a)(i) dealt with concepts that were differently regulated under national laws of various countries. The Delegation proposed to omit these indents. Terms such as “usurpation”, “imitation” or “evocation” were unfamiliar in Australian national law and might in fact set a higher threshold for proof than intended. Referring to the second indent and cases of unauthorized use of the geographical indication in a way that was not identical, the Delegation said that the TRIPS Agreement required such use to be misleading or to constitute an act of unfair competition. There was no requirement for such use to amount to usurpation or imitation. Apart from the fact that these terms were unfamiliar to many legal systems, it was difficult to comprehend why these terms were chosen, as the common definition of “usurpation” was “to seize and hold by force without legal authority”, which was an extraordinary high threshold. It was difficult to understand what actual function this term could perform apart from making life difficult for legislators. The term “evocation”, on the other hand, would appear to be at the other side of the spectrum: it was very broad and very subjective. In relation to the third indent, dealing with “use which would be detrimental to or unduly exploit reputation”, the Delegation pointed out that these concepts were dealt with differently under various national laws. Moreover, Article 16.3 of the TRIPS Agreement provided for protection against use of a trademark on goods or services which were not similar to those in respect of which a trademark was registered, provided that such use would indicate a connection between those goods or services and the owner of the registered trademark and provided that the interests of the owner were likely to be damaged by such use. The Delegation also referred to Article 22.2(a) of the TRIPS Agreement and suggested the deletion of these indents or the use of terms more familiar to and applicable in a broader range of countries.

133. The Delegation of Hungary supported the statement made by the Delegation of the European Union and was also in favor of deleting the square brackets in Article 10.

134. The Delegation of Italy expressed its support for the statement of the Delegation of the European Union. In addition, the Delegation indicated its preference for the removal of the term “unduly” from the third indent of Article 10(1)(a)(i), because it introduced a subjective criterion. The Delegation also had concerns with regard to the issue of homonymy and wondered whether this should be a target of the revision of the Lisbon Agreement.

135. The Delegation of France supported the views expressed by the Delegations of Hungary, Italy and the European Union. Referring to the French version of Article 11, the Delegation wondered why there were two square brackets – “[être considérée comme ayant] [avoir]” – and suggested that the provision be re-drafted and simplified.

136. The Delegation of Chile supported the statements of the Delegations of Australia and the United States of America as to the difficulties related to Article 10, its level of protection and the use of terms which would be meaningless in the legislation of its country.

137. Concerning footnote 4, the Delegation of Chile stated to believe that this matter had already been resolved during the previous session of the Working Group. The Delegation indicated that the Lisbon Agreement in its current version did not have an express provision recognizing the possibility of members to protect homonymous appellations of origin. Many countries, including also several Lisbon members, protected homonymous appellations of origin and geographical indications under bilateral agreements. Therefore, the Delegation considered the provision contained in Article 10(3) of the earlier version of the draft Revised Lisbon Agreement very important, as such provision would update the Lisbon Agreement and made it coherent and consistent with the reality at the international level. The provision would not impose any obligation to protect homonymous appellations of origin and geographical indications, but would only allow Contracting Parties to do so, on the basis of their national legislation and subject to practical provisions which would give a fair treatment to all producers involved. The Delegation recalled its willingness to reach a compromise, as reflected in footnote 4. However, if this compromise was no longer acceptable, the Delegation expressed its preference for Article 10(3) as contained in the previous version of the Draft Revised Lisbon Agreement

138. The Representative of INTA reiterated INTA’s concerns about the ambiguity of the text defining the scope of protection, in particular in respect of the term “evocation”, while referring to similar concerns voiced by the Delegations of Australia, Peru and the United States of America. INTA would prefer to bring the scope of protection in line with trademark law standards. The current wording of the scope of protection created uncertainty and could lead to an excessive protection at the expense of, inter alia, trademark owners. Further, the precise meaning and scope of the phrase “use in a translated form” was unclear. It should be made clear that protection against such use was dependent upon the actual perceptions of the consumers in the country of protection. INTA was of the view that broadening the scope of protection could also raise issues regarding the balance between registered terms and other terms that were already in use. In this regard, there might be a need for further transitional provisions. As regards Article 10(1)(b), INTA had a preference for incorporating more expressly the priority principle, in addition to the general reference to Article 13(1). Moreover, owners of prior trademarks should not, as a result of Article 10(1)(a), be restrained in their freedom to modernize their logos .

139. The Representative of oriGIn expressed reservations on footnote 4. It could be dangerous to deal with a crucial topic like homonymous appellations of origin in a simple footnote. He also shared the concerns expressed by some Delegations about the possible interpretation of this footnote as an obligation to accept homonymous appellations of origin. This issue should be left to national law. Therefore either the footnote should be removed or

reformulated in order to make it clear that Contracting Parties would be free to decide whether to accept or not homonymous appellations of origin.

140. The Representative of CEIPI said that there was an incoherence between the title of Article 11, the body of this Article and footnote 5. In fact, the expression “term or name” did not appear in the body of this Article. He also raised the question as to whether Article 11 would apply in respect of geographical indications that consisted of an indication other than a term or a name.

141. The Delegation of Portugal indicated that the current text of Article 10 was the result of the good work done so far by the Working Group. The Delegation declared it was comfortable with Article 10 and would like to see the square brackets removed. It should be kept in mind that one of the mandates of this Working Group was to make the Lisbon system more attractive in order to attract more members. This should, however, not result in a weaker protection of geographical indications and appellations of origin. A high level of protection should be guaranteed and it would be guaranteed in the formulation of Article 10.

142. The Delegation of Peru said that footnote 4 had raised a great deal of concerns among Delegations and could not be retained. As indicated in paragraph 208 of the Report of the seventh session of the Working Group (document LI/WG/DEV/7/7), there was no consensus on that particular issue.

143. The Delegation of the Republic of Korea, referring to Article 10(1)(a)(i), said that the concept of “evocation” was too ambiguous and subjective and supported the position expressed by the Delegations of Australia and the United States of America. Article 10 should provide flexibility.

144. The Chair recalled that the inclusion of footnote 4 was the result of the conclusion of the previous session of the Working Group, that the Secretariat would prepare a text that might serve as a possible agreed statement and which would be considered by the Working Group at the present session, without prejudice to the outcome of the discussion. The Chair noted the conflicting views expressed on this footnote, even though the text would allow Contracting Parties to shape refusals or statements of grant of protection in a way that would reflect the issue of homonymy as it applied in their national or regional system. The Chair further pointed out that the issue of protection should be separated from the procedural issue.

145. Referring to footnote 4, the Secretariat recalled that in 2006 this procedural issue had been solved in the form of a practical solution and the draft Revised Lisbon Agreement aimed to codify this practical solution. In the light of the current discussion, the suggestion made by the Delegation of Peru might be followed by reflecting that national or regional law would determine how to deal with homonymous appellations of origin and geographical indications. The Secretariat clarified that the International Bureau was not in a position to refuse an application on the basis that it conflicts with another appellation of origin or geographical indication, as the International Bureau is not entitled to carry out a substantive examination of applications. Therefore, upon application, homonymous appellations of origin or geographical indications would be recorded in the International Register, which would require their protection, except in those Contracting Parties that would notify a refusal or invalidate the effects of the registration. Those countries that did not allow for coexistence could simply refuse the protection. Other countries could issue a statement of partial grant of protection or a partial refusal. The Secretariat recalled that there had been an attempt to reflect this approach in the Regulations, so that a partial refusal or a partial grant of protection could be recorded in the International Register. Article 9(3) could serve as a solution in connection with Article 15(2), which specified that a refusal should not be detrimental to any other protection available in the refusing country.

146. Referring to Article 8 and to the question posed by the Delegation of the Russian Federation, the Secretariat indicated that the reference to refusal, invalidation or renunciation seemed sufficient. A registration would not be effective in those countries that had issued a refusal, had invalidated the registration in their territory or for the territory of which the protection had been renounced.

147. Referring to Article 10 and the question raised by the Delegation of the Russian Federation, the Secretariat clarified that the same text on the protection to be provided from the date of the international registration applied in the current Lisbon system. According to Rule 8(3)(b) of the current Lisbon Regulations, countries had the opportunity to make a declaration indicating that protection would only be available from a later date within a maximum of one year after the date of international registration. The Secretariat clarified that under the current Lisbon Agreement no country had made such a declaration. Therefore, all Lisbon countries were protecting appellations of origin from the date of international registration, obviously subject to any refusal. However, if the Working Group would favor the introduction of a provision along the lines of Rule 8(3)(b), this could certainly be done.

148. The Delegation of the European Union said that the concept of “evocation” had been interpreted by the European Court of Justice. The Italian protected designation of origin “Parmigiano-Reggiano” was registered in the European Union and it was found that a cheese was marketed under the name “Parmesan” in Germany. The question brought to the Court was whether this term “Parmesan” could be validly used. In this regard, the Court had come to the conclusion that, given the phonetic and visual similarity between the names Parmesan and Parmigiano-Reggiano and the similar appearance of the products, the use of the term Parmesan must be regarded as an evocation of the protected designation of origin Parmigiano-Reggiano. Referring to the concern raised by the Delegation of the United States of America as to whether this protection would cancel the generic character of a name, the Delegation of the European Union recalled that, according to the Court, Germany had failed to show that the name “Parmesan” was generic. Therefore, Germany could not rely on that exception in respect of “Parmesan”.

149. The Delegation of Chile recalled that the issue of homonymy had already been dealt with at the international level in the TRIPS Agreement and that since 1995, in a considerable number of bilateral agreements, there had been acceptance of homonymous geographical indications. The Delegation said that it would be odd that after twenty years all that development should not be included in a Revised Lisbon Agreement. The Delegation was of the view that Article 9(3) could not resolve this issue. Moreover, Lisbon members that were members of the WTO could grant protection to homonymous appellations of origin. Footnote 4 was not as clear as Article 10(3) of the previous version of the draft Revised Lisbon Agreement.

150. The Delegation of the Russian Federation sought additional clarification on Article 8. The Delegation further supported the idea of introducing in the draft Revised Lisbon Agreement a provision reading “countries would be able to declare that protection will be granted from a date subsequent to the registration date” modeled on Rule 8(3)(b) of the current Lisbon Regulations.

151. The Chair said that the possibility of making a declaration on the effective date of international registration in a Contracting Party, modeled on current Rule 8(3)(b), would be included in the next version of the draft Revised Lisbon Agreement, either in Article 8 or in Article 10. The Chair further clarified that the subject matter of protection under Article 8 was the appellation of origin or the geographical indication registered in the international register, rather than the international registration itself.

152. The Secretariat confirmed the explanation given by the Chair and suggested the following text for Article 8: "Each Contracting Party shall protect on its territory, within its own legal system and practice but in accordance with the terms of this Act, appellations of origin and geographical indications that are the subject of international registrations in force under this Act, subject to any refusal, invalidation or renunciation that may be effective with respect to its territory."

153. The Delegation of France wondered whether the new text of Article 8 could not simply use the abbreviated expression "registered" of Article 1(x). The Delegation also suggested that the non-payment of individual fees could be considered as either a renunciation by the applicant or a ground for refusal by the Competent Authority.

154. The Representative of CEIPI wondered whether the phrase "in force under this Act" was necessary in Article 8.

155. The Secretariat proposed to take up in Article 8 the phrase "from the date of international registration" and delete that phrase from Article 10. The Secretariat also suggested to take up, as a second paragraph of Article 8, the provision of Rule 8(3)(b) of the current Lisbon Regulations.

156. The Chair concluded that these modifications would streamline the drafting and also simplify the text of Article 10.

157. Reverting to footnote 4, the Chair noted that the current text had not found sufficient support. He suggested that the Secretariat might be requested to prepare a new draft that would leave to it the legislation of a Contracting Party how the issue of homonymous appellations of origin and geographical indications would be dealt with, in accordance with its international obligations. This new text should not create an obligation for Contracting Parties to provide protection for such appellations of origin or geographical indications, nor should it prevent them from doing so. Apart from this substantive issue, procedural provisions should be taken up in the text so as to allow Contracting Parties to issue partial refusals or statements of partial grant of protection.

158. The Delegation of Peru sought clarification of the proposal of the Chair on the issue of homonymy. The Delegation was concerned about regulating that particular issue in a footnote.

159. The Chair reiterated his suggestion and pointed out that the text would leave it to national or regional legislation how to address the issue of homonymous appellations of origin and homonymous geographical indications. A Contracting Party would therefore not have any obligation, under the Revised Lisbon Agreement, to protect homonymous appellations of origin or geographical indications, nor would a Contracting Party be prevented from protecting them. The second element of his proposal was to leave the procedural options open for those Contracting Parties that provided for the coexistence of homonymous appellations of origin or geographical indications in their territories. Thus, they would be in a position to notify this in an appropriate manner to the International Bureau, either in the form of a partial refusal or in that of a partial statement of grant of protection.

160. The Delegation of Peru asked to be consulted before the Secretariat presented a text without square brackets to the Working Group.

161. The Chair recalled that there was always an opportunity for delegations to contact the International Bureau and share their suggestions. In that respect, all delegations were placed on an equal footing. In any event, the text would appear in square brackets.

162. The Delegation of Chile was of the view that there was no reason why there should be a special and differential treatment for this particular text.

163. The Chair indicated that the Rules of Procedure were clear and should be followed in respect of all provisions. His understanding was that the Delegation of Peru was ready to share its suggestions with the International Bureau and that the Rules of Procedure left Delegations free to do so.

164. As regards Article 9(3), the Delegation of Algeria expressed a preference for deleting the references to other international instruments. The Delegation did not see any need for the inclusion of a list in this provision.

165. The Chair indicated that Article 9(3) followed the structure of Article 4 of the current Lisbon Agreement, which also made reference to other international instruments. The TRIPS Agreement was not mentioned in Article 4 of the current Lisbon Agreement, due to the fact that the Lisbon Agreement was concluded much earlier than the TRIPS Agreement. Bilateral agreements were not mentioned either. However, neither the text of Article 4 of the current Lisbon Agreement, nor draft Article 9(3) were to be interpreted as imposing an obligation for Contracting Parties to accede to these international instruments.

166. The Representative of CEIPI noticed a difference between the English and the French text of Article 9(3). While the French text used the expression "*accorde déjà*", the English text contained the phrase "has already granted". The Representative suggested to align the English version with the French version.

167. The Delegation of Algeria reiterated its preference for deleting the reference to other international agreements. Alternatively, the Delegation said that another possibility would be to amend the provision in question, so that it would only mention bilateral agreements and the international instruments mentioned in Article 4 of the current Lisbon Agreement.

168. The Delegation of Peru was of the view that the references in draft Article 9(3) were important, in particular the reference to the TRIPS Agreement.

169. The Representative of CEIPI suggested either to put a full stop after "other international instruments" in Article 9(3), or to continue by adding the phrase "to which the Contracting Party is a party", so as to make it clear that the provision would not require a Contracting Party to be bound by the TRIPS Agreement, the Madrid Agreement, or a bilateral agreement. The case of the Paris Convention was different, in view of Article 28 of the draft Revised Lisbon Agreement.

170. The Delegation of Algeria wondered whether it would be possible to include the references to other international instruments in the Notes or in an Agreed Statement on Article 9(3) rather than in the Revised Lisbon Agreement itself.

171. The Chair recalled that the Delegation of Peru had expressed a clear preference for keeping the references to other international instruments in the Revised Lisbon Agreement itself. He therefore suggested that the phrase "the TRIPS Agreement or a bilateral agreement" be put between square brackets for the time being. In addition, he reiterated his suggestion to add a footnote to Article 9(3), or to include text in the Notes, which would clarify that Article 9(3) did not create any obligation, for a Contracting Party to the Revised Lisbon Agreement, to accede to the TRIPS Agreement or to comply with any of its provisions.

172. The Delegation of El Salvador supported the views expressed by the Delegation of Peru, in light of the fact that international instruments such as the Paris Convention, the TRIPS

Agreement and also bilateral agreements, had established a number of obligations for El Salvador as well. The Delegation therefore expressed its preference for keeping the references to other international instruments in Article 9(3).

173. The Delegation of Romania expressed its support for the drafting suggestion made by the Representative of CEIPI.

174. The Delegation of Georgia fully supported the proposed wording for Article 9(3) but, as it also understood the concerns expressed by the Delegation of Algeria, the Delegation could go along with the suggestion by the Chair to put some references between square brackets, for the time being.

175. By way of conclusion, the Chair indicated that there would be two options for Article 9(3) in the next version of the draft Revised Lisbon Agreement. One option would only include a reference to the Paris Convention and the Madrid Agreement on Indications of Source, while the other would reproduce the current text in full, albeit in square brackets. He added that there would also be a footnote to Article 9(3) that would explain that the provision in question would not create any obligation, for a Contracting Party to the Revised Lisbon Agreement, to accede to the WTO or to comply with the provisions of the TRIPS Agreement.

DISCUSSION ON ARTICLE 12 OF THE DRAFT REVISED LISBON AGREEMENT

176. The Delegation of the United States of America sought clarification as to whether Article 12 would prohibit a Contracting Party from requiring use or intent to use as a condition for the maintenance of rights or the renewal of a registration.

177. The Delegation of the European Union was of the view that neither a specific period of validity nor a use requirement for registered appellations of origin and geographical indications should appear in the Revised Lisbon Agreement. In that regard, the Delegation expressed a preference for the wording used in Article 7 of the current Lisbon Agreement.

178. The Delegation of Mexico sought clarification as regards the compatibility of the wording of Article 12 and the possible introduction of individual fees.

179. The Chair recalled that, when discussing Article 7 of the draft Revised Lisbon Agreement, the Working Group had indeed touched upon the option that might be opened for Contracting Parties to introduce individual fees, to cover their expenses in relation to examining international registrations, prior to deciding on whether or not to issue a refusal or a statement of grant of protection. He added that the issue of renewal fees had also been raised, but no conclusion had been reached on the issue of fees.

180. The Secretariat pointed out that Article 7 of the current Lisbon Agreement mentioned that protection would be available without renewal and added in that regard that the phrase "without renewal" had not been repeated in the draft Revised Lisbon Agreement because of the existence of national systems which did require renewal. In other words, the text left the question open for the time being. The Secretariat also referred to the suggestion it had made, in the discussion of Article 7 of the draft Revised Lisbon Agreement, to use the Madrid system as a model, in particular since the Madrid system allowed Contracting Parties to make protection conditional upon use. Non-compliance with such use requirement would not affect the international registration, but only the effects of the registration in the Contracting Party concerned if no information was provided on use. As regards Article 12, the Secretariat clarified that, although its title read "Duration of Protection", the provision itself only dealt with international registrations, in other words it did not say what the duration of protection should

be, but only clarified that “international registrations shall not be subject to a specific period of validity”. The Secretariat added that the objective of the proposed wording for Article 12 was to have a text that would be as open-ended as possible, but that would still say that protection would have to be provided, albeit, in those countries which had a renewal system, subject to payment of a renewal fee.

181. The Chair was of the view that, when reference was made to renewal fees, two different types of renewal were actually referred to. One was the renewal fee that a Contracting Party could require with respect to its own territory for purposes of maintaining protection under the Revised Lisbon Agreement and which could be referred to as a national renewal fee. The other type of renewal fee would be a possible fee to be paid to the International Bureau for purposes of renewing the international registration as such. In spite of the fact that those were two separate issues, the Chair pointed out that both would be affected by the question as to whether there should be a specific term of protection for those appellations of origin and geographical indications registered under the Revised Lisbon Agreement. The Chair indicated that a related question was whether Contracting Parties would still be free to require a renewal fee at the national level if the international registration itself would not be subject to a renewal process. He also wondered what would then be the consequence at the international level of the non-payment of the renewal fees at the national level. The Chair recalled that in previous discussions on the same matter a number of delegations had pointed out that the introduction of renewal fees at the international level would not solve the problem of the financial sustainability of the Lisbon system. Instead an increase of the membership of the Lisbon system might be a better response to the question of the financial sustainability of the Lisbon system.

182. The Delegation of France recalled that a distinction had to be made between the goal of the Revised Lisbon Agreement, namely the protection and international registration of appellations of origin and geographical indications, and the issue concerning the duration of protection. Under the current Lisbon system, the validity of an international registration depended on the validity of the registration at the national level. Hence, the current Lisbon system operated on the basis of an unlimited duration of protection, subject to the validity of the national registration in the country of origin. The Delegation further expressed the view that a country, in which the validity of a registration was conditional upon a renewal procedure and the payment of a renewal fee, should only apply such requirement to its national appellations of origin and geographical indications and not to geographical indications and appellations of origin registered at the international level under the Lisbon system by other countries.

183. The Chair’s understanding of the comment made by the Delegation of France was that a Contracting Party could subject the protection of domestic appellations of origins and geographical indications to a renewal procedure and that the validity of a corresponding international registration could be affected whenever the required domestic renewal would not take place. However, such renewal procedure should not apply in respect of an appellation of origin or a geographical indication from another Contracting Party registered at the international level and would thus have to be protected as long as the appellation of origin or the geographical indication would be protected in the Contracting Party of Origin.

184. The Delegation of El Salvador pointed out that the Notes on the draft Revised Lisbon Agreement in document LI/WG/DEV/8/4 offered a detailed and useful explanation of the reasons for changing the text of Article 12.

185. The Delegations of Italy and Switzerland supported the comments made by the Delegation of France. In addition, the Delegation of Switzerland said that most bilateral agreements did not establish renewal fees or renewal procedures.

186. The Delegation of the European Union suggested that Article 12 be redrafted, so that the provision would be less ambiguous and clarify that international registrations would not be limited in time.

187. The Chair concluded that a revised version of Article 12 could be based on both Article 7 of the current Lisbon Agreement and on Article 12 of the previous version of the draft Revised Lisbon Agreement. While a number of delegations would like to ensure that international registrations could be subject to the payment of renewal fees, the majority of the current membership of the Lisbon Agreement would seem to be in favor of international registrations that could not be limited in time as a result of the non-payment of renewal fees, especially not at the international level.

DISCUSSION ON ARTICLE 13 OF THE DRAFT REVISED LISBON AGREEMENT

188. The Delegation of the United States of America expressed its serious concerns with respect to Article 13(1), which it considered misleading, inaccurate and also constituting a mischaracterization of Article 24.5 of the TRIPS Agreement. The Delegation added that the Delegations of Australia and the United States of America were both very familiar with the Report of the WTO Panel that had interpreted Article 24.5 in the dispute settlement cases brought by Australia and the United States of America against the European Union with regard to Regulation 2081/92. The Delegation recalled that, in that instance, the Panel had found that Article 24.5 was inapplicable for purposes of defining the appropriate relationship between trademarks and geographical indications, as the provision only applied when WTO members were implementing their TRIPS obligations in respect of geographical indications for the first time. The Delegation further pointed out that Article 16 of the TRIPS Agreement, which defined exclusive trademark rights, and Article 17 of the TRIPS Agreement, which defined possible exceptions to those rights that a WTO member could apply, were the only two provisions of the TRIPS Agreement defining the relationship between geographical indications and prior trademark rights. In this regard, the Delegation stressed that, if a WTO member chose to apply an exception to the trademark right under Article 17, such exception had to be limited and construed narrowly. As the Working Group would not want to approve texts that would be in direct conflict with a WTO precedent, the Delegation suggested that the text in the fourth line of Article 13(1) be deleted – i.e., the text from “shall not prejudice the eligibility” to “the public is not misled”. Instead, the Delegation suggested that Article 13(1) be amended so as to read: “Without prejudice to Articles 15 and 19, where a registered appellation of origin or a registered geographical indication conflicts with a prior trademark applied for or registered, or acquired through use, in good faith in a Contracting Party, the protection of that appellation of origin or geographical indication in that Contracting Party shall be subject to the rights conferred by the prior trademark under national or regional law along with any applicable exceptions to those rights”.

189. The Delegation of the Republic of Korea supported the proposal made by the Delegation of the United States of America.

190. The Delegation of the European Union welcomed the introduction of the coexistence principle between later geographical indications or appellations of origin and prior trademarks in the draft text and recalled that the principle of coexistence had also been confirmed by the WTO Panel. The principle of coexistence was applied in the European Union, but the proposed wording for Article 13 would not preclude Contracting Parties from not applying the coexistence principle. In other words, under the proposed text, a 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.

191. The Delegation of Italy supported the statement made by the Delegation of the European Union.

192. The Representative of INTA shared the concerns expressed by the Delegation of the United States of America. With respect to the phrase starting with “[taking into account] [provided that]” in the sixth line of Article 13(1), she said that the proposed wording appeared to suggest that the legitimate interests of the holder of a geographical indication could be a ground for the geographical indication to prevail over the prior trademark right. Such a consequence would be incompatible with the priority principle and would raise concerns under both the TRIPS Agreement and fundamental rights guarantees as recognized for example under the European Union Convention on Human Rights. Although the reference to legitimate interests in Article 13 had been introduced on the basis of the provisions of Article 17 of the TRIPS Agreement, there was a difference between the limited exceptions which the owner of a trademark had to tolerate in accordance with Article 17 of the TRIPS Agreement and the very right of continued existence of a prior trademark which the proposed language seemed to put into question. She added that, in her view, a later geographical indication should never be recognized as such as a basis for invalidating a prior trademark. Of course, there could be other grounds for the cancellation or invalidation of a trademark under national law, such as non-use or a possible misleading nature of the trademark in the country of protection. As far as the last part of Article 13(1) was concerned, she indicated that the wording did not make it entirely clear which would actually be the sign that would be regarded as misleading. In that regard, she added that the misleading sign would rather be the later geographical indication, not be the prior trademark, as far as the consumers in the country of protection of the prior trademark were concerned. Finally, she wished to emphasize once again the significance of the “first in time, first in right” principle in respect of the relationship between trademarks and geographical indications, as well as the principles of priority, exclusivity, and territoriality, which governed all industrial property rights in general.

193. The Delegation of Georgia supported the intervention of the Delegation of the European Union and also welcomed the introduction of the coexistence principle in the draft Revised Lisbon Agreement, all the more since the Georgian national legislation also provided for a possible coexistence of the prior trademark and the later appellation of origin or geographical indication, as long as the public would not be misled as to the origin of the good.

194. The Secretariat said that the difference in the interpretation of Article 24.5 and Article 17 of the TRIPS Agreement was well known. At the previous session of the Working Group, it had been noted that some countries applied the “first in time, first in right principle”, while others applied the coexistence principle under certain circumstances and the European Union applied both, namely the “first in time, first in right” principle in respect of well-known prior trademarks but the coexistence principle in relation to other prior trademarks. Article 13(1) had been drafted with the intention to reflect all those possibilities, thus allowing each Contracting Party to continue to provide under its national or regional law what it was currently providing.

195. The Representative of oriGIn agreed that the legislation of some countries provided for the “first in time, first in right” principle, while others applied the coexistence principle, and therefore expressed the view that the text should be as flexible as possible, in order to allow for accession by the largest possible number of countries to the Revised Lisbon Agreement. He further pointed out that the coexistence principle appeared more and more in bilateral agreements that had recently been negotiated or that were in the process of being finalized. He concluded by saying that, instead of focusing on ideological principles, the Working Group should look at the real interests of the parties involved. Moreover, there could even be circumstances allowing the respective right holders to agree to a possible coexistence.

196. The Delegation of the United States of America said that it objected to the coexistence principle because it did not fit with the trademark system and the notion of priority and exclusivity. Yet, the United States of America had accepted the WTO Panel's findings in that regard. However, the reason for its concerns was not so much the coexistence principle as such, but rather the conditions under which such coexistence would be allowed. In that regard, the Delegation recalled that a Contracting Party applying a coexistence regime had to abide by the conditions of Article 17 of the TRIPS Agreement. As per the Report of the WTO Panel, these conditions had to be reflected in Article 13(1), not those of Article 24.5 of the TRIPS Agreement. The Delegation also pointed out that the EU Regulations, as amended after the WTO Panel's Report, reflected the conditions of Article 17. Alternatively, Article 13(1) had rather read "Prior trademark rights are determined by national laws".

197. The Secretariat reiterated that the idea behind the proposed wording for Article 13(1) had been to come up with a text that would allow for a "first in time, first in right" type of system or a coexistence system, or even a combination of both systems. The Secretariat further recalled that a previous version of Article 13(1) had simply included the relevant provisions of the TRIPS Agreement by reference to deal with the issue. However, as the Working Group had decided that the draft Revised Lisbon Agreement should not include provisions of the TRIPS Agreement by reference, the Secretariat had had to find a way to describe what was stated in the relevant provisions of the TRIPS Agreement, namely Article 24.5 and Article 17 of the TRIPS Agreement. The Secretariat suggested that the discussion focus on the part of draft Article 13(1) that caused difficulties, namely the phrase "shall not prejudice the eligibility for, or the validity of, the registration of the trademark, or the right to use the trademark".

198. The Delegation of France indicated that the current text of Article 13(1) was perfectly acceptable and that any reference to national legislation should be avoided altogether. In that regard, the Delegation added that a clear international rule was necessary instead of a systematic reference to national legislation.

199. The Delegation of Peru was of the view that it would be useful to have a reference to national legislation, because, in the case of Peru for example, the national legislation did not incorporate the notion of a prior trademark "acquired through use, in good faith".

200. The Delegation of Italy shared the views expressed by the Delegation of France.

201. The Chair said that no delegation had challenged the underlying idea that Article 13(1) had to provide for both options, namely a coexistence system or a "first in time and first in right" system. In an attempt to reflect both legal schools of thought in the text, he suggested the following redraft of Article 13(1): "Without prejudice to Articles 15 and 19, where a registered appellation of origin or a registered geographical indication conflicts with a prior trademark applied for or registered, or acquired through use, in good faith in a Contracting Party, that Contracting Party shall provide that the protection of that appellation of origin or geographical indication in that Contracting Party shall either not prejudice the eligibility for, or the validity of, the registration of the trademark or the right to use a trademark or shall be subject to the exclusive right conferred by the prior trademark".

202. The Delegation of the United States of America said that the drafting suggestion of the Chair still incorporated the phrase "shall not prejudice the eligibility for, or the validity of" from Article 24.5 of the TRIPS Agreement. In view of the WTO Panel's Report, this phrase should not be used in draft Article 13(1). The Delegation reiterated the wording it had suggested earlier for the last part of draft Article 13(1), i.e.: "shall be subject to the rights conferred by the prior trademark under national or regional law along with any applicable exceptions to those rights".

203. The Delegation of the European Union said that it could go along with the draft proposed by the Chair.

204. The Secretariat said that, since the two systems had been respectively named the “first in time, first in right system” and the “system of co-existence”, the phrase “shall not prejudice the eligibility for, or the validity of” in draft Article 13(1) might be replaced by text to the effect that a Contracting Party shall provide that the prior trademark may co-exist with a later geographical indication or appellation of origin or that the exclusive right conferred by the prior trademark would prevail.

205. The Delegation of the United States of America said that a proper identification of the conditions under which a system of coexistence could be implemented, by a Contracting Party that wished to do so, would be crucial to the provision of Article 13(1).

206. The Chair invited the Delegation of the United States of America to repeat their earlier drafting suggestion in respect of Article 13(1).

207. The Delegation of the United States of America said that the text for Article 13(1) that it had proposed read as follows: “Without prejudice to Articles 15 and 19, where a registered appellation of origin or a registered geographical indication conflicts with a prior trademark applied for or registered, or acquired through use, in good faith in a Contracting Party, the protection of that appellation of origin or geographical indication in that Contracting Party shall be subject to the rights”. The Delegation added that, if the phrase at the end of the current draft of Article 13(1) would be retained, it should follow the text of Article 17 of the TRIPS Agreement more closely and thus read: “the legitimate interests of the owner of the trademark and of third parties”.

208. As a preliminary conclusion to the discussion on Article 13(1), the Chair suggested that three different options be included in the next version of Article 13(1), i.e. the current version of Article 13(1) as Option A, the text proposed by the Delegation of the United States of America as Option B, and a compromise text, to be prepared by the Secretariat, as Option C.

209. The Working Group agreed to proceed in this way in respect of Article 13(1).

210. Referring to Article 13(4) which dealt with the “[Rights Based on [Plant Variety or Animal Breed Denominations, or Trade Names] Used in the Course of Trade]”, the Delegation of the European Union suggested to delete the reference to “trade names”, as there was no basis in the TRIPS Agreement for their inclusion in such a provision.

211. The Delegation of Peru requested that the brackets be kept in Article 13(2) for the time being.

212. The Chair confirmed that no suggestion had been made to remove the brackets from paragraphs 2, 3 and 4 of Article 13. Consequently, these paragraphs would remain bracketed for the time being.

213. Referring back to the intervention of the Delegation of the European Union as regards Article 13(4), the Representative of INTA expressed the view that it would seem odd not to have any provision regarding trade names and suggested that a new paragraph (5) be inserted to deal with trade names.

214. The Chair recalled that the Delegation of the European Union had requested that any reference to trade names be removed from Article 13.

215. The Delegation of Italy supported the intervention made by the Delegation of the European Union in respect of trade names.

216. The Representative of CEIPI expressed the view that the deletion of the reference to trade names would not be appropriate, if this would mean that a trade name could no longer be used in case of a conflict with a later appellation of origin or geographical indication.

217. The Chair agreed that the issue raised by the Representative of CEIPI had to be clarified, namely whether the fact that certain types of conflict would not be dealt with in Article 13 would either mean that such conflicts could be addressed at the level of national or regional legislation or that the protection of appellations of origin or geographical indications would always take precedence. In the case of the first interpretation, the logic would be that the issue of trade names was not covered by the Revised Lisbon Agreement, while the other interpretation followed the logic that Article 13 would have to be understood as providing for an exhaustive list of rights to be safeguarded.

218. The Delegation of the European Union reiterated that trade names were not mentioned in Article 24 of the TRIPS Agreement concerning the exceptions to rights in respect of geographical indications. EU legislation did not mention exceptions in respect of trade names either. Trade names could be dealt with under the provisions on prior use which were subject to possible phasing out provisions.

219. The Chair said that the conclusion on this issue would appear to be that trade names should be deleted from Article 13(4) and could be considered covered by Article 17.

ARTICLE 14 ON THE DRAFT REVISED LISBON AGREEMENT

220. The Chair noted that no comments were made in respect of Article 14 of the draft Revised Lisbon Agreement.

DISCUSSION OF CHAPTER IV OF THE DRAFT REVISED LISBON AGREEMENT (ARTICLES 15 TO 20) TOGETHER WITH CHAPTER III OF THE DRAFT REGULATIONS (RULES 9 TO 18)

221. The Representative of CEIPI said that there were links between Article 17 and Article 11 of the draft Revised Lisbon Agreement. Consequently, changes to Article 11 as a result of the discussion on that provision could have repercussions in respect of Article 17. The same applied with regard to changes to be made to Article 13(4) as a result of the discussion on that provision, notably in respect of prior trade names, or other prior rights, such as prior domain names, for example.

222. The Delegation of France reiterated its view that Rule 14(2) should not contain a minimum duration for the phasing out period. If a country agreed to a shorter phasing out period, the Revised Lisbon Agreement should not prevent application of such shorter period. The Delegation also expressed the view that a 15-year period would be quite long but added that, as it constituted a maximum duration, it could accept the provision as drafted. The Delegation sought clarification from the Secretariat as to why the phasing out periods mentioned in Article 17 had been limited to "prior use as a generic". As regards Article 19(2), the Delegation reiterated its wish that the provision should contain a limited list of grounds upon which invalidation could be based. Member States would have a full year to take a decision as to whether or not they could protect the internationally registered appellation of origin or geographical indication in their territories and consequently had sufficient time to

investigate any possible ground for issuing a refusal. The Delegation failed to understand for what reason a prior right might only be invoked subsequently, once the effects of an international registration had been fully recognized in the Contracting Party concerned. This was different in respect of cases in which the conditions that prevailed at the time of recognition of the appellation of origin or geographical indication no longer existed in the Contracting Party of Origin, or in which legal proceedings initiated before the end of the one-year period for issuing a refusal would not have ended within that one-year period.

223. The Delegation of the Russian Federation expressed the view that, if a Contracting Party required the payment of an individual fee, to cover its operational costs, most notably as regards the issuance of a refusal, a statement of grant of protection, or the entry of the internationally registered appellation of origin or geographical indication in the national registry administered by the Contracting Party in question, there should be modalities for the defaulting Contracting Party of Origin to correct the situation by paying the required fee. In such cases, the Competent Authority of the Contracting Party of Origin should have the option to pay the required fee directly to the Competent Authority of the Contracting Party requiring payment of an individual fee. The Delegation also expressed the view that late payment of the individual fee should have a consequence in respect of the date of international registration in respect of the Contracting Party requiring the individual fee. The Revised Lisbon Agreement should regulate this in Article 6(2) or 6(3), or in Rule 7. Furthermore, the Delegation was of the view that the deadline of one year in Rule 9(1)(b) should start from the date on which the Contracting Party requiring the individual fee had received a communication from the International Bureau informing that all irregularities in the application had been met and the required individual fee had been paid.

224. The Delegation of Italy suggested to add in Article 17(1)(a) “the protection of” before “the appellation of origin or geographical indication” and “and reasonable” after “a defined”. The Delegation shared the views expressed by the Delegation of France as regards the proposed phasing out period of 15 years.

225. The Delegation of Switzerland supported the views expressed by the Delegation of France as to the minimum duration for the phasing out of prior use and as regards an exhaustive list of the grounds for invalidation.

226. The Delegation of the European Union sought clarification regarding Rule 9(2)(v), in particular as to whether the provision concerned homonymous geographical indications or appellations of origin. The Delegation shared the views expressed by the delegations of France, Italy and Switzerland that there should not be a minimum phasing out period. A maximum period of 15 years would be quite long and should normally be shorter.

227. The Delegation of Australia was of the view that Article 17(1) was overly prescriptive and even intrusive in respect of a range of existing geographical indication systems. The Delegation recalled that the geographical indication regimes of most countries prohibited the protection as a geographical indication of a term that had become generic for the relevant goods, as was also the case under the current Lisbon system. The Delegation added that Article 17(2) was also over-reaching and unnecessarily detailed. Moreover, Article 13, once reformulated, would provide for the possibility of coexistence in appropriate circumstances. Where a national decision to protect a legal right in the face of an earlier right was made, issues of prejudice to the earlier right should be the subject of national law.

228. The Representative of oriGIn sought clarification from the Secretariat as to why the text of Article 17(1) read “that Contracting Party may”, instead of “shall have the right” along the lines of Article 5(6) of the current Lisbon Agreement.

229. As regards Article 19, the Representative of INTA expressed the view that the provision in question should not impose limits to the possibility of invalidating the effects of an international registration in respect of an individual country. For example, the Competent Authority could make a mistake in not issuing a refusal; or new facts could become available showing that the geographical indication should not have been protected in the first place. Consequently, she welcomed the current wording of Article 19(2).

230. The Delegation of the United States of America aligned itself with the comments of the Delegation of Australia regarding Article 17 and the Representative of INTA regarding Article 19. Countries had the ability to refuse protection in respect of geographical indications that contained a term that was regarded as generic in their respective territories. Moreover, a generic term could not function as a geographical indication in a Contracting Party in which the term would be regarded as generic. Consequently, phasing out a generic term and allowing the geographical indication to go ahead would contradict the geographical indication definition of the TRIPS Agreement.

231. The Delegation of France pointed out that the French version of Article 16(2) was not in line with the English version of Article 16(2).

232. The Delegation of the European Union said that it was clear from the draft Revised Lisbon Agreement that a Contracting Party could indeed refuse the protection of an appellation of origin or a geographical indication on the basis that the name would be regarded as generic in its territory. However, it was also clear from the text that the Contracting Party in question could decide to grant protection to the appellation of origin or geographical indication and to phase out the prior use as a generic. The Delegation further indicated that its reading of the TRIPS Agreement differed from the one advanced by the Delegation of the United States of America. Its understanding of Article 24.6 of the TRIPS Agreement was that WTO members could refuse the protection of a particular geographical indication on the basis that it would be considered as generic in its territory, but that such refusal would certainly not be mandatory.

233. The Secretariat noted that, as regards the bracketed minimum phasing out period in Rule 14, there had only been suggestions for its deletion. With respect to the bracketed maximum period of 15 years, a suggestion had been made to shorten it, but there had also been a suggestion to keep it, while indicating that a 15-year period would be exceptional. In response to the request for clarification as to why Article 17(1) would be limited to generic terms or names, the Secretariat indicated that the corresponding Notes clarified that prior rights were safeguarded under Article 13; so that those rights could not be phased out. In respect of the generic terms contained in prior trademarks or other prior rights, the Secretariat recalled that footnote 6 explained that the question that had come up at the previous meeting was whether those prior rights should be safeguarded or whether the use of the generic term in such a prior right could be subject of a phasing out period. The Secretariat also indicated that the use of the word “may” in Article 17(1) would not appear to make much difference with “shall have the right”, if any difference at all.

234. Referring to Article 19(2) concerning the grounds for invalidation, the Secretariat recalled that, in light of the strong opposition to a detailed enumeration of the grounds for invalidation expressed in previous sessions of the Working Group, the proposed provision would basically leave it to national law to determine what such grounds for invalidation would be. The proposed text only made it clear that, in any event, national laws had to provide that the existence of a prior right would be a ground for invalidation. As regards the suggestion to include an exhaustive list of the possible grounds for invalidation, the Secretariat pointed out that it would be difficult to be completely exhaustive. Since new facts could become available after the recognition of the effects of a given international registration by a Contracting Party, such Contracting Party should still have the possibility to invalidate the effects of the

international registration on its territory after the expiration of the one-year period for issuing a refusal.

235. As regards the comments made by the Delegation of the Russian Federation concerning individual fees and the consequences of them not being paid, the Secretariat agreed that those new elements would certainly require a number of changes in the draft Revised Lisbon Agreement and the Regulations. As regards the refusal of an international registration when an individual fee would not be paid, the Secretariat expressed the view that the consequence would be that the protection would not be granted in the country which required the individual fee but the international registration as such would remain in force, in respect of the other Contracting Parties.

236. As regards the question from the Delegation of the European Union on Rule 9(2)(v), the Secretariat said that the provision referred to the coexistence with another appellation of origin or geographical indication and consequently appeared between brackets.

237. With respect to the question raised by the Delegation of the European Union, on Article 17(2), the Secretariat referred to the explanation provided in the corresponding Notes and said that what the provision aimed to do was to deal with the case of a Contracting Party that had refused the protection of an appellation of origin or a geographical indication because of the existence of a prior right on its territory, but which had subsequently decided to withdraw its refusal, for example because of an agreement between the owner of the prior right and the beneficiaries of the geographical indication or the appellation of origin. As withdrawal of a refusal implied that the prior right could no longer be used, a provision was required to deal with the situation of a Contracting Party that allowed for coexistence of an appellation of origin or a geographical indication and a prior right.

238. In response to the comments made by the Delegations of Australia and the United States of America, the Secretariat referred to Article 15, which clearly indicated that refusals could be based on any ground, which also included the generic character of a term in a given Contracting Party. The Secretariat pointed out that it was only if a Contracting Party had not issued a refusal that Article 17 would come into play.

239. In response to a question raised by the Russian Federation as to what was actually meant by "partial refusal in Rule 9(2)(v)", the Secretariat recalled that the introduction of the possible recording in the International Register of partial refusals, based on coexistence of the appellation of origin with a prior right, was based on a situation which dated back to 2006, when the Secretariat received a number of refusals which were not really refusals, as they specified that the rights in respect of the appellation of origin were acknowledged with one exception, namely, that these rights could not be used to prevent the sale of products, put on the market in the Contracting Parties notifying such partial refusal, which were the subject of another appellation of origin protected under a bilateral agreement entered into by these Contracting Parties with the country where the other appellation of origin originated. This was the way by which these Contracting Parties had recorded in the International Register the resulting coexistence situation, existing in their territories under their laws. Since, this procedure had been codified in Rule 11*bis* of the current Lisbon Regulations, which dealt with Statements of Grant of Protection. The purpose of Rule 9(2)(v), including its footnote, and Rule 12 was to transpose the practice under Rule 11*bis* into the draft Regulations under the Revised Lisbon Agreement.

240. In conclusion, the Chair suggested that the Working Group might request the Secretariat to have a further look into the drafting of Article 17 on the basis of the comments made. Questions had been raised as to whether it was appropriate to limit the scope of this provision to generic terms or names, in particular if Article 13 would not provide for safeguards in respect

of all possible prior rights. Also, different interpretations had been advanced in this regard of the provisions of Article 24.6 of the TRIPS Agreements. As regards the issue of the duration of the phasing out period, it seemed that the Working Group could live with a provision that would not specify a minimum duration while, in respect of the maximum duration, 15 years would only apply in exceptional circumstances. Conflicting views had been expressed on the issue as to whether Article 19(2) should list the grounds for invalidation in an exhaustive manner. Some delegations had spoken in favor of such an exhaustive listing without, however, identifying which grounds. Others had spoken against such an exhaustive listing. The Chair suggested that, in the absence of a concrete proposal for an exhaustive listing, the text of Article 19(2) be maintained. Finally, the Chair noted the comments from the Russian Federation on the way individual fees should be dealt with in the future Lisbon system.

241. The Delegation of the European Union proposed the following text for Article 19(2): “The grounds on the basis on which a Contracting Party may pronounce invalidation shall be limited to prior rights, as referred to in Article 13, and when compliance with the definition of an appellation of origin or a geographical indication is not ensured anymore”. Thus, if the specifications of an appellation of origin or a geographical indication would be modified in such a way that the definition of appellation of origin or geographical indication would no longer be met, other Contracting Parties would be in a legitimate position to invalidate the effects of the international registration in respect of their territories.

242. The Chair said that the proposed wording would not cover the situation where a court found that the appellation of origin or the geographical indication did in fact not meet the definition criteria at the date of the international registration.

243. The Delegation of the European Union said that in such a case the Contracting Party should have submitted a refusal under Article 15. If it had failed to do so, it had to live with the consequences.

244. The Delegation of Italy supported the amendment proposed by the Delegation of the European Union.

245. The Delegation of France said that the proposal from the Delegation of the European Union deserved further consideration.

246. The Chair concluded that the next version of the draft Revised Lisbon Agreement should contain two options for Article 19(2). Option A would reflect the current version of Article 19(2), while Option B would reflect the text proposed by the Delegation of the European Union.

DISCUSSION ON CHAPTER V OF THE DRAFT REVISED LISBON AGREEMENT (ARTICLES 21 TO 25)

247. The Delegation of the European Union wondered why Article 22(3)(a) was restricted to States, i.e. what the reason was that intergovernmental organizations that were Contracting Parties would not be taken into account for purposes of constituting the required quorum.

248. The Delegation of Hungary sought clarification in respect of Article 22(1)(a)(viii).

249. The Representative of INTA said that Article 22(2)(a)(viii) covered the existing case of one member State of the current Lisbon Agreement that was not a member of the Lisbon Union Assembly. The provision seemed redundant in the Revised Lisbon Agreement, as Article 9(3)(g) of the current Lisbon Agreement provided that “Countries of the Special Union not members of the Assembly shall be admitted to the meetings of the latter as observers” and

Article 22(1)(a) of the draft Revised Lisbon Agreement provided that its Contracting Parties shall be members of the same Assembly as the States party to the Lisbon Agreement.

250. The Chair said that in the Beijing Treaty and the Marrakesh Treaty the determination of the quorum was left to the Rules of Procedure to be established by the Assembly. The Chair suggested that Article 22(3)(a) might be modeled on the quorum provision of the Madrid Protocol and thus read: "One-half of the members of the Assembly which have the right to vote on a given matter shall constitute a quorum for the purposes of the vote on that matter". It would then be an internal issue for an intergovernmental organization to determine whether it would have the right to vote on a certain matter or whether it would be its member States which would have such right.

251. The Representative of CEIPI supported the proposal made by The Representative of INTA. As to the question raised by the Delegation of the European Union, he was of the view that the advice of the Legal Counsel of the International Bureau should be sought. He further suggested that the last part of Article 22(2)(a)(iii) be deleted, so that the provision would simply read: "amend the Regulations".

252. The Chair noted that there was consensus to delete the last part of Article 22(2)(a)(iii) as well as the last part of Article 22(2)(a)(viii), as proposed. The Working Group also appeared to agree that the advice of the Legal Counsel of the International Bureau be sought in respect of the question raised by the Delegation of the European Union.

253. The Delegation of the United States of America said that it had reviewed the Notes on the provisions of the draft Revised Lisbon Agreement and that it had been unable to find an explanation for the deletion of the wording of Article 11(3)(v) of the current Lisbon Agreement in Article 24 of the draft Revised Lisbon Agreement. The Delegation sought clarification from the Secretariat in that regard. The Delegation also wondered why the draft Regulations did not contain a proposal to change the fees, as the last time that the fees had been changed was over 20 years ago and the draft Program and Budget for the 2014-2015 biennium anticipated for the Lisbon Union a deficit of 900,000 Swiss francs.

254. The Secretariat clarified that for the most part the proposed wording followed the text of the administrative provisions contained in the most recently adopted text of a WIPO-administered international registration treaty, namely the Geneva Act of the Hague Agreement. This part of the draft Revised Lisbon Agreement had been prepared in consultation with the Legal Counsel. In any event, Article 11(3)(v) of the current Lisbon Agreement would remain applicable as long as the Lisbon Agreement would remain in force. As regards the question as to why no fee increase had been proposed, the Secretariat indicated that the reason was simply that the issue had been raised only very recently.

255. Referring to Article 24(4)(b), the Representative of INTA reiterated the statement of INTA had made at an earlier session of the Working Group, i.e., that it was not realistic to expect that the fee revenues of the Lisbon system would ever be sufficient to cover the costs of the maintenance of the system.

DISCUSSION ON CHAPTER VI (ARTICLES 26 AND 27) AND CHAPTER VII (ARTICLES 28 TO 34) OF THE DRAFT REVISED LISBON AGREEMENT

256. The Delegation of the European Union expressed some reservations with regard to Article 28(1)(iii) and Article 28(3)(b) of the draft Revised Lisbon Agreement. More specifically, the Delegation was of the view that the last part of the sentence which read “under the constituting treaty of the intergovernmental organization, legislation applies for the protection of appellations of origin and/or geographical indications in accordance with this Act” in Article 28(1)(iii) should be modified in light of the corresponding provisions of the Madrid Protocol or the Beijing Treaty. In that regard, the Delegation recalled that the European Union legislation covered geographical indications for agricultural products, wines and spirits, but not for handicrafts at this point in time. The Delegation wanted to avoid that Article 28(1)(iii) would prevent the European Union from acceding to the Revised Lisbon Agreement. Further, the provision of Article 28(3)(b) would appear to prevent member States of intergovernmental organizations from acceding to the Revised Lisbon Agreement if the intergovernmental organization itself was not already a member. In the Delegation’s view, such a provision was intrusive as to how an intergovernmental organization interacted with its member States.

257. Referring to Article 31, concerning the relations between States party to the Revised Lisbon Agreement and those party to the current Lisbon Agreement, the Representative of INTA pointed out that Article 1(i) defined the Lisbon Agreement as “the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, as revised at Stockholm on July 14, 1967, and as amended on September 28, 1979”, which did not cater for the situation of Haiti, that was only bound by the original Lisbon Agreement of 1958.

258. The Secretariat said that Article 28(3)(b) had been modeled on Article 27(3)(b) of the Geneva Act of the Hague Agreement. Article 28(3)(b) would only apply in respect of those intergovernmental organizations, such as OAPI or the Benelux, which provided for the “regional” registration of appellations of origin or geographical indications while their member States did not maintain national registration systems.

DISCUSSION OF RULES 2 AND 3 AND CHAPTER IV (RULES 19 TO 24) OF THE DRAFT REGULATIONS

259. The Chair noted that no interventions were made on Rules 2 and 3, nor on Chapter IV of the draft Regulations.

FUTURE WORK

260. The Chair recalled that the roadmap, which had been designed by the Working Group at its previous session and subsequently noted by the Lisbon Union Assembly in September, envisaged, in addition to the holding of a Diplomatic Conference in 2015, the holding of two more Working Group sessions i.e., the ninth session in the first half of 2014 and, if considered necessary by the Working Group, the tenth session in the second half of 2014. The Chair suggested that the ninth session would examine and discuss a newly revised version of the draft Revised Lisbon Agreement and the draft Regulations, to be prepared by the Secretariat and distributed well in advance of that session. As usual, the Secretariat would make sure that all comments and suggestions made be duly reflected in these revised versions. The Working Group should continue its work on the assumption that a tenth session be held in the second half of 2014, in conjunction with the meeting of the Preparatory Committee for the Diplomatic Conference. At its tenth session, the

Working Group would focus on further clarifying the options, preferably reducing their number, as well as on technically preparing the texts of the draft Revised Lisbon Agreement and the draft Regulations for the Diplomatic Conference. Consequently, at that last session, no issues would be re-opened, no new issues would be raised and no substantive proposals would be tabled.

261. The Delegation of Switzerland expressed its preference for only one more session. The Delegation expressed concern about the risk of using the last session to re-open issues that had already been agreed upon and was of the view that the final text could already be decided at the next Working Group session and sent forward to the next session of the Lisbon Union Assembly.

262. The Chair pointed out that the decision of the Working Group to hold one or two additional meetings would not change the date of the Diplomatic Conference, which had been scheduled for 2015. Furthermore, faster progress might be made at the Diplomatic Conference if the text of the draft Revised Lisbon Agreement and the draft Regulations would have been appropriately prepared beforehand. The Chair further reiterated that the next session would focus on the examination and discussion of a newly revised text that would reflect all the important suggestions made at the present session, while the tenth and last session would be devoted to technically preparing the Diplomatic Conference, without the possibility of tabling new proposals on substantive issues.

263. The Delegation of the Russian Federation supported the proposal made by the Chair to hold two additional sessions. In particular, given the Delegation's proposal regarding fees, the Delegation was of the view that some time would be necessary to find the appropriate wording in that respect.

264. The Delegation of Mexico also supported the proposal made by the Chair to hold two additional sessions, in view of the number of pending issues.

265. The Delegation of Italy said that it could also go along with the suggestion made by the Chair to have two additional meetings, on the understanding that the aim of the second meeting would be to finalize any outstanding issues and to technically prepare the upcoming Diplomatic Conference.

266. The Delegation of Georgia supported the proposal made by the Chair to hold two additional Working Group sessions before convening the Diplomatic Conference.

267. The Delegation of France supported the proposal made by the Chair to hold two additional Working Group sessions in 2014. In that regard, the Delegation invited the Working Group not to forget the intensity of the work that had been carried out and the results that had been achieved and to capitalize on that progress to practically finalize the work already at the ninth session.

268. The Delegation of Italy invited the Secretariat to further promote the Lisbon system and the ongoing review exercise.

AGENDA ITEM 6: OTHER MATTERS

269. The Chair noted that a half-day conference on the question of dispute settlement within the Lisbon system had been held as a side event in the margins of the present session of the Lisbon Working Group and that the information note on the question of dispute settlement

within the Lisbon system (document LI/WG/DEV/8/INF/1) prepared by the Secretariat had been presented and discussed.

AGENDA ITEM 7: ADOPTION OF THE SUMMARY BY THE CHAIR

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

271. 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. As of that date, the report will be deemed adopted and the Working Group will be invited to take note of such adoption at its next session.

AGENDA ITEM 8: CLOSING OF THE SESSION

272. The Chair closed the session on December 6, 2013.

[Annexes follow]



LI/WG/DEV/8/6
ORIGINAL: ENGLISH
DATE: DECEMBER 6, 2013

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

**Eighth Session
Geneva, December 2 to 6, 2013**

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 December 2 to 6, 2013.
2. The following Contracting Parties of the Lisbon Union were represented at the session: Algeria, Czech Republic, France, Georgia, Haiti, Hungary, Iran (Islamic Republic of), Israel, Italy, Mexico, Peru, Portugal (12).
3. The following States were represented as observers: Australia, Benin, Chile, Colombia, El Salvador, Germany, Greece, Jamaica, Japan, Lithuania, Madagascar, Mauritius, Morocco, Pakistan, Paraguay, Poland, Republic of Korea, Romania, Russian Federation, Spain, Switzerland, Turkey, United States of America, Venezuela (Bolivarian Republic of) (24).
4. Representatives of the following international intergovernmental organizations (IGOs) took part in the session in an observer capacity: European Union (EU), Organization of Islamic Cooperation (OIC), World Trade Organization (WTO) (3).
5. Representatives of the following international non-governmental organizations (NGOs) took part in the session in an observer capacity: Centre for International Intellectual Property Studies (CEIPI), International Trademark Association (INTA), MARQUES (Association of European Trademark Owners), Organization for an International Geographical Indications Network (oriGIn) (4).

6. The list of participants is contained in document LI/WG/DEV/8/INF/2 Prov. 2*.

AGENDA ITEM 1: OPENING OF THE SESSION

7. The Director General of the World Intellectual Property Organization (WIPO), Mr. Francis Gurry, opened the session, recalled the mandate of the Working Group and introduced the draft agenda, as contained in document LI/WG/DEV/8/1 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. Behzad Saberi Ansari (Iran (Islamic Republic of)) 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/8/1 Prov.) without modification.

AGENDA ITEM 4: REPORT OF THE SEVENTH 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 November 19, 2013, of the Report of the seventh session of the Working Group, as contained in document LI/WG/DEV/7/7, 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. Discussions were based on documents LI/WG/DEV/8/2, LI/WG/DEV/8/3, LI/WG/DEV/8/4 and LI/WG/DEV/8/5. The Working Group examined in detail all the provisions of the draft Revised Lisbon Agreement and the draft Regulations.

13. The Chair noted and welcomed the significant progress that had been made at the present session on the basis of constructive discussions on issues of high importance involving not only member but also observer delegations paving the way for holding a successful Diplomatic conference in 2015.

* The final list of participants will be made available as an Annex to the Report of the session.

Future work

14. The Chair confirmed that the next session of the Working Group would be convened in the first half of 2014.

15. He reiterated that the focus of the next session would be the examination and discussion of newly revised versions of the draft Revised Lisbon Agreement and draft Regulations that would be prepared by the Secretariat and distributed well in advance of the next session. In particular, the Secretariat would work along the lines of the guidance provided by the Working Group at the present session and would make sure that all comments and suggestions be duly reflected in those revised versions.

16. The Chair encouraged all participants to submit comments and drafting suggestions to the Secretariat on the electronic forum that had been established for that purpose, while also recalling that such comments and suggestions would be posted for information purposes only and without prejudice to the role of the Working Group and the formal discussions therein.

17. 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 in 2015, with the exact dates and venue to be decided by a preparatory committee meeting. He noted that the roadmap that would be followed until then would include two further Working Group sessions. The ninth session would be held in the first half of 2014 and the tenth session would be held in the second half of 2014 in conjunction with the meeting of the preparatory committee. In that connection, the Chair further recalled that the Lisbon Union Assembly would be in a position to note the progress made in preparing the diplomatic conference at its session in the second half of 2014.

18. In accordance with the agreed roadmap, the Chair indicated that the tenth session of the Working Group would focus on technically preparing the texts of the draft Revised Lisbon Agreement and the draft Regulations for the Diplomatic conference and on reducing the number of pending issues, where possible. At that session, resolved issues would not be re-opened and proposals and discussions should be limited to pending issues.

19. The Chair noted the wish of the Working Group that the Secretariat should continue to promote the activities of the Working Group as well as the draft Revised Lisbon Agreement and its draft Regulations in order to raise awareness of their objectives and benefits, and to stimulate discussions among the current membership of the Lisbon Union and other WIPO Member States.

AGENDA ITEM 6: OTHER MATTERS

20. The Chair noted that a half-day conference on dispute settlement within the Lisbon system had been held as a side event in the margins of the present session of the Lisbon Working Group and that the information note on the question of dispute settlement within the Lisbon system (document LI/WG/DEV/8/INF/1) prepared by the Secretariat had been presented and discussed.

AGENDA ITEM 7: ADOPTION OF THE SUMMARY BY THE CHAIR

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

22. 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. As of that date, the Report will be deemed adopted and the Working Group will be invited to take note of such adoption at its next session.

AGENDA ITEM 8: CLOSING OF THE SESSION

23. The Chair closed the session on December 6, 2013.

[Annex II follows]

F - E



LI/WG/DEV/8/INF/2 PROV.2
ORIGINAL: FRANCAIS/ENGLISH
DATE: 6 DÉCEMBRE 2013/DECEMBER 6, 2013

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

**Huitième session
Genève, 2 – 6 décembre 2013**

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

**Eighth Session
Geneva, December 2 to 6, 2013**

**DEUXIÈME LISTE PROVISOIRE DES PARTICIPANTS*
SECOND PROVISIONAL 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)

ALGÉRIE/ALGERIA

Ahlem CHARIKHI (Mme), attachée, Mission permanente, Genève

FRANCE

Véronique FOUKS (Mme), chef du Service juridique et international, Institut national de l'origine et de la qualité (INAO), Paris

GÉORGIE/GEORGIA

Ana GOBECHIA (Ms.), Head, International Affairs and Project Management Division, National Intellectual Property Center (SAKPATENTI), Tbilisi

HAÏTI/HAITI

Pierre Mary Guy ST AMOUR, conseiller, Mission permanente, Genève

HONGRIE/HUNGARY

Mihály FICSOR, Vice-President, Legal Affairs, Hungarian Intellectual Property Office (HIPO), Budapest

Imre GONDA, Deputy Head, Trademark, Model and Design Department, Hungarian Intellectual Property Office (HIPO), Budapest

IRAN (RÉPUBLIQUE ISLAMIQUE D')/IRAN (ISLAMIC REPUBLIC OF)

Behzad SABERI, Acting Head, Private International Law Division, Ministry of Foreign Affairs, Tehran

Nabiollah AZAMI SARDOUEL, First Secretary, Permanent Mission, Geneva

ISRAËL/ISRAEL

Tania BERG-RAFAELI (Ms.), Counsellor, Permanent Mission, Geneva

Yotal FOGEL (Ms.), Advisor, Permanent Mission, Geneva

ITALIE/ITALY

Renata CERENZA (Ms.), Senior Trademark Examiner, Italian Patent and Trademark Office, Directorate General of Combating Counterfeiting, Ministry of Economic Development (UIBM), Rome

Vincenzo CARROZZINO, Technical Coordinator, Ministry of Agricultural and Food Policies Directorate General of Agri-food Development and Quality, Rome

Tiberio SCHMIDLIN, Counsellor, Economic Section, Permanent Mission, Geneva

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Alfredo RENDÓN ALGARA, Director General Adjunto de Propiedad Industrial, Instituto Mexicano de la Propiedad Industrial (IMPI), Ciudad de México

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Ana VALENCIA (Sra.), Especialista en Propiedad Industrial, Dirección de Relaciones Internacionales, Instituto Mexicano de la Propiedad Industrial (IMPI), Ciudad de México

Hugo ROMERO, Consejo Económico, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra

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Magaly TRAVERSO (Sra.), Secunda Secretarí, Misión Permanente, Ginebra

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Sílvia LOURENÇO (Ms.), Trademarks Examiner, National Institute of Industrial Property (INPI), Lisbon

RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

Silvie GOTZOVÁ (Ms.), Board of Appeals, Industrial Property Office, Prague

Jan WALTER, Second Secretary, Permanent Mission, Geneva

II. ÉTATS OBSERVATEURS/OBSERVER STATES

ALLEMAGNE/GERMANY

Pamela WILLE (Ms.), Counsellor, Permanent Mission, Geneva

Stefan GEHRKE, Federal Ministry of Justice, Berlin

AUSTRALIE/AUSTRALIA

David KILHAM, First Secretary, Permanent Mission to the World Trade Organization (WTO), Geneva

Caroline McCARTHY (Ms.), Director of International Policy, IP Australia, Woden ACT

BÉNIN/BENIN

Charlemagne DEDEWANOU, attaché, Mission permanente, Genève

CHILI/CHILE

Andrés GUGGIANA, Consejero, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra

COLOMBIE/COLOMBIA

Juan Camilo SARETZKI, Consejero, Misión Permanente, Ginebra

María Catalina GAVIRIA BRAVO (Sra.), Consejera, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra

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MAURICE/MAURITIUS

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Muhammad Amar Aftab QURESHI, Deputy Permanent Representative, Permanent Mission, Geneva

Fareha BUGTI (Ms.), First Secretary, Permanent Mission, Geneva

PARAGUAY

Roberto RECALDE, Segundo Secretario, Misión Permanente, Ginebra

POLOGNE/POLAND

Wojciech PIATKOWSKI, First Counsellor, Permanent Mission, Geneva

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Liliana DRAGNEA (Ms.), Legal Advisor, Legal and International Affairs Department, State Office for Inventions and Trademarks (OSIM), Bucharest

SUISSE/SWITZERLAND

Alexandra GRAZIOLI (Mme), conseiller, Mission permanente, Genève

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

TURQUIE/TURKEY

Günseli GÜVEN (Ms.), Legal Counsellor, Permanent Mission, Geneva

VENEZUELA (RÉPUBLIQUE BOLIVARIENNE DU)/VENEZUELA (BOLIVARIAN REPUBLIC OF)

Oswaldo REQUES OLIVEROS, Primer Secretario, Misión Permanente, Ginebra

III. ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES/
INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

ORGANISATION DE COOPÉRATION ISLAMIQUE (OCI)/ORGANIZATION OF ISLAMIC COOPERATION (OIC)

Halim GRABUS, premier secrétaire, Genève

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

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

UNION EUROPÉENNE (UE)/EUROPEAN UNION (EU)

Oliver HALL-ALLEN, First Counsellor, Delegation of the European Union to UNOG, Geneva

Dan ROTENBERG, Head, Unit European Neighbourhood Policy, EFTA, European Commission, DG Agriculture and Rural Development, Brussels

Antonia GAMEZ MORENO (Ms.), IP Legal Advisor, European Commission, DG Agriculture and Rural Development, Brussels

Óscar MONDÉJAR, Legal Advisor, Operations Department, Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM), Alicante

Ian GREEN, Legal Advisor, Legal Practice, International Cooperation and Legal Affairs Department, Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM), Alicante

Julio LAPORTA INSA, Head, Legal Practice, International Cooperation and Legal Affairs Department, Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM), Alicante

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

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

Miguel Ángel MEDINA, Chair, MARQUES Geographical Indications Team, Madrid

Keri JOHNSTON (Ms.), Vice-Chair, MARQUES Geographical Indications Team, Toronto

Jürg SIMON, Member, MARQUES Geographical Indications Team, Zurich

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

François CURCHOD, chargé de mission, Genolier

International Trademark Association (INTA)

Bruno MACHADO, Geneva Representative, Rolle

Constanze SCHULTE (Ms.), Member, INTA Geographical Indications Subcommittee, Madrid

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

Massimo VITTORI, Managing Director, Geneva

Ida PUZONE (Ms.), Project Manager, Geneva

Daniela LIZARZABURU (Ms.), Focal Point GI Compilation, Geneva

H. Kopresa CHARI, National Advisor, Skills and Crafts, IL&FS Cluster Development Initiative Limited, Hyderabad

Alexander PARRA, Coordinator of the Intellectual Property Project, *Artesanías de Colombia*, Bogota

V. BUREAU/OFFICERS

Président/Chair: Mihály FICSOR (Hongrie/Hungary)

Vice-présidents/Vice-chairs: Behzad SABERI (Iran (République islamique d’)/Iran (Islamic Republic of))
Ana GOBECHIA (Mrs.) (Géorgie/Georgia)

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/Ms.), vice-directrice générale/Deputy Director General

Matthijs GEUZE, chef du Service d’enregistrement Lisbonne, Secteur des marques et des dessins et modèles/Head, Lisbon Registry, Brands and Designs Sector

Florence ROJAL (Mlle/Miss), juriste, Service d’enregistrement Lisbonne, Secteur des marques et des dessins et modèles/Legal Officer, Lisbon Registry, Brands and Designs Sector

Matteo GRAGNANI, juriste adjoint, Service d’enregistrement Lisbonne, Secteur des marques et des dessins et modèles/Associate Legal Officer, Lisbon Registry, Brands and Designs Sector

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