

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

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

### **INFORMATION NOTE ON THE QUESTION OF DISPUTE SETTLEMENT WITHIN THE LISBON SYSTEM**

*prepared by the Secretariat*

#### **I. INTRODUCTION**

##### **REQUEST FROM THE LISBON WORKING GROUP FOR THE PREPARATION OF A FACTUAL DOCUMENT ON THE QUESTION OF DISPUTE SETTLEMENT WITHIN THE LISBON SYSTEM**

1. At its first session, which took place in Geneva from March 17 to 20, 2009, the Working Group on the Development of the Lisbon System (hereinafter referred to as the "Working Group") agreed that the International Bureau of the World Intellectual Property Organization (WIPO) should conduct a survey with a view to ascertaining how the Lisbon system might be improved, in order that the system would become more attractive for users and prospective new members of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (hereinafter referred to as "the Lisbon Agreement") while preserving the principles and objectives of the Agreement.

2. In 2009, the International Bureau of WIPO conducted the survey referred to above as instructed by the Working Group and later agreed to by the Lisbon Union Assembly at its twenty-fifth (18<sup>th</sup> ordinary) session. Contributions to the survey were sought not only from Contracting Parties to the Lisbon Agreement, but also from States non-members of the Lisbon system, interested intergovernmental and non-governmental organizations, as well as interested circles at large.

3. For purposes of the present information document, special mention should be made of the last question to be addressed in response to the survey and which reads as follows:

“Question 10: What other issues concerning law or practice directly or indirectly related to the functioning of the Lisbon system do you consider require amendment or modification of the existing Lisbon Agreement and would you like to bring to the attention of the Working Group on the Development of the Lisbon system?”

4. As reflected in document LI/WG/DEV/2/2, entitled Results of the Survey on the Lisbon system, among the various contributions received in relation to that particular question, it is worth stressing that six of them suggest that the Working Group should explore the possibility of establishing a dispute settlement mechanism within the Lisbon system. Two Lisbon Contracting Parties made suggestions of that kind as well as one intergovernmental organization, two non-governmental organizations, and the representative of an academic institution<sup>1</sup>. The full text of their respective contributions is available on the Lisbon website at <http://www.wipo.int/lisbon/en/survey.html>.

5. More specifically, a dispute settlement system for the following types of disputes was suggested in those contributions: (a) disputes between States (for example a dispute between a Contracting Party issuing a refusal of protection of the international registration submitted by the Contracting Party of origin, or a dispute between Contracting Parties related to the proper implementation of the Lisbon Agreement under international public law); (b) disputes between interested private parties originating in one of the Contracting Parties to the Lisbon Agreement; (c) disputes between interested private parties originating in one of the Contracting Parties to the Lisbon Agreement and third parties (holders of prior rights).

6. It was on the basis of those contributions that, at its second session, which took place in Geneva from August 30 to September 3, 2010, the Working Group on the Development of the Lisbon system requested the International Bureau of WIPO to prepare a factual document on the possibility of dispute settlement within the Lisbon system<sup>2</sup> at one of its future sessions to allow the Working Group to explore in which situations dispute settlement might be appropriate and in what form.

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<sup>1</sup> Hungary, Portugal, the European Union, MARQUES, oriGIn and Prof. Dr. Alberto Ribeiro de Almeida of the University of Coimbra (Portugal).

<sup>2</sup> References: See paragraph 39 of the Chair Summary (document LI/WG/DEV/2/4), paragraphs 249-251 of the Report (document LI/WG/DEV/2/5), and paragraphs 115-118 of “Results of the Survey on the Lisbon system” (document LI/WG/DEV/2/2).

7. At the fourth, fifth and sixth sessions of the Working Group (in 2011 and 2012), the suggestion was made to organize a half-day conference as a side event in the margins of a session of the Lisbon Working Group, but the Working Group was of the view that this was premature and that the focus should remain, for the time being, on the draft Revised Lisbon Agreement as presented to those sessions. However, at the seventh session, the Chair concluded that the International Bureau would organize such a half-day conference as a side event in the margins of the eighth session of the Working Group, in December 2013, and would prepare a factual document on the question of dispute settlement within the Lisbon system to facilitate discussions at the conference<sup>3</sup>.

#### Structure and objective

8. As instructed by the Working Group, the two-fold objective of the present information document is thus to explore in which situations dispute settlement might be appropriate and in what form; and to provide information on the existing dispute settlement systems in the intellectual property area and the legislative history in that regard.

9. The document has been divided into the following segments: (i) overview of the different international dispute settlement mechanisms in the field of intellectual property; (ii) nature of disputes that could be submitted to a dispute settlement mechanism under the Lisbon system; (iii) general presentation of the services offered by the WIPO Arbitration and Mediation Centre; and (iv) final remarks.

## **II. LEGISLATIVE HISTORY: OVERVIEW OF THE DIFFERENT INTERNATIONAL DISPUTE SETTLEMENT MECHANISMS IN THE FIELD OF INTELLECTUAL PROPERTY**

### **OVERVIEW OF THE DISPUTE SETTLEMENT PROVISIONS CONTAINED IN EXISTING MULTILATERAL INTELLECTUAL PROPERTY CONVENTIONS**

10. Several international intellectual property Conventions incorporate articles allowing a Party to bring a dispute to the International Court of Justice (ICJ). These are the *Universal Copyright Convention* which is administered by the United Nations Educational, Scientific and Cultural Organization (UNESCO), but also the *Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations* which is administered jointly by WIPO, UNESCO and the International Labour Organization (ILO), and the Patent Cooperation Treaty (PCT), the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks as well as the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works, all of which are WIPO-administered treaties.

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<sup>3</sup> See paragraph 14 of the Summary by the Chair (document LI/WG/DEV/7/6).

11. For ease of reference, the relevant dispute settlement provisions incorporated in each of those Conventions are reproduced hereunder.

12. Universal Copyright Convention:

*“Article XV*

“A dispute between two or more contracting Parties concerning the interpretation or application of this Convention, not settled by negotiation, shall, unless the States concerned agree on some other method of settlement, be brought before the International Court of Justice for determination by it.”

13. Paris Convention:

*“Article 28  
Disputes*

“(1)Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.

“(2)Each country may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the Union, the provisions of paragraph (1) shall not apply.

“(3)Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General.”

14. Berne Convention:

*“Article 33  
Disputes:*

1. Jurisdiction of the International Court of Justice;
2. Reservation as to such jurisdiction; 3. Withdrawal of reservation

“(1)Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of

the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.

“(2) Each country may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the Union, the provisions of paragraph (1) shall not apply.

“(3) Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General.”

15. Rome Convention:

“Article 30  
Settlement of disputes

“Any dispute which may arise between two or more Contracting States concerning the interpretation or application of this Convention and which is not settled by negotiation shall, at the request of any one of the parties to the dispute, be referred to the International Court of Justice for decision, unless they agree to another mode of settlement.”

16. PCT:

“Article 59  
Disputes

“Subject to Article 64(5), any dispute between two or more Contracting States concerning the interpretation or application of this Treaty or the Regulations, not settled by negotiation, may, by any one of the States concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the States concerned agree on some other method of settlement. The Contracting State bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other Contracting States.”

17. Vienna Agreement:

“Article 16  
Disputes

“(1) Any dispute between two or more countries of the Special Union concerning the interpretation or application of this Agreement, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of

settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Special Union.

“(2) Each country may, at the time it signs this Agreement or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between any country having made such a declaration and any other country of the Special Union, the provisions of paragraph (1) shall not apply.

“(3) Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General.”

18. It is worth noting that even though the various provisions referred to above explicitly refer to the ICJ, they nonetheless leave the door open to any alternative form of settlement chosen by the parties to the dispute as reflected in the wording “unless the countries concerned agree on some other form of settlement”. In that regard, reference can also be made to Article 14(2) of the Washington Treaty on Intellectual Property in Respect of Integrated Circuits which explicitly refers to mediation and arbitration as a possible form of dispute settlement mechanism between Contracting Parties to a dispute.

19. Washington Treaty:

“Article 14  
Settlement of Disputes

“(1) [*Consultations*]

(a) Where any dispute arises concerning the interpretation or implementation of this Treaty, a Contracting Party may bring the matter to the attention of another Contracting Party and request the latter to enter into consultations with it.

(b) The Contracting Party so requested shall provide promptly an adequate opportunity for the requested consultations.

(c) The Contracting Parties engaged in consultations shall attempt to reach, within a reasonable period of time, a mutually satisfactory solution of the dispute.

“(2) [*Other Means of Settlement*] If a mutually satisfactory solution is not reached within a reasonable period of time through the consultations referred to in paragraph (1), the parties to the dispute may agree to resort to other means designed to lead to an amicable settlement of their dispute, such as good offices, conciliation, mediation and arbitration.”

## CORE FEATURES OF THE INTERNATIONAL COURT OF JUSTICE (ICJ)

20. The jurisdiction of the ICJ – the judicial arm of the United Nations – is exclusively available to States which are the only entities permitted to be parties to contentious cases before the ICJ.

21. In practice, however, the ICJ has never been used to litigate a case involving intellectual property rights or the enforcement of treaty obligations under an international intellectual property convention. To a great extent, this can perhaps be explained by the nature of judicial remedies. In effect, the ICJ can only state whether the conduct of a particular State is or is not in conformity with treaty-law, however, the ICJ is unable to order “specific performance” (a court order that the defendant perform or complete its treaty obligations). This might not provide adequate satisfaction to a State whose interests are injured by non-performance because the binding character of an ICJ decision seems to depend on the concerned States willingness to comply with the judgment, which in practical terms means that effective enforcement remains a significant problem.

22. In that regard, the main innovation of the World Trade Organization (WTO) dispute settlement system, which also applies with regard to intellectual property as covered by the TRIPS Agreement, is to allow WTO members to file a complaint for violation of a TRIPS obligation by another WTO member that could lead, under the WTO Dispute Settlement Understanding, to a decision by the WTO Dispute Settlement Body based on the interpretation to be given to the treaty rule concerned and on the legal obligation to bring the offending measure into conformity with the TRIPS Agreement. Non-conforming law or practice is to be amended or withdrawn and failure to do so can result in the suspension of trade concessions granted by the successful complainant WTO member, even possibly under another agreement covered by the WTO Agreement (cross-retaliation).

## CORE FEATURES OF WTO DISPUTE SETTLEMENT<sup>4</sup>

23. Under the WTO Dispute Settlement Understanding:

(i) only Contracting Parties (WTO members) have standing to file a complaint; and

(ii) only laws or conduct by a Contracting Party can be challenged (i.e., not IP infringements by private operators).

24. In consequence, it appears that the WTO system offers limited remedies to winning complainants with no immediate effect: implementation or cessation of the violation by the end of a “reasonable” implementation period and, in the absence of that, mutually agreed, prospective trade compensation or WTO-authorized retaliation until rulings are implemented.

<sup>4</sup>

[http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/disp1\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm)

25. In concrete terms, private IP right holders, through the government of a Contracting Party (WTO member), do not obtain reparation for past harm nor do they get compensation for continued violation subsequent to a WTO ruling. At best, they can expect prospective changes in legislation or other general rules.

#### PAST ATTEMPTS TO ESTABLISH A DISPUTE RESOLUTION MECHANISM BETWEEN STATES AT WIPO

26. Previous attempts to establish a dispute resolution mechanism at WIPO have failed in light of strong opposition based in part on the idea that conflicting interpretations might emanate from WIPO panels and, post-TRIPS, from WTO and WIPO panels.

27. For ease of reference, the relevant provisions contained in the Draft Treaty on the Protection of Geographical Indications of 1975 and the Proposed Treaty on the Settlement of Disputes Between States in the Field of Intellectual Property of 1997 are referred to hereinafter.

#### DRAFT TREATY ON THE PROTECTION OF GEOGRAPHICAL INDICATIONS OF 1975 (WIPO DOCUMENT TAO/II/2)

28. The Draft Treaty on the Protection of Geographical Indications prepared by the International Bureau in 1975 (see document TAO/II/2) incorporated a provision on “Sanctions, Right to Bring Actions, Settlement Through Diplomatic Channels” under Article 17. That provision and the corresponding annotated comments read as follows:

##### “Article 17

##### Sanctions; Right to Bring Actions; Settlement Through Diplomatic Channels

“(1) Action against the unlawful acts referred to in Articles 4<sup>5</sup> and 9<sup>6</sup> shall be taken by virtue of this Treaty itself; in such action, resort shall be had to all the judicial or administrative remedies, including seizure, which are provided under the law of the State of protection for the repression of the use of false or deceptive geographical indications or the unlawful use of protected denominations.

*Comment (Doc. TAO/II/2, page 46): This provision represents a considerable progress compared with the Madrid Agreement in that it provides for the application not only of administrative sanctions such as seizure but also of civil and penal sanctions.*

“(2) Actions based on this Treaty may be brought before the courts of the State of protection not only by persons and entities entitled under the law of the State of protection to bring such actions, but also by the federations, associations, groups and bodies that represent the producers, manufacturers, traders or consumers concerned and have their registered offices in the State of origin, in so far as the law of the State of origin empowers them to take civil proceedings

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<sup>5</sup> False or deceptive Geographical Indications.

<sup>6</sup> Protection based on the international registration.

and in so far as the law of the State of protection permits similar federations, associations, groups and bodies of that State to do so. Subject to the same conditions, and to the same extent, they may claim rights and the application of legal remedies in criminal proceedings and take action before the administrative authorities.

*Comment (Doc. TAO/II/2, page 46): This provision, which deals with the right to bring actions before the courts or to take action before the administrative authorities, lays down a rule that is of particular importance for groups of consumers. On the assumption that groups of consumers of the State of protection are entitled to bring actions in that State, they may bring an action to defend a registered foreign denomination, but the groups of consumers of the State of origin may also bring an action, provided they are entitled to do so in their own State. If, on the other hand, national groups of consumers are not entitled under the law of the State of protection to bring actions, the groups of consumers of the State of origin cannot bring an action in the State of protection even though they are entitled to do so in their own State.*

*The rule outlined above would also apply to federations, associations, groups and bodies representing the producers, manufacturers, traders or consumers concerned. A special problem arises here: in some States there is an official body whose task is to defend national denominations abroad, but in other States there is no such body. The requirement according to which the law of the State of protection has to authorize national bodies to take legal proceedings will prevent existing bodies in foreign countries from taking action in all those States where similar bodies do not exist. This disadvantage could be avoided if the aforementioned requirement were not maintained. In the latter event, however, foreign groups of consumers could take action even in those States which do not permit their own groups of consumers to bring legal actions. The same would apply to federations, associations or groups of producers, manufacturers or consumers of a private nature. Such a consequence might seem unreasonable and therefore provision could be made for an exception in the case of official bodies, by adding, for example, between the word "and" and the expression "in so far as" the words "except in the case of official bodies". Question: Should it be provided that official bodies of the State of origin may take action in the state of protection even if there are no similar bodies in the latter State?*

“(3) Any Contracting State may transmit to the International Bureau the provisions of its national law relating to the application of paragraphs (1) and (2). The International Bureau shall publish the fact that it has received the said provisions, as provided in the Regulations.

“(4) The International Bureau shall send to anyone so requesting, against payment of a fee, as provided in the Regulations, a copy of the provisions transmitted to it under paragraph (3).

*Comment (Doc. TAO/II/2, page 46): These provisions correspond to Article 15 (“Communications of Texts of the National Law”) and their purpose is to facilitate proceedings against violations of the Treaty.*

“(5) The Contracting States shall endeavor to settle through diplomatic channels all cases of violation of this Treaty brought to their notice.

*Comment (Doc. TAO/II/2, page 46): In so far as paragraphs (3) and (4) provide only for the optional deposit of the provisions of the national law relating to sanctions and the right to bring actions, they will not suffice to facilitate in all cases the protection abroad of national geographical indications. For that reason paragraph (5) provides that Contracting States must endeavor to settle through diplomatic channels all cases of violation of the Treaty that are brought to their notice. Where a case cannot be entirely settled through diplomatic channels, this procedure can nevertheless be used to indicate, for example, to interested persons in the State of origin where and how to proceed in the State of protection in order to defend a geographical indication.”*

#### PROPOSED TREATY ON THE SETTLEMENT OF DISPUTES BETWEEN STATES IN THE FIELD OF INTELLECTUAL PROPERTY (WIPO DOCUMENT WO/GA/XXI/2, 1997)

29. Reference is hereby made to Articles 4 to 7 of the Proposed Treaty on the Settlement of Disputes Between States in the Field of Intellectual Property which appear in the Annex to the present document and which make specific reference to: (i) Good Offices, Conciliation, Mediation (Article 4), (ii) Panel procedure (Article 5), (iii) Reporting on the Compliance with the Recommendations of the Panel and (iv) Arbitration (Article 7).

### **III- DISPUTE SETTLEMENT WITHIN THE LISBON SYSTEM FOR DISPUTES RELATED TO THE IMPLEMENTATION OR INTERPRETATION OF THE LISBON AGREEMENT AND THE REGULATIONS**

30. Prior to designing a new dispute resolution mechanism for geographical indication (GI) or appellation of origin (AO) related disputes, the following open-ended questions should be addressed: (1) the type of disputes that could be settled by an alternative dispute resolution mechanism and the possible parties to the dispute, as well as (2) the procedural modalities and enforcement mechanisms that could be adopted for the settlement of GI or AO related disputes.

31. In an attempt to envisage different possible scenarios, the following subparagraphs make a distinction between the settlement of disputes that may arise before the international registration of a GI or an AO under the Lisbon system, and those which may arise after such registration took place.

## DISPUTES ARISING BEFORE THE INTERNATIONAL REGISTRATION OF A GI OR AN AO UNDER THE LISBON SYSTEM

32. The following hypotheses could be envisaged:

(i) Dispute between the Competent Authority of the Contracting Party of Origin and the International Bureau as far as the international application procedure is concerned (which is governed by *Chapter 2 – International Applications* of the Lisbon Regulations).

For example if there is a disagreement as to the existence of a formal defect in the initial application and the Competent Authority feels unduly prejudiced by the rejection of its application or the subsequent attribution of a different registration date, as per Rule 8 of the Lisbon Regulations.

(ii) Dispute between an intergovernmental organization (IGO) and one of its member States, or between an interested party and the Competent Authority of the Contracting Party of Origin, over the timely submission of the international application to the International Bureau.

In this regard, it is worth recalling that the draft Revised Lisbon Agreement opens the possibility for accession by IGOs and therefore potential disputes between such IGOs and their member States over Lisbon-related issues could also be envisaged (Article 28(1)(iii) of the draft Revised Lisbon Agreement, document LI/WG/DEV/7/2/Rev.<sup>7</sup>). In any event, the type of disputes referred to above might be obviated by the possibility to submit direct applications for interested parties under the draft Revised Lisbon Agreement, should the national or regional law of their Contracting Party of Origin allow them to do so (Article 5(3) of the draft Revised Lisbon Agreement)

## DISPUTES ARISING AFTER THE INTERNATIONAL REGISTRATION OF A GI OR AN AO UNDER THE LISBON SYSTEM

33. The following hypotheses could be envisaged:

(i) Dispute between two Contracting Parties over the notification of a declaration of refusal to protect the internationally registered GI or AO.

For example, whenever there is a discussion over the merits, or the validity of, the grounds for refusal between the Contracting Party of Origin of the registered GI or AO and the Contracting Party (-ies) issuing a declaration of refusal. Under such scenario, the Contracting Party of Origin could for example claim that the ground of refusal is based on a domestic law or decree that might not be in conformity with the obligations of the Contracting Party under the Lisbon Agreement.

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<sup>7</sup> [http://www.wipo.int/edocs/mdocs/mdocs/en/li\\_wg\\_dev\\_7/li\\_wg\\_dev\\_7\\_2\\_rev.doc](http://www.wipo.int/edocs/mdocs/mdocs/en/li_wg_dev_7/li_wg_dev_7_2_rev.doc)

At present, it is possible to resort to all the judicial or administrative remedies that are open to the nationals of the Contracting Party issuing the refusal<sup>8</sup>, however an alternative dispute settlement mechanism, such as arbitration or mediation, could represent a more expedite and less costly option for purposes of challenging a refusal.

(ii) Dispute between Contracting Parties over the adequate enforcement of their obligations under the Lisbon Agreement or the Revised Lisbon Agreement in their respective territories.

(iii) Disputes between Contracting Parties to the Lisbon Agreement or the Revised Lisbon Agreement and non-Contracting States over the registration of a particular GI or AO.

(iv) Dispute between interested parties in the case of direct GI or AO applications.

For example, whenever an international registration is granted to homonymous GIs or AOs and one of the interested parties later decides to challenge the validity of the homonymous GI or AO. Another scenario under this hypothesis would be a dispute between an interested party and the holder of a prior trademark or between the holder of the registered GI or AO and a third party using the registered GI or AO as a generic, in one of the Contracting Parties to the Lisbon Agreement or the Revised Lisbon Agreement.

(v) Dispute between an interested party (direct applicant) and the Competent Authority of the Contracting Party which issued a refusal of protection.

(vi) Dispute between applicants (either a direct applicant or the Competent Authority) and prior right holders or prior users of the registered GI or AO, located in one of the Contracting Parties, irrespective of whether a declaration of refusal has been issued or not.

For example for disputes concerning the validity of a prior trademark incorporating the registered GI or AO, or disputes related to the acquisition of a generic character in respect of the registered GI or AO in a given Contracting Party.

34. Obviously, the various case scenarios referred to above represent a non-exhaustive list of the possible types of dispute concerning GIs or AOs protected under the Lisbon system<sup>9</sup>, as well as the possible parties to such disputes (disputes between Contracting Parties, disputes between private parties (holders of the right to use the GI or AO and third parties), disputes between a private party and a Competent Authority, etc.).

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<sup>8</sup> See Article 5(5) of the Lisbon Agreement

<sup>9</sup> Generally speaking, one may think of an alternative dispute settlement mechanism for the settlement of any dispute related to the implementation or interpretation of Article 1(2) - *treaty obligations*, Article 2 - *definition*, Article 3 - *type of protection*, Article 5(3) - *grounds for refusal*, Article 5(6) - *period granted to third parties*, Article 8- *legal proceedings*, and Rule 16 - *Invalidation (grounds for)*, of the Lisbon Agreement and the Regulations, and of the corresponding provisions under the Revised Lisbon Agreement, should it be adopted.

## POSSIBLE DISPUTE-SETTLEMENT MODALITIES UNDER THE LISBON SYSTEM

35. A specific mechanism for the settlement of disputes within the Lisbon system could be designed. The WIPO Center<sup>10</sup>, an international dispute resolution service provider would be available to assist in such exercise upon request. Referral to WIPO dispute resolution procedures is consensual.

36. For purposes of resorting to an alternative dispute settlement mechanism, different legal techniques may be used, such as the insertion of a specific dispute settlement clause in the Lisbon Agreement (or in the Revised Lisbon Agreement) or the preparation of a standard stand-alone dispute settlement agreement that can be entered into by Contracting Parties of the Lisbon Agreement or the Revised Lisbon Agreement.

37. It should nonetheless be pointed out that there are circumstances in which court litigation may still be preferable to an alternative dispute resolution mechanism. For example, a court judgment will be preferable if, in order to clarify its rights, a party seeks to establish a public legal precedent rather than an award that would be limited to the relationship between the parties to the dispute.

### Development of a Specific Dispute settlement mechanism for disputes within the Lisbon system

38. A specific dispute settlement mechanism could be established for disputes related to the international registration of a GI or an AO under the Lisbon Agreement or the Revised Lisbon Agreement. Such mechanism could for example refer to a multi-tiered procedure involving different phases (e.g., a first phase of negotiation; followed, in the absence of settlement, by a second phase of mediation; which could in turn be followed, in the absence of settlement, by a third phase of binding arbitration). In addition, the members of the arbitration and mediation panel that would be set up to settle a dispute could be drawn from a detailed list of mediators and arbitrators specialized in GIs or AOs that would have been established beforehand.

### Integration of a specific dispute settlement provision in the Lisbon Agreement or the Revised Lisbon Agreement

39. The specific dispute settlement provision that would be included in the Lisbon Agreement or the Revised Lisbon Agreement itself could either be a binding or a non-binding provision.

#### Option 1: Binding provision

40. This option would require the insertion of a specific, binding dispute settlement provision in the text of the Lisbon Agreement or Revised Lisbon Agreement. Such provision would more particularly provide that any dispute, controversy or claim arising

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<sup>10</sup> More information on the WIPO Center's services and procedures is set out in Chapter IV, below.

under, out of, or in relation to the Lisbon Agreement or the draft Revised Lisbon Agreement shall be submitted to a specific out-of-court dispute settlement mechanism such as arbitration or mediation.

41. It is worth considering the advantages or disadvantages of the insertion of such a binding provision in the Agreement. Regarding the possible advantages, it is important to mention that: (a) a binding mechanism would be applicable to all the Contracting Parties to the Lisbon Agreement or the draft Revised Lisbon Agreement without distinction, (b) the parties to the dispute would not have to separately consent to the dispute settlement mechanism each time a dispute arises, and (c) the procedure would be highly efficient as it could be commenced swiftly by a simple reference to the dispute settlement provision.

42. As far as the disadvantages are concerned, those that come immediately to mind are (a) the necessity to amend the Lisbon Agreement to introduce a dispute-settlement provision<sup>11</sup>, and (b) such a provision would only bind the Contracting Parties to the Lisbon Agreement or the Revised Lisbon Agreement.

#### Option 2: Non-binding reference

43. Alternatively, the Lisbon Agreement or the Revised Lisbon Agreement could make a non-binding reference to the availability of a specific dispute settlement mechanism and simply encourage parties to submit disputes to such mechanism.

44. The main advantage of the provision in question would be to raise awareness among the Contracting Parties of the availability of a tailored alternative dispute settlement mechanism.

45. Among the disadvantages one could of course mention the non-binding character of the provision and the fact that in order to resort to the proposed dispute settlement mechanism, the parties to the dispute would need to agree to submit their dispute to such mechanism by signing a separate submission agreement. It goes without saying that such an agreement might be difficult to achieve in practice once a dispute has arisen.

#### Optional Consensual Mechanism

46. In this third hypothesis, no binding or optional provision making reference to the availability of a specific dispute settlement mechanism would be incorporated in the Lisbon Agreement or the Revised Lisbon Agreement itself. Instead, an explicit reference to the availability of a dispute settlement mechanism could be included in the administrative notifications that are sent by the International Bureau in the course of the international registration process of an appellation of origin or a geographical indication. Parties would agree separately to submit their dispute to an ADR procedure<sup>12</sup>.

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<sup>11</sup> Work on a Revised Lisbon Agreement is still "work in progress".

<sup>12</sup> The WIPO Center makes available contract clauses and submission agreements, in several languages (see <http://www.wipo.int/amc/en/clauses/index.html>).

47. Among the main advantages of this option are that its implementation would not require any amendment to the Lisbon Agreement, and that the proposed standard submission agreement could also be used for appellation of origin or geographical indication-related disputes outside the Lisbon Agreement, as in the case of disputes which might arise prior to an international registration effected under the Lisbon system, or in the case of a dispute involving a contracting party and a non-contracting party to the Lisbon Agreement or the Revised Lisbon Agreement.

48. As in the case of ii), it is recalled that, in order to resort to the proposed dispute settlement mechanism, the parties to the dispute would need to agree to submit their dispute to such mechanism by signing a separate submission agreement, which might be difficult to achieve in practice once a dispute has arisen.

Availability of a specific dispute settlement mechanism and standard submission agreement for private parties outside the Lisbon Agreement?

49. The proposed specific dispute settlement mechanism for appellation of origin or geographical indication-related disputes could also be made available to private parties as suggested by oriGIn in its contribution to the Survey ([http://www.wipo.int/export/sites/www/lisbon/en/submissions/pdf/ngo\\_origin.pdf](http://www.wipo.int/export/sites/www/lisbon/en/submissions/pdf/ngo_origin.pdf)).

50. The proposed extension to private parties could be justified in light of the considerable amount of appellation of origin and geographical indication-related disputes between private parties, not necessarily parties to the Lisbon Agreement or the Revised Lisbon Agreement. Moreover the specific or tailored alternative dispute settlement mechanism and standard submission agreement would have already been established for the Contracting Parties to the Lisbon Agreement or to the Revised Lisbon Agreement. Lastly, it would raise awareness about the positive role of an alternative dispute resolution mechanism specific to appellation of origin or geographical indication-related disputes amongst private parties. It might also create further consistency among the final decision or arbitration and mediation awards rendered in the case of appellation of origin or geographical indication-related disputes. Yet, it should still be pointed out that alternative dispute resolution proceedings are private and that the parties can always agree to keep the proceedings and results confidential.

#### **IV. SERVICES AND EXPERTISE OF THE WIPO ARBITRATION AND MEDIATION CENTER**

##### **GENERAL INFORMATION ABOUT THE WIPO CENTER**

(a) The WIPO Center and Alternative Dispute Resolution (ADR) procedures

51. The advantages of resorting to the WIPO Center and ADR are increasingly recognized. They include the following:

(i) Based in Geneva, Switzerland, the WIPO Center was established in 1994 to offer ADR options for the resolution of international commercial disputes. Developed by leading experts in cross-border dispute settlement, the arbitration, mediation and expert determination procedures offered by the WIPO Center are widely recognized as particularly appropriate for technology, entertainment and other disputes involving intellectual property. Since 2010, the WIPO Center also has an office at Maxwell Chambers in Singapore.

(ii) An independent and impartial body, the WIPO Center forms part of WIPO. As such, it offers an international and neutral forum for the resolution of intellectual property related disputes, that is particularly appropriate for international, cross-border and cross-cultural disputes;

(iii) The WIPO Center administers, on a non-profit basis, ADR procedures, in particular mediation, arbitration, expedited arbitration, expert determination, and domain name dispute resolution procedures;

(iv) Through ADR, the parties can agree to resolve in a single procedure a dispute involving intellectual property that is protected in a number of different countries, thereby avoiding the expense and complexity of multi-jurisdictional litigation, and the risk of inconsistent results;

(v) ADR procedures allow parties to resolve their disputes outside court in a private and confidential forum, through flexible and efficient means with the assistance of qualified neutral intermediaries appointed in consultation with the parties;

(vi) Unlike court decisions, which can generally be contested through one or more rounds of litigation, arbitral awards are not normally subject to appeal. Their enforcement across borders is greatly facilitated by the United Nations Convention for the Recognition and Enforcement of Foreign Arbitral Awards of 1958, known as the New York Convention<sup>13</sup>, which requires all 148 Member States to recognize arbitral awards without review on the merits.

(b) Caseload

52. A few facts:

(i) To date the WIPO Center has administered over 350 mediation and arbitration cases;

(ii) Over 70 per cent of WIPO mediation and arbitration cases are international as they have involved parties from different jurisdictions;

(iii) Remedies in WIPO mediation and arbitration cases have included damages, infringement declarations and specific performance;

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<sup>13</sup> <http://www.newyorkconvention.org/>

(iv) 67 per cent of WIPO mediations settled, 40 per cent of WIPO arbitrations settled (while the rest concluded in a binding and final arbitral award);

(v) Most of the mediations and arbitrations were based on contract clauses providing for the reference of all disputes under that contract to one of the WIPO dispute resolution procedures; however, some cases were submitted to WIPO mediation and arbitration as a result of a submission agreement providing for the reference of the dispute to WIPO mediation and arbitration once the dispute had arisen;

(vi) In addition to its mediation and arbitration cases, the WIPO Center has administered over 20,000 domain name disputes under the Uniform Domain Name Dispute Resolution Policy (UDRP).

## WIPO NEUTRALS

(i) The WIPO list of neutrals (Center's database) includes over 1,500 mediators, arbitrators and experts from over 70 countries;

(ii) Parties in WIPO ADR proceedings have the possibility to select one or several mediators, arbitrators or experts that have specific expertise in the area of the dispute;

(iii) If the parties cannot agree on a candidate, the WIPO Center will make the appointment under the WIPO Arbitration/Mediation Rules.

## WIPO ALTERNATIVE DISPUTE RESOLUTION (ADR) PROCEDURES

### (a) Scope of Application of WIPO ADR

(i) Open scope: Where an arbitration or mediation agreement provides for arbitration and mediation under the WIPO Arbitration or Mediation Rules, these Rules shall be deemed to form part of that arbitration or mediation agreement and the dispute shall be settled in accordance with such Rules (see Article 2 of the WIPO Arbitration and the WIPO Mediation Rules);

(ii) The only condition is the parties' consent to submit the dispute to WIPO ADR. As mentioned before, such consent can be achieved through an ADR contract clause for future disputes or a submission agreement for existing disputes.

(b) The Procedures

53. The WIPO Arbitration and Mediation Center offers rules and neutrals for the following procedures:

(i) *Mediation*<sup>14</sup>: a non-binding procedure in which a neutral intermediary, the mediator, assists the parties in reaching a settlement of the dispute.

(ii) *Arbitration*<sup>15</sup>: a neutral procedure in which the dispute is submitted to one or more arbitrators who make a binding decision on the dispute. The award rendered by the arbitrator(s) is internationally enforceable under the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

(iii) *Expedited Arbitration*<sup>16</sup>: an arbitration procedure that is carried out in a shortened time and at reduced cost. The award is also enforceable under the New York Convention.

(iv) *Mediation followed, in the absence of a settlement, by (expedited) arbitration.*

(v) *Expert Determination*<sup>17</sup>: a procedure in which a specific, often technical, question or difference is submitted to one or more independent experts who make a determination on such referred matter. The determination is contractually binding unless the parties agree otherwise.

(c) Flexibility and Combination of Procedures

54. WIPO ADR procedures are flexible and can be further adapted by parties to their particular needs, for example:

(i) Parties may agree on issues such as number and qualifications of mediators, language of the process, representation of parties, as well as on any procedural and substantive principles that would provide the basis for the mediation.

(ii) Different WIPO ADR procedures may also be combined with each other. For example, WIPO mediation may be combined with WIPO arbitration.

(d) Confidentiality

55. In principle, the existence of WIPO ADR procedures, as well as disclosures made during such procedures, are confidential, unless the parties agree otherwise.

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<sup>14</sup> [www.wipo.int/amc/en/mediation](http://www.wipo.int/amc/en/mediation)

<sup>15</sup> [www.wipo.int/amc/en/arbitration](http://www.wipo.int/amc/en/arbitration)

<sup>16</sup> [www.wipo.int/amc/en/arbitration/what-is-exp-arb.html](http://www.wipo.int/amc/en/arbitration/what-is-exp-arb.html)

<sup>17</sup> [www.wipo.int/amc/en/expert-determination](http://www.wipo.int/amc/en/expert-determination)

## WIPO GOOD OFFICES SERVICE

56. In light of the consensual nature of ADR, good offices aim to facilitate the submission of disputes to ADR.

(i) Good-offices are provided free-of-charge upon the request of an interested party/entity;

(ii) The good-offices service includes: procedural guidance (i.e., in the drafting of dispute resolution contractual clauses, advice on available ADR options) and assisting parties to submit existing disputes to WIPO ADR procedures through submission agreements.

## TAILORED WIPO ADR SERVICES

57. The WIPO Center also develops tailored ADR services for specific sectors to respond to a need for adapted procedures that take into account the specific features of recurring disputes in a particular area;

58. Typically, such tailored ADR services include a panel of mediators, arbitrators and experts that are specialized in a specific area of intellectual property or industry; they may also involve adapted schedules of fees and costs; tailored ADR rules and clauses.

59. Examples of tailored ADR services:

(i) Specific rules for disputes between right holders of certain collecting societies (AGICOA and EGEDA);

(ii) Specific rules for entertainment disputes (WIPO Mediation and Expedited Arbitration Rules for Film and Media);

(iii) ADR for Intellectual Property Offices (IPOs): as part of the WIPO ADR Services for specific sectors<sup>18</sup>, the WIPO Center provides, at the request of IPOs, dispute resolution advice and case administration services to offer parties a more flexible option to resolve pending disputes related to intellectual property rights before IPOs.

60. Further detailed information on the WIPO Center and the WIPO ADR procedures may be found on the website of the WIPO Arbitration and Mediation Center at <http://www.wipo.int/amc/en/>.

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<sup>18</sup> <http://www.wipo.int/amc/en/center/specific-sectors/>

## V. FINAL REMARKS

61. As mentioned in Chapter II, existing international dispute settlement systems in the field of intellectual property, or even past attempts to come up with new multilateral dispute settlement systems at WIPO, concern or have concerned disputes between States<sup>19</sup>.

62. It also appears that for the settlement of their international disputes private parties can either resort to national courts, or to alternative dispute resolution systems (Arbitration, Mediation, UDRP) through the International Chamber of Commerce (ICC) or the WIPO Arbitration and Mediation Center, for example.

63. Since there is not an alternative dispute settlement mechanism specific to appellation of origin or geographical indication-related disputes, there seems to be a window of opportunity for the establishment of a tailored GI/AO dispute settlement mechanism, that would be available to States and private parties, but also to Contracting Parties and to non Contracting Parties to the Lisbon Agreement and the Revised Lisbon Agreement, alike.

[Annex follows]

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<sup>19</sup> See WTO Dispute Settlement, ICJ, or the WIPO Proposed Treaty on the Settlement of Disputes between States (document WO/GA/XXI/2).

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Article 4

Good Offices, Conciliation, Mediation

(1) [Recourse to Good Offices, Conciliation or Mediation] (a) The parties to a dispute may, by common agreement, made at any time before, during or after the consultations provided for in Article 3, including during the panel procedure established under Article 5, submit their dispute to the procedure of good offices, conciliation or mediation of an intermediary jointly designated by them.

(b) Where a party to a dispute is a Contracting Party that is regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations, it may request the good offices, conciliation or mediation of the Director General

Alternative A: prior to the making by either party to the dispute of a request for a procedure before a panel:

(i) if, within the time limit specified in, or otherwise agreed to by virtue of, Article 3(2), an invitation to enter into consultations made by the said Contracting Party to the other party is not replied to by the other party, or the opportunity for consultations is not offered by the other party, or the parties to the dispute are unable to agree that their consultations shall commence; or

[Article 4(1)(b) continues]

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[Article 4(1)(b), continued]

(ii) if all parties to the dispute agree that the consultations provided for under Article 3 shall be dispensed with; or

(iii) if the consultations under Article 3 do not result in the settlement of the dispute within six months from the date of the receipt of the invitation referred to in Article 3(1) or within any other shorter or longer period agreed upon by the parties.

Alternative B: at any time during or after the consultations have taken place or after they should have occurred, as provided for in Article 3, or at any time during the procedure before a panel under Article 5.

(c) The Director General shall transmit a copy of the request referred to in paragraph (b) to the other party to the dispute and shall transmit a copy of the response of that party to the party making the request.

[Article 4 continues]

[Article 4, continued]

(2) [Cooperation with the Intermediary] The parties to the dispute shall cooperate in good faith with the intermediary in order to enable the latter to carry out the functions necessary to bring about the settlement of the dispute through agreement.

(3) [Notification of Submission to Good Offices, Conciliation or Mediation] Each of the parties to a dispute that is submitted under paragraph (1)(a) to the procedure of good offices, conciliation or mediation shall inform the Director General of that submission. The Director General shall, if the parties to the dispute so agree, notify the members of the Assembly and, if there is a source treaty, the parties to that treaty, of the fact that a submission has been made under paragraph (1)(a) or that a request has been made under paragraph (1)(b) and of the names of the parties to the dispute and the name of the intermediary.

(4) [Notification of the Results of Good Offices, Conciliation or Mediation] Each of the parties to a dispute that has been submitted to the procedure of good offices, conciliation or mediation under paragraph (1)(a) shall inform the Director General whether the result of the procedure is the settlement of their dispute or not, and, if they have settled their dispute, what the outcome is. Where the parties to the dispute have agreed to the notification of the submission to the procedure under paragraph (1)(a) or of the request under paragraph (1)(b), the Director General shall notify the members of the Assembly and, if there is a source treaty, the parties to that treaty, of the information received from the parties to the dispute concerning the results of the procedure of good offices, conciliation or mediation.

[Article 4 continues]

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[Article 4, continued]

(5) [Privileged Nature of the Conduct and Contents of the Procedure] Subject to paragraphs (3) and (4), Article 3(6) shall apply, *mutatis mutandis*, to both the parties to the dispute and the intermediary also in respect of the procedure of good offices, conciliation or mediation.

[End of Article 4]

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Article 5

Panel Procedure

(1) [Recourse to a Panel] Any party to a dispute may request a procedure before a panel:

(i) if, within the time limit specified in, or otherwise agreed to by virtue of, Article 3(2), an invitation to enter into consultations made by that party is not replied to by the other party, or the opportunity for consultations is not offered by the other party, or the parties to the dispute are unable to agree that their consultations shall commence; or

(ii) if all parties to the dispute agree that the consultations provided for under Article 3 shall be dispensed with; or

(iii) if the consultations under Article 3, or any procedure of good offices, conciliation or mediation under Article 4, do not result in the settlement of the dispute within six months from their initiation.

[Article 5 continues]

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[Article 5, continued]

(2) [The Request] (a) The request for a procedure before a panel shall be addressed to the Director General.

(b) The said request shall

(i) set forth the relevant facts concerning prior consultations under Article 3(1), or concerning any procedure entered into under Article 4,

(ii) be accompanied by a summary of the dispute, drawn up in the prescribed manner and with the prescribed content.

(c) The Director General shall, within 14 days of its receipt, send a copy of the request and of the summary of the dispute to the other party to the dispute. Within the said period, the Director General shall also send to all parties to the dispute a copy of the roster of potential members of panels that is established in the prescribed manner and shall offer to the parties the possibility of his drawing up from the said roster a list of persons with particular expertise appropriate to the subject matter of the dispute.

[Article 5 continues]

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[Article 5, continued]

(3) [The Answer] (a) Within two months of the sending by the Director General of the copy of the request and summary in accordance with paragraph (2)(c), the other party to the dispute shall send to the Director General an answer stating which of the facts and legal grounds in the request the said party admits or denies and, in respect of the latter, on what basis. The answer may contain other facts and legal grounds upon which that other party to the dispute relies.

(b) Within seven days of the receipt of the answer, the Director General shall send a copy of that answer to the party to the dispute that made the request. If the Director General has not received the answer, the Director General shall, within seven days of the end of the period prescribed in sub-paragraph (a), notify the party to the dispute that made the request of the failure of the other party to the dispute to submit an answer.

(c) The failure of a party to a dispute to submit an answer shall not be considered as an admission or denial of the allegations or of the facts or legal grounds set forth in the request and shall not be regarded as in any way prejudicing the position of that party.

[Article 5 continues]

[Article 5, continued]

(4) [Transmission of the Request, the Summary of the Dispute and the Answer to the Members of the Assembly and Parties to the Source Treaty] The Director General shall, within 14 days of the receipt of the request for a procedure before a panel, transmit to the members of the Assembly and, if there is a source treaty, to the parties to that treaty a copy of the request for a procedure before a panel and the summary of the dispute. Within 14 days of the receipt of an answer to that request, or within 14 days of the end of the period prescribed in paragraph 3(a), the Director General shall inform the members of the Assembly and the parties to any source treaty of the receipt or the lack of receipt of that answer, as the case may be.

(5) [Designation and Convocation of the Panel] (a) Within two months from the date of the sending by the Director General of the copy of the request referred to in paragraph (2)(c), or within such other time limit as may be agreed to by them, the parties to the dispute shall agree on the total number of members of the panel, which shall be either three or five, and on the number of such members to be designated by each, and shall communicate to each other the names of the members to be designated by each. Unless the parties to the dispute otherwise agree, the members so designated must be persons whose names appear on the roster, established by the Assembly, of potential members of panels.

(b) If the parties to the dispute fail to agree on the total number of the members of the panel, the number shall be three.

[Article 5(5) continues]

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[Article 5(5), continued]

(c) If any party to the dispute fails to designate a member of the panel as required, or if the parties fail to designate a member that it was agreed would be designated by them jointly, the Director General shall, at the request of either party to the dispute, and after consulting the parties to the dispute, designate, within one month, the said member of the panel.

(d) Where at least one of the parties to the dispute is a Contracting Party that is regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations, the Director General shall, at the request of such a party, designate, within one month, one or more persons from one or more countries regarded as developing countries as member or members of the panel, the number of them being fixed in the Regulations.

(e) The members of the panel designated by the Director General pursuant to paragraph (c) or (d) shall be persons whose names appear on the roster, established by the Assembly, of potential members of panels. A member of the panel designated by the Director General shall be a national of a Contracting Party, but may not be a national of any party to the dispute. The member or members so designated shall have expertise in the field of intellectual property.

(f) The Director General shall convene the panel not later than two months from its designation.

[Article 5 continues]

[Article 5, continued]

(6) [Task of the Panel] (a) The panel shall examine the dispute.

(b) The panel shall express an opinion in a written report on the question whether an obligation relating to a matter of intellectual property exists and was breached and, if so, to what extent. The report shall contain a finding of the facts and a statement of the law on which the opinion is based, and a summary of the panel's proceedings and of the submissions of the parties to the dispute. The report shall be adopted by a majority of the members of the panel.

(c) In the event that the panel is of the opinion that a party to the dispute has breached an obligation relating to a matter of intellectual property, the panel shall make a recommendation, in the said report, that the said party comply with the obligation it has breached; however, the panel shall not make any recommendation as to how a party to the dispute should enact or amend its legislation or change its practice, unless that party requests the panel to make such a recommendation.

[Article 5(6) continues]

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[Article 5(6), continued]

(d) The panel shall conclude its proceedings, adopt its report and transmit its report to the Director General within six months from the date of its first meeting or within such longer period not exceeding 12 months from that date, as the panel, after consultation with the parties to the dispute, may decide.

(e) Whenever a party to the dispute is a Contracting Party that is regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations,

Alternative A: the panel shall take into account, in making its findings of fact and statement of the law, in expressing its opinion and in making its recommendations, the relevant provisions of the source treaty, if any, that contain special measures for developing countries, and the special circumstances and needs of the developing country party to the dispute that relate to those provisions

Alternative A(1): , as well as the impact of the recommendations on the economy and trade of that developing country.

Alternative A(2): [no further words].

[Article 5(6)(e) continues]

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[Article 5(6)(e), continued]

Alternative B: the report of the panel shall set forth the relevant provisions of any source treaty that contain special measures for developing countries, and the special circumstances and needs of the developing country party to the dispute that relate to those provisions,

Alternative B(1): as well as the impact of the recommendations on the economy and trade of that developing country.

Alternative B(2): and indicate the extent to which those provisions, special circumstances and needs and that impact were taken into account by the panel in making its findings of fact and statement of the law, in expressing its opinion and in making its recommendations.

Alternative B(3): [no further words].

Alternative C: [no such provision].

[Article 5 continues]

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[Article 5, continued]

(7) [Procedural Rights of the Parties to the Dispute] (a) In its examination of the dispute, the panel shall ensure that the parties to the dispute are treated with equality and that each is given a fair opportunity to present its case.

(b) If all the parties to the dispute so request, the panel shall stop its proceedings.

(8) [Intervention by Contracting Party not Party to the Dispute]

(a) Any Contracting Party that is not a party to the dispute and that has a substantial interest in the matter in dispute may, provided it has accepted an obligation under the source treaty, intervene, in the prescribed manner, in the proceedings before the panel in order to express its views on the matter in dispute. Any such Contracting Party wishing to intervene shall so notify the Director General within one month from the sending of the information referred to in paragraph (4) and shall state in its notification the nature of its interest in the matter in dispute. The panel shall decide whether such a Contracting Party has a substantial interest in the matter in dispute.

[Article 5(8)(a) continues]

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[Article 5(8)(a), continued]

Alternative A:

An intergovernmental organization that is not a party to the dispute under the source treaty, provided it is a Contracting Party, may intervene, in the prescribed manner, in the proceedings before the panel in order to express its views on a matter that falls within its jurisdiction and that is the subject of a dispute between one or more of its Member States and another party to the dispute.

Alternative B:

[no such provision].

[Article 5(8) continues]

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[Article 5(8), continued]

(b) The intervening party shall have the opportunity to present written submissions to, and be heard by, the panel. If the parties to the dispute so agree, the intervening party may be present when the parties to the dispute are heard by the panel and may receive copies of the submission of arguments and rebuttals of the parties to the dispute.

(9) [Privileged Nature of the Conduct and Contents of the Procedure] Subject to the necessity to include or to refer in the findings of fact and in the summary of the submissions of the parties to the dispute to information furnished or statements made in the course of the panel procedure, Article 3(6) shall apply *mutatis mutandis*, to the parties to the dispute and any intervening party, and to submissions and statements made by them, in respect of the procedure before a panel.

[Article 5 continues]

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[Article 5, continued]

(10) [Communication and Consideration of the Report of the Panel] (a) The Director General shall transmit copies of the report of the panel to the parties to the dispute.

(b) Each of the parties to the dispute shall inform the Director General within one month from the date of the transmittal of the report, or within such other period, not exceeding three months from that date, as may be agreed upon by the parties to the dispute, of any comments it may have on the report and what action, if any, it has taken or plans to take in respect of the recommendations in the said report.

(c) The Director General shall within one month from the expiration of the time limit referred to in paragraph (b), or within such other period, not exceeding three months, as may be agreed upon by the parties to the dispute, transmit copies of the said report and of any comments of the parties on the report, together with the information received from them on the action taken or to be taken in respect of the said recommendations, to the members of the Assembly and, if there is a source treaty, to the parties to that treaty.

[Article 5(10) continues]

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[Article 5(10), continued]

(d) The Assembly may have an exchange of views on the report of the panel and on the information thereon received from the parties to the dispute. The Assembly shall not impose or authorize sanctions for non-compliance with the recommendations contained in the report of the panel.

[End of Article 5]

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Article 6

Reporting on the Compliance with  
the Recommendations of the Panel

Each party to a dispute shall submit reports to the Assembly, in the prescribed form and manner, and with the content and within the period or periods to be decided by the Assembly, on the implementation of the recommendation or recommendations made by the panel. Such reports shall be submitted by a party to the dispute even in the case where it disagrees with the recommendation or recommendations made by the panel.

[End of Article 6]

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Article 7

Arbitration

(1) [Arbitration Agreement] The parties to a dispute may agree, at any time, that their dispute shall be settled by arbitration in accordance with the provisions of this Article. If they agree so to settle their dispute, no other procedure for the settlement of that dispute under this Treaty may be invoked or pursued by any of the parties to the dispute.

[Article 7 continues]

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[Article 7, continued]

(2) [Arbitration Procedure] Unless the parties to an arbitration agreement agree otherwise, the arbitration procedure shall be as follows:

(i) any party to an agreement referred to in paragraph (1) may request, in the prescribed manner, the other party to the dispute to proceed with the establishment of an arbitration tribunal. A copy of the request shall be addressed to the Director General;

(ii) the party to the dispute to which the request for the establishment of an arbitration tribunal is sent shall reply, in the prescribed manner, to the request within one month of the receipt of the request;

(iii) the arbitration tribunal shall be composed of three arbitrators: subject to item (iv), each party to the dispute shall appoint one arbitrator, and the third arbitrator shall be appointed by agreement of the parties to the dispute. No arbitrator may be a national of, or may have his domicile or habitual residence in, any State party to the dispute or any State member of an intergovernmental organization that is party to the dispute;

(iv) if, within two months from the date of receipt by the Director General of the copy of the request referred to in paragraph (2)(i), any member of the arbitration tribunal has not been appointed by the parties to the dispute as provided in (iii), above, the Director General shall, at the request of any of the parties to the dispute, appoint, as prescribed and within one month of the request, such arbitrator;

[Article 7(2) continues]

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[Article 7(2), continued]

(v) the arbitration tribunal shall be the judge of its own competence;

(vi) the arbitration proceedings shall be conducted in the prescribed manner and within the prescribed time limits;

(vii) the arbitration tribunal shall decide its award on the basis of the treaty or other source of international law establishing the obligation whose alleged existence or breach has given rise to the dispute;

(viii) the adoption of the arbitration award shall require that the majority of the arbitrators vote for it.

(3) The arbitration award shall be final and binding.

[Article 7 continues]

[Article 7, continued]

(4) [Notification of Submission to Arbitration] Each of the parties that agree to submit a dispute to arbitration under paragraph (1) shall inform the Director General of that submission. The Director General shall, if the parties to the dispute so agree, notify the members of the Assembly and, if there is a source treaty, the parties to that treaty, of the fact that a submission has been made under paragraph (1) and, if the parties so agree, of the names of the parties to the dispute and the names of the arbitrators.

(5) [Notification of the Results of Arbitration] Each of the parties to the dispute that has been submitted to arbitration under paragraph (1) shall inform the Director General what the outcome of the arbitration is. The Director General shall, if the parties to the dispute so agree, notify the members of the Assembly and, if there is a source treaty, the parties to that treaty, of the information received from the parties to the dispute concerning the outcome of the arbitration.

(6) [Privileged Nature of the Conduct and Contents of the Arbitration] Subject to paragraphs (4) and (5), Article 3(6) shall apply, *mutatis mutandis*, to the parties to the dispute and the arbitrators, and to the submissions and statements made by the parties, in respect of the arbitration procedure.

[End of Article 7]

[End of Annex and of document]