

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

**Ninth Session
Geneva, June 23 to 27, 2014**

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 June 23 to 27, 2014.
2. The following Contracting Parties of the Lisbon Union were represented at the session: Algeria, Czech Republic, France, Georgia, Hungary, Iran (Islamic Republic of), Italy, Mexico, Republic of Moldova, Peru, Portugal (11).
3. The following States were represented as observers: Argentina, Australia, Bhutan, Chile, Colombia, El Salvador, Fiji, Germany, Greece, Iraq, Kenya, Nepal, Paraguay, Republic of Korea, Romania, Russian Federation, Spain, Switzerland, Turkey, Ukraine, United States of America, Venezuela (Bolivarian Republic of) (22).
4. Representatives of the following international intergovernmental organizations (IGOs) took part in the session in an observer capacity: African Regional Intellectual Property Organization (ARIPO), European Union (EU), Organization of Islamic Cooperation (OIC) (3).
5. Representatives of the following international non-governmental organizations (NGOs) took part in the session in an observer capacity: Association of European Trademark Owners (MARQUES), Brazilian Association of Intellectual Property (ABPI), Centre for International Intellectual Property Studies (CEIPI), Consortium for Common Food Names (CCFN), European Communities Trade Mark Association (ECTA), International Trademark

¹ Compared to document LI/WG/DEV/9/8 PROV. 2, the list of participants regarding Mexico has been corrected. In addition, paragraphs 292 and 299 in the Spanish version have been modified based on communications from delegations and representatives that participated in the meeting.

Association (INTA), Knowledge Ecology International Inc. (KEI), Organization for an International Geographical Indications Network (oriGIn) (8).

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

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/9/1 Prov. 2.

8. He started the meeting by pointing out that, since the previous session in December 2013, the International Bureau had received 26 new applications for registration under the Lisbon system - 25 from Italy and one from Iran (Islamic Republic of). By way of comparison, he indicated that 13 new Lisbon registrations had been received in 2013, which in turn amounted to a 100 per cent increase in demand in the course of the present year.

9. The Director General also indicated that further progress had been made with the streamlining of notifications under the Lisbon system, in particular with the development of the electronic environment.

10. Referring to the agenda for the present session, he underlined that in addition to the text of the draft Revised Lisbon Agreement and the corresponding Regulations, a draft proposal for updating the fee schedule of Rule 23 of the current Lisbon Regulations had been submitted for further consideration by the Working Group. He recalled in particular that the extremely good progress made by the Working Group with respect to the draft Revised Lisbon Agreement and the Regulations had resulted in the decision taken by the Assembly of the Lisbon Union in September 2013 to convene a diplomatic conference in 2015. In that regard, he pointed out that the preparatory committee for the diplomatic conference would be held in October 2014.

11. The Director General further indicated that in the revised texts under consideration, the International Bureau had put forward suggestions that were based on the proposals that had been made at the previous session, both by Lisbon member States and non-member States. He invited the members of the Working Group to provide their feedback in that regard bearing in mind that the objective was to help the Lisbon system develop internationally in the fullest possible manner.

12. Referring to the draft proposal for updating the fee schedule, the Director General first recalled that for most of the registration systems administered by WIPO the aim was for those systems to be self-sustaining. He went on to say that the Organization's objective was to run its registration systems on the basis of the public broadcasting model for example— which in turn implied that the fees had to be sufficient to cover costs as well as to allow investments in the next quality production or, in WIPO's terms, in the next enhancements to the electronic environment in the information technology systems. In the case of the Lisbon system, the Director General recalled that the registration activity was by its very nature limited. In other words, the number of applications that would be submitted by any given country would be limited by the geography of that particular country. He further indicated that the proposal for updating the fee schedule was a very modest one and that even though it would represent a 100 per cent rise in the amount of the fee - from 500 Swiss francs to 1,000 Swiss francs per application - it would be difficult to achieve sustainability in the Lisbon system, since registration activity was limited. The Director General was of the view that, when establishing the level of the fee, it should be taken into account that the value of the title usually benefitted a considerable number of producers located in a well-defined geographical area. Although no

proposal had been made regarding renewal fees, the question as to whether such fees should be introduced in the Lisbon system also had to be discussed at the present session. He concluded by saying that the main purpose of initiating a discussion on fees was to ensure a sound financial basis to the Lisbon system, which he hoped would increase in importance with a successful revision of the Agreement in 2015.

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. Alfredo Rendón Algara (Mexico) and Mrs. Ketevan Kiladze (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/9/1 Prov. 2.) without modification.

AGENDA ITEM 4: REPORT OF THE EIGHTH 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 June 12, 2014, of the report of the eighth session of the Working Group, as contained in document LI/WG/DEV/8/7, 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/9/2, LI/WG/DEV/9/3, LI/WG/DEV/9/4 and LI/WG/DEV/9/5.

18. Referring both to the decision of the Lisbon Union Assembly to convene a Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications in 2015 and to the road map that would lead up to that conference, the Chair indicated that the activities of the Working Group had obviously reached a new crucial stage as there now was a clear mandate to fulfill, namely, to prepare a Diplomatic Conference to revise the current Lisbon Agreement.

19. He recalled that, in accordance with the road map approved by the Lisbon Union Assembly at its last session, after the present session there would be another Working Group session in the second half of October, which would focus on technically preparing the texts of the draft Revised Lisbon Agreement and the draft Regulations for the Diplomatic Conference, as well as on reducing the number of pending issues. That tenth session of the Working Group would be held in conjunction with a preparatory committee meeting, at which the exact dates and the venue of the Diplomatic Conference would be determined.

20. The Chair reiterated that the revision of the Lisbon system would serve important goals, such as the refinement of the current legal framework, the accession of intergovernmental organizations and the extension of the International Register to geographical indications. He

further recalled that, at its sixth and seventh sessions, the Working Group had managed to reach agreement on the main directions in respect of the revision. He recalled in particular that it had been agreed that the revision of the Lisbon Agreement would result in a single instrument covering both appellations of origin and geographical indications and providing for a single and high level of protection for both while maintaining separate definitions, on the understanding that the same substantive provisions would apply to both. He went on to say that there had also been a broad agreement to the effect that the new instrument would establish a single International Register covering both appellations of origin and geographical indication, and also that competent intergovernmental organizations would be given the possibility of joining the Lisbon system.

21. He further indicated that his priority concern would be that the discussions would be as focused as possible and would concentrate on the most important aspects of the ongoing revision exercise and the main choices that still had to be made. In that context, he would do his best to assist the Working Group in identifying the issues that could already be regarded as resolved and those that would still be pending. In respect of those pending issues, he further indicated that his ambition was to clearly define them and, where possible, to reduce their number in the course of the present session.

22. He concluded by saying that since one of the main objectives of the review of the Lisbon system was to attract a much wider membership and to transform the system into a truly global one, he would make his best efforts to stimulate fruitful discussions between the current membership of the Lisbon Union and the other WIPO Member States.

23. Referring to the documents under consideration, the Chair recalled that the Working Group was invited: (i) to comment on the various provisions in the draft Revised Agreement and the draft Regulations, (ii) to make any suggestions concerning the preparation of the tenth session and the meeting of the preparatory committee and (iii) to comment on the issue raised in paragraph 4 of document LI/WG/DEV/9/2 which concerned the possibility and desirability of implementing certain new elements of the envisaged reform even earlier than the adoption of a Revised Lisbon Agreement through amendments to the Regulations under the current Lisbon Agreement or through interpretative statements to be adopted by the Lisbon Union Assembly.

24. Finally, the Chair indicated that he would consistently try to identify and check with the members of the Working Group which provisions of the draft Revised Lisbon Agreement and the draft Regulations could be considered acceptable, on the understanding that nothing would be agreed until everything was agreed. Obviously, consequential or editorial changes would not be excluded with respect to such provisions. He further indicated that, with regard to issues that were still regarded as pending, an attempt would be made to define them as clearly as possible with a view to efficiently preparing the tenth session of the Working Group, which would exclusively deal with those pending issues – with the aim of reducing their number to the extent possible in preparation for the Diplomatic Conference.

GENERAL STATEMENTS

25. The Delegation of Georgia expressed its full support for the concept of a single instrument covering geographical indications and appellations of origin with a high level of protection for both, as provided for under the draft Revised Lisbon Agreement.

26. Pointing out that geographical indications and appellations of origin concerned more than only economic aspects, as they also concerned aspects of tradition and cultural representations, the Delegation of Mexico said that it would closely follow and actively take part in the discussions at the present session.

27. Reiterating its firm commitment to the principles and objectives of the Lisbon Agreement, the Delegation of Peru attached the greatest importance to the protection of appellations of origin because of their contribution to economic development and more particularly because of their important role in alleviating poverty and improving the living conditions of the rural population. The Delegation said that Peru had adopted a very ambitious legislation in that regard and further pointed out that in the past few years the number of protected appellations of origin had increased in Peru. The Delegation renewed its support for the ongoing revision process to improve the Lisbon Agreement, not only because such revision would benefit all its members but also because it could make the system more attractive for potential new members and therefore more universal. The Delegation expressed the wish that the efforts of the Working Group would reach a successful conclusion at the Diplomatic Conference in 2015. The Delegation further expressed the view that the ongoing revision process, which appeared to be achieving its aims of complementing and improving the Lisbon system, should not be watered down through the addition of provisions which might compromise the very nature of the exclusive protection for appellations of origin and geographical indications.

28. The Delegation of the European Union, speaking on behalf of the European Union and its member States, reiterated its support in respect of the Secretariat's 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, while preserving the principles and objectives of the current Lisbon Agreement. The Delegation stressed the importance of ensuring consistency of the draft Revised Lisbon Agreement and the draft Regulations with the TRIPS Agreement. Before coming up with more detailed comments on individual provisions of the draft new instrument and the draft regulations, the Delegation wished to welcome the progress made in the Working Group towards refining the current legal framework of the Lisbon system, including the provisions allowing the application of the Lisbon system in respect of geographical indications and those allowing accession by intergovernmental organizations. The Working Group should also make good use of the remaining time in view of the Diplomatic Conference in 2015 to settle as many pending issues as possible.

29. The Delegation of Iran (Islamic Republic of) cautioned that the improvement of the current legal framework and the establishment of an international system for the protection of geographical indications had to be in line with the general principles and objectives of the Lisbon Agreement. As regards the substance of the draft Revised Lisbon Agreement and the draft Regulations, 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. Lastly, the Delegation supported the convening of the Diplomatic Conference in 2015, while also expressing its appreciation for the offer made by Portugal to host such Diplomatic Conference.

30. The Delegation of the United States of America welcomed with satisfaction the attempts that had been made towards increased financial responsibility for the Lisbon system in the working documents under consideration, although the Delegation would still like to see the relevant provisions go even further. While also expressing its appreciation towards the efforts of the Secretariat to attempt to create a more inclusive system in the draft Revised Lisbon Agreement and the draft Regulations, the Delegation was of the view that the proposed text failed to create a Madrid-type system in combination with the historical principles of the Lisbon system. More specifically, the Delegation pointed out that the Madrid concept of designations appeared to be in conflict with the notion of international registration under the Lisbon system. In particular, the underlying structure of the Lisbon system was that the international registration had a legal identity of its own that was simply given effect at the national level

whereas, in contrast, designations under the Madrid system actually created a legal identity at the national level, separate and apart from the international registration. The Delegation went on to say that a model along the lines of the Madrid system would make it clear that national geographical indication regimes could operate independently of the international registration and the country of origin. Under a model along the lines of the historical Lisbon system national geographical indication regimes could neither operate independently of the international registration nor of the protection in the country of origin. The proposed text retained both concepts, even though they were in conflict. More particularly, the Delegation was concerned by the fact that the text and the corresponding Notes gave the wrong impression to prospective Contracting Parties that they would be free to apply their domestic law and their domestic processes when, on the contrary, they would be seriously constrained from doing so under the proposed text. The Delegation went on to say that the fact that such an important debate was happening within the Lisbon Working Group, without the participation of all WIPO Member States, perpetuated the confusion and the misunderstanding that tended to diminish the value of geographical indications, precisely when many delegations attending the present session of the Working Group were attempting to increase their value instead. The Delegation reiterated its view that the right forum for discussion of geographical indications was the Standing Committee on Trademarks, Industrial Designs and Geographical Indications, in which a full discussion could take place about the establishment of an international geographical indication system that would be transparent and fair for all WIPO Member States.

31. The Delegation of Australia, while expressing its appreciation for the very detailed and helpful working documents, reiterated its previously voiced concerns about particular aspects of the draft Revised Lisbon Agreement. The Delegation was of the view that the Revised Lisbon Agreement had to be as inclusive as possible and that this could be achieved through a proper accommodation of different specialized geographical indication regimes as well as trademark systems for the protection of geographical indications. Australia had two different registration regimes for geographical indications: one of them was specific for wine geographical indications and implemented the Australian European Community Agreement on trade in wine, while the other was a certification trademark system. The Delegation expressed the view that the draft Revised Lisbon Agreement had to provide fair treatment for terms which might be considered generic in some countries in the world. In other words, the Lisbon system should not dictate in detail how its members should deal with the issue of generic terms. The Delegation also believed that the Lisbon system had to be fair and consistent with other international agreements, such as the TRIPS Agreement, which would be achieved if the treatment of prior rights would be in line with international law. The Delegation indicated that the proposed co-existence of later claimed rights with earlier rights would be possible as long as the legitimate interests of the earlier right holder and third parties would be appropriately safeguarded. In that regard, the Delegation indicated that interested parties should also have a meaningful opportunity to object directly to the protection of terms in a particular market, as that was an essential safeguard for users of the intellectual property system as well as third parties. The ongoing revision of the Lisbon Agreement should also provide the opportunity to ensure adequate cost recovery so as to make the system sustainable rather than operating at a loss. Lastly, the Delegation stressed that the development of an inclusive system and the maximization of the value of the revision to the wider WIPO membership would require that the Diplomatic Conference be open to all WIPO Member States.

32. The Delegation of the Republic of Korea indicated that the protection of geographical indications was gaining global importance as a tool to enhance the competitiveness of producers, enterprises and nations. However, there were many elements in the draft Revised Lisbon Agreement that were the object of the TRIPS Agreement, while there were also elements which would incur costs or generate confusion with the trademark system. The Delegation was therefore of the opinion that a feasibility study on the benefits of establishing

an international geographical indication protection system, in combination with the input provided by the members of the international community at large, would be of great benefit in resolving those difficulties. In conclusion, the Delegation indicated that more extended and continued discussions were required to reach a consensus as regards the nature of the proposed revision of the Lisbon Agreement.

33. The Delegation of Chile underscored the paramount importance of the topics addressed by the Lisbon Working Group and shared the views expressed by the Delegations of the United States of America, Australia and the Republic of Korea. Overall, the Delegation expressed the view that the text of the draft Revised Lisbon Agreement required more in-depth work, while also making it clear that Chile was ready to actively and constructively participate in the present session with a view to arriving at a text that would benefit all WIPO Member States.

34. The Delegation of Switzerland was of the view that the proposed texts provided a good basis for purposes of reaching a more inclusive membership concerning the protection of geographical indications and appellations of origin. The Delegation further indicated that the proposed introduction of provisions concerning geographical indications combined with the preservation of the existing principles and objectives of the Lisbon Agreement already represented a major progress.

35. The Delegation of Colombia pointed out that Colombia had been protecting its appellations of origin and geographical indications in a very dynamic manner in the past two years. As a result, over 20 appellations of origins were currently protected in Colombia. The Delegation therefore welcomed the present discussions in the Lisbon Working Group with the objective of fostering a yet more inclusive system. In that regard, the Delegation was of the view that a system of appellations of origin and geographical indications could be made compatible with other intellectual property systems, such as the trademark system.

36. The Representative of CEIPI clarified that his intervention was motivated by the wish to achieve the broadest possible membership to the Lisbon system as it would be desirable to find a way of attracting those countries which protected geographical indications under trademark systems. In that regard, he suggested the introduction of a reservation possibility of which such countries could avail themselves in respect of Chapter III of the draft Revised Lisbon Agreement. Under such reservation possibility, those countries would be able to protect an international registration not on the basis of the provisions of Chapter III, but on the basis of their own trademark legislation. In addition, Contracting Parties that would not make use of the reservation possibility would be entitled to protect international registrations of those Contracting Parties, which were making use of the reservation possibility, also on the basis of their own trademark legislation. Another consequence of the proposed reservation system would be that Contracting Parties making use of the reservation possibility would not have a right to vote in the Lisbon Union Assembly on questions related to Chapter III. He concluded by saying that there were precedents for such a reservation possibility in other WIPO-administered treaties, such as the Patent Cooperation Treaty.

37. Upon thanking the Representative of CEIPI for putting forward his suggestion for a possible compromise based on the possibility of a reservation regarding Chapter III, the Chair noted with satisfaction that all participants were ready to embark on a constructive discussion on the basis of the documents that had been submitted by the International Bureau. As regards the critical remarks that had been made, in particular regarding the issue as to whether the revised instruments had achieved the goal of making the system more inclusive and more financially sustainable, the Chair said that the Working Group would revert to those comments when discussing the provisions in question. As regards the mandate of the Lisbon Working Group and the possibility of other WIPO Member States to participate in the

deliberations of the Working Group, the Chair said that the Working Group had always been open to the participation of all WIPO Member States and that it was therefore up to such Member States to decide whether or not to engage in a constructive discussion with the current membership of the Lisbon Union. The Chair expressed its utmost satisfaction for the growing interest and increasing participation of those WIPO Member States that were not Contracting Parties of the Lisbon Union. He fully agreed that one of the main objectives of the ongoing review exercise was to expand the current membership of the Lisbon Union so as to make the Lisbon system a truly global one.

38. The Secretariat introduced documents LI/WG/DEV/9/2 to 5, indicating the modifications that had been made to the previous versions of the draft Revised Lisbon Agreement and the draft Regulations on the basis of the discussions at the eighth session of the Working Group.

DISCUSSION ON THE PREAMBLE AND CHAPTER I OF THE DRAFT REVISED LISBON AGREEMENT (ARTICLES 1 TO 4) TOGETHER WITH RULES 1, 4, 19 AND 20 OF THE DRAFT REGULATIONS

39. Referring to the proposed definition of appellation of origin under Article 2(1)(a)(i), the Delegation of France recalled that within the framework of the Working Group it had previously been decided to stick as closely as possible to the definition of appellation of origin under the current Lisbon Agreement, next to the introduction of the concept of geographical indication in the draft Revised Lisbon Agreement. The Delegation expressed reservations regarding the introduction of the notion of reputation as a constitutive element in Article 2(1)(a)(i), as this had the effect of bringing the definition of appellation of origin closer to the definition of geographical indication, thereby generating a certain level of confusion between those two definitions. The Delegation further sought clarification on the exact scope of footnote 2 to Article 2, in light of the fact that the proposed wording introduced a certain degree of flexibility with respect to the cumulative nature of the natural and human factors, notwithstanding the fact that those factors were clearly cumulative under the proposed definition of appellation of origin in Article 2(1)(a)(i). The Delegation also suggested that Article 2(1)(b) could be deleted, as the provision would not appear to add anything substantial.

40. The Delegation of Switzerland shared the concerns expressed by the Delegation of France regarding footnote 2 and questioned the utility of introducing such provision under Article 2, as it was quite clear that the natural and human factors were cumulative elements, irrespective of whether they would be predominantly natural or predominantly human. Referring to Article 2(1)(a)(i), the Delegation pointed out that the concept of reputation had been merely introduced as an alternative criterion in the proposed definition of appellation of origin, whereas it appeared as a supplementary criterion in Article 2(2) of the current Lisbon Agreement. The Delegation went on to say that the attempt to make the two definitions converge in the draft Revised Lisbon Agreement would not be desirable, in view of the consensus reached in the Working Group that there would be two separate definitions with a single and high level of protection for both. The Delegation agreed with the views expressed by the Delegation of France that Article 2(1)(b) should be deleted. Lastly, the Delegation questioned the utility of having a Preamble in the draft Revised Lisbon Agreement, all the more since the proposed text appeared to merely describe the nature of the ongoing work of the Lisbon Working Group.

41. As regards Article 1(xiv), the Delegation of Peru reiterated its concerns about the possibility for an intergovernmental organization to file applications for the international registration of an appellation of origin or a geographical indication. In that regard, the Delegation recalled that such possibility was not envisaged in the common legislation of the Andean Community and would, therefore, require an amendment of that legislation.

42. The Delegation of Italy was of the view that the text of the Preamble had to be consistent with the mandate of the Working Group and therefore requested that the word “preserving” be brought back in the first sentence of the Preamble so that the text would read “while preserving and building on its principles and objectives...”. Referring to Article 2(1)(a)(i), the Delegation indicated that the reference to reputation gave the false impression that “reputation” would be an additional requirement that would have to be fulfilled for purposes of registering an appellation of origin, contrary to what was provided for in the Lisbon Agreement. In respect of Article 4, the Delegation requested clarification of the meaning of the phrase “or under both”.

43. With respect to Article 2, the Delegation of the Russian Federation failed to see the pertinence of bringing the definitions of appellation of origin and geographical indication closer to each other. Further, whenever reference was made to the place of origin of a given good, the reputation of the good also had to be taken into account. The Delegation failed to see the utility of footnote 2 under Article 2. Instead, the Delegation suggested rephrasing the text of Article 2(1)(a)(i), so that it would refer to “natural and/or human factors”.

44. As regards Article 2(1)(a)(i), the Delegation of the European Union shared the views previously expressed by other delegations and agreed that the reference to reputation should be deleted from that paragraph as it constituted an additional requirement which also generated confusion between the appellation of origin and the geographical indication definitions. The Delegation welcomed the proposed definition of geographical indications, which was now in line with the definition of the TRIPS Agreement. The Delegation also welcomed the amendment in Rule 4 concerning the possibility of indicating several competent authorities.

45. The Representative of CEIPI sought further clarification regarding the reference to reputation in Article 2(1)(a)(i). He more specifically asked whether the word “and” in the sentence “and which has given the good its reputation” referred back to the geographical environment. As regards the drafting of Article 2(1)(a)(i), he pointed out that the first reference to the notion of reputation in the first bracket was not an essential element but only one of the elements of the definition of appellation of origin. On the contrary, if the second reference to reputation, appearing in the second bracket at the end of the sentence, were to be kept, then reputation would become an essential element of the definition, along the lines of Article 2(2) of the current Lisbon Agreement. He also cautioned that the proposal made by the Delegation of the European Union to remove any reference to reputation from the provision in question would also imply moving away from the current text of the Lisbon Agreement, which did require reputation. As regards Article 2(1)(b), even though he agreed with the proposals that were made to remove it altogether from Article 2, he was of the view that the definitions provided thereunder could be moved to Article 1. Lastly, he questioned the necessity of having a Preamble in the draft Revised Lisbon Agreement.

46. With respect to Article 2(1)(a)(i), the Delegation of Mexico supported the proposal made by the Delegation of the European Union to delete any reference to reputation.

47. Referring to Note 2.03 in the Notes in document LI/WG/DEV/9/4, the Delegation of the United States of America noted that a delegation had suggested the inclusion of a reference to reputation in the definition of both appellations of origin and geographical indications, arguing that without the reputation element the receiving Contracting Parties would have to exhaustively conduct fact-finding missions to investigate foreign soil or, in the alternative, would simply forego any examination of the application entirely and simply provide reciprocal right protection to the foreign Government’s pronouncement of the soil quality. The Delegation expressed its agreement with that suggestion, as it shared the view that reputation was a critical element for both appellations of origin and geographical indications, bearing in mind

that reputation was an element in the appellation of origin definition of the current Lisbon Agreement. The Delegation went on to say that from its perspective natural factors alone did not create a private property right and, regardless, it would be impossible for foreign receiving Offices to evaluate the value of natural factors during the examination process. The Delegation added that the insistence that the mere existence of natural factors had some inherent value, without any objective proof of that value, made the appellation of origin definition problematic from its perspective. In light of the fact that intellectual property rights usually rewarded some form of human intervention, the Delegation was of the view that reputation was a measurement of whether such human intervention had value and whether an intellectual property right had to reward it as an incentive to creative quality products and to protect consumer's expectations.

48. Referring back to the issue of reputation, the Delegation of the European Union clarified that its position was that an inclusion of the term "reputation" as an alternative to "quality" or "characteristics of the good" as currently drafted in Article 2(1)(a)(i) would make it possible for an appellation of origin to be exclusively based on reputation. In that regard, the Delegation recalled that currently such possibility only existed in the case of geographical indications but not in the case of appellations of origin which, by essence, were required to have a much closer link between the characteristics of the good and the geographical environment. Hence, the Delegation's request for the deletion of the reference to reputation in sub-item (i) under Article 2(1)(a).

49. The Delegation of Colombia agreed that the word "reputation" had to be maintained in the definition of an appellation of origin. In that regard, the Delegation further indicated that in the case of Colombia the undue exploitation of the reputation fell under unfair competition law.

50. The Delegation of Portugal supported the comments made by the Delegation of the European Union and was of the view that any reference to reputation had to be deleted from the Article 2(1)(a)(i).

51. The Delegation of Peru shared the views expressed by the Delegation of Colombia and also considered that it would be appropriate to include the term "reputation" in the definition of an appellation of origin, at least in the first bracket where it appeared as an alternative to other criteria.

52. The Delegation of Switzerland noted that the issue regarding the inclusion or not of the notion of reputation in the definition of an appellation of origin led to very different positions within the Working Group. As an alternative solution, the Delegation suggested to remain as closely as possible to the current provision of Article 2(2) of the Lisbon Agreement and to reintroduce the concept of reputation under Article 1(xv) which defined the "Contracting Party of Origin".

53. The Chair pointed out that under the current draft Revised Lisbon Agreement the underlying principle was that, although the instrument covered both appellations of origin and geographical indications, the same level of protection would be provided in respect of both. Further, Article 9(1) made it clear that Contracting Parties would not be required to make a distinction between appellations of origin and geographical indications within their own legislation. In other words, while the proposed definitions in Article 2(1) would work for purposes of the international registration and for purposes of applying the Revised Lisbon Agreement in all Contracting Parties, under their national or regional legislation, the Contracting Parties would be allowed to treat registered appellations of origin as registered geographical indications.

54. Referring to the issue of reputation, the Chair recalled that the two pairs of square brackets in Article 2(1)(a)(i) represented two different options, which meant that it was either the first reference to reputation or the second reference to reputation that would be included in the text. He went on to say that, if the Working Group opted for the text in the first pair of square brackets, the element of reputation would be one of the alternative characteristics that would derive exclusively or essentially from the geographical environment. Instead, if the Working Group opted for the text in the second pair of square brackets at the end of the paragraph, the element of reputation would be made mandatory in the case of an appellation of origin, as was already the case under Article 2(2) of the current Lisbon Agreement. As regards the concern expressed by some delegations that, in the absence of any reference to reputation, fact finding missions might become necessary in order to assess whether the object for which an international registration as an appellation of origin was sought did indeed meet the definition requirements, especially in those countries which made a distinction between appellations of origin and geographical indications, the Chair said that it was his understanding that under the current text of the Lisbon Agreement, no such fact-finding missions had ever been undertaken and that the Contracting Parties to the Lisbon Agreement had nonetheless always been in a position to assess whether or not they would refuse to recognize the effect of an international registration.

55. The Chair noted that the prevailing view appeared to be to remove footnote 2 from Article 2 and to include its text in the Notes to the draft Revised Lisbon Agreement.

56. Referring to the request for clarification concerning the terms “or under both” in Article 4, the Secretariat indicated that there would be a period within which some Contracting Parties would have only acceded to the Revised Lisbon Agreement while others would only be party to the current Lisbon Agreement. In addition, there would also be a third set of Contracting Parties that would have acceded to both the Lisbon Agreement and the Revised Lisbon Agreement. In consequence, as there would be different relations between Contracting Parties within the same Lisbon Union, Article 4 aimed to make it clear that the International Register that would be kept by the International Bureau would record all the international registrations, whether they would have been applied for by countries that would only be party to the Lisbon Agreement, or by Contracting Parties that would have acceded only to the Revised Lisbon Agreement, or by countries that would be party to both international instruments. The Secretariat indicated that the complexity of Article 4 derived from the fact that, in addition to the Lisbon Agreement, there was also a reference to the 1967 Act of the Lisbon Agreement, to which all Contracting Parties of the current Lisbon Agreement were party with the exception of one Contracting Party, which was only party to the Lisbon Agreement as originally adopted in 1958. The Secretariat went on to say that those two instruments were nonetheless considered to be one entity, in view of Article 16 of the 1967 Act. Hence, the terms “under both” referred to both the Lisbon Agreement, whether the original Lisbon Agreement of 1958 or the 1967 Act, and the Revised Lisbon Agreement.

57. The Secretariat sought clarification from the Delegation of Peru as regards the fate of an international registration effected by an intergovernmental organization in the case of Peru.

58. As regards the Preamble, the Secretariat indicated that, if the Working Group would retain the Preamble, the text of its first sentence could perhaps stop after the words “Lisbon Agreement”.

59. The Delegation of Peru said that its concerns referred specifically to the possibility that would be given to intergovernmental organizations to register appellations of origin or geographical indications. In that regard, the Delegation recalled that under the Andean Community legislation such registrations could only be effected by natural persons or legal entities directly interested in the production, the extraction and the processing of the product

for which registration was sought. The Andean community legislation also stated that where the appellations of origin referred to their own jurisdictions, any state, departamental, provincial, or municipal authority should likewise be considered an interested party. As regards the Preamble, the Delegation was of the view that the proposed text should be maintained in the Revised Lisbon Agreement, as it clearly defined the framework for the ongoing revision process. Moreover, the Delegation supported the idea of reintroducing the term “preserving”, so that the text would read “while preserving and building on its principles and objectives”.

60. The Chair agreed that preserving the principles and objectives of the current Lisbon system was part of the mandate of the Working Group, in addition to making the system more attractive so as to pave the way for a wider membership. The Chair further recalled that the mandate of the Working Group, at least since its second session, was also to give the possibility to intergovernmental organizations to accede to the Revised Lisbon Agreement. In that regard, the Chair welcomed with satisfaction the clarification made by the Delegation of Peru that it was not challenging that specific element of the mandate, but rather expressed concern about its application modalities under Peruvian legislation.

61. The Delegation of Peru confirmed that it was not opposed to the inclusion of intergovernmental organizations, but simply wished to leave on record the type of difficulties in implementation that would arise in respect of registrations effected by intergovernmental organizations, not only in Peru but also in the other members of the Andean community, i.e., Bolivia, Colombia and Ecuador, which might wish to accede to the Revised Lisbon Agreement at a given point in time.

62. The Delegation of Fiji shared the views expressed by the Delegation of Peru as regards the practical consequences of the accession of intergovernmental organizations in particular since its national industrial property legislation did not foresee the case of registrations effected by intergovernmental organizations. The Delegation further pointed out that the same applied to the other 14 countries in the region. The Delegation expressed the view that the Preamble had to be kept in the Revised Lisbon Agreement but that some amendments could be made so as to introduce, for example, an explicit reference to the principles and objectives of the TRIPS Agreement which constituted the basic intellectual property legal framework for many countries.

63. The Chair indicated that there appeared to be consensus that intergovernmental organizations should be allowed to become parties to the Revised Lisbon Agreement. On the basis of the comments made by some delegations, he indicated that there might be a need to look into the provisions which dealt with the application procedure to better address the practical implementation difficulties that might arise in some countries.

64. The Chair wondered whether the compromise solution proposed by the Secretariat in respect of the Preamble was acceptable.

65. The Delegations of Italy and Peru were in favor of retaining the second part of the first sentence and that this part should read: “while preserving and building on its principles and objectives”.

66. The Delegation of Iran (Islamic Republic of) supported the drafting proposal made by Secretariat.

67. Upon a request for clarification from the Chair, the Delegation of Italy indicated that the phrase “and in the light of the relevant provisions of the TRIPS Agreement” should be retained.

68. The Delegation of Iran (Islamic Republic of) recalled that its country was not a member of the WTO and therefore requested that the reference to the TRIPS Agreement be removed from the Preamble.

69. The Chair concluded that the two sentences of the draft Preamble would then read: "Recognizing the need to refine and modernize the legal framework of the system established under the Lisbon Agreement, while preserving and building on its principles and objectives" and "Desiring to introduce provisions for the possible accession by intergovernmental organizations"

70. The Chair wondered whether the square brackets in Article 2(2) could be removed.

71. The Delegation of Algeria requested that the square brackets be maintained for the time being, as it had not yet adopted a definite position on the inclusion or not of the reference to trans-border geographical areas.

72. The Delegation of Hungary expressed its preference for having the square brackets removed in the second part of Article 2(2).

73. In light of the diverging views expressed, the Chair indicated that the brackets around the second sentence of Article 2(2) would be maintained for the time being.

74. As regards Article 2(1)(a)(i), the Chair wondered whether footnote 2 could be deleted as well as the first pair of square brackets together with the word "reputation" while retaining the phrase "which has given the good its reputation" without the square brackets.

75. The Delegation of Iran (Islamic Republic of) expressed its preference for retaining the first reference to reputation and for deleting the phrase "and which has given the good its reputation".

76. The Delegation of Chile was of the view that the proposed definition in Article 2(1)(a)(i) had to envisage the possibility for an appellation of origin to be also based on the reputation of the good. However, the Delegation would not deem it appropriate to require such reputation as a compulsory criterion for an appellation of origin to be protected under the provision in question, which would be the case if the final sentence within brackets were to be maintained without brackets. Hence, the Delegation's preference for keeping the first reference to reputation within square brackets for the time being, as well as for deleting the second reference to reputation at the end of the paragraph.

77. The Chair indicated that he had some difficulties in understanding the position of those delegations representing Contracting Parties to the Lisbon Agreement, which were against the use of the phrase already contained in Article 2(2) of the current Lisbon Agreement, namely "which has given the good its reputation", on the basis of fears about possible fact-finding missions. He went on to say that, as he had already underlined, even under the provisions of the current Lisbon Agreement, no such fact-finding missions had ever been undertaken either by the International Bureau or by Contracting Parties. Moreover, if a Contracting Party would not be able to satisfy the stricter requirements for an appellation of origin under Article 2(1)(a)(i), it would still be in a position to register denominations on the basis of the definition of a geographical indication under sub-item (ii) of Article 2(1)(a), which had been drafted along the lines of Article 22.1 of the TRIPS Agreement.

78. As regards the issue of reputation, the representative of CEIPI pointed out that, if the text in the first pair of square brackets would be maintained while the text in the second pair of square brackets would be deleted, the principles of the Lisbon Agreement would not be preserved.

79. The Delegation of Kenya said that the geographical indication definition in Kenya's national legislation covered both geographical indications and appellations of origin, by stating: "geographical indication means an indication which identifies a product as originating from a territory, or a region or locality where a given quality, reputation or other characteristics of the product are exclusively or essentially attributable to its geographical origin".

80. Noting that the terms "*reputación*" and "*notoriedad*" and "*réputation*" and "*notoriété*" had been used indistinctly in the draft Revised Lisbon Agreement, the Delegation of Chile reiterated its request made at the previous session that an interpretative statement be introduced in the text to clarify that those terms would be considered as being synonymous for purposes of the Revised Lisbon Agreement.

81. In response to the comment made by the Delegation of Chile, the Secretariat pointed out that Note 2.07 already contained a statement along those lines.

82. In response to a comment made by the Delegation of France, the Chair suggested a slight amendment to the second part of Article 2(1)(b), so that the text after the comma would read: "regardless of the term used to identify such denominations or indications in the Contracting Party of Origin or in other Contracting Parties". The proposed amendment would be made with a view to further clarifying that the terminology used in that context would not matter as long as the substantive requirements of the Revised Lisbon Agreement would be met.

83. The Delegation of Switzerland expressed the view that the first part of Article 2(1)(b) could be moved to Article 2(1)(a) and that its second part could be deleted altogether, since its contents already appeared to be covered by Article 9(1).

84. The Delegation of the European Union shared the views expressed by the Delegation of Switzerland.

85. Following some further discussion, the Chair concluded that the Working Group could go along with the suggestion to delete Article 2(1)(b) altogether, on the understanding that its first part thereunder be replaced by the addition of two new abbreviated expressions in Article 1: one for appellation of origin and one for geographical indication, which would respectively refer to sub-items (i) and (ii) of Article 2(1)(a). The second part of Article 2(1)(b), which clarified that terminology would not be decisive in assessing whether the Contracting Party would be complying or not with the substantive requirements of the Agreement, would be reflected either in the Notes or in a footnote to Article 9(1) or Article 10(2). As a result, Article 2(1)(a) would become simply Article 2(1).

86. Finally, the Delegation of Iran (Islamic Republic of) agreed to the proposal for the deletion of the first reference to reputation in the definition of appellation of origin and the retention of the second reference, without square brackets.

DISCUSSION ON CHAPTER II OF THE DRAFT REVISED LISBON AGREEMENT
(ARTICLES 5, 6 AND 8(1 AND 2)) TOGETHER WITH RULES 5, 6 AND 7 OF THE DRAFT
REGULATIONS

87. Referring to Article 5(4), the Delegation of Algeria expressed its preference for maintaining the text within square brackets for the time being, as it was still in the process of assessing the possible impact of such provision.

88. The Delegation of Georgia said, while stressing the importance of Article 5(4), that it was its understanding that the proposed wording of Article 5(4) would require a bilateral or a multilateral agreement between the countries in which the trans-border area was situated. In that regard, the Delegation was of the view that since the signature of an agreement was an expression of a free will it would not be reasonable to make such agreement mandatory. However, in order to move forward, the Delegation could go along with the proposed version of Article 5(4) without the square brackets. Along the same lines, the Delegation was of the view that the square brackets in Art. 2(2) could also be removed.

89. The Delegations of Hungary and the Republic of Moldova agreed with the Delegation of Georgia on the deletion of the square brackets in Article 5(4). In addition, the Delegation of Hungary sought clarification about the necessity of making explicit reference to Art. 2(1)(a)(i) and (ii), in spite of the fact that a clear definition of the geographical area of origin would already be provided in Article 1(xii).

90. As regards Rule 5, the Delegation of the European Union welcomed the proposed drafting of Rule 5(2)(a)(vi) which referred to the geographical area of origin relevant for geographical indications as well as to the geographical area of production relevant for appellations of origin. Referring to Rule 5(3), the Delegation recalled that information about the link between a product and its geographical origin was crucial and therefore had to be made mandatory so that it would be possible to verify that all requirements of the definition of the geographical indication or appellation of origin were met. In addition, in light of the discussion concerning Article 2(1)(a)(i), the Delegation stated that it would be appropriate to delete the word reputation in Rule 5(3) as well. As regards Rule 5(4), which required use along the lines of the trademark system, the Delegation was of the view that such trademark logic should not apply in the context of the Lisbon system. The Delegation went on to say that each Contracting Party had of course the possibility to foresee use requirements for its own geographical indications or appellations of origin under its national legislation, but the validity of their protection should not be subject to any use requirements in the other Contracting Parties. Geographical indications and appellations of origin could have a very limited production, which would prevent them from meeting such use requirements in multiple countries.

91. The Delegation of Colombia sought clarification about the meaning of the word "jointly" in Article 5(4)(b), and in particular whether the term "jointly" meant that adjacent Contracting Parties had to submit a common declaration, signed by both parties, at the same time, or whether it would be possible for the declaration in question to be submitted separately by the adjacent Contracting Parties concerned. Also, it was not clear how the provision applied in case the trans-border area was partly situated in a country that was not a Contracting Party.

92. Referring to the contents of Rule 5(3), the Delegation of France expressed support for the mandatory character of the indication of particulars concerning quality or any other characteristic of the good. As regards Rule 5(4) concerning "a declaration of intention to use the registered appellation of origin or geographical indication", the Delegation pointed out that the proposed drafting brought the text very close to the applicable legislation in the area of

trademarks which, in turn, constituted an entirely new approach with no relation whatsoever to the issue at stake, namely the establishment of individual fees. The Delegation concluded by saying that the proposed wording was not acceptable at this stage. Lastly, the Delegation inquired as to the necessity of maintaining square brackets in Article 6(3)(v).

93. The Delegation of the United States of America pointed out that Rule 5(5)(iii), which outlined as an optional element of the application “a statement concerning the scope of protection, for example to the effect that protection is not claimed for certain elements of the appellation of origin or the geographical indication”, should be included as a mandatory element in Rule 5(2). The Delegation went on to say that such a disclaimer would need to be recorded in the International Register, in order to provide notice to third parties about the appropriate scope of protection to be given to the individual elements of a compound geographical indication. Such disclaimers might help stem the current trend whereby terms that had been in widespread and longstanding global use suddenly appeared to be the subject of geographical indication protection, either because of a misunderstanding regarding the scope of protection of individual terms within a compound geographical indication, or because the country of origin would all of a sudden decide that it would be useful for its national producers to attempt to obtain global exclusive rights in a common term. As indicated in footnote 5 under Article 11, generic terms within a compound geographical indication should not be protected in Contracting Parties to the extent that the country of origin would have clearly recognized such terms as being generic. The Delegation was of the view that such information should really pass through to the other Contracting Parties in the interest of transparency and fairness and that its inclusion in international registrations should therefore be made mandatory. For the sake of illustration, the Delegation referred to the example of “*Camembert de Normandie*” which had been registered as a geographical indication in France by the national Competent Authority, which had also issued at the same time a clarification that the protection for that geographical indication did not extend to the term “*Camember*”, a term widely regarded as the name for a type of cheese that could be produced anywhere. The Delegation was of the view that such model helpfully established clear guidance as to which portion of a geographical indication actually fell under the scope of protection in the country of origin.

94. The Delegation of the United States of America welcomed the inclusion in the draft Regulations of Rule 5(4) concerning an optional provision for Contracting Parties to require declarations of intention to use the geographical indication, in response to the concerns it had raised at the previous session. As the Delegation had indicated at the time, the United States Patent and Trademark Office (USPTO) did not have the authority to regulate commercial speech unless those terms were used in commerce in the United States of America. Therefore, without a declaration such as the one referred to in Rule 5(4), the United States of America would be unable to join the Revised Lisbon Agreement. However, Rule 5(4) would be meaningless in view of the provisions in the draft Revised Lisbon Agreement limiting the grounds upon which geographical indications could be cancelled or invalidated, which did not allow for cancellation or invalidation on the basis of failure to use the geographical indication. The Delegation clarified that, in the United States of America, a registered mark or a registered geographical indication could be cancelled ex officio by the USPTO for failure to show continued use in commerce; or at the request of a third party for lack of a *bona fide* intention to use, for non-use, or because the term had become generic through lack of enforcement. Referring to Article 9(1), which stated that Contracting Parties had to protect the registered geographical indication “subject to any refusal, invalidation or grounds for cancellation that may become effective with respect to its territory”, the Delegation of the United States of America pointed out that the concepts of renunciation, invalidation or cancellation were not always available under national law. The Delegation further indicated that Article 8(1) provided that the term of protection was indefinite, which in turn meant that a cancellation for lack of maintenance, for lack of use or for no intention to use, could not occur. Along the same lines,

Article 12 also provided that a registered geographical indication could not be cancelled for becoming generic through lack of enforcement. In that regard, the Delegation was of the view that, if a national office seriously took the declaration of intention to use as a mechanism to prevent bad faith applications or to ensure constitutional authority to regulate commercial speech, it should also have the ability to enforce the declaration of intention to use when it would not be respected. The Delegation concluded by saying that since neither Article 8 nor Article 12 of the draft Revised Lisbon Agreement gave a national Office the ability to take action to enforce such declaration, the provision of Rule 5(4) was meaningless to the United States of America. In that regard, the Delegation recalled that it had repeatedly made the point that the draft Revised Lisbon Agreement was fundamentally incompatible with trademark and unfair competition systems and further indicated that the point it had just made clearly demonstrated why that was so.

95. The Delegation of the United States of America suggested adding an additional paragraph under Rule 5 that would mirror the structure of the bracketed Rule 5(4) regarding the declaration of intention to use. The proposed provision would allow Contracting Parties to file a declaration together with their instrument of accession to the Revised Lisbon Agreement to preserve their ability to refuse those applications that would not emanate from the owner of the geographical indication. Referring to Article 5(2) which allowed the “beneficiaries” or the “legal entity with legal standing to assert the rights of the beneficiaries” to file the international application, the Delegation pointed out that those entities might not be the owner of the geographical indication, but might only be entitled to use the geographical indication under the legal systems of some countries. Therefore, the Delegation proposed to add the ability of a Contracting Party to file a declaration with the instrument of accession that would allow such Contracting Party to renounce protection in respect of an international registration, if the application for international registration was not filed by the owner of the geographical indication. The Delegation proposed the following text: “(a) Where a Contracting Party requires the owner or the one entitled to use the appellation of origin or geographical indication to file and sign the application as referred to in Rule 5(2)(a)(viii), it shall notify that requirement to the Director General; (b) an application that is not accompanied by a declaration signed by the owner or the one entitled to use the appellation of origin or the geographical indication shall have the effect that protection is renounced in respect of a Contracting Party having notified such a requirement”.

96. Referring to Rule 5(5)(ii), the Delegation of the United States of America recalled that, at the previous session, it had sought clarification about the legal significance of such provision in relation to Article 10 of the previous version of the draft Revised Lisbon Agreement (i.e., Article 11 of the present draft) and that the response given by the Secretariat at the time had been that the purpose of Rule 5(5)(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. However, the Secretariat also made it clear at the time that, if the applicant did not mention any translation in the application itself, the translation of the appellation of origin or geographical indication would still be protected under Article 10. In that regard, the Delegation was of the view that it would be burdensome and misleading to allow, even as an optional content of the application, for the inclusion of the various and potentially random translations the applicant might be interested in. The Delegation therefore suggested deleting sub-item (ii) from the list of optional elements of the application in Rule 5(5) as the inclusion of any such translation would give the misleading impression to Contracting Parties that they would in fact be obliged to protect the translation that the applicant would include.

97. The Delegation of Colombia was of the view that the contents of the statement concerning the scope of protection in respect of certain elements of the appellation of origin or the geographical indication referred to in Rule 5(5)(iii) could not be different from the scope of protection granted in the country of origin. Consequently, if a term was considered to be

generic in the Contracting Party of Origin, it should not be allowed to claim protection for such term in other Contracting Parties.

98. As regards Rule 5(3), the Delegation of Australia indicated that information on the quality, reputation or other characteristics of the goods and its connection with the geographical area of origin was not required under its trademark system, while appreciating that such information was required in some countries. The Delegation suggested a mechanism allowing Contracting Parties requiring such information to inform producers of goods protected by a geographical indication in a Contracting Party of Origin not requiring such information, for example by means of a declaration upon accession to the Revised Lisbon Agreement along the same lines as proposed in Rule 5(4). Producers of a protected geographical indication from a Contracting Party not requiring such information would, nevertheless, be able to provide the information when seeking protection in a Contracting Party that does require the information. Concerning Rule 5(4), the Delegation noted that the issue of use was very important in Australia, in relation to both its national systems, i.e., the one in respect of geographical indications for wines and the other one in respect of certification marks. While Australia did not require declarations of intention to use as envisaged by Rule 5(4), lack of use constituted a ground for opposition or cancellation under the Australian trademark system as well as its specialized system in respect of geographical indications for wines. The Delegation of Australia, therefore, supported the comments made by the Delegation of the United States of America on Article 12 and Rule 5(4).

99. The Delegation of Chile expressed the view that Article 6(3) should require the same information as Rule 5(2). For example, in the event that an application omitted the reference to a geographical area, the international registration date should not be the date on which the International Bureau had received the application, but the date on which the applicant had corrected the irregularity.

100. The Representative of INTA indicated that Article 8(1) would be clearer if it established that protection under this Act ceased to exist if there was no longer protection of the appellation of origin or of the geographical indication in the Contracting Party of Origin. Therefore, the Representative of INTA suggested deleting the words "on the understanding that" because they could raise doubts as regards the interpretation of this provision. An alternative could be to state that protection under the international registration might no longer be invoked if the denomination constituting the appellation of origin or the indication constituting the geographical indication was no longer protected in the Contracting Party of Origin. This should clearly reflect the dependency of the international registration on the protection in the Contracting Party of Origin. The Representative of INTA suggested introducing in Article 8(2) a reference to the possibility for interested parties to promote a request for cancellation, so that the provision would include language such as: "[...] the Competent Authority of the Contracting Party of Origin shall, on its own motion or at the request of any private party, request cancellation of the international registration [...]". This should make the obligation to request a cancellation, which was already contained in Article 8(2), more effective. The Representative of INTA wondered why the initial words "notwithstanding paragraph (1)" in Article 8(3) were not contained in paragraph (2), which also provided for a ground of cancellation. Therefore, using the words "notwithstanding paragraph (1)" only for one of the grounds of cancellation could cause misunderstandings. Furthermore, the Representative of INTA indicated that in Article 8(3) it might be clearer to state directly that "the International Bureau shall, on its own motion, cancel an international registration if the fee referred to in Article 7(2)(b) is not paid". Finally, the Representative of INTA suggested that the ground for cancellation contained in Rule 17(1), namely the general ground of cancellation at the request of the Competent Authority or of the beneficiaries, should also be included in Article 8.

101. The Delegation of Iran (Islamic Republic of) sought clarification about the text of Article 5(4). Article 5 indicated that application could be filed either by the Competent Authority, or by the beneficiaries or a legal entity, if the legislation of their Contracting Party of Origin so permitted, but Article 5(4) mentioned Contracting Parties filing applications. The Delegation of Iran (Islamic Republic of) also suggested that the division into two sections (a) and (b) in Article 5(4) should start from the beginning of the third line.

102. The Delegation of the European Union wondered what situation could be covered by Rule 5(5)(iii) other than the example contained therein. If there was no other possible type of declarations except the example given, the text could be simplified so as to read: "to the effect that protection is not claimed for certain elements of the appellation of origin or the geographical indication". In response to the proposal made by the Representative of INTA concerning Article 8(1), the Delegation of the European Union was of view that the current text was preferable because, at the beginning, it clearly established the principle of a registration valid indefinitely and, afterwards, it indicated the exception.

103. The Delegation of Chile considered that Article 8 should also specify that the validity of the international registration should cease when the geographical indication or the appellation of origin was no longer used in the Contracting Party of Origin, in accordance with Article 24.9 of the TRIPS Agreement.

104. The Chair referred to the mandatory disclaimer proposed by the Delegation of the United States of America and wondered how the International Bureau could assess whether an application contained a generic element for which a disclaimer should have been filed. Even when adding the words "where applicable", the question would arise who would be in a position to judge whether this provision was applicable and, in particular, whether the International Bureau would be in such a position. It seemed more appropriate to leave this matter to the Competent Authorities of the Contracting Parties that would be notified of the international registration. They should be in a position to decide whether they should refuse the effects of an international registration on the ground that it related to a generic denomination or indication. The Contracting Party of Origin might wish to avoid such a refusal by indicating in the international application that protection was not claimed for certain elements, in particular for those that are generic.

105. The Delegation of the United States of America confirmed that the mandatory disclaimer was only required "where applicable". In the Madrid system, it was the responsibility of the Office of Origin to certify that the protection in the basic application or the basic registration corresponded to the information contained in the international application. Taking this system as a model, the Delegation of the United States of America considered that, if the basic application or the basic registration had a limitation in scope, it would be up to the Office of Origin to make sure that this information was transmitted with the international application and reflected in the international registration. The Delegation of the United States of America recognized that the International Bureau might not be in a position to make this evaluation. However, the Office of Origin would be in this position and could ensure the communication of this information.

106. The Delegation of Colombia supported the statement made by the Delegation of the United States of America concerning Rule 5(5)(iii). In the context of the Lisbon system, it should be the responsibility of the Competent Authority of the Contracting Party of Origin to inform about the generic nature of terms contained in appellations of origin consisting of composed names, without the need of a substantive evaluation from the International Bureau. A box to be ticked should be included in the application form. The Delegation did not consider the Madrid system an appropriate model, as a trademark might contain elements that might be considered non-distinctive terms in the country of origin, but not in another country. Therefore,

the applicant could claim different rights depending on the situation in different countries. However, this was not the case with appellations of origin and geographical indications, for which the protection should be the same as in the Contracting Party of Origin.

107. The Delegation of the Republic of Moldova expressed its preference for keeping the information referred to in Rule 5(5)(iii) as optional content of the application.

108. The Chair noted that, if Rule 5(5)(iii) were mandatory, there should be a sanction when the requirement was not met. Under both the current Lisbon system and the envisaged one, the International Bureau should check whether a certain mandatory element was included or not. If not, then the deficiency would have to be remedied or, otherwise, the International Bureau should reject the application. The Chair recalled that a mandatory requirement inserted with the language “where applicable” would finally result in an optional element. He then suggested that it might be clearer to keep the information referred to in Rule 5(5)(iii) as optional content of the application. It was in the interest of the Contracting Party of Origin to clarify for which elements protection was not claimed, so that the legal effects of the international registration would not be refused on those grounds by other Contracting Parties. The Chair noted that Rule 5(5)(iii), compared to the current text of the Lisbon Regulations, was broader and suggested that the text might be brought back to that of Rule 5(3)(iii) of the current Lisbon Regulations.

109. The Representative of CEIPI agreed with the analysis made by the Chair and suggested to find a solution in Chapter III rather than in Rule 5(5)(iii). In this context, it should be clarified that a Contracting Party was not obliged to protect any element which was not protected in the Contracting Party of Origin.

110. The Delegation of Colombia was of the view that the Contracting Party of Origin should not only have an obligation to inform the International Bureau of the cancellation of the appellation of origin or the geographical indication in its country, but also of any partial cancellation.

111. The Delegation of the United States of America noted that the Contracting Party of Origin might have an interest in not communicating this information. Therefore, in the interest of transparency, the Delegation expressed its preference for having a mandatory element in Rule 5 to make sure that the information was available in the International Register, so that third parties could see what was claimed. If the issue would be dealt with merely in Chapter III, the information might not be fully and transparently communicated to third parties. However, understanding the constraints of the system, the Delegation of the United States of America could accept the suggestion made by the Chair or that proposed by the Delegation of Colombia.

112. The Chair noted that Rule 5(5)(iii) could only be made mandatory if the application form contained a box to be ticked with two options: one with a disclaimer that, for instance, could read: “for these elements, protection is not claimed”; the other option would be with no disclaimer at all.

113. The Secretariat said that the boxes should be more compelling in order to achieve what was suggested. For example, the application could contain a box requiring the Competent Authority to indicate whether the geographical indication or the appellation of origin contained any term which was generic in the Contracting Party of Origin. The Secretariat added that Rule 5(5)(iii) was not necessarily limited to elements of an appellation of origin or geographical indication which were generic in the Contracting Party of Origin. There could also be other statements concerning the scope of protection, for example regarding coexistence with a homonymous appellation of origin or geographical indication. The Secretariat recalled that

Rule 5(3) of the current Lisbon Regulations already contained these elements in an optional manner. This provision originally referred only to terms of which the appellation of origin consisted. However, since the possibility of granting a partial statement of protection had been introduced in the Lisbon Regulations in 2010 to reflect that the protection of the appellation of origin did not relate to a particular term or to a particular use of it, this provision had acquired a broader sense than just referring to the generic use of certain terms.

114. The Delegation of Switzerland agreed with the analysis provided by the Secretariat. The Delegation also expressed its preference for maintaining Rule 5(5)(iii) as optional. In addition, the Delegation suggested that, in Rule 5(2)(iv) and Rule 5(5)(v), “was granted” be replaced by “is granted”, in view of the fact that, in certain countries, protection may be based on an unregistered right.

115. The Representative of CEIPI suggested that the proposed statement under Rule 5(5)(iii) could only be made where applicable, which meant that the absence of such a statement should not represent an irregularity of the application and could, therefore, not be sanctioned by the International Bureau. Thus, Rule 5(5)(iii) would amount to an encouragement for the Contracting Party of Origin or for the applicant to file such a statement.

116. The Chair said that, without the possibility of a sanction, Rule 5(5)(iii) would be *lex imperfecta*. Moreover, appellations of origin and geographical indications containing generic elements should not be the rule, but an exception to the rule. The International Bureau had to treat the lack of any mandatory element as an irregularity, with a specific procedure applicable to it. These irregularities could be checked by the International Bureau without going into the substance. In the Chair’s view, the text proposed by the Delegation of the United States of America seemed to require a substantive consideration by the International Bureau. He wondered whether the International Bureau was in a position to check whether the application should contain a statement under Rule 5(5)(iii) and also whether Contracting Parties would want the International Bureau to do so. In fact, this issue related to the scope of protection (*i.e.* whether a Contracting Party of Origin could claim in the other Contracting Parties protection for those elements that were considered generic in its own jurisdiction). The Chair pointed out that this was a substantive issue, to which the Working Group should revert when discussing Chapter III. Finally, the Chair concluded that Rule 5(5)(iii) should, for the time being, be kept as an optional element, while suggesting that its text might be simplified, so as to read, as it does in Rule 5(3)(iii) of the current Lisbon Regulations: “a statement to the effect that protection is not claimed for certain elements of the appellation of origin or the geographical indication”.

117. Turning to Rule 5(3) of the draft Regulations under the Revised Lisbon Agreement, the Chair noted that there continued to be conflicting views as to whether the information referred to in the provision should be mandatory or optional. A suggestion had been made that application of the provision might be subject to a declaration similar to the scheme envisaged in Rule 5(4). The Chair concluded that the square-brackets around the words “[shall]” and “[may]” represented a pending issue. In view of the discussion on Article 2, the square bracketed word “[reputation]” could be deleted.

118. Referring to Rule 5(4), the Chair pointed out the existing divergent views. A number of delegations had expressed their opposition to the inclusion of this provision, arguing that in the context of the Lisbon system there was no room for applying a requirement of intent to use. Other delegations had pointed out that, although they welcomed the effort made in this context, they found the provision meaningless within the system of the draft Revised Lisbon Agreement, unless the grounds for invalidation would be extended so as to include lack of use as a ground. The Chair, therefore, concluded to keep the text within square brackets.

119. As regards Article 6(3), the Chair recalled that Article 6(3) should only list the data required in order to determine the filing date of the application and, as a consequence, of the international registration. It would be in the interest of applicants to apply some flexibility in this regard, in the same way as this was the case in other registration systems for intellectual property rights, such as those in respect of patents or trademarks. Of course, an application could only lead to registration, if also the other requirements specified in Rule 5 had been met. The Chair concluded that the first four items in Article 6(3) should be sufficient for establishing the filing date.

120. The Chair then turned to Article 5(4) and concluded that, in view of the intervention of the Delegation of Iran (Islamic Republic of), the title of Article 5(4) should be modified, so as to read: "Possible Joint Application in the Case of a Trans-Border Area". Further simplifications of the text of Article 5(4)(a) that appeared to be acceptable to the Working Group were the deletion of the phrase "as referred to in Article 2(1)(a)" – as "geographical area of origin" was an abbreviated expression under Article 1 – and the deletion of the phrase "on the basis of Article 2(1)(a)(i) or Article 2(1)(a)(ii), depending upon the protection they have granted jointly" – as it was obvious that an agreement for filing such a joint application would also cover the option for a geographical indication or an appellation of origin. Furthermore, in response to the question raised by Colombia, enquiring about the meaning of the word "jointly" in Article 5(4)(b), the Chair said that there was no need for a joint declaration of Contracting Parties in a single document.

121. The Delegation of Mexico said that, considering the nature of an appellation of origin or a geographical indication, a joint application implied a previous consent, in whatever form, of the adjacent countries. For that reason, the Delegation supported the simplifications of Article 5(4) proposed by the Chair.

122. Referring to the proposed deletion of item (ii) of Rule 5(5), the Chair clarified that Rule 3(4) and Rule 5(2)(b) concerning transliterations would remain in the text, with the necessary consequential changes. The Chair also pointed out that Article 11(1) extended the content of the protection to the translated forms of the appellation of origin or the geographical indication. The Chair wondered whether the Working Group could accept the deletion of Rule 5(5)(ii).

123. As regards the proposal made by the Delegation of the United States of America, concerning the introduction in Rule 5 of a provision allowing a Contracting Party to require the application to be filed by the owner of the geographical indication, the Secretariat requested clarification as to why such a requirement would be necessary in the context of the Lisbon system, while it was not prescribed as such in the Madrid system.

124. The Delegation of the United States of America said that Rule 9 of the Common Regulations under the Madrid Agreement established that the international application shall be signed by the Office of origin and, where the Office of origin so requires, also by the applicant". The provision did not identify specific applicants nor did it define applicants in the way that the draft Revised Lisbon Agreement did. The Delegation had no problem with the fact that applications could be filed under the Revised Lisbon Agreement by a Competent Authority on behalf of the beneficiaries or by the beneficiaries themselves, but when the resulting registration would be notified to the Competent Authority of the United States of America, that Competent Authority would be required to check whether those beneficiaries were actually the legal owner of the geographical indication. In this connection, the Delegation underlined that, in the United States of America, a geographical indication was a private property right, not a public right, as the draft Revised Lisbon Agreement seemed to require. In the United States, there were three different mechanisms by which ownership could be structured: as a trademark, with a legal entity owning and licensing it; as a collective mark, with a group of

producers owning it and, in many cases, collective beneficiaries; or as a certification mark, where the owner might be a different entity. The draft Revised Lisbon Agreement was limited to just one or two of these three different ownership structures, reducing the flexibility. Understanding that a requirement that the owner should file the application would not match with the national systems of Lisbon members, the Delegation had proposed the introduction of a declaration-based provision in Rule 5 permitting a Contracting Party to refuse or invalidate the effects of an international registration on its territory, if the application for international registration had not been filed by the owner of the geographical indication.

125. In response to a question from the Secretariat, the Delegation of the United States of America confirmed that the State could be the owner of a private right. However, when an application was filed by the Competent Authority under the Lisbon system, this did not necessarily imply that the Competent Authority was doing so on behalf of the owner of the geographical indication, be it the State or someone else.

126. The Delegation of Colombia suggested that an application filed by the beneficiaries or by the Competent Authority should be accompanied by a statement that they are entitled to submit the international application.

127. The Chair said that, although the Competent Authority might not necessarily represent the State as the owner of the geographical indication when filing an application, an application filed by the Competent Authority would imply that the Competent Authority was authorized to do so, or at least provide sufficient guarantee in that respect. In the case of direct filings by the beneficiaries or a legal entity on their behalf, there would appear to be an issue that required further consideration.

128. The Delegation of the United States of America said that its country's law required the applicant to sign the application as well as a use declaration, which had to include a statement that the applicant is the owner of the mark and entitled to use it in the United States of America and knows of no one with a better title. Such a statement was subject to challenge, if it was not accurate. Such a statement would in many cases be inaccurate, when signed by the Competent Authority. In case the application was filed by the beneficiaries of a certification mark, the statement would certainly be inaccurate, as the certifying authority would be the owner. In case the application was filed by a legal entity with the ability to assert the rights of the beneficiaries, the problem was that a certifying authority was not asserting the rights of the beneficiaries, but its own rights as the owner of the certification mark. The addition of another category to Article 5(2)(ii) would not help, because the Competent Authority of the United States of America would still be obliged to accept international registrations from other Contracting Parties in respect of which the application had been filed by the Competent Authority of such Contracting Party or by the beneficiaries of the geographical indication. For that reason, the Delegation had proposed the introduction of declaration-based option along the lines of Rule 5(4).

129. The Chair expressed his doubts as to whether it would be appropriate to entitle a Contracting Party to refuse all international registrations that had resulted from an application filed by the Competent Authority of a Contracting Party, i.e., not by the owner of the geographical indication. Further, he underlined that Article 5(2)(a)(ii) also intended to cover the case of certification marks and their owners, by virtue of the phrase "other rights in the geographical indication or the appellation of origin".

130. The Delegation of Colombia said that Article 10 of the Paris Convention would appear to imply that an applicant could be any producer, manufacturer, or merchant, whether a natural person or a legal entity, engaged in the production or manufacture or trade of goods.

131. The Delegation of the United States of America suggested that Rule 5(4) might be broadened so as to allow a declaration under that provision also to be made with regard to the signature of the owner. In response to a question raised by the Delegation of Iran (Islamic Republic of), the Delegation confirmed that a State or a Government could be the owner of a private property right and act in a private right capacity.

132. The Chair concluded that the issue of the entitlement to file an application under Article 5(2) would be dealt with as a pending issue.

133. In response to a query from the Delegation of the Republic of Korea, the Secretariat pointed out that Article 3 of the draft Revised Lisbon Agreement specified that a Contracting Party should designate a Competent Authority as responsible for the administration of the Act in its territory. Each Contracting Party should decide which entity or which entities should have that responsibility. However, each Contracting Party should also designate a Competent Authority for communicating with the International Bureau under the procedures of the Revised Lisbon Agreement and the Regulations. For that purpose, Article 3 specified that the Contracting Party had to notify the name of this entity to the International Bureau. Article 3 was accompanied by Rule 4 of the draft Regulations, establishing that it would be preferable that the Contracting Party indicates a single Competent Authority for communicating with the International Bureau. However, this provision left the flexibility to indicate more than one Competent Authority to communicate with the International Bureau. In that case, the Contracting Party should clearly indicate the competence of each of these Competent Authorities.

134. The Chair recalled that a non-governmental organization had suggested simplifying Article 8(1) by leaving out the first part of the sentence. On the other hand, at least one government delegation and a delegation of an intergovernmental organization had opposed this suggestion pointing out that it was important to clearly set out the basic principles in this provision. He then expressed doubts as regards the editorial drafting proposal that had been made, to include the phrase “notwithstanding paragraph (1)” also in Article 8(2), as Article 8(1) already referred to the case where a denomination or an indication was no longer protected in the Contracting Party and Article 8(2) only specified that, in such a case, the Contracting Party of Origin was required to request cancellation. Finally, he invited the Working Group to comment on the suggestion made by the Representative of INTA concerning Article 8(2) and Rule 17(1) as well as on the suggestion made by the Delegation of Chile concerning Article 24.9 of the TRIPS Agreement.

135. The Delegation of the Russian Federation said that there was an inconsistency between Article 8(2) and Rule 17(1) as to who was entitled to request cancellation. In the case of Article 8(2), it was only the Competent Authority while, in the case of Rule 17(1), it could also be the beneficiaries or the legal entity, in case the application for international registration had been filed by them.

136. The Delegation of Colombia sought clarification on the scope of Article 24.9 of the TRIPS Agreement, in particular as to whether that provision was conceived bearing in mind a trademark or a certification mark system with a requirement of use.

137. As regards the statement made by the Delegation of Russian Federation, the Representative of CEIPI proposed to move the first sentence of Rule 17(1) to Article 8(2), which could then be divided into two subparagraphs. The title of Article 8(2) could simply read: “Cancellation”. Subparagraph (a) could reflect the current text of Rule 17(1), as follows: “The Competent Authority of the Contracting Party of Origin, or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, may at any time request the International Bureau to cancel the

international registration concerned". Subparagraph (b) would read as the current text of Article 8(2), as follows: "In case the denomination constituting a registered appellation of origin, or the indication constituting a registered geographical indication, is no longer protected in the Contracting Party of Origin, the Competent Authority of the Contracting Party of Origin shall request cancellation of the international registration". The final phrase "in accordance with the procedures specified in the Regulations" could be omitted, because the Regulations were, in any event, specifically conceived to provide for the necessary procedures to implement the Agreement itself. The title of Rule 17(1) could continue to be: "Request for Cancellation" and the text of the provision should be reduced to the second sentence.

138. In response to the question raised by the Delegation of Colombia, the Secretariat said that it was not aware of any authoritative interpretation of Article 24.9 of the TRIPS Agreement in the sense indicated by the Delegation of Colombia. The question was whether it was necessary to specify in Article 8(2) also that the Competent Authority of a Contracting Party of Origin, which was protecting geographical indications by means of collective or certification marks had to request cancellation of the international registration, in case the geographical indication had fallen into disuse in that Contracting Party of Origin.

139. The Delegation of the European Union said that, if a Contracting Party of Origin required use of the geographical indication to maintain its protection, such Contracting Party of Origin would need to request cancellation, if protection of the geographical indication had ceased because of disuse. However, when there was no requirement of use, the problem simply did not exist.

140. The Chair concluded that the text of Article 8(2) and Rule 17(1) would be modified as suggested by the Representative of CEIPI. The discussion on the issue of geographical indications and appellations of origin that had fallen into disuse in the Contracting Party of Origin would be duly reflected in the report.

DISCUSSION ON CHAPTER III OF THE DRAFT REVISED LISBON AGREEMENT (ARTICLES 9 TO 14)

Article 9: Commitment to Protect

141. The Delegations of France, the European Union and Switzerland expressed doubts about the title of Article 9 and the necessity of Article 9(1), which seemed redundant in view of the contents of Article 10.

142. The Delegation of the United States of America was of the view that Article 9 reflected the tension between the elements of the draft Revised Lisbon Agreement based on the Madrid system and those based on the current Lisbon system. The Delegation said that Article 9(1) suggested a designation system starting from the Madrid concept of extension of protection. The heading of Article 9(1) ("Effect as Grant of Protection Under Applicable Law") recalled the statement of grant of protection under the Madrid system. The Delegation interpreted this as meaning that, if a Contracting Party issued a statement of grant of protection, there would be a commitment under national law to protect the geographical indication. This could suggest that the national law could operate independently of the international registration. On this basis, the Delegation of the United States of America would be in favor of Article 9(1). However, there were other provisions in the draft Revised Lisbon Agreement that conflicted with Article 9(1), notably Article 8 and Article 12, which would not allow national law to operate independently of the international registration, because, if the international registration was valid indefinitely and a registered geographical indication could not be found to be generic, the

national law could not operate to require use or intention of use, or to cancel or invalidate the effects of the international registration on the territory of a Contracting Party due to acquiescence or lack of enforcement. Stressing the importance of the phrase “within its own legal system and practice but in accordance with the terms of this Act” and the phrase “any possible limitation to the enforcement of rights in a geographical indication or appellation of origin due to acquiescence will be subject to the national or regional law of the Contracting Party concerned” in Note 9.04, the Delegation said that there was nothing in the draft Revised Lisbon Agreement to the effect that failure or delay in taking enforcement action could represent a ground for cancellation of the effects of an international registration in the Contracting Party concerned. Similar concerns applied with regard to Article 11 and Note 11.04.

143. The Delegation of Australia considered Article 9(1) useful for the reference to the international registration being “subject to any refusal, renunciation, invalidation or cancellation”.

144. The Chair noted that a number of delegations had raised questions about the benefit of Article 9(1) and the utility of this provision. On the other hand, other delegations welcomed the current text of this provision. The Chair invited the Secretariat to clarify the purpose of Article 9(1).

145. The Secretariat said that the starting point for Article 9(1) was the current Lisbon Agreement, which in Article 1(2) established this commitment, by stipulating that the Lisbon countries undertook to protect on their territories the appellations of origin of the other Contracting Parties, under the terms of the Agreement. The different text of Article 9(1) of the draft Revised Lisbon Agreement reflected the discussions on this provision at previous sessions of the Working Group. The corresponding provisions of the Madrid Protocol and the Geneva Act of the Hague Agreement required international registrations to be protected in the same way as the Contracting Parties protected their national trademarks or industrial designs. Similarly, the current draft of Article 9(1) intended to reflect the different types of systems around the world by saying that: “Each Contracting Party shall protect registered appellations of origin and geographical indications on its territory, within its own legal system and practice”. This text was modeled on Article 1 of the TRIPS Agreement. Another reason for having Article 9(1) was the phrase at the end of the provision, which recognized that there were countries that did not distinguish between appellations of origin and geographical indications. It had been a clear understanding in the Working Group since its second session, as also reflected in the Notes, that the Revised Lisbon Agreement would not require Contracting Parties to make such distinction. However, this required the inclusion of a provision in the draft Revised Lisbon Agreement specifying that appellations of origin should be protected as geographical indications by those countries that only defined geographical indications in their national law.

146. The Representative of CEIPI suggested that Article 9(1) be deleted, that the contents of the last part of that provision be clarified in the Notes and that Article 9(2) be transferred to Article 6, which dealt with the international registration date.

147. The Delegation of the United States of America said that the title of Article 9(2)(b) concerned the date of effect of an international registration at the national level, while Article 6 concerned the date of an international registration at the international level. The Delegation considered that it was appropriate to keep these concepts separated.

148. The Chair concluded that Article 9(1) would be put in square brackets, on the understanding that, should later on this paragraph be entirely deleted, consideration should be given to the idea of transferring the content of Article 9(2) to Article 6.

Article 10: Protection Under Laws of Contracting Parties or Other Instruments

149. The Representative of INTA noted that the first two paragraphs of Article 10 largely mirrored Article 1.1 of the TRIPS Agreement. However, the Representative indicated that the words of Article 1.1 of the TRIPS Agreement “provided that such protection does not contravene the provisions of this Act” could be usefully inserted at the end of the sentence in paragraph (1). The draft Revised Lisbon Agreement was meant to establish a minimum level of protection for geographical indications and appellations of origin, but, at the same time, contained provisions for the safeguarding prior rights, specifically in Article 13 and, even more specifically, regarding trademarks.

150. The Delegation of Switzerland recalled that it had repeatedly proposed to delete Article 10(1), because the provision was not essential and under a minimum rights treaty Contracting Parties were always free to provide more extensive protection.

151. The Delegation of Colombia expressed support for the statement made by the Delegation of Switzerland, as the proposal from the Representative of INTA did not correspond to the spirit of the draft Revised Lisbon Agreement.

152. The Chair said that the draft Revised Lisbon Agreement contained provisions providing for mandatory exceptions to the protection enjoyed by registered geographical indications and appellations of origin. Consequently, the proposal put forward by the Representative of INTA would make it clear that the freedom to provide more extensive protection did not apply in respect of these exceptions.

153. The Delegation of Italy said that Article 10(1) was excessive and overly prescriptive. Article 10(2) set out a general principle and was the core provision in Article 10. Regarding Article 10(3), the Delegation expressed its preference for the text contained in the previous version of the draft Revised Lisbon Agreement and wondered why the phrases “be without prejudice” and “has already granted” had been changed.

154. The Delegation of Georgia expressed its full support for the wording of Article 10(3). Even without its footnote, this provision would not create any obligation to accede to the TRIPS Agreement or to other international agreements.

155. The Secretariat recalled that Article 10(3) should be read in conjunction with Article 15(2). If a Contracting Party refused protection in respect of an appellation of origin or geographical indication as registered under the Revised Lisbon Agreement, but the appellation of origin or geographical indication met the conditions for another title of protection available in that Contracting Party, there would be an obligation to provide that protection. In this respect, the wording “shall not in any way affect” would seem to more appropriately reflect this aspect, rather than the earlier wording “has already granted”. In fact, the wording “has already granted” could be interpreted to mean that the protection was already available in the country in question, for example by virtue of a prior bilateral agreement.

156. The Delegation of Switzerland proposed to amend Article 10(3), adding the words “more extensive than” after “any other protection”.

157. The Delegation of Iran (Islamic Republic of) was in favor of deleting the names of the international legal instruments in Article 10(3), while underlining that this would not have any negative impact on the essence of the provision.

158. The Representative of CEIPI agreed that all these examples could be deleted and that the provision could end after the phrase “under other international instruments”. Proceeding in this manner would require consequential changes in Article 1.

159. The Chair sought clarification from the delegations that took the view that Article 10(1) was redundant. The Chair wondered which other provisions of the draft Revised Lisbon Agreement implied that Contracting Parties were free to provide more extensive protection. Moreover, it should also be clarified that there was a limit to this freedom, in view of the mandatory exceptions in the draft Revised Lisbon Agreement. He also indicated that similar provisions could be found in other international treaties providing for a minimum level of protection, such as the TRIPS Agreement.

160. The Delegation of Switzerland said that this type of provision did not exist in all the treaties that provided for a minimum level of protection. Moreover, Article 10(1) would prevent Contracting Parties from providing more extensive protection under their national law, if they did not include a similar provision in a future treaty.

161. The Chair recalled that there was a precedent in this regard, as Article 2(1) of the Geneva Act of the Hague Agreement provided as follows: “The provisions of this Act shall not affect the application of any greater protection which may be accorded by the law of a Contracting Party”. The provision specifically referred to protection accorded under the TRIPS Agreement. Apparently, in respect of the Geneva Act, the concern had not arisen that such provision might create a precedent that would be relied upon as an *a contrario* argument in respect of other treaties.

162. The Delegation of the European Union said that it could accept the current text of Article 10(3) with the references to various international instruments and the footnote. However, the Delegation could also live with a text that would not mention any specific international instruments. As for the other issue raised by the Delegation of Switzerland, the Delegation of the European Union wondered whether Article 10(1) was redundant in view of Article 10(3), as more extensive protection could only derive from regional or national legislation or from another international instrument.

163. The Delegation of the Republic of Moldova supported deletion of the references to specific international instruments in Article 10(3), for reasons of clarity and because the list was not exhaustive.

164. The Chair said that the confusion in the relationship between Article 10(1) and Article 10(3) might be due to the changes that had been introduced to the text of Article 10(3). This provision previously mirrored the language of Article 4 of the current Lisbon Agreement, which provided a safeguard for protection that had already been granted.

165. The Delegation of the European Union suggested the deletion of Article 10(1) and an amendment of Article 10(3), which should cover past and future protection.

166. The Chair wondered whether this proposal should also take on board the suggestion made by the Delegation of Switzerland, so as to refer to “more extensive protection” rather than just “other protection”.

167. The Representative of INTA could go along with the suggestion of deleting Article 10(1). However, in that case, the Representative suggested adding the phrase “provided that such protection does not contravene the provisions of this Act” at the end of Article 10(3).

168. The Delegations of the European Union and Italy could not accept the suggestion made the Representative of INTA, as this would contravene existing obligations of Contracting Parties.

169. The Chair suggested that Article 10(1) might be deleted, while Article 10(3) might be amended, by deleting the specific references to the Paris Convention, the Madrid Agreement, the TRIPS Agreement and bilateral agreements. As a consequence, footnote 3 would also disappear. The remaining text of Article 10(3) would then remain unchanged, unless there was support for the proposal put forward by Switzerland to include a reference to “more extensive protection” or, in the words of Article 2(1) of the Geneva Act, “greater protection”.

170. The Delegation of Colombia supported the proposal made by Switzerland, to the extent that it clarified Article 10(3).

171. The Delegation of Fiji expressed its concerns about the relationship of its national regime with the draft Revised Lisbon Agreement, as its national law had been drafted on the basis of the TRIPS Agreement.

172. The Chair said that Article 10(1) would have mirrored the text of Article 1 of the TRIPS Agreement, while Article 10(3) reflected the logic of Article 4 of the current Lisbon Agreement and of the Geneva Act of The Hague Agreement. The Chair underlined that this provision would only confirm that Contracting Parties might accord, or might have accorded, more extensive protection. The provisions of the draft Revised Lisbon Agreement would not affect such more extensive protection and such more extensive protection would not lead to a breach of the Revised Lisbon Agreement.

173. The Delegation of the Republic of Korea requested that the text proposed by the Delegation of Switzerland be put within brackets.

174. The Chair concluded that Article 10(1) would be deleted and that Article 10(2) would remain unchanged. In Article 10(3), the specific references to the international instruments and footnote 3 would be deleted and square brackets would be put around the words “any other” and “more extensive” before the word “protection”. These would basically represent two options to be considered as a pending issue at the next session of the Working Group.

175. The Delegation of Switzerland proposed deletion of the word “registered” in Article 10(3). Different types of protection systems existed at the national level, including systems that were not based on registration.

176. The Chair recalled that there was an abbreviated expression in Article 1 item (xi), specifying that “registered” meant “entered in the International Register in accordance with this Act”. Consequently, Article 10(3) only referred to appellations of origin and geographical indications “registered” by the International Bureau and entered into the International Register.

Article 11: Protection in Respect of Registered Appellations of Origin and Geographical Indications

177. The Delegation of Peru said that its position concerning the possibility of regulating the co-existence of appellations of origin and geographical indications had remained the same throughout the entire revision process. The Delegation was of the view that such possibility was not foreseen in the current Lisbon Agreement. Neither Peruvian law nor the legislation of the Andean Community regulated the matter. Footnote 4 to Article 11 should be deleted, as it merely described the role played by the International Bureau in a specific type of situation.

Moreover, the provision was redundant next to Article 6, which described the role of the International Bureau upon receipt of an application for international registration.

178. Noting that Article 11(1)(a) appeared to confer the same level of protection as the one conferred in respect of geographical indications for wines and spirits under Article 23.1 of the TRIPS Agreement, the Delegation of Chile indicated that such provision would cause difficulties for countries that had not incorporated such level of protection in respect of geographical indications for goods other than wines and spirits in their national legislation. As regards sub-items (ii) and (iii) of Article 11(1)(a), the Delegation said that there seemed to be a difference between the Spanish and English versions of the draft Revised Lisbon Agreement and requested the Secretariat to make the necessary adjustments to align both versions. As regards footnote 5 to Article 11(1)(a), the Delegation expressed a preference for the expression "have a generic character" instead of "are generic", since an element of an appellation of origin or a geographical indication could have a generic character in a specific Contracting Party without necessarily being generic elsewhere. The Delegation was of the view that footnote 4 to Article 11 had to remain in the draft Revised Lisbon Agreement, as it explicitly acknowledged that homonymous geographical indications and appellations of origin could coexist in Contracting Parties that allowed for such coexistence in their national or regional legislation.

179. The Delegation of the United States of America noted that the infringement standard for the same type of goods in Article 11(1)(a)(i) appeared to track the presumption of confusion concept mentioned in Article 16.1 of the TRIPS Agreement, which would apply whenever the same mark would be used in respect of the same kind of goods or services as those for which the mark was registered. However, usually, in trademark systems there was a requirement of use of the mark at some point during the life of the registration. In other words, if a third party using a registered mark would get sued for infringement by the holder of the trademark registration, the defendant would be able to present a counterclaim for lack of use of the trademark within three years from its registration and get the trademark registration cancelled. The Delegation went on to say that in that connection a presumption of confusion could be regarded as fair, because there was a mechanism for the defendant to counterclaim and attempt to cancel an unused registration. On the contrary, in the case of a geographical indication registered under the Lisbon system, where the geographical indication registration could not be cancelled for lack of use or for becoming generic through lack of enforcement, it seemed unjustified to analogize the same presumption of confusion in respect of a geographical indication. The Delegation was of the view that the introduction of the presumption of confusion concept in Art 11(1) would be overreaching, if there was no evidence that the consumer was actually harmed in some way by the use of the registered geographical indication by someone other than the holder of the registration. The Delegation suggested that the standard included in the text of Article 11(3) in respect of "goods that are not of the same kind" should also be applied as the standard for infringement in respect of goods of the same kind.

180. Further, the Delegation of the United States of America reiterated its objection to the indication in Note 11.04 that Article 24.5 and Article 24.7 of the TRIPS Agreement had anything to do with governing the on-going relationship between geographical indications and trademarks. The references to those provisions should be stricken from Note 11.04. The WTO Panel had clearly held in the dispute initiated by the United States of America and Australia against the European Union with regard to Regulation (EC) 2081/92 that Article 24.5 was limited to the implementation of Section 3 of Part II of the TRIPS Agreement, which dealt with geographical indications, and that it had nothing to do with limiting any trademark right granted under Section 2 of Part II of the TRIPS Agreement, which dealt with trademarks. The text of Article 24.5 itself limited its applicability to "measures adopted to implement this Section", namely Section 3 of Part II. In other words, the scope of Article 24.5 was strictly

limited to geographical indications and was entirely limited in time to measures that WTO members took when creating national laws in respect of geographical indication at the time of their implementation of the TRIPS Agreement. In that regard, the Delegation referred the Working Group to paragraphs 7.604 to 7.625 of the Panel Report, as contained in WTO document WT/DS174/R, and more particularly to the last paragraph which stated that Article 24.5 was inapplicable and did not provide authority to limit trademark rights. This interpretation had been adopted by the WTO Dispute Settlement Body.

181. Finally, the Delegation was of the view that the Notes to the draft Revised Lisbon Agreement also did not correctly reflect the interpretation of Article 24.7 of the TRIPS Agreement. Referring to Notes 11.04 and 9.04, the Delegation said that it was puzzling that one apparently had to read the concept of acquiescence into the text of the draft Lisbon Agreement. In the Delegation's view, acquiescence could not be considered an acceptable ground for cancellation of the effects of a trademark registration by virtue of its alleged incorporation into Article 24.7 of the TRIPS Agreement. If the Working Group wished to allow national regimes to impose national law requirements, such as a reasonable delay in bringing an infringement suit, under the equitable doctrine of laches, the Working Group needed to make that very clear in the draft Revised Lisbon Agreement. The Delegation added that the text would then need to include a designation and extension of protection system and would also have to make it clear that the national geographical indication extension of protection would be independent of the international registration, from a legal perspective. Furthermore, Articles 12 and 16(2) would have to be deleted.

182. The Delegation of Australia reiterated its preference for a more inclusive system for geographical indications than that contained in the draft Revised Lisbon Agreement. As regards the single and high level of protection for both appellations of origin and geographical indications sought by the current Lisbon membership, the Delegation of Australia agreed that protection similar to the one afforded by Article 23.1 of the TRIPS Agreement already existed in respect of trademark counterfeiting and applied in relation to any goods, i.e., not just wine and spirits. In cases of unauthorized use of the same sign on identical goods, a likelihood of confusion was presumed along the lines of Article 16.1 of the TRIPS Agreement. In relation to the issue of use, the Delegation agreed with the concerns expressed by the Delegation of the United States of America, while indicating that the same issue also arose in relation to Article 19(2) concerning the grounds for invalidation. The Delegation appreciated the addition of the alternative text presented in Article 11(3), which more closely resembled existing obligations in respect of geographical indications protected under the trademark system. However, the Delegation was of the view that the standard articulated in Article 11(3) should replace the text in sub-items (ii) and (iii) of Article 11(1)(a), as Article 11(3) was more inclusive and consistent with existing international standards. Moreover, from a systemic point of view, it would be preferable to create universal standards rather than exceptions when dealing with such important substantive issues. Lastly, the Delegation supported the comments made by the Delegation of the United States of America in relation to the lack of impact of Article 24.5 and Article 24.7 of the TRIPS Agreement in relation to trademarks.

183. With respect to Article 11(2)(a), the Delegation of the European Union was of the view that the phrase "which contains or consists of a registered appellation of origin, or a registered geographical indication, if use of the trademark would result in one of the situations covered by paragraph (1)" should be deleted, in view of its reference to Article 11(1)(a). The Delegation further expressed the view that Article 11(2)(b) was superfluous, as it simply described a consequence of Article 11(2)(a). Finally, as regards Article 11(3), the Delegation had some difficulties in understanding the idea that the Revised Lisbon Agreement would establish two standards for the required level of protection and requested that the text remain in square brackets. Moreover, the reference to Article 11(1)(a)(ii) should be deleted, because the provision contained the text of Article 3 of the current Lisbon Agreement.

184. As regards Article 11(2), the Delegation of France agreed with the statement made by the Delegation of the European Union. Further, Article 11(3) demonstrated the flexibility of the Working Group in responding to the requests made by a number of delegations. However, the Working Group would need to look further into the alternative for paragraphs (1)(a)(ii) and (iii), as mentioned in Article 11(3), as the terms of paragraph (1)(a)(ii) were contained in Article 3 of the current Lisbon Agreement. In that regard, the Delegation recalled that the objective of the revision exercise was to improve the current system of protection and not to reduce the current level of protection. Lastly, the Delegation sought clarification about the standard of Article 16.3 of the TRIPS Agreement, on which Article 11(3) was based.

185. The Delegation of Switzerland supported the proposed deletion of Article 11(2)(b) and sought clarification about the utility of footnote 5 under Article 11 next to Rule 5(5)(iii).

186. The Delegation of Portugal supported the comments made by the Delegation of the European Union in respect of Article 11.

187. The Representative of INTA reiterated INTA's concerns on the concept of evocation. In view of the broad scope of protection established in the remainder of Article 11, the additional concept of evocation would not be required and might even lead to greater uncertainty. The use of broad terminology would make it difficult to predict the precise scope of protection. She added that, for example, the use of notions such as 'usurpation' or 'use in translation' would likely broaden the possible areas of conflict between trademarks and geographical indications and would lead to greater uncertainty in practice. She further indicated that such uncertainty could be avoided through the use of wording that would be more in line with the concepts of trademark law which are already broadly tested in practice and globally recognized. Referring to Article 11(2)(a), she was of the view that an explicit reference to the priority principle, beyond the generic reference to Article 13, might be recommendable, so as to make it clear that the provision in question would apply only to trademarks with a later priority. Noting that Article 11(2)(b) appeared to refer to both applications and registrations, it would be preferable to redraft the second half of the provision, so that it would read: "if the goods in respect of which the trademark is applied for or registered" instead of "if the goods in respect of which the trademark is registered". Lastly, she reiterated INTA's concerns in respect of the reference to the compliance with "any other applicable requirements for using the appellation of origin or the geographical indication", as such requirements were difficult to verify by national authorities of a Contracting Party other than the Contracting Party of Origin.

188. The Representative of oriGIn expressed discomfort with Article 11(3), as the proposed draft left room for a high degree of uncertainty and unpredictability which was contrary to the expectations of beneficiaries of geographical indications, who would prefer a clear understanding of the type of protection they would receive in export markets. The level of this protection should be high, be it under a *sui generis* system or under a trademark system. Allowing Contracting Parties to provide for a lower level of protection would not be conducive for meeting this objective. Along the same lines, he did not feel at ease with the reference to the incompatibility of national legal systems with the standards of Article 11(1)(a)(ii) and (iii).

189. The Delegation of Colombia was of the view that sub-items (ii) and (iii) of Article 11(1)(a) provided a good level of protection for all countries with regard to appellations of origin and geographical indications.

190. As regards the comment made by the Delegation of Switzerland regarding footnote 5 to Article 11, the Delegation of the United States of America said that the issue of the disclaimer under Rule 5(5)(iii) had not yet been settled. The Delegation further indicated that footnote 5 should not be deleted, as it made it clear to Contracting Parties that they were not obliged to protect certain elements of the appellation of origin or the geographical indication, if the

Contracting Party of Origin did not protect them either. Furthermore, the Delegation supported the comments made by the Representative of INTA.

191. The Delegation of Italy expressed the view that the brackets should be removed from sub-items (ii) and (iii) of Article 11(1)(a) and that the term “evocation” should remain in the text of sub-item (ii), while the term “unduly” should be removed from the text of sub-item (iii). The Delegation further indicated that it shared the doubts expressed by the Delegation of the European Union with regard to Article 11(2) and preferred to reserve its position on Article 11(3), subject to the outcome of the discussions on Chapter IV, while suggesting that the title of the provision be reworded. As regards the complex issue of homonymy, the Delegation thanked the Secretariat for the text of footnote 4.

192. In an attempt to sum up what had emerged so far from the discussions on Article 11, the Chair said that footnote 4 to Article 11 would be put in square brackets, in view of the conflicting views expressed by delegations in that regard. He further indicated that it was his understanding that all the square brackets in Article 11(1)(a) should be kept for the time being. Then, referring to Article 11(2)(a), he indicated that the phrase “which contains or consists of a registered appellation of origin, or a registered geographical indication” would be deleted. Article 11(2)(b) would be deleted as well, on the understanding that the issue could perhaps be covered by the Notes. Footnote 5 to Article 11 would be put in square brackets and the option in square brackets for the words “are generic” would be removed from the text. Article 11(3) might serve as a basis for further talks on a possible alternative to the content of protection, but the Working Group still had to determine to which provisions Article 11(3) might serve as an alternative. In that regard, he pointed out that two options had been advocated and further specified that the proposed options would be either to apply Article 11(3) to Article 11(1)(a) as a whole, or to limit its application to Article 11(1)(a)(iii) only. Finally, the Chair noted the wish expressed for deleting Note 11.04 from the Notes attached to the draft Revised Lisbon Agreement.

193. The Delegation of Australia clarified that its proposal was that the standard of Article 11(1)(a)(ii) and (iii) be deleted and replaced by the standard of Article 11(3). Terms such as “usurpation”, “imitation” or “evocation” were unfamiliar concepts in trademark law and, without a definition of their meaning, difficult to apply with regard to geographical indications in some jurisdictions.

194. The Chair suggested that the proposal from the Delegation of Australia be presented as a possible alternative to Article 11(1)(a)(i), (ii) and (iii) rather than as a universal standard.

195. The Delegation of Australia said that its intention was not for one legal system to take precedence over the other. Instead, its proposal sought to avoid that situation by creating a standard that would be appropriate for all systems. Moreover, the Delegation did not object to the universal standard proposed in Article 11(1)(a)(i) in relation to goods of the same kind. It was only proposing a universal standard in relation to use of a geographical indication in respect of goods of a different kind. In that regard, the Delegation was of the view that the standard of Article 11(3) was more universal, modern and inclusive than the standard of Article 11(1)(a)(ii) and (iii).

196. The Chair indicated that the revised version of the draft Revised Lisbon Agreement would then reflect the two options he had previously referred to. In addition, there would be a third option, as proposed by the Delegation of Australia, which would appear in square brackets in Article 11(1)(a), as a substitute for items (ii) and (iii).

197. The Delegation of the United States of America shared the view expressed by the Delegation of Australia that a single standard of protection would be much easier to

understand for stakeholders and third parties. The Delegation went on to say that it also represented the interests of those stakeholders who were negatively impacted by the very broad use of the terms “evocation”, “usurpation” and “imitation” as possible infringement standards. Further, the Delegation agreed with the suggestion from the Representative of INTA for the inclusion of a reference to the priority principle in Article 11(2)(a), so that the sentence would, for example, read: “[...] refuse or invalidate the registration of a later in time trademark [...]”.

198. The Chair referred to the proposal from the Delegation of the United States of America in respect of Article 11(2)(a) and said that it was his understanding that the phrase “Without prejudice to Article 13(1)” already addressed the concern expressed. Moreover, Article 11(2)(a) followed the same logic as Article 22.3 of the TRIPS Agreement, which did not specify that it only applied with regard to a later trademark either, as conflicts between geographical indications and prior trademarks were dealt with under other provisions of the TRIPS Agreement.

199. The Secretariat confirmed that the reference to Article 13(1) in Article 11(2)(a) was meant to deal with the issue of prior trademarks and included a reference to the priority principle by virtue of the word “prior” in Article 13(1).

200. The Delegation of Colombia suggested that Article 11(3) might be modeled on the corresponding provisions of the WIPO Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, in particular its Article 4. Further, the Delegation wondered whether the reference in Article 11(2)(a) to trademarks included collective and certification trademarks as well.

201. In response to the question raised by the Delegation of Colombia with regard to Article 11(2)(a), the Chair said that the text made reference to “trademarks” in the widest possible sense and should therefore be interpreted as also referring to collective and certification marks. As regards the proposal to add a reference to the priority principle, the Chair wondered whether inclusion of the word “later” in the third sentence of Article 11(2)(a) would help.

202. The Delegation of the European Union failed to understand, in view of Article 23.1 of the TRIPS Agreement, the argument that the current wording of Article 11(1)(a)(i) might not be compatible with the legal system of a Contracting Party and that therefore an option should be provided allowing the text of Article 11(3) to be used instead.

203. The Delegation of Switzerland was of the view that the text of Article 11(3), as contained in document LI/WG/DEV/9/2, should also be kept as an option. The Delegation also expressed interest in studying further the proposal made by the Delegation of Colombia with regard to the WIPO Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks. The Delegation had some reservations as regards the proposal made by the Delegation of Australia in respect of Article 11(1)(a)(ii) and (iii), as such amendment would seem to go against the objective of preserving the principles and objectives of the current Lisbon Agreement.

204. The Delegation of Italy shared the doubts expressed by the Delegation of the European Union and also agreed with the Delegation of Switzerland that the current version of Article 11(3) should be kept as an option, for further discussion.

205. The Delegation of the United States of America said that the subject matter of the Revised Lisbon Agreement concerned geographical indications, i.e., not just appellations of origin. Therefore, there was an issue as to whether the current Lisbon standards should also

be applied in respect of geographical indications, in view of the possible implications on the various economic interests concerned. After all, Article 23.1 of the TRIPS Agreement did not apply across the board, but only required its application in respect of geographical indications for wines and spirits.

206. The Delegation of the European Union said that it was difficult to understand that, if Article 23.1 of the TRIPS Agreement had been incorporated in a given country's legal system with regard to wines and spirits, the same provision would be "incompatible with its legal system and practice" with regard to other goods. Consequently, the Delegation could not agree that Article 11(3) would replace Article 11(1)(a) as a whole.

207. The Chair concluded that an amended version of Article 11(3) would reflect the various options that had been proposed: (1) Article 11(3) as contained in document LI/WG/DEV/9/2; (2) Article 11(3) drafted along the same lines, but providing an alternative in respect of Article 11(1)(a)(iii) only; (3) Article 11(3) drafted along the lines of the criteria contained in the WIPO Joint Recommendation Concerning Provisions on the Protection of Well-known Marks; and (4) an option drafted along the lines of Article 11(3), but proposing an alternative in respect of Article 11(1)(a) in its entirety. In addition, Article 11(1)(a) would reflect two options: (1) Article 11(1)(a) as contained in document LI/WG/DEV/9/2; and (2) an option drafted along the lines of Article 11(3) as contained in document LI/WG/DEV/9/2, but proposing to replace the provisions of Article 11(1)(a)(ii) and (iii) and to delete Article 11(3).

208. The Delegation of Australia confirmed that the alternative option it had proposed would entail that Article 11(3) would disappear from the text.

209. The Chair further concluded that footnotes 4 and 5 under Article 11 would be put in square brackets. In footnote 5, the option based on the words "are generic" would be removed from the text. Article 11(2)(b) would be deleted as well as the phrase "which contains or consists of a registered appellation of origin, or a registered geographical indication" in Article 11(2)(a). Lastly, Article 11(2)(a) would, in the third line, refer to "a later trademark" instead of "a trademark", so as to better reflect the priority principle.

210. In response to a request for clarification from the Delegation of Moldova, the Chair said that the amended text of Article 11(2)(a) would read as follows: "Without prejudice to Article 13(1), a Contracting Party shall, *ex officio* if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a later trademark if use of the trademark would result in one of the situations covered by paragraph (1)".

211. The Delegation of Chile recalled its concerns with regard to Article 11(1)(a), which were based on the fact that the scope of protection under this provision went beyond what was required under the TRIPS Agreement in respect of geographical indications. As regards footnote 4, the Delegation was willing to work on a draft that would be acceptable to all delegations.

212. The Chair said that footnote 4 would be put in square brackets and thus allow for consultations among delegations having concerns with regard to its content. As regards Article 11(1)(a), the Chair noted that one of the options in respect of Article 11(3) reflected the view expressed by the Delegation of Chile.

Article 12: Protection Against [Acquiring a Generic Character] [Becoming Generic]

213. The Delegation of the United States of America reiterated its concerns about Article 12, which established that a geographical indication could never become generic in the Contracting Parties to which the international registration was extended. This provision contradicted the notion that a national geographical indication regime could operate autonomously according to its own national law and legal processes. The Delegation proposed to delete Article 12 or to add the following phrase at the end of the provision: “[...] and national law requirements in the designated contracting parties regarding use, maintenance and renewal are met”.

214. The Chair said that the current structure of the system envisaged under the draft Revised Lisbon Agreement would not be based on designations of Contracting Parties. He also highlighted the need for a reference to regional laws. Thus, the proposal put forward by the Delegation of the United States of America might read as follows: “[...] and national or regional law requirements in the Contracting Party concerned regarding use, maintenance and renewal are met.”

215. The Delegation of the United States of America agreed with the amendments proposed by the Chair.

216. The Delegation of Australia wondered whether the Lisbon system really needed such a provision and supported both the proposals of the Delegation of the United States of America regarding Article 12. The Delegation said that the proposed protection against becoming generic under Article 12 excluded from membership of the Revised Lisbon Agreement those countries which protected geographical indications under a trademark system. The question as to whether a term had a generic character should depend on the factual situation in the market place concerned. In Australia, such question was determined by the courts and only occurred occasionally. The Delegation suggested looking for an amendment of Article 12 along the lines of that proposed by the Delegation of United States of America, if this provision were to remain in the text at all.

217. The Delegation of France expressed its preference for maintaining the current text of Article 12 with the phrase “cannot become generic”. The provision should not include any reference to national or regional legislation, because it should establish an international standard.

218. The Delegation of Switzerland said that Article 12 reflected one of the principles of the current Lisbon Agreement. The Delegation suggested to simply refer to “appellation of origin” and “geographical indication” rather than “the denomination constituting the appellation of origin” and “the indication constituting the geographical indication”.

219. The Delegation of Chile expressed its preference for the first option in the text: “are protected against acquiring a generic character”. The Delegation said that the second option (“becoming generic”) would appear to imply an obligation for the Contracting Party to make sure that a given term would never become generic.

220. The Representative of the CCFN expressed concerns about the impact that the proposed revision and expansion of the Lisbon Agreement would have on those around the world relying on the use of common food names. The Representative indicated that CCFN supported the deletion of Article 12 because of the negative impacts that this would have on its membership. The main concerns referred to the fact that Article 12 would permit holders of geographical indications to permanently reserve the right to use these terms, even if they did

not educate the public or other companies in a given country about their exclusive right or they did not sell their product in that market. This situation created a serious risk for companies starting using a term without realizing it was a name owned by someone else. If the Lisbon system expanded to a large number of geographical indications, with an overly broad and non-specific scope of protection, protecting terms in the absence of any enforcement efforts or sales by geographical indication owners could become quite onerous for many WIPO members. Furthermore, the Lisbon system provided an expedited and streamlined path for geographical indication holders to widely register their terms, while it did nothing to streamline the ability of users of food names to voice their concerns about these registrations or secure corresponding safeguards for the use of terms that long ago entered into the global public domain. The Representative pointed out that commonly used food terms were extremely important to the domestic and international sales of the food sectors of many countries.

221. The Delegation of Italy indicated its preference for the first option in brackets: “are protected against acquiring a generic character”. However, the Delegation said that it could also accept the second option if formulated without the expression “be considered to have”.

222. The Chair noted that at least two delegations had expressed their preference for the first alternative option in the text, reading: “protection against acquiring a generic character” and the text: “are protected against acquiring a generic character” and wondered whether there was any opposition to limiting the text to this option and removing the square brackets.

223. The Delegation of Colombia expressed its concerns with regard to the phrase “acquiring a generic character” and suggested the following text: “Subject to the provisions of this Act, registered appellations of origin and registered geographical indications cannot be considered as generic, as long as the denomination constituting the appellation of origin, or the indication constituting the geographical indication, is protected in the Contracting Party of Origin”.

224. The Chair said that the text proposed by the Delegation of Colombia would not reflect that, if the denomination constituting the appellation of origin or the indication constituting the geographical indication was considered generic in a given Contracting Party at the time of the notification of the international registration of the appellation of origin or the geographical indication to the Competent Authority of that Contracting Party, the generic character of the denomination or the indication constituted a possible ground for refusal.

225. The Delegation of Colombia withdrew its proposal and indicated its preference for the wording “become generic”.

226. The Chair concluded that the two alternative options would be kept in the text of Article 12. The proposed deletion of Article 12 would not be reflected in the next version of the draft Revised Lisbon Agreement, as part of the mandate of the Working Group was to preserve the principles and objectives of the current Lisbon Agreement. The phrase proposed by the Delegation of the United States of America and supported by the Delegation of Australia would be added at the end of Article 12, in square brackets, reading: “[...] and national or regional law requirements in the Contracting Party concerned regarding use, maintenance and renewal are met”.

227. The Secretariat said that the reference to “the denomination constituting the appellation of origin, or the indication constituting the geographical indication” was consistent with the use of the terminology in footnote 6 and Article 2.

228. The Delegation of the European Union, supported by the Delegations of France, Italy and Switzerland, proposed to delete the words “the denomination constituting” and “the indication constituting”, as they would not appear to be necessary.

229. The Chair said that Article 6 of the current Lisbon Agreement referred to “appellation” and not to “appellation of origin”.

230. The Delegation of the United States of America expressed its preference for keeping the words “the denomination constituting” and “the indication constituting”. As explained by the Secretariat, “appellation of origin” and “geographical indication” were legal terms, while Article 12 deals with the factual use of a denomination or indication.

231. The Chair concluded that the phrases “the denomination constituting” and “the indication constituting” would appear in square brackets in the next version of Article 12.

Article 13: Safeguards in Respect of Other Rights

232. The Delegation of the European Union expressed its support for Option A of Article 13(1). WTO jurisprudence clarified that coexistence was possible. Option A was entirely in line with the wording of Article 17 of the TRIPS Agreement: “Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties”. At the same time, Option A allowed Contracting Parties to refuse protection of an appellation of origin or a geographical indication that would be in conflict with a prior trademark.

233. The Delegation of France expressed its preference for Option A. However, the provision would be appropriately balanced with the phrase “taking into account”, if the brackets around the phrase “the owner of the trademark” were removed.

234. The Delegation of Italy indicated its preference for Option A.

235. The Delegations of Georgia, Hungary and Portugal expressed support for Option A and for the proposal from the Delegation of France regarding the removal of the brackets.

236. The Delegation of Australia said that it could not support Option A. The Delegation agreed that coexistence of a later claimed geographical indication with an earlier trademark right was possible. However, the legitimate interests of the earlier trademark holder and third parties must be taken into account. The Delegation of Australia pointed out that the outcome of the WTO dispute was confined to circumstances pertaining to a European Union Regulation which was not in place in the rest of the world. There should not be a default of coexistence across the international borders, where regulations and circumstances could differ from country to country. The Delegation said that the possibility of a later coexisting geographical indication with an earlier trademark should be an issue to be dealt with on a case-by-case basis under the laws existing in the territories concerned. Therefore, the Delegation supported the proposal from the United States of America, as reflected in Option B, which did not prevent coexistence of a geographical indication with an earlier trademark right, but showed that the earlier rights were appropriately respected.

237. The Delegation of Chile indicated its preference for Option B, which appropriately reflected Article 17 of the TRIPS Agreement and corresponded to a legal principle reflecting the position of the Delegation. Option A took into account Articles 17 and 24.5 of the TRIPS Agreement, but the wording was too vague, too flexible and unclear. Option C presented coexistence in a way that was too general in nature.

238. The Delegation of the United States of America was of the view that limitation of trademark rights was governed by Article 17 of the TRIPS Agreement and not by its

Article 24.5. Option A continued to include text contained in Article 24.5, thus giving the impression that the concept of coexistence was somehow enshrined in this provision of the TRIPS Agreement. The text of Option A reflected the provision of Article 17 of the TRIPS Agreement in a specific way, by limiting third parties to the beneficiaries of rights in a geographical indication. Option A gave the misleading impression that the TRIPS Agreement allowed Contracting Parties to regulate coexistence as the default situation. Coexistence could only be provided if the conditions of Article 17 were met, i.e., under certain conditions and taking into account the legitimate interests of the owner of the trademark and those of third parties.

239. The Delegation of Mexico supported Option B, since it better reflected its national legislation.

240. The Delegation of Peru recalled the comment it had made during the previous session of the Working Group, requesting the inclusion of a reference to national legislation in Article 13(1), since in certain countries it was not possible to consider a sign as a mark just because it was used. This was the case of Peru. Therefore, the Delegation reiterated its request to add the phrase “according to its national legislation” at the end of the chapeau of Article 13(1), after the phrase “the prior trademark applied for or registered, or acquired through use, in good faith in a Contracting Party”. The Delegation of Peru also sought clarification on the conditions to which the phrase “subject to” referred in Option B.

241. The Delegation of the Republic of Korea expressed its support for Option B, because it was in line with the TRIPS Agreement and protected prior trademark rights more effectively.

242. The Representative of INTA reiterated INTA's concerns about the text of Option A, in particular the second part of the sentence starting with “[taking into account] [provided that]”. The reference to the legitimate interests of the beneficiaries was possibly misleading and therefore inappropriate. While Article 13(1) concerned the right of a prior trademark to continue to exist, the text of Option A could be interpreted as if the legitimate interests of holders of a right in a later geographical indication could provide a ground for denying a prior trademark the right to continue to exist. This would be incompatible with the priority principle and also raised questions as to the compatibility of the text with the TRIPS Agreement and with fundamental rights guarantees. Consequently, although Option A had been drafted with a view to reflecting the criteria of Article 17 of the TRIPS Agreement, its text did not do so in an appropriate manner, as indicated by the Delegation of the United States of America. Moreover, there was a fundamental difference between limited exceptions which a trademark owner had to tolerate, such as fair descriptive use under Article 17 of the TRIPS Agreement, and the very right of a prior trademark to continue to exist. The Representative of INTA also pointed out that the phrase “provided that the public is not misled”, at the end of Option A, could cause misunderstandings and should be deleted, thus aligning the provision with Article 13(2) in that regard. If a trademark in itself was misleading, it could always be invalidated under the national law, even if Option A would not provide so. Further, if the misleading nature derived from the geographical indication, this should not be a possible ground for challenges to the continued existence of the trademark. In sum, the Representative of INTA suggested deleting the second part of Option A, starting from “[taking into account] [provided that]”. As regards Option B, the Representative of INTA indicated a preference for stronger language. As Option B did not clearly spell out the right of a prior trademark to a continued existence, there was all the more reason for including in Article 11(2) a reference to the priority principle and in Article 17 that the phasing-out provisions would not apply in respect of prior trademarks. Finally, the Representative of INTA said that the concern with regard to Option C was that the provision appeared to suggest that coexistence was the rule and prevalence of prior trademarks the exception. The WTO Panel had not recognized coexistence as the general rule governing the relationship between geographical indications

and prior trademarks. The Panel considered coexistence only as justified under Article 17 of the TRIPS Agreement under quite specific conditions, taking into account the specific features of the European Union regime for geographical indications. Consequently, Option C went beyond what the Panel considered justified in that case.

243. The Representative of oriGIn pointed out that Article 13 should be considered in conjunction with Article 15, under which a Contracting Party could refuse protection on any ground, i.e., also on the basis of a prior trademark. The Representative of OriGIn supported Option A as the one reflecting mostly the flexibility that the Working Group would like to achieve. The experience of both trademark owners and geographical indication beneficiaries showed that, in some cases, coexistence was the only solution, taking into account all the conditions specified in Option A.

244. The Representative of MARQUES was of the view that the question of coexistence should be assessed on a case-by-case basis and that the interests of all stakeholders should be addressed in a neutral way, without putting the burden of proof on one of the parties. The Representative of MARQUES supported Option A and the wording: "taking into account the legitimate interests of the owner of the trademark as well as those of the beneficiaries". The Representative of MARQUES also supported the suggestion made by the Representative of INTA to delete the phrase "and provided that the public is not misled", because in cases of coexistence between trademarks and geographical indications there would always remain a risk of confusion.

245. The Chair concluded that the Working Group was divided between Options A and B. No support had been expressed for Option C. Consequently, the next version of Article 13(1) would only reflect Options A and B. The square brackets around the phrase "the owner of the trademark as well as those of" would be removed. Then, there would be a reference to the legitimate interest of the owner of the trademark. The other square brackets in Option A would remain in the text. The Chair noted that the other paragraphs of Article 13 had not been addressed. As a result, these paragraphs would remain in the draft Revised Lisbon Agreement, within square brackets and without changes to the text.

246. The Chair underlined the point that had been made by the Representative of oriGIn, that Article 13(1) specified that the provision was without prejudice to Article 15 and Article 19. As under the current Lisbon Agreement, this meant that prior trademarks could serve as a ground for refusal. In this regard, the importance of Article 15(3) was that it would establish an obligation for each Contracting Party to provide a reasonable opportunity for owners of trademarks to request the notification of a refusal. Consequently, Article 13(1) did not establish a general rule, neither under Option A nor under Option B, as, in case of a prior conflicting trademark, Contracting Parties could, or should, at the request of a trademark owner, notify a refusal. The scope of application of Article 13(1) was limited to certain specific cases and both Option A and Option B provided criteria for carrying out a case-by-case assessment.

247. Finally, the Chair noted that the Delegation of Peru had made a suggestion for including a reference to national legislation in the chapeau of Article 13(1). The Chair invited the Delegation of Peru to further clarify this proposal.

248. The Delegation of Peru said that, under its national legislation, it was not possible to grant a trademark right simply on the basis of its use. For that reason, the Delegation proposed that the phrase "in conformity with national legislation" be added at the end of the chapeau of Article 13(1).

249. The Chair said that Article 13(1) would not appear to create any obligation whatsoever on the part of Contracting Parties to provide for the possibility of acquiring trademark rights merely through use. The provision only stated that, irrespective of the way in which trademark rights could be acquired in a Contracting Party, there should be safeguards for these trademark rights, as specified in the provision.

250. The Delegation of France said that Article 24.5 of the TRIPS Agreement did not contain a specific reference to national legislation either. Consequently, it was clear that Article 13(1) dealt with national trademark rights granted in accordance with the law of the Contracting Party concerned.

251. The Delegation of Peru said that it would prefer a text which would not leave any room for different interpretations.

252. The Chair suggested that the concerns of the Delegation of Peru might be addressed by specifying its proposal in the chapeau of Article 13(1), either by a text reading: “[...] with a prior trademark applied for or registered or, where applicable, acquired through use in good faith in a Contracting Party [...]”; or by a text reading: “[...] with a prior trademark applied for or registered or, if national or regional legislation so permits, acquired through use in good faith in a Contracting Party [...]”.

253. The Delegation of Peru, while welcoming the proposal made by the Chair and the clarification provided by the Delegation of France, reserved its right to revert to the matter.

Article 14: Enforcement Procedure and Remedies

254. As suggested by the Representative of MARQUES, the Chair indicated that the word “registered” would be added before geographical indications.

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

255. The Delegation of the United States of America said that Article 16(2) appeared to require negotiations between governments on a refusal issued by a national Office. This contradicted the notion of a national geographical indication regime operating independently of the international registration or of the protection in the Contracting Party of Origin. Article 16(2) seemed to require national tribunals and courts to communicate and negotiate the withdrawal of a refusal, if so requested by a foreign government. However, the dialogue should be between the national Office and the applicant, who in many cases would not be the foreign government. The Delegation said that Article 16(2) would have implications for its federal court system.

256. The Secretariat recalled that the possibility to negotiate the withdrawal of a refusal was explicitly referred to in the Acts of the Diplomatic Conference in 1958, when the Lisbon Agreement was concluded. In previous meetings of the Working Group the question had arisen as to whether it was necessary to explicitly mention this possibility in the Revised Lisbon Agreement. In practice, some Lisbon members did approach countries that had issued a refusal to discuss whether the refusal could be withdrawn. The Secretariat said that Article 24.1 of the TRIPS Agreement was also relevant in this regard, where it read as follows: “Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23”. This provision referred to a negotiation on individual geographical indications and not on legal provisions of general application in respect

of geographical indications. Article 24.1 of the TRIPS Agreement further referred to the possibility that a particular exception might apply in respect of a specific individual geographical indication, which included the possibility that a country had issued a refusal in respect of a given geographical indication. In the context of negotiations under Article 24.1 of the TRIPS Agreement, the continued applicability of such a refusal could be considered as well. Article 16(2) was only a mandatory provision in that it required Contracting Parties to allow interested parties to file a request, but a Contracting Party would remain free to decide whether it would enter into such negotiations or not.

257. The Chair said that, of course, Article 16(2) was not meant to require a government to enter into international negotiations with the government of another Contracting Party simply at the request of private parties. Therefore, as the mandatory nature of this provision seemed to create confusion, the Chair suggested the following redraft: “The Contracting Party of Origin may enter into negotiations with a Contracting Party in respect of which a refusal has been recorded, in order to have the refusal withdrawn, in particular at the request of interested parties affected by such a refusal.”

258. The Delegation of the United States of America said that the text proposed by the Chair seemed to suggest that it was appropriate for a Contracting Party to communicate and negotiate with courts to address a refusal. The Delegation said that Article 16(2) if retained, should not interfere with national tribunals.

259. The Delegation of the European Union agreed that a provision requiring negotiations on the decision of a tribunal would indeed be problematic, but refusals were not always decisions by a tribunal. There would be no obstacle for a Contracting Party of Origin to negotiate the withdrawal of a refusal that had been issued on the basis of an administrative decision. The Delegation of the European Union considered the text proposed by the Chair acceptable, as it indicated that negotiations were possible but not mandatory.

260. The Representative of oriGIn expressed support for the statement made by the Delegation of the European Union.

261. The Representative of INTA supported the position taken by the Delegation of the United States of America. Contracting Parties would nevertheless be entitled to negotiate under the general rules of public international law. It would be inappropriate for the rights of private parties (in particular, trademarks) to become the subject of bilateral negotiations between the Contracting Party of Origin and another Contracting Party.

262. The Delegation of Australia supported the comments made by both the Delegation of the United States of America and the Representative of INTA.

263. The Chair wondered whether his proposal would be acceptable, if the phrase “where appropriate” would be added. Article 16(2) would convey the meaning that negotiations could only take place where possible, in view of the circumstances of the case and of the particular characteristics of the legal system of the Contracting Party that had issued the refusal.

264. The Delegation of Colombia supported the proposal made by the Chair on Article 16(2). The Delegation added that associations of beneficiaries might not always have the ability to engage in costly litigations in other Contracting Parties.

265. The Delegation of the United States of America said that the amended text proposed by the Chair was acceptable, if put within square brackets and provided that “may enter into” be replaced by “request”, as the other side had to agree to enter into such negotiations.

266. Following some further discussion, the Chair concluded that the following text of Article 16(2), in square brackets, would feature in the next version of the draft Revised Lisbon Agreement: “Where appropriate, the Contracting Party of Origin may propose negotiations with a Contracting Party in respect of which a refusal has been recorded, in order to have the refusal withdrawn, in particular at the request of interested parties affected by such a refusal.”

267. The Delegation of the Russian Federation sought clarification on Rule 9(2)(v), because in its legislation there was no procedure dealing with partial refusals concerning an appellation of origin. The Delegation also sought clarification on Rule 9(2)(vi), given that in its legislation there was no provision allowing for refusals of separate elements of the appellation of origin.

268. The Secretariat recalled that the Delegation of the Russian Federation had asked a similar question at the previous meeting of the Working Group. The response to that question could be found in paragraph 239 of document LI/WG/DEV/8/7. There had been situations under the current Lisbon Agreement on the basis of which some Contracting Parties had issued a refusal only in respect of certain uses of the appellation of origin. This could concern the use in respect of another product, which was on the market under the same name. In case of two homonymous appellations of origin, certain countries allowed for coexistence while other countries did not. Either situation could be recorded in the International Register. Further, Rule 9(2)(vi) concerned appellations of origin or geographical indications which were composed of more than one word, for example, “*Camembert de Normandie*”, in respect of which a Contracting Party could issue a partial refusal if the word “*Camembert*” was considered a generic term. Rule 9(2)(vi) clarified that such partial refusals were possible and would be recorded in the International Register.

269. The Chair underlined that Rule 9(2)(v) and (vi) did not create any obligation for a Contracting Party to provide for the possibility of partial refusals. These provisions only applied where the Contracting Party was in a position to issue a partial refusal, either based on coexistence or only with respect to certain elements.

270. The Delegation of the Russian Federation sought further clarification on how to include the possibility of partial refusals in its national legislation.

271. The Chair reiterated that the Russian Federation would not be obliged to provide for the possibility of partial refusals.

272. In response to a question from the Delegation of Peru, the Chair said that Rule 9(2)(v) would be kept in square brackets.

273. With regard to Article 19, the Delegation of the European Union recalled that, under the current Lisbon Agreement, a Contracting Party could not invalidate the protection of an appellation of origin, originating from another Contracting Party, once protection had been granted, despite the fact that this possibility was *de facto* open under the current Regulations. Opening now this possibility without any limitation would not be acceptable for the European Union, as it would be a source of major legal uncertainty. Therefore, the Delegation was of the view that the grounds for invalidation of protection should be enumerated in Article 19(2) and limited to two cases, as specified in Option B. First, when the granted protection had been successfully challenged by someone having a legitimate interest and the court decision was no longer open to appeal. Second, when compliance with the definition of an appellation of origin or geographical indication was no longer ensured. Regarding the second indent of paragraph (2) of Option B, the Delegation pointed out that a Contracting Party should not have the possibility to pronounce invalidation based on an unsubstantiated ground.

274. The Delegations of France, Italy and Portugal supported the intervention of the Delegation for the European Union and expressed their preference for Option B of Article 19.

In addition, the Delegation of France said that the French version of Article 17(1)(a) should rather use the term “*prévu*” instead of “*prescrit*”. The Delegation of France further expressed its preference for the removal of the brackets in Rule 14(2).

275. The Delegation of Australia considered Article 17(1) overly prescriptive, intrusive and unnecessary. The Delegation pointed out that the geographical indication regime of most countries prohibited the protection as a geographical indication of a term that had been considered generic by the relevant courts. Under the current Lisbon system, a Contracting Party could refuse to protect an appellation of origin on this basis. However, Article 17(1) contemplated the possibility that the denomination might be registered in a Contracting Party, even if it constituted, rather than it just contained, a generic term. The Delegation considered it difficult to reconcile this possibility with the domestic regimes of most of the world. Article 17(2) was unnecessary for an International Register. Where a national decision to protect a later right was taken, despite of an earlier right, the action to be taken by the holder of the earlier right was regulated by the national law. The Delegation believed that Article 13 should provide for the possibility of coexistence in appropriate circumstances when the legitimate interests of the right holders and third parties had been taken into account. The Delegation of Australia further expressed its concerns regarding Option B of Article 19. The Delegation did not see any need for limiting the grounds for invalidation. Such a limitation might prevent accession by a large numbers of countries, not only countries protecting geographical indications as trademarks, but also those which had *sui generis* systems. The Delegation referred to the example of an appellation of origin which had fallen into disuse in its Contracting Party of Origin. In this respect, the Delegation considered it extremely relevant to have a ground for invalidation in order to deal with this situation.

276. The Chair pointed out that Article 17(1) was an optional provision.

277. The Delegation of Australia said that its main concern was that the draft Revised Lisbon Agreement would contemplate that a Contracting Party would protect as a geographical indication a term that constituted a generic term in its territory.

278. The Delegation of Chile expressed its preference for Option A of Article 19(2).

279. The Delegation of Iran (Islamic Republic of) supported the current text of Article 19(1). Regarding Article 19(2), the Delegation expressed its preference for Option A and footnote 8.

280. The Delegation of Switzerland agreed with the Chair that Article 17(1) should not cause problems to any country, in view of its optional nature. The Delegation further indicated its preference for Option B of Article 19(2).

281. The Delegation of the United States of America supported the comment made by the Delegation of Australia regarding Article 17(1). If a term was generic, it did not meet the definition of an appellation of origin or a geographical indication. Therefore, the Delegation failed to understand how a Contracting Party could declare a generic term to be a private property right. The Delegation further expressed its support for Option A of Article 19(2). The Delegation did not consider footnote 8 to represent an exhaustive list. The Delegation, nevertheless, acknowledged that footnote 8 might be useful for many delegations, as mentioned by the Delegation of Iran (Islamic Republic of). In this regard, the Delegation would propose to add two grounds to footnote 8 and to put the footnote within square brackets. A first additional ground for invalidation would refer to non-use, while the second would concern the fact that the term had become generic under international law.

282. The Representative of INTA reiterated its suggestion for stronger language in Article 15(3), since the text of the provision was still too vague. It would be helpful to provide

explicitly that this procedure would be available for the owners of prior trademarks, for example by adding the following phrase: “[...] including in particular the owners of prior trademarks” prior to “to request the Competent Authority”. It would also be useful to specify that Article 17 did not apply in respect of use based on a prior trademark. Referring to Article 19(2), the Representative of INTA shared the concerns of the Delegation of Australia about Option B. Invalidity procedures should remain generally available for any grounds foreseen under the national law of a Contracting Party. Option B might even raise constitutional law concerns in some countries. The consequences deriving from the failure of an administrative authority to notify a refusal within the one-year period could be excessive. The national authority might even have had wrong or insufficient information, which might become obvious only at a later stage. Option B did not appear to take into consideration such situations. The existing practice under the current Lisbon Agreement did not exclude invalidation. The Lisbon Union had decided expressly to include a provision in the Regulations allowing for the recordal of such invalidation. The Representative of INTA expressed its clear preference for Option A and suggested that footnote 8 should establish at most a non-exhaustive list.

283. The Delegation of Hungary, supported by the Delegation of Iran (Islamic Republic of) suggested a reformulation of Article 19(1), so as to start in a positive way by first providing for the possibility and only then mention the conditions.

284. The Chair recalled that, under the current Lisbon Agreement, Contracting Parties might invalidate in part or in whole the effects of an international registration. This had not been contested and, under the current system, the grounds for invalidation were not listed. Option B of Article 19(2) was an attempt to lay down an exhaustive list of grounds for invalidation. Option A would leave the grounds for invalidation to national law, as was the case in respect of the grounds for refusal. Following the logic of Option A, footnote 8 should not list the grounds for invalidation in an exhaustive manner. The Chair concluded that both Options should be retained in the text. Footnote 8 would be put within square brackets and would be rephrased so as to make it a non-exhaustive list and add the grounds mentioned by the Delegation of the United States of America. Option B would be kept with the current text. The Chair noted the suggestion for rephrasing Article 19(1) in a positive manner. He also noted the concerns expressed with regard to Article 17(1). As regards Rule 14(2), there had been no opposition to removing the square brackets. Finally, Article 17(2) would be put within square brackets, in view of the fact that there were square brackets in Article 13 to which this provision referred. Accordingly, footnote 7 would also appear within square brackets.

DISCUSSION ON FEE-RELATED PROVISIONS IN DOCUMENTS LI/WG/DEV/9/2 AND 3 AND THE FEE PROPOSAL CONTAINED IN DOCUMENT LI/WG/DEV/9/6

285. The Working Group took up the fee-related provisions of the draft Revised Lisbon Agreement and the draft Regulations (Agenda Item 5) together with the proposal to update the fee schedule under Rule 23 of the Regulations under the current Lisbon Agreement (Agenda Item 6).

286. The Chair invited the Secretariat to introduce document LI/WG/DEV/9/6, while indicating that the Secretariat had already introduced documents LI/WG/DEV/9/ 2 to 5.

287. The Secretariat said that document LI/WG/DEV/9/6 foreshadowed a proposal that the Director General was preparing for the upcoming session of the Lisbon Union Assembly, in September 2014, to increase the fees under the Lisbon Regulations. In accordance with good practice, a draft of this proposal, as contained in document LI/WG/DEV/9/6, had been submitted to the Working Group for comments. The document specified that a deficit had

occurred in respect of the Lisbon Union since 2009, which was mainly due to the expenses incurred by the International Bureau in respect of the review of the Lisbon system and related information and promotion activities. As indicated in paragraph 8 of the document, the fees to be established for Lisbon registrations should be sufficient to cover the expenses of the International Bureau “for maintaining the international registration service”. Paragraph 6 of the document specified that, on the basis of the average number of transactions that the Lisbon Registry receives, as mentioned in paragraph 4 of the document, the processing of transactions – i.e., registration activity – represents about 30 per cent of the total work load of the Lisbon Registry. Obviously, an increase in the number of transactions would result in an increase of the cost of maintaining the international registration service. Consequently, information and promotion activities would have to be reduced or other ways would have to be found to cover these costs. In terms of the 70 per cent of the work load that concerns activities other than those for maintaining the international registration service, the Secretariat referred to the Convention Establishing the World Intellectual Property Organization, in particular the functions of the Organization relating to the promotion of intellectual property, as specified in Article 4 of that Convention. The Secretariat further highlighted the practical aspects relating to the Lisbon Union mentioned in paragraphs 10 and 11 of the document, regarding the sources of income of the Lisbon Union and the fact that, in respect of appellations of origin and geographical indications, there would never be a continuous and major flow of incoming applications. Finally, the Secretariat referred to the opening statement of the Director General, who had underlined that WIPO’s international registration services should be self-sustaining. Consequently, not only an update of the current fee schedule of the Lisbon system, which had been in force for 20 years, was called for, but also the introduction of a maintenance fee in the context of the revision of the Lisbon Agreement.

Article 7(4) and Related Provisions Concerning the Possible Introduction of Individual Fees

288. The Delegation of France said that the proposed introduction of the possibility for a contracting party to establish an individual fee under Articles 7(4) and 29(4) in combination with the option for a contracting party to require that it had to be designated under Rule 5(2)(viii) and the option to require that a declaration of intent to use be filed under Rule 5(4) questioned the structure and philosophy of the current Lisbon system. The Delegation expressed a reservation in this regard.

289. The Delegation of the United States of America said that application fees alone often did not fully cover the cost of examination and proposed that an additional sentence be inserted in Article 7(4)(a), reading: “Additionally, the Contracting Party may notify the Director General in a declaration that protection resulting from the international registration shall be subject to maintenance and renewal requirements and fee payments”. Article 7(4)(b) would then have to be amended accordingly, by insertion of the phrase “and any maintenance or renewal fees”. Similar changes would also need to be made to Rule 8(2)(a). The Delegation was further of the view that clarity should also be added as to how these provisions would apply in respect of appellations of origin and geographical indications already in the Lisbon Register prior to accession by a new contracting party. It would be quite a burden for newly acceding contracting parties to have to examine hundreds or thousands of prior-registered appellations of origin and geographical indications without being allowed to require payment of an individual fee to fund the examination of all the international registrations concerned, in particular given the time frame within which such examination would have to be carried out. Moreover, the Delegation wondered how the proposed designation system under Rule 5(2)(viii) would work in connection with Article 29(4).

290. The Delegation of the Russian Federation expressed its satisfaction with Article 7(4). The Delegation underlined the importance of provisions addressing the situation that fee income does not cover the cost of examination.

291. The Delegation of Italy said that Italy is open to the idea of discussing the introduction of an option for contracting parties to require individual fees, in view of the importance expressed in this regard, for example by the Delegation of the Russian Federation and in the spirit of providing the right incentive for new accessions to the Lisbon system. However, the Delegation needed more time to reflect on it, in particular as there was also a proposal to introduce a maintenance fee. There is a risk that such additional financial obligations would have a deterrent effect on right holders, in particular small and medium-sized producers. In this regard, the Delegation suggested that a revised version of the Notes to Article 7 might indicate the average cost of an application under the Madrid system and what the ordinary amounts of individual fees were under the Madrid system. The Delegation was opposed to the introduction of a designation system, as proposed in Rule 5(2)(viii). This was not necessary and, more importantly, deprive the Lisbon system of one of its attractive features, i.e., the automatic extension of protection to all contracting parties. The Delegation preferred a system of automatic protection combined with an automatic renunciation in case an individual fee was not paid.

292. The Delegation of Mexico expressed the view that Article 7(4) should not be too open-ended as regards the amounts that a contracting party could establish in respect of such individual fees.

293. The Delegation of the European Union stressed the point made by the Delegation of Italy concerning the possible deterrent effect that the cost of an international registration could have on right holders. The Delegation, therefore, proposed a redraft of Article 7(4)(a) along the lines of Article 7(2)(b), reading: "The Assembly may establish the possibility for contracting parties to adopt individual complementary fees in order to cover the costs of substantive examination of international registrations". This would leave time for a proper examination of the pros and cons of providing an option to contracting parties of introducing individual fees. The remainder of Article 7(4)(a) could then be deleted as well as the corresponding provisions in Rule 8.

294. The Delegation of Colombia expressed its support for the possible introduction of individual fees in combination with an automatic effect of renunciation in case of non-payment of such an individual fee.

295. The Delegation of Kenya said that, in view of the aim of the revision exercise to attract a wider membership, a good number of new contracting parties would be developing and least-developed countries. The cumulative effect of the possible increase of the registration fee, the possible establishment of a maintenance fee and the possible introduction of individual fees might function as a deterrent for potential applicants from these countries.

296. The Chair referred to Article 7(3), which already envisaged the possibility of reduced fees for applicants from developing countries or least-developed countries.

297. The Delegation of Mexico pointed out that, for the attractiveness of the Lisbon system, one should rather look at its effectiveness than at its cost.

298. The Representative of ABPI requested clarification of the term "substantive examination" in Article 7(4).

299. The Delegation of the Republic of Moldova agreed with the Delegation of Mexico that Article 7(4) should not be too open-ended as regards the amounts that a contracting party could establish in respect of such individual fees. As regards the content of substantive examination, the Delegation indicated that, upon receipt of notifications of new international registrations under the Lisbon system, the Competent Authority of the Republic of Moldova

carried out a substantive examination as to whether or not the appellation of origin conflicted with a prior trademark.

300. The Delegation of Australia welcomed the introduction of Article 7(4) and supported the proposal of the Delegation of the United States to extend the concept of individual complementary fees to maintenance and renewal fees in contracting parties. The ability for national Offices to recover the costs of substantive examination might make the revised Lisbon Agreement more attractive to potential new contracting parties. The Delegation expressed concerns about the effect of Article 29(4), which looked like a barrier to accession to aspiring members. If newly acceding contracting parties have to protect all appellations and geographical indications already protected under it, subject to the notification of a refusal, they would be required to examine or assess all existing registered appellations of origin and geographical indications and, consequently, need not only the time to conduct substantive examination, but also to receive a fee for carrying out this work. To mitigate this burden, the Delegation could consider either renunciation of protection due to non-payment of an individual complementary fee or, preferably, the introduction of a subsequent designation process involving fees, modeled on the Madrid system.

301. The Delegation of Hungary said that the introduction of individual complementary fees was worth considering, but agreed with Italy that this should not be done in combination with a designation system. The Delegation supported the statement made by the Delegation of the European Union.

302. The Delegation of Peru said that the issue of fees was a delicate and complex issue. In the Delegation's view, Article 7 provided a good basis for discussion, including the possible introduction of individual complementary fees. However, the Delegation felt that more information was needed.

303. The Delegation of Portugal supported the proposal made by the Delegation of the European Union and the request for more information made by the Delegation of Italy.

304. The Delegation of France said that the proposal from the Delegation of the European Union was worth considering, but should be looked into more carefully. In particular, the current members of the Lisbon Union had been able to deal with notifications of new international registrations under the current Lisbon Agreement without the need to require the payment of a fee. Consequently, Article 7(4) should only be looked at in connection with potential new members of the Lisbon Union.

305. The Delegation of Italy expressed support for the proposal from the Delegation of the European Union.

306. The Delegation of Switzerland said that in view of the issues referred to by several delegations it would appear to be advisable to follow the pragmatic approach suggested by the Delegation of the European Union. Thus, these issues could be studied carefully in the light of all the pros and cons of introducing individual complementary fees.

307. The Delegation of the United States of America said that the possibility for a contracting party to make a declaration to the effect that the protection of registered appellations of origin and geographical indications on their territory would be subject to payment of an individual fee was a matter to be dealt with in the revised Lisbon Agreement itself. Without clarity and legal certainty about this possibility and the effect of non-payment of such an individual fee, many potential contracting parties would not be in a position to accede to the revised Lisbon Agreement.

308. The Chair concluded that there was a wish to receive more information from the Secretariat on the possible magnitude of the costs that should be covered by individual fees. The Notes to Article 7 could be amended so as to provide such information. Further, there was sufficient support for the proposal from the Delegation of the European Union. The Chair suggested that the Secretariat include the proposed text in the next version of the draft Revised Lisbon Agreement as an Option B for Article 7(4), together with all the consequential amendments that would be necessary. Article 7(4) would also be amended by the insertion of the possibility for contracting parties of requiring an individual fee for the renewal or maintenance of a registered appellation of origin or geographical indication. Finally, an individual fee system could be introduced without a requirement for the applicant to designate the contracting parties in respect of which protection is requested. It was sufficient to provide that non-payment of an individual fee would result in renunciation of protection under Rule 16 in respect of the contracting party requiring the fee. Thus, an applicant would have the option to renounce protection in respect of one, some or all contracting parties requiring an individual fee, by simply not paying the individual fee or fees concerned. Any such renunciation could also be withdrawn under Rule 16, subject to payment of the individual fee in addition to the fee for the modification of the entry of the international registration in the International Register. Under Rule 16(4), the period for a contracting party to refuse protection in respect of the appellation of origin or geographical indication concerned would of course start at the date the notification of the withdrawal of the renunciation is received.

309. The Delegation of the United States of America said that all that mattered was that an individual fee could be required, i.e., that a contracting party could require individual fees in order to finance the procedure for granting protection in respect of a registered appellation of origin or a registered geographical indication and the continuation of that protection at periodic intervals, whether this be called renewal or maintenance. If such contracting parties could be identified in a system operationalized in the context of Rule 16, this would be fine.

310. In response to a request for clarification from the Representative of CEIPI, the Delegation of the European Union indicated that its proposal in respect of Article 7(4) was meant to replace only the text of current Article 7(4)(a) and that Article 7(4)(b), which dealt with the legal consequence of non-payment of an individual fee, should be retained.

Other Fee-Related Provisions in the Draft Revised Lisbon Agreement and Draft Regulations

Proposal to Update the Fee Schedule under Rule 23 of the Current Lisbon Regulations

311. The Delegation of France gave its preliminary views regarding the proposal to update the fees under Rule 23 of the current Lisbon Regulations. Although the capital had not yet taken position on the proposal, the Delegation wished to convey the message that France was very much in favor of the reflection proposed by the Secretariat, with a view to allowing the Lisbon system to function in a financially sustainable way. The proposed fee increase made good sense, but stake holders had to be consulted first. As regards the proposal to consider the introduction of a maintenance fee, the Delegation expressed the view that caution was required, while underlining the differences between trademarks and geographical indications. Geographical indications were after all linked to a specific product from a particular geographical area. The Delegation was of the view that fee income might rise as a result of the revision of the Lisbon Agreement in view of registrations from newly acceding contracting parties. Moreover, as the Working Group would have finished its work, there would be less expenditure as well.

312. The Delegation of the United States of America expressed its satisfaction with the introduction of Article 7(2)(b) and the explanation in respect of this provision in the Notes. The

Delegation had two concerns in respect of the proposed fee increase: (i) that the proposed amount was not sufficient to fund the Lisbon budget; and (ii) that there was no triggering mechanism for the Assembly to establish the maintenance fee proposed in Article 7(2)(b). As indicated in the Notes to Rule 8, 98 per cent of the income of the Lisbon Union is from other sources than fees. In this regard, the Delegation requested clarification of the source of the amount of some 700,000 Swiss francs that the Lisbon Union was estimated to receive from its share in general income features of WIPO. The Delegation agreed with the view expressed that international application fees were very unlikely ever to be sufficient to fund the Lisbon budget. Consequently, the introduction of a maintenance fee, as proposed in Article 7(2)(b) was inevitable. This meant that Article 7(2)(b) should be made mandatory; that the proposed level of the fee should be proposed by the Director General to the Assembly; and that the issues of timing should also be resolved. In the alternative, the Delegation proposed an amendment of Article 7(2)(b) to the effect that the Assembly shall establish and set the maintenance fee for each international registration upon recommendation by the Program and Budget Committee. In addition, the Delegation suggested an amendment to Article 24(4), i.e., the addition of a requirement that the amounts of the fees referred to in Article 24(3)(i) and (v) shall fixed by the Assembly “at a level such that the revenue would cover the cost of the Lisbon Agreement”. Finally, as regards the fee proposal in document LI/WG/DEV/9/6, the Delegation requested a revision of the document, which should contain information explaining the current sources of the revenues of the Lisbon system or the method for calculating the fees so as to ensure sustainability of the Lisbon system for its own activities.

313. The Delegation of Portugal could agree with an update of the fees in the terms proposed, in view of the deficit that the Lisbon system had been accumulating. This could be a way to mitigate the problem. However, caution was called for, so as to avoid the risk of making the Lisbon system too expensive. This might conflict with the goal of the planned revision of the Lisbon system, to create an attractive Lisbon system and increase its membership. Thus, an increased number of registrations could be expected. Moreover, the end of the revision process would result in a reduction of costs for the Lisbon system. Given the nature of geographical indications and appellations of origin, the Delegation had difficulties in accepting the introduction of a maintenance fee.

314. The Delegation of Italy said that a careful analysis of the financial situation of the Lisbon Union was required. It was reasonable to consider an update of the fee schedule, as the current fees had not been modified for 20 years. The introduction of a maintenance fee, however, was more problematic, as explained by the Delegation of Portugal. As in the case of the proposed introduction of individual fees, the Delegation requested the Secretariat to take up in the next version of the Notes to Article 7 information on the average cost of a renewal under the Madrid system. This would be important information for assessing the possible impact of individual fees and renewal fees on the use of the Lisbon system and the possible impact in terms of the number of accessions to the Revised Lisbon Agreement.

315. The Delegation of Mexico, while welcoming the proposed update of the fee schedule, requested the Secretariat to provide additional information on the parameters for calculating the amounts proposed in document LI/WG/DEV/9/6.

316. The Delegation of Georgia expressed support for the proposed fee increase. The Delegation was, however, concerned about the possible introduction of maintenance fees, which would appear to be contrary to the philosophy behind the protection of geographical indications and appellations of origin.

317. The Delegation of the Russian Federation suggested that the amounts of fees had rather be specified in a Schedule annexed to the Regulations – as is the case in the Madrid system – and not in the Regulations themselves.

318. The Chair said that there was no difference in the adoption procedure in respect of fees under the Madrid system – where they were contained in a Schedule of fees annexed to the Regulations – and under the Lisbon system – where they were contained in the Regulations themselves.

319. The Delegation of Colombia expressed the view that possible fee reductions under Article 7(3) should be based on financial criteria concerning the applicant, not the status of development of the Contracting Party of Origin. As regards Article 7(2)(b), the Delegation favored the term “maintenance fee”, as the term “renewal fee” would run counter to Article 7(1) of the current Lisbon Agreement.

320. The Delegation of Chile considered a maintenance fee as proposed in Article 7(2)(b) a good alternative for dealing with the budget deficit and suggested that a maintenance fee might even be established independently from a deficit, as is the case under other international registration systems administered by WIPO.

321. The Delegation of the Republic of Korea said that many countries were in the process of developing geographical indications and appellations of origin. The ways in which countries were creating and protecting geographical indications and appellations of origin required changes to the Lisbon Agreement. As regards the financial basis of the Lisbon system, the two basic principles should be that the Lisbon system should be self-sustaining and that the operational cost of the Lisbon system should be borne by those who benefitted from the protection provided by the Lisbon system in respect of their geographical indications or appellations of origin. Consequently, Article 7(2)(b) should be mandatory and the maintenance fee should be set at a level sufficient to allow the Lisbon system to be self-sustaining. The Delegation strongly believed that without sustainable financing within the Lisbon system itself an effective and perpetual protection of appellations of origin and geographical indications could not be obtained.

322. The Delegation of the European Union said that most of the cost of the Lisbon Union, at present, was related to the revision of the Lisbon system and that there was no reason why only the current membership of the Lisbon Union should bear the burden of that expenditure. Of course, the long-term financing of the Lisbon system had to be secured, but this should be considered in the light of the improvements of the Lisbon system that would result from its revision. Maintenance fees or renewal seemed to be contrary to the logic of geographical indications. Such fees applied in respect of patents or trademarks in order to require their owners to decide whether they wanted to continue to protect them; however, geographical indications were, in principle, protected forever. Therefore, the Delegation suggested that Articles 7(2)(b) and 8(3) be deleted. Instead, the Delegation proposed the reintroduction of the provision of Article 11(3)(v) of the current Lisbon Agreement concerning the possibility of contributions by members of the Lisbon Union in case of a deficit.

323. The Delegation of the United States of America expressed support for the reintroduction of the provision of Article 11(3)(v) of the current Lisbon Agreement, as proposed by the Delegation of the European Union. The Delegation was of the view that this provision should have come into play in order to deal with the current deficit of the Lisbon system and suggested that its application should be proposed to the Lisbon Union Assembly.

324. The Delegation of Hungary supported the points made by the Delegations of France, Georgia, Italy and Portugal with regard to maintenance fees. In this regard, a very cautious approach was needed and the results of the revision of the Lisbon system should be awaited first.

325. In conclusion, the Chair first referred to the proposal to update the fee schedule of Rule 23 of the current Lisbon Regulations, as contained in document LI/WG/DEV/9/6. In this regard, the Chair noted that, while there appeared to be a need for more time to further consider the proposal, which should be revised to contain more information, the general sentiment towards an increase of the amounts of fees in Rule 23 was predominantly positive.

326. The Chair then turned to the other fee-related provisions in the draft Revised Lisbon Agreement and the draft Regulations, as contained in documents LI/WG/DEV/9/2 and 3. He said that a clear distinction should be made between short-term and long-term considerations. As far as the short-term was concerned, he said that the Program and Budget for the 2014/15 biennium had been adopted by the General Assembly and foresaw expenditure for the activities of the Working Group and for the holding of a diplomatic conference next year. As regards the long-term, a number of comments had been made that deserved proper consideration. It was important to note that 70 per cent of the current expenditure of the Lisbon Union related to the revision process in the Working Group and related promotion activities. It would be difficult to deny that this process did not only serve the interests of the current membership, but should be of interest to the entire membership of WIPO. As a result of the revision process, the membership of the Lisbon Union is expected to increase significantly. Consequently, many new international registrations could be expected. Although the Secretariat was right, when pointing out that because of the nature of geographical indications and appellations of origin there was an inherent limit to the number that would ever exist, the current number of international registrations under the Lisbon system was still far below that limit. Next to this increased income, there would be a gradual decrease of the expenditure related to the revision process and related promotion activities. All in all, there was not a sufficient basis at this stage for the introduction of a maintenance fee. Therefore, the text of Article 7(2)(b), as proposed by the Secretariat in document LI/WG/DEV/9/2, was worth considering. In view of the various comments and drafting suggestions made in respect of Articles 7(2)(b) and 8(3), these provisions should, however, both be put in square brackets. In addition, provisions along the lines of Article 11(4)(b) and Article 11(3)(v) of the current Lisbon Agreement should be taken up, also between square brackets, in the next version of the draft Revised Lisbon Agreement, to be prepared by the Secretariat for the tenth session of the Working Group.

DISCUSSION OF CHAPTERS V, VI AND VII (ARTICLES 21 TO 34) OF THE DRAFT REVISED LISBON AGREEMENT AND RULE 7(4) OF THE DRAFT REGULATIONS

327. The Delegation of the European Union reserved its position with regard to the voting procedures provided for.

DISCUSSION OF RULES 2, 3 AND 22 TO 24 OF THE DRAFT REGULATIONS

328. The Chair noted that no interventions were made on Rules 2 and 3, nor on Rules 22 to 24 of the draft Regulations.

FUTURE WORK

329. The Secretariat said that, in accordance with the agreed roadmap, the tenth session of the Working Group will be held from October 27 to 31, 2014, and that in the course of the same week the meeting of the Preparatory Committee for the Diplomatic Conference will also be held.

330. The Chair recalled that the Lisbon Union Assembly had approved, in September 2014, the convening of a Diplomatic Conference in 2015 for the Adoption of a Revised Lisbon Agreement. The dates and venue would be decided by the Preparatory Committee for the Diplomatic Conference. In accordance with the agreed roadmap, 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 the pending issues identified at the present session. In this regard, the Chair indicated that the Summary by the Chair would set out those pending issues, so that the tenth session would be in a position to address them in an efficient manner. He further recalled that the Lisbon Union Assembly would be in a position, at its session in September 2014, to note the progress made in preparation of the Diplomatic Conference.

331. In response to a comment from the representative of CEIPI, the Chair said that the title of the draft Revised Lisbon Agreement would feature in the list of pending issues.

332. Finally, the Chair referred to paragraph 5(iii) of document LI/WG/DEV/9/2 and noted, when no interventions were made concerning the possibility of implementing some of the planned changes to the Lisbon system also under the current Lisbon Agreement, that the question had better be addressed once it was clear how the Revised Lisbon Agreement and its Regulations would look like.

AGENDA ITEM 6: PROPOSAL TO UPDATE THE FEE SCHEDULE UNDER RULE 23 OF THE REGULATIONS UNDER THE LISBON AGREEMENT

333. The Working Group discussed the proposal contained in document LI/WG/DEV/9/6 together with the fee-related provisions of the draft Revised Lisbon Agreement and the draft Regulations, as reflected under Agenda Item 5.

334. In conclusion, the Chair noted that, while there appeared to be a need for more time to further consider the proposal, which should be revised to contain more information, the general sentiment towards an increase of the amounts of fees in Rule 23 of the Regulations under the Lisbon Agreement was predominantly positive.

AGENDA ITEM 7: OTHER MATTERS

335. No interventions were made under this Agenda Item.

AGENDA ITEM 8: ADOPTION OF THE SUMMARY BY THE CHAIR

336. The Working Group considered a draft for the Summary by the Chair, as contained in document LI/WG/DEV/9/7 Prov.. As a result, paragraphs 2, 13 and 18 were modified while a new paragraph was inserted between paragraphs 14 and 15.

337. On the basis of the comments and suggestions made in respect of paragraph 13, the Chair proposed that the following pending issues would be submitted to the next session of the Working Group:

- (i) the title and the Preamble of the draft Revised Lisbon Agreement;
- (ii) implementation aspects of Article 1(xiv);

- (iii) the content of Article 2(2) and Article 5(4) concerning trans-border geographical areas of origin;
- (iv) the issue of entitlement to file an application under Article 5(2);
- (v) Article 7(2)(b), Article 8(3), Article 24(3)(v) and related provisions concerning the possible introduction of maintenance fees;
- (vi) the possible re-introduction of the provisions of the current Lisbon Agreement dealing with contributions by members of the Lisbon Union;
- (vii) Article 7(4) and related provisions concerning the possible introduction of individual fees;
- (viii) the question as to whether Article 9(1) should be kept and whether Article 9(2) should be moved to Article 6;
- (ix) the issue as to whether Article 10(3), read in conjunction with Article 15(2), should refer to any other or to more extensive protection;
- (x) the various options in respect of Article 11(1)(a) and Article 11(3);
- (xi) the issue of the Draft Agreed Statement contained in footnote 4 to Article 11 and provisions relating to the same issue;
- (xii) the content of Article 12 concerning protection against acquiring a generic character;
- (xiii) the content of Article 13(1) concerning safeguards in respect of prior trademark rights;
- (xiv) the issues as to whether Article 13(2) to (4) should be kept and whether consequential amendments should be made to Article 17(2) and to footnote 7 relating to that provision;
- (xv) the content of Article 16(2) concerning negotiations following a refusal;
- (xvi) the content of Article 17 concerning the necessity of a phasing out period;
- (xvii) the issue as to whether Article 19(2) should establish an exhaustive or a non-exhaustive list of grounds for invalidation;
- (xviii) the issue as to whether Rule 5(3) should be optional or mandatory;
- (xix) the issue of the inclusion of Rule 5(4) permitting a Contracting Party to require a declaration of intention to use in respect of a registered appellation of origin or a registered geographical indication;
- (xx) the issue of promoting transparency under Rule 5(5)(iii); and
- (xxi) the amount of fees in Rule 8(1).

338. In response to a comment from the Delegation of Turkey concerning item (ii), the Chair said that the issue raised by the Delegation of Peru does not concern the possible accession by intergovernmental organizations under Article 28 and 29 of the draft Revised Lisbon Agreement, but the fact that the legislation of the Andean Community would not allow Peru to recognize appellations of origin and geographical indications registered under the Revised Lisbon Agreement for which the applicant would be an intergovernmental organization.

339. The Chair said that item (iv) concerned the issue raised by the Delegation of the United States of America, that their trademark legislation requires applications to be filed by the owner of the trademark and that, in order to benefit from certification mark protection in the United States of America, international registrations under the Revised Lisbon Agreement would consequently also need to specify the owner of the mark.

340. In response to a question from the Delegation of Australia, the Chair said that Article 11(2) was not mentioned in item (x) because the issue concerning that provision had been solved by the addition of the word “later” before “trademark”.

341. In response to a request for clarification from the Delegation of Peru concerning item (xi), the Chair said that the phrase “and provisions relating to the same issue” is meant to refer to any provision in the draft Revised Lisbon Agreement or the draft Regulations relating to the issue of footnote 4 to Article 11, such as, for example, Rule 9(2)(v) and the footnote relating to that provision.

342. The Chair said that item (xx) concerned the issue raised by the Delegation of the United States of America that applicants should be required to mention in their application any disclaimers applying in respect of the appellation of origin or the geographical indication in the Contracting Party of Origin.

343. In response to a comment from the Delegation of Turkey, the Chair said that the Representative of CEIPI had indeed made a suggestion to open the possibility for reservations under Article 30 of the draft Revised Lisbon Agreement. However, none of the delegations representing a government had taken up this suggestion. Moreover, the provisions of the draft Revised Lisbon Agreement in respect of which the Representative of CEIPI had suggested the possibility for reservations under Article 30 are contained in the list of pending issues. As the outcome of further discussions on those provisions was open, any solution of those issues was still possible and an explicit reference to Article 30 was not necessary.

344. In response to a request for clarification from the Representative of CEIPI concerning the expression “in whole or in part” in Rule 16 of the draft Regulations, as contained in the Annex to document LI/WG/DEV/9/3, the Chair said that Rule 16 had been touched upon during the discussions on whether individual fees could be introduced into the Lisbon system. As a result, the square brackets in Rule 16 could be removed, as there had been no opposition to the idea of referring to renunciation as being possible not only with respect to all Contracting Parties, but also in respect of some of them.

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

346. A draft of the full report of the ninth 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 9: CLOSING OF THE SESSION

347. The Chair closed the session on June 27, 2014.

[Annexes follow]



LI/WG/DEV/9/7
ORIGINAL: ENGLISH
DATE: JUNE 27, 2014

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

**Ninth Session
Geneva, June 23 to 27, 2014**

SUMMARY BY THE CHAIR

adopted by the Working Group

1. The Working Group on the Development of the Lisbon System (Appellations of Origin) (hereinafter referred to as “the Working Group”) met in Geneva, from June 23 to 27, 2014.
2. The following Contracting Parties of the Lisbon Union were represented at the session: Algeria, Czech Republic, France, Georgia, Hungary, Iran (Islamic Republic of), Italy, Mexico, Peru, Portugal, Republic of Moldova (11).
3. The following States were represented as observers: Argentina, Australia, Bhutan, Chile, Colombia, El Salvador, Fiji, Germany, Greece, Iraq, Kenya, Nepal, Paraguay, Republic of Korea, Romania, Russian Federation, Spain, Switzerland, Turkey, Ukraine, United States of America, Venezuela (Bolivarian Republic of) (22).
4. Representatives of the following international intergovernmental organizations (IGOs) took part in the session in an observer capacity: African Regional Intellectual Property Organization (ARIPO), European Union (EU), Organization of Islamic Cooperation (OIC) (3).
5. Representatives of the following international non-governmental organizations (NGOs) took part in the session in an observer capacity: Association of European Trademark Owners (MARQUES), Brazilian Association of Intellectual Property (ABPI), Centre for International Intellectual Property Studies (CEIPI), Consortium for Common Food Names (CCFN), European Communities Trade Mark Association (ECTA), International Trademark Association (INTA), Knowledge Ecology International, Inc. (KEI), Organization for an International Geographical Indications Network (oriGIn) (8).

6. The list of participants is contained in document LI/WG/DEV/9/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/9/1 Prov. 2.

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

8. Mr. Mihály Ficsor (Hungary) was unanimously elected as Chair of the Working Group, Mr. Alfredo Rendón Algara (Mexico) and Mrs. Ketevan Kiladze (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/9/1 Prov. 2) without modification.

AGENDA ITEM 4: REPORT OF THE EIGHTH 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 June 12, 2014, of the Report of the eighth session of the Working Group, as contained in document LI/WG/DEV/8/7, 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/9/2, LI/WG/DEV/9/3, LI/WG/DEV/9/4 and LI/WG/DEV/9/5. The Working Group examined in detail all the provisions of the draft Revised Lisbon Agreement and the draft Regulations.

13. The Chair concluded that the following pending issues would be submitted to the next session of the Working Group:

- (i) the title and the Preamble of the draft Revised Lisbon Agreement;
- (ii) implementation aspects of Article 1(xiv);
- (iii) the content of Article 2(2) and Article 5(4) concerning trans-border geographical areas of origin;
- (iv) the issue of entitlement to file an application under Article 5(2);

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

- (v) Article 7(2)(b), Article 8(3), Article 24(3)(v) and related provisions concerning the possible introduction of maintenance fees;
- (vi) the possible re-introduction of the provisions of the current Lisbon Agreement dealing with contributions by members of the Lisbon Union;
- (vii) Article 7(4) and related provisions concerning the possible introduction of individual fees;
- (viii) the question as to whether Article 9(1) should be kept and whether Article 9(2) should be moved to Article 6;
- (ix) the issue as to whether Article 10(3), read in conjunction with Article 15(2), should refer to any other or to more extensive protection;
- (x) the various options in respect of Article 11(1)(a) and Article 11(3) (see the Annex to the present document);
- (xi) the issue of the Draft Agreed Statement contained in footnote 4 to Article 11 and provisions relating to the same issue;
- (xii) the content of Article 12 concerning protection against acquiring a generic character;
- (xiii) the content of Article 13(1) concerning safeguards in respect of prior trademark rights;
- (xiv) the issues as to whether Article 13(2) to (4) should be kept and whether consequential amendments should be made to Article 17(2) and to footnote 7 relating to that provision;
- (xv) the content of Article 16(2) concerning negotiations following a refusal;
- (xvi) the content of Article 17 concerning the necessity of a phasing out period;
- (xvii) the issue as to whether Article 19(2) should establish an exhaustive or a non-exhaustive list of grounds for invalidation;
- (xviii) the issue as to whether Rule 5(3) should be optional or mandatory;
- (xix) the issue of the inclusion of Rule 5(4) permitting a Contracting Party to require a declaration of intention to use in respect of a registered appellation of origin or a registered geographical indication;
- (xx) the issue of promoting transparency under Rule 5(5)(iii); and
- (xxi) the amount of fees in Rule 8(1).

Future work

14. The Chair recalled that the Lisbon Union Assembly had approved, at its ordinary session in 2013, the convening of a Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications in 2015, with the exact dates and venue to be decided by a preparatory committee meeting to be held in conjunction with the tenth session of the Working Group in October 2014.

15. The Chair noted that the Secretariat would prepare newly revised versions of the draft Revised Lisbon Agreement and the draft Regulations for the tenth 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. He reiterated that, in accordance with paragraph 18 of the Summary by the Chair adopted at the eighth session, 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 the pending issues listed in paragraph 13 of the present document.

17. 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 next session in September 2014.

AGENDA ITEM 6: PROPOSAL TO UPDATE THE FEE SCHEDULE UNDER RULE 23 OF THE REGULATIONS UNDER THE LISBON AGREEMENT

18. Discussions were based on document LI/WG/DEV/9/6.

19. The Chair noted that, while there appeared to be a need for more time to further consider the proposal, which should be revised to contain more information, the general sentiment towards an increase of the amounts of fees in Rule 23 of the Regulations under the Lisbon Agreement was predominantly positive.

AGENDA ITEM 7: OTHER MATTERS

20. No interventions were made under this item.

AGENDA ITEM 8: 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 9: CLOSING OF THE SESSION

23. The Chair closed the session on June 27, 2014.

[Annex follows]

Article 11⁴

Protection in Respect of Registered Appellations of Origin and Geographical Indications

(1) *[Content of Protection]* Subject to the provisions of this Act, each Contracting Party shall extend to a registered appellation of origin, or a registered geographical indication, protection against:

- (a) any use of the appellation of origin or the geographical indication
 - (i) in respect of goods of the same kind as those to which the appellation of origin, or the geographical indication, applies not originating in the geographical area of origin or not complying with any other applicable requirements for using the appellation of origin, or the geographical indication; or

Option A

- (ii) which would amount to its usurpation or imitation [or evocation]; or
- (iii) which would be detrimental to, or exploit unduly, its reputation,

Option B

- (ii) in respect of goods that are not of the same kind as those to which the appellation of origin or geographical indication applies, if such use would indicate or suggest a connection between those goods and the beneficiaries, and is likely to damage the interests of the beneficiaries,

even if the appellation of origin or the geographical indication is used with minor differences; if true origin of the goods is indicated; or if the appellation of origin, or the geographical indication, is used in translated form or accompanied by terms such as “style”, “kind”, “type”, “make”, “imitation”, “method”, “as produced in”, “like”, “similar”, or the like⁵;

(b) any other practice liable to mislead the consumer as to the true origin, provenance or nature of the goods.

(2) *[Use in a Trademark]* Without prejudice to Article 13(1), a Contracting Party shall, *ex officio* if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a later trademark if use of the trademark would result in one of the situations covered by paragraph (1).

[⁴ Draft Agreed Statement by the Diplomatic Conference: “As the International Bureau is only authorized to refuse applications that do not meet the formal requirements of the Lisbon Agreement or the 1967 Act, or the applicable Regulations under these instruments, applications concerning appellations of origin consisting of or containing a term occurring in an appellation of origin already registered under the Agreement have not been refused by the International Bureau, and will not be refused by the International Bureau under this Act either, as this would amount to a refusal on a substantive ground. It is for each Contracting Party to decide, on the basis of its own legal system and practice, whether such appellations of origin or geographical indications may coexist on its territory or that one of them shall prevail.”]

[⁵ Where certain elements of the denomination or indication constituting the appellation of origin or geographical indication have a generic character in the Contracting Party of Origin, their protection under this subparagraph shall not be required in the other Contracting Parties.]

Option A

(3) *[Alternative for Paragraph (1)(a)(iii)]* Any State or intergovernmental organization may declare, when depositing its instrument of ratification or accession, that the provisions of paragraph (1)(a)(iii) are not compatible with its legal system and practice and that it shall, instead of the protection stipulated in this item, extend to the registered appellation of origin or the registered geographical indication protection against any use thereof in respect of goods that are not of the same kind as those to which the appellation of origin or geographical indication applies, if such use would indicate or suggest a connection between those goods and the beneficiaries, and is likely to damage the interests of the beneficiaries.

Option B

(3) *[Alternative for Paragraph (1)(a) (ii) and (iii)]* Any State or intergovernmental organization may declare, when depositing its instrument of ratification or accession, that the provisions of paragraph (1)(a)(ii) and (iii) are not compatible with its legal system and practice and that it shall, instead of the protection stipulated in these items, extend to the registered appellation of origin or the registered geographical indication protection against any use thereof in respect of goods that are not of the same kind as those to which the appellation of origin or geographical indication applies, if such use would indicate or suggest a connection between those goods and the beneficiaries, and is likely to damage the interests of the beneficiaries.

Option C

(3) *[Alternative for Paragraph (1)(a) (ii) and (iii)]* Any State or intergovernmental organization may declare, when depositing its instrument of ratification or accession, that the provisions of paragraph (1)(a)(ii) and (iii) are not compatible with its legal system and practice and that it shall, instead of the protection stipulated in these items, extend to the registered appellation of origin or the registered geographical indication protection against any use thereof in respect of goods that are not of the same kind as those to which the appellation of origin or geographical indication applies, if such use:

- (i) would indicate a connection between those goods and the beneficiaries of the appellation of origin or the geographical indication, and would be likely to damage their interests;
- (ii) would be likely to impair or dilute in an unfair manner the distinctive character of the appellation of origin or the geographical indication; or
- (iii) would take unfair advantage of the distinctive character of the appellation of origin or the geographical indication.

Option D

(3) *[Alternative for Paragraph (1)(a)]* Any State or intergovernmental organization may declare, when depositing its instrument of ratification or accession, that the provisions of paragraph (1)(a) are not compatible with its legal system and practice and that it shall, instead of the protection stipulated in this subparagraph, extend to the registered appellation of origin or the registered geographical indication protection against any use thereof in respect of goods, if such use would indicate or suggest a connection between those goods and the beneficiaries, and is likely to damage the interests of the beneficiaries.

[Annex II follows]



LI/WG/DEV/9/INF/2 PROV. 2
ORIGINAL: FRANCAIS/ENGLISH
DATE: 27 JUIN 2014/JUNE 27, 2014

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

**Neuvième session
Genève, 23 – 27 juin 2014**

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

**Ninth Session
Geneva, June 23 to 27, 2014**

DEUXIÈME LISTE PROVISOIRE DES PARTICIPANTS[§] SECOND PROVISIONAL LIST OF PARTICIPANTS*

*établie par le Secrétariat
prepared by the Secretariat*

[§] Les participants sont priés d'informer le Secrétariat, en modifiant la présente liste provisoire, des modifications qui devraient être prises en considération lors de l'établissement de la liste finale des participants.

[§] Participants are requested to inform the Secretariat of any changes which should be taken into account in preparing the final list of participants. Changes should be requested by making corrections on the present provisional list.

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

Malika HABTOUN (Mme), chef d'études, Ministère de l'industrie, de la petite et moyenne entreprise et de la promotion de l'investissement, Alger

Ahlem Sara CHARIKHI (Mlle), 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

Ketevan KILADZE (Mrs.), Senior Legal Officer, National Intellectual Property Center (SAKPATENTI), Tbilisi

HONGRIE/HUNGARY

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

Csaba BATICZ, Deputy Head, Industrial Property Law Section, Hungarian Intellectual Property Office (HIPO), Budapest

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

Mahmoud MOVAHED, Legal Expert, Private International Law Division, Ministry of Foreign Affairs, Tehran

Nabiollah AZAMI SARDOUEL, First Secretary, Permanent Mission, Geneva

ITALIE/ITALY

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

MEXIQUE/MEXICO

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

Karla JUÁREZ BERMÚDEZ (Sra.), Especialista en Propiedad Industrial, Dirección General Adjunta de Propiedad Industrial, Instituto Mexicano de la Propiedad Industrial (IMPI), Ciudad de México

Sara MANZANO MERINO (Sra.), Attaché, Misión Permanente, Ginebra

PÉROU/PERU

Luz CABALLERO (Sra.), Ministra Consejera, Encargada de Negocios a.i., Representante Permanente Alterna, Misión Permanente, Ginebra

Sergio CHUEZ SALAZAR, Subdirector, Dirección de Marcas, Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI), Lima

Luis MAYAUTE VARGAS, Consejero, Misión Permanente, Ginebra

Giancarlo LEÓN COLLAZOS, Primer Secretario, Ministerio de Relaciones Exteriores, Lima

PORTUGAL

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Olena ILIASCHUK (Ms.), Deputy Head, Examination of Applications and Industrial Designs, State Enterprise Ukrainian Industrial Property Institute, Kyiv

III. ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES/
INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

ORGANISATION RÉGIONALE AFRICAINE DE LA PROPRIÉTÉ INTELLECTUELLE
(ARIPO)/AFRICAN REGIONAL INTELLECTUAL PROPERTY ORGANIZATION (ARIPO)

Kujo MCDAVE, Legal Counsel, Legal and International Cooperation Affairs, Harare

UNION EUROPÉENNE (UE)/EUROPEAN UNION (EU)

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

Klaus BLANK, International Relations Officer, DG AGRI, European Commission, Brussels

Nicolas VERLET, Deputy Head Unit, World Trade Organization (WTO), DG Agriculture and Rural Development, Brussels

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

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

Carlos Henrique de Carvalho FRÓES, Counsellor, Rio de Janeiro

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

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

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

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

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

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

François CURCHOD, chargé de mission, Genolier

Consortium for Common Food Names (CCFN)

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Knowledge Ecology International, Inc. (KEI)

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

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V. BUREAU/OFFICERS

Président/Chair: Mihály FICSOR (Hongrie/Hungary)

Vice-présidents/Vice-chairs: Alfredo RENDÓN ALGARA (Mexique/Mexico)

Ketevan KILADZE (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/Mrs.), vice-directrice générale/Deputy Director General

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